Deep Chand and Others

Vs

State of Haryana

Criminal Appeal No. 43 of 1968

(J.M. Shelat, C.A. Vaidialingam, I.D. Dua JJ)

17.10.1969

JUDGMENT

SHELAT, J. -

1. One Mange Ram and the four appellants herein were charged under Section 302 read with Section 149 and Section 148 of the Penal Code of causing the death of one Des Raj at about 10 a.m. on July 4, 1960. They were tried and convicted by the Sessions Judge, Rohtak and each of them was sentenced to imprisonment for life. In appeal against the said conviction and sentence, the High Court acquitted the said Mange Ram, but confirmed the conviction of the appellants, changing, however, their conviction from Section 302 read with Section 149 to Section 302 read with Section 34. This appeal is by special leave against the said conviction and sentence.

2. Mange Ram and appellant Deep Chand are brothers. Appellants Dharam Singh and Fateh Singh are also brothers and applicant Mohinder Singh is the son of Dharam Singh.

3. According to the prosecution, the relations between the said Mange Ram and the appellants on the one hand and the deceased Des Raj and his cousin, Daryao Singh, on the other were strained for a number of reasons, one of them was that Mange Ram suspected that his father, Gumani Ram, had been killed by the deceased, Des Raj. There was, besides, political rivalry in respect of the Panchayat elections between the parties. As it very often happens, this bitterness was sparked of by Dharam Singh's buffalo straying into Des Raj's field on the previous day. Hot words were then exchanged between the two.

4. The prosecution case, as laid before the Trial Court, was that while Des Raj was returning in a cart from his field after unloading manure and had reached the outskirts of the village, Mange Ram and the appellants came out of the Kotha of Mange Ram, armed with different weapons, and on Mange Ram raising the cry that they should settle their score with the deceased, all of them struck Des Raj with their weapons till he was killed. This incident was testified by Chandgi Ram, the nephew of Des Raj, who was said to be following the cart of the deceased and by witnesses Sultan, Bhalle Ram, Lachhi and Raghbir, who were either in their cattle enclosures or at the well nearby. It was said that immediately after the incident, Chandgi Ram rushed to the shop of Daryao Singh at Sonepat 6 miles away and narrated the incident to him. Daryao Singh thereupon went to the police station leaving Chandgi Ram at the shop and lodged the First Information Report wherein he set-out the names of the appellants and Mange Ram as Perpetrators of the crime and also the names of Chandgi Ram and the other witnesses as persons who had witnesses the incident.

5. The Trial Judge accepted the evidence of Chandgi Ram and the four witnesses, who claimed to be

the eye-witnesses, and convicted all the 5 accused. This was done in spite of the evidence of Piara Singh, D.W. 1, the Assistant Excise and Taxation Officer and Man Singh, D.W. 2, both of whom testified to the presence of Mange Ram at the office of witness Piara Singh that morning. The Trial Judge was of the view that although on that evidence Mange Ram could be said to be in that office that morning, that evidence was not enough to exclude the possibility of his having returned to the village in time to participate in the crime along with the appellants. The High Court, however, felt that even if the defence evidence was not sufficient to fully establish Mange Ram's alibi, it was enough to cast a reasonable doubt on the prosecution case against him and in that view gave him the benefit of reasonable doubt and acquitted him. Mange Ram having thus been eliminated from amongst the five assailants, Section 149 became inapplicable and the High Court, therefore, converted the conviction of the appellants to Section 302 read with Section 34 and also set aside their conviction under Section 148.

6. Two contentions were raised before us by Mr. Chari against the correctness of the conviction of the appellants by the Trial Court and by the High Court. The first was that although Daryao Singh had lodged the First Information Report within a comparatively short time after the incident and although that document set out at some length the incident, the motive for which Des Raj was killed and the names of the appellants as his assailants as also the eye-witnesses, it could not further the prosecution case. The argument was that Chandgi Ram could not have been the eye-witness he claimed to be, that if he was, he would have rusted straight away to the police station which was only 4 miles away from the place of the incident instead of going six miles to Sonepat for giving information to Daryao Singh and in any event having witnessed the assault on his uncle, Des Raj, he would have accompanied Daryao Singh to the police station and given the First Information Report himself instead of leaving that to be done by one who had not seen the incident, and therefore, could only give a secondary report about it. Mr. Chari argued that Chandgi Ram could not be a witness to the incident, that Daryao Singh having learned about the murder grasped the opportunity of involving Mange Ram and the appellants with whom his relations were hostile and lodged the case against them, to bolster up which he gave the names of person, who he was sure would depose conveniently against his enemies. According the Mr. Chari, the fact that Mange Ram was acquitted on his plea of alibi supported his contention that the investigation against Mange Ram and the appellants was at the very threshold suspect, and therefore, no credence could be given to the prosecution case although it was said to be supported by eye-witnesses' account. This was so as Chandgi Ram as also the other witnesses belonged to the party of Daryao Singh and could be easily used by him as eye-witnesses.

