Bhusai (Alias) Mohammad Mian and Another

Vs

State of Uttar Pradesh

Criminal Appeal No. 230 of 1969

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

03.12.1970

JUDGMENT

BHARGAVA, J. -

1. Appellants Bhusai alias Mohammed Main and Mohammed Ibrahim were prosecuted for an offence under Section 302, read with Section 34 of the Indian Penal Code for committing the murder of one Abdul Haq Ansari on the night between 9th and 10th of August, 1965. The Sessions Judge, who tried the appellants, acquitted both of them. The State filed an appeal in the High Court of Allahabad. The High Court disagreed with the Sessions Judge, allowed the State appeal, and convicted both the appellants. Bhusai was sentenced to death under Section 302, read with Section 34, I.P.C., while Mohammed Ibrahim was sentenced to imprisonment for life under Section 302, read with Section 34, I.P.C. The High Court granted a certificate to Bhusai under Article 134(1)(a) of the Constitution and to Mohammed Ibrahim under Article 134(1)(c). This appeal has been filed by the two appellants on the basis of these certificates.

2. The prosecution case was that appellant Mohammed Ibrahim was living in a house belonging to Abdul Sattar, father of the deceased Abdul Haq. and had constructed a verandah in the front portion of the house. The house occupied by Mohammed Ibrahim was a part of the house in which Abdul Sattar was living with all his family. They were related as cousins. Abdul Sattar used to tie his cattle in the back portion of house and, since there was no the exist, the cattle had to be taken in and brought out through the verandah constructed by Mohammed Ibrahim. About 15 days before this incident, Mohammed Ibrahim started objecting to Abdul Sattar's cattle being taken through the verandah. This resulted in a quarrel between Mohd. Ibrahim and Abdul Sattar's son, Abdul Haq, deceased. Then there was another quarrel just a day before the incident. On both occasions, people intervened and, thus, avoided the quarrels developing into serious fights Mohammed Ibrahim threatened Abdul Haq on the second occasion, saying that he would soon settle the matter for good. It is said that these were the incidents which led these two appellants to commit the murder of Abdul Haq.

3. The version put forward by the prosecution for the actual incident is that, on the night between 9th and 10th August, 1965, Abdul Haq happened to be sleeping on the Chabutra of a house belonging to one Yusuf, while Abdul Haq's father, Abdul Sattar, and his son Mohammad Akhtar were sleeping inside he lane which passes by the side of the Chabutra of Yusuf and goes from the Pacca road to the house of Abdul Sattar. At about 1.30 in the night, Abdul Sattar and Mohammad Akhtar woke up on hearing the shrieks of Abdul Haq that he was being killed and, according to them, they saw Mohammad Ibrahim holding down Abdul Haq on the cot while Bhusai was inflicting dagger stabs on him. They shouted, whereupon the two appellants started running away.

The appellants were pursued by Abdul Sattar and Mohammad Akhtar. As the appellants came on to the Pacca road outside the lane, they were confronted by four persons, Majid Husain, Nazar Husain, Badruddin and Choudhary Pasi, who happened to be returning to the village after attending a Session of Qawwali at the Mazar belonging to one Ibrahim Khan which was situated at a distance of about 200 yards from the scene of occurrence. These four persons happened to arrive close to the scene of occurrence just at about the time of the murder and heard the shriek of Abdul Haq whereupon they ran in that direction. They found the two appellants trying to run away and caught hold of them. Bhusai was sill carrying the dagger and that was snatched away from him by Mohammad Akhtar. The two appellants were then kept in custody at the scene of occurrence, while Mohammad Akhtar, Abdul Sattar and a number of other persons proceeded with Abdul Haq to T. B. Sapru Hospital in order to have his injuries attended. They carried him to he Hospital on a cot. On arrival at the Hospital at about 2.30 a.m., however, the nurse, who saw Abdul Haq, pronounced him dead. Thereupon, Mohammad Akhtar wrote out a report at the hospital and proceeded to Police Station Colonelganj where he is said to have lodged the report at 3.10 a.m. Mohammad Akhtar also carried the dagger with him and deposited it at the Police Station when he filed his report. Thereupon, he Head Constable, who recorded the report at he Police Station, sent a message by telephone to Police Out-post, Pura Gadaria, asking the police there to proceed to the place of occurrence and take the appellants into custody. The case was investigated and, after investigation, both the appellants were sent up for trial for committing the murder of Abdul Haq who was found to have received three stab wounds in hid abdomen in addition to an incised wound on his left index finger. On post mortem examination, it was found that the three wounds inflicted in the abdomen had caused extensive internal injuries and bleeding. Death was the result of shock and hemorrhage following these abdominal injuries.

