

Hari Om and Another

Vs

The State of Uttar Pradesh

Criminal Appeal No. 214 of 1967

(S. M. Sikri, I. D. Dua JJ)

16.09.1970

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment of the High court of Judicature at Allahabad dismissing the criminal appeal filed by the present appellants against their conviction and sentence by the learned Sessions Judge, Azamgarh, under Section 302/34, I.P.C. The case against the appellants depends upon circumstantial evidence as there are no eye-witnesses to the murder of Mathura Prasad. Ordinarily we do not interfere with the concurrent findings of the learned Sessions Judge and the high court, but in this particular case certain vital circumstances have not been considered by them and, therefore, we are constrained to look into the evidence ourselves.

2. The prosecution story, briefly stated, is as follows : The appellant Hari Om maintained a cloth shop in Atraulia. He used to purchase cloth from M/s. Baijnath Sheo Gopal, a firm of Kanpur, on credit. He owed a sum of about Rs. 3,000/- in respect of the purchases and in spite of several demands in writing he failed to pay. Under instructions of the firm, other deceased, Mathura Prasad, reached Atraulia on January 27, 1964, to realise dues of the firm from Hari Om. It is the case of the prosecution, which is denied by the defence, that Hari Om used to reside with his wife in his recently constructed house in Atraulia and Mathura Prasad is alleged to have stayed with him in this house, and further Hari Om and Mathura Prasad were seen together in that house at about 8 p.m. on January 28, 1964. It is further alleged that on the morning of January 29, 1964, at about 6, the neighbours on hearing groans coming out of that house rushed towards the house and saw the appellants emerging out of the western room of the house. Their clothes were alleged to have been blood-stained and in spite of questioning of the neighbours they ran away towards the east without giving any reply. Thereafter the neighbours went inside the house and saw the dead body of Mathura Prasad lying there with multiple injuries. One blood-stained Pharsa and a blood-stained knife were also found lying on the ground by the side of the dead body. It was further alleged that the wife of Hari Om with a child in her lap was standing in the verandah and informed the witnesses that the appellant Mangru had come to Hari Om and shortly thereafter both of them had committed the murder.

3. The First information Report was lodged at the police station, which is only two furlongs away from the place of occurrence at 6.25 a.m. The Sub-Inspector on reaching the scene of occurrence took into possession various things including the broken cot in which the strings and Patti had stains of blood. He is also alleged to have recovered a register, Ex. 29, on a search of the house of Hari Om.

4. Mangru was arrested on the same day at about 4.45 p.m. at Azamgarh. He was brought to village Atraulia, and it is alleged that at his instance some blood-stained clothes and a beddings alleged to belong to the deceased were recovered from his house.

5. Hari Om in his defence inter alia stated that his house in village Atraulia was still under construction and nobody lived in it and that Mathura Prasad never stayed with him at that house. He examined himself as a witness in defence. Mangru, appellant, denied that he had discovered any articles from his room, as alleged by the prosecution.

6. It is common ground that Hari Om was indebted to the extent of about Rs. 3,000/- to Messrs Baijnath Sheo Gopal, who were demanding payment of their dues and that Mathura Prasad, deceased, did come to Atraulia for the realisation of the money.

7. The learned Counsel for the appellants, Mr. Chari, submitted that it is not proved that Mathura Prasad spent the night at the new residence of Hari Om. He pointed out that the evidence of Bhagwati Prasad, P.W. 14, shows that the house had not been completed and no kitchen was found in the house. The learned Counsel further urged that it is remarkable that the dead body of the deceased was found on a Charpoy which had no Dari, sheet or any other cloth spread on it, and the bedding of the deceased was found not in Hari Om's house but was found in the house of Mangru. He urged that it is impossible to come to the conclusion that the deceased slept in that house and further that it is possible that the deceased was murdered not in the morning, as the witnesses have deposed, but at some other time. He further pointed out that it is remarkable that the Investigating Officer, P.W. 16, stated in his examination that after recording the statements of some of the witnesses he took a search of the house of Mangru at about 3 p.m. but did not take anything in his possession from his house. As we have already stated, it was at about 4.45 p.m. that Mangru is alleged to have promised to hand over blood-stained clothes and a bedding saying that the bedding belonged to the deceased, and later did so.

8. Mangru has a betel shop and this shop is situated in a portion of the house of Smt. Gomti. This betel shop is situated in a Kothari. There is a verandah in front and there is one more Kothari inside that Kothari. It seems the Kothari serves both as a shop and as his house.

9. We are unable to appreciate why the Investigating Officer, when he made the search at 3 p.m., was not able to find anything, including the blood-stained clothes, either from the shop or from the Kothari.

10. The High Court and the Sessions Judge have not adverted to this question of the bedding and to the question whether the prosecution story is probable or not, and also as to why the prosecution story does not explain how in the month of January the deceased was able to sleep without any covering whatsoever. It is true that the witnesses who say that they saw Mangru and Hari Om coming together from the house of Hari Om and running away have been believed by the learned Sessions Judge and the High Court but we do not find it possible to place any reliance on them because the prosecution has not been able to explain about the finding of the bedding of the deceased in the house of Mangru and the absence of any sheet, etc. on the cot on which the deceased was found lying dead.

11. In the result we must give the benefit of doubt to the appellants and acquit them. The judgment of the learned Sessions Judge and the High Court are set aside, the convictions and sentences quashed and it is directed that the appellants be released forthwith.

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