7. It cannot be gainsaid that Chandgi Ram and the other witnesses were interested witnesses. In fact, the High Court treated them so and scrutinised their evidence with caution as has to be done in the case of such interested witnesses. But once the evidence of such witnesses is considered with care and caution and found satisfactory, the mere fact that they are interested witnesses cannot be a ground for discarding it. That is a well accepted principle of assessment of evidence. The other two premises of Mr. Chari's argument, as to what he characterised as the unusual conduct of Chandgi Ram and the possibility of Daryao Singh having got the opportunity of involving his enemies and naming persons who would be plaint enough to falsely pose as eye-witnesses, are so closely inter-related that they have to be examined together.

8. The first difficulty which Mr. Chari's argument has to confront is that both the Trial Court and the High Court were agreed in treating Chandgi Ram and the witnesses as genuine eye-witnesses and their evidence as reliable so far as the appellants were concerned. The High Court on its own assessment regarded their evidence satisfactory despite the fact that against their unanimous word

that Mange Ram had taken a prominent part in the assault of Des Raj, the High Court gave him the benefit of doubt and acquitted him. But then, was the conduct of Chandgi Ram so unusual and abnormal so as to justify the argument that the investigation had proceeded on a false foundation ? If Chandgi Ram was following the cart of Des Raj, as he testified, the sudden attack made on the deceased would obviously be a shocking experience and knowing the background of strained relations between the parties, it would be but natural that he would first turn to the only elder member of the family, which Daryao Singh undoubtedly was, to report it and to ascertain what best could be done. There was, therefore, nothing unusual or extraordinary in Chandgi Ram going to his uncle at Sonepat instead of rushing straight to the police station though that was four miles away. It was equally not unusual for Daryao Singh, being also aware of the background of the crime and having learnt its details, to leave Chandgi Ram at his shop and go to the police and lodge the First Information Report. That he did lodge that report and at the time mentioned therein was undisputed.

9. As regards Daryao Singh having thus got the opportunity and using it for falsely implicating the appellants and fabricating a cash with false witnesses against them, one Chandgi Ram was found to have been present at the time and place of the incident, it could hardly be conceived that either he or Daryao Singh would allow the murderers of Des Raj to go scot-free by substituting them for the appellants, only to satiate their antagonism against them. If, on the other hand, Chandgi Ram was not present and Daryao Singh on coming to know of the murder thought that an opportunity had become available to him to implicate the appellants and Mange Ram, there was scarcely any necessity for him to invest the story of Chandgi Ram having come to him and of Chandgi Ram being an eye-witness. It would have been easy for him substitute himself in the place of Chandgi Ram and pose before the police that he was present at the time of the incident. That would have been quite easy and perhaps plausible. He could have asserted with case that he had accompanied Des Raj that morning to help him to carry the manure and that they were returning from the field after unloading when the deceased was attacked. There was thus no necessity for him to invent a roundabout story of Chandgi Ram having been present, his having rushed up to him and then his going to the police station to lodge the First Information Report.

10. As regards the argument that Daryao Singh had falsely given that names of Sultan and others as eye-witnesses knowing that they would give evidence in the manner he desired, attractive though such an argument can be, a scrutiny of the evidence on record at once renders it unsustainable. There was clear evidence that Daryao Singh had accompanied the police officer from the police station straight to the scene of the offence and that the police officer had recorded the statements of these witnesses that very day. That being so, there could have been no opportunity for Daryao Singh to confabulate with those witnesses and to tutor them to say what he wanted them to say to the police officer before they gave their statements. At any rate, nothing was brought out in the evidence of Daryao Singh or the police officer that the former had that opportunity before the officer recorded the statements of those witnesses. In these, circumstances, it is not possible to sustain the first argument of Mr. Chari, namely, that the witnesses could not have been treated as genuine eye-witnesses because the investigation was started on a false foundation. The premises on which the argument was founded have nothing on record except only speculation.

11. The second argument ran on the following lines. Both the first Information Report and the eye-witnesses uniformly alleged that Mange Ram took a predominant part in the incident, firstly, by raising a cry of instigation, and secondly, by giving a blow with the axe he had which felled the deceased down. That part of the case not having been found acceptable, contradicted as it was by the evidence of the two defence witnesses whom the High Court regarded as credence-worthy, it was not a case merely of the applicability of the maxim falsus in uno falsus in omnibus, but of the

very substratum of the prosecution case having been found to be untrue, and therefore, destroyed. Mr. Chari conceded that maxim has not been found to be a sound rule in the conditions in this country, see Umar Ahir & Others v. The State of Bihar and Ambika Sbaran Singh v. Mahant Mahadeva Nand Giri and therefore, the Court's duty in cases where a witness has been found to have given unreliable evidence in regard to certain particulars is to scruntinise the rest of his evidence with care and caution. If that part of the evidence takes away the every substratum of his case, the Court cannot disbelieve the substratum and reconstruct a story of its own out of the rest.

12. What was the substratum of the prosecution case and the case of the witnesses in their evidence ? The essence of the evidence of these witnesses and based on it of the prosecution case was the murderous assault on Des Raj and the fact of the appellants and Mange Ram having been his assailants. The fact that the High Court and even the Trial Court found the evidence led by Mange Ram as trustworthy clearly meant that Mange Ram could not be amongst those who killed Des Raj. That part of the evidence obviously, therefore, was untrue. But if the maxium falsus in uno falsus in omnibus were not be applied there would still be the evidence relating to the other persons who were the assailants of the deceased. There still remained the duty of the Court to scrutinise with caution and care the evidence with regard to those others. The substratum of the prosecution case, therefore, could not be said to have fallen with the evidence as against Mange Ram. A conviction based on the rest of the evidence as against the rest could be justified if that evidence was found on a careful and cautions consideration of it to be reliable. That is precisely what has been done in this case.

13. It is true that by reasons of the eye-witnesses having attempted to drag in Mange Ram along with the appellants coupled with the fact that they were interested witnesses, the High Court, before accepting the rest of their evidence, had to subject it to a careful scrutiny and to ascertain whether it could be accepted by reason of its being sufficiently corroborated or for other equally safe reason. Apart from the intrinsic worth, which both the courts found in it, there were certain circumstances which rendered that evidence safe in spit of its being tainted in the matter of Mange Ram. In the first place, the medical evidence was clear that the prosecution version that Des Raj was attacked by a number of persons and with different weapons was true. In the second place, there was the evidence that appellants Deep Chand and Fateh Singh had gone that very day to the Civil Hospital to get themselves examined in respect of such light and superficial injuries for that neither of them would ordinarily have taken the trouble of going. Why did they do so unless, as the High Court has observed, they had a guilty conscience and had at that stage thought of preparing evidence to enable them to raise the possible plea of a scuffle and their having exercised the right of private defence therein, but on second thoughts having given up that course of action. Lastly, there was the fact of the Investigating Officer having seized from the houses of the appellants weapons which were found to have stains of human blood. The prosecution case was that these weapons were discovered by the appellants. That was not accepted by the High Court because of the seizure of them having been considerably delayed. Although the evidence as to the appellants having discovered these weapons and their statements in regard to it were held unacceptable, the evidence as to their seizure, however belated, was there as also the fact of there being human blood stains on those weapons. That evidence constituted a strong circumstance pointing to the appellants having used those weapons in the attack on Des Raj.

14. The appellants, no doubt, alleged that these weapons were planted by the Investigating Officer in their houses. But barring the allegation in general terms, there was not a title of evidence in its support. There was also no evidence that there were no inmates living in those houses enabling the police to plant those weapons there. Even assuming that those houses were vacant and none was

living in them, no evidence was led and not even a suggestion made that the police had broken open those houses to plant those weapons therein. No reliance thus could be placed on such a bare allegation. The seizure of weapons with human blood on them without any explantion for such blood was a valuable piece of evidence which together with the other circumstances went a long way in lenfing trustworthiness to the evidence against the appellants in spite of a part of it as regards Mange Ram being untrue.

15. In these circumstances it is not possible to disagree with the High Court when it declined to discard the prosecution case against the appellants.

16. The appeal is dismissed.

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