4. The Sessions Judge, in a well-reasoned and careful judgment, discussed the prosecution evidence and the various aspects of the prosecution case in its different sages and held that the prosecution evidence was not sufficient to prove the charge against these two appellants beyond reasonable doubt. The High Court, on appeal, disregard with this view and set aside the order of acquittal passed by the Sessions Judge. In giving its decision, the High Court accepted the findings recorded by the Sessions Judge that Abdul Haq was murdered at the place and time alleged by the prosecution and that there was sufficient light at the place to enable witnesses to recognise the assailants. The High Court, however, differed from the Sessions Judge in the assessment of the evidence of the eye-witnesses as well as his criticism of the other aspects of the prosecution case.

5. According to the High Court, the eye-witnesses were disbelieved by the Sessions Judge on the sole ground that no blood was found wither on the cot or underneath the cot on which Abdul Haq was assaulted and given the injuries, so that the High Court proceeded to deal with this reasoning adopted by the Sessions Judge. The High Court hardly took notice of the fact that there were two other reasons given by he Sessions Judge for disbelieving he eye-witnesses. One of them was fairly important, viz. that the dagger, which was alleged to have been snatched away from Bhusai By Mohammad Akhtar, was not found to be blood-stained even though Bhusai had no opportunity of washing away the blood from the dagger or to clean the dagger before it was taken away from him. Another circumstance was that, even though the two appellants were caught on the spot immediately after he murder, they were not ill-treated in any manner by the villagers or by the son or father of Abdul Haq who was killed by them. These two circumstance were brushed aside by the High Court without sufficient reasons.

6. With regard to the question of blood not being found on the dagger, the High court considered that this fact had no importance, because it is quite possible that, in the long time that passed while

Mohammad Akhtar carried the dagger from the place of occurrence to the Hospital and thence to the Police Station, the blood may have been wiped off. On the face of it, this can be no explanation for absence of blood on the dagger. If Mohammad Akhtar adopted the extraordinary course of carrying the dagger with him even to the hospital when taking Abdul Haq there, Abdul Haq there, he would surely have taken care to see that the blood on the dagger remains intact and does not get wiped off. In fact, the conduct of Mohammad Akhtar in taking the dagger with him to the Hospital itself seems to be suspicious, particularly when, according to him, the assailants were captured and where left behind at the scene of occurrence. The alternative explanation that the blood had disintegrated by the time the scrapings from the dagger could be tested by the Chemical Examiner and the Serologist is also improbable, because the Serologist in his report was quite definite that there were no traces of blood in the scrapings. If he had failed to find the blood due to disintegration, he would have said so in his report, as is usual in such cases where the Serologist feels that there was blood, but, due to disintegration, proper test could not be applied, so that he could not certify its presence.

7. The principal ground given by the Sessions Judge for holding that the eye-witnesses were unreliable as the version given by them was not at all probable was based on the absence of blood on the cot or underneath the cot. One of the eye-witnesses, Abdul Wajid, stated in clear terms that the blood, which was found on the Chabutra of Yusuf, was at a distance of 2 or 3 paces from the place where Abdul Haq's cot was lying when he was sleeping on it. The High Court has suggested two alternative explanations for the absence of blood on the cot. One is that there is no certainty that the cot, which was found close to the blood spots on the Chabutra by the investigating officer, may not have been the cot on which Abdul Haq was killed. This possibility was envisaged on the basis of the statements of one or two witnesses who said that Abdul Haq was carried on is cot to the hospital, was not taken into possession by the police nor was any note made that there was blood on it. Further the absence of blood that was noticed by the Sessions Judge was not only from the cot but also from the ground underneath it. Abdul Haq was sleeping without any clothes covering his abdomen. Even if there had been some bleeding when he was attacked on the cot, at least some drops would have dripped down beneath the cot. The second alternative explanation suggested by the High Court is that none of the injuries received by Abdul Haq was such as to cause blood to spurt out from it. According to the High Court, the nature of the injuries was such that blood could come out slowly though in large quantities. This explanation appears to have appealed to the High court to explain the want of blood on the cot or on the Chabutra underneath the cot; but the High Court lost sight of the fact that if this was correct, there could have been no blood at all on the clothes of the assailants. The prosecution very strongly relied on the presence of human blood on the Baniyan and Tahmad of Mohammad Ibrahim and on the Pant of Bhusai. In fact, the High court took it as a strong circumstance corroborating the evidence of the eye-witnesses. If there twice no spurting of the blood, the presence of the blood on the clothes of the two appellants remains totally unexplained by the prosecution version and, in fact, militates against it. The prosecution case was that Mohammad Ibrahim was keeping Abdul Haq on the cot by pressing down his head and shoulders at the time when Bhusai stabbed him with the dagger three times. Obviously, Mohammad Ibrahim must have been at quite some distance from the abdomen of Abdul Haq and, even if the blood had spurted out, it was extremely unlikely that his Tahmad and Baniyan would both get blood-stained. In fact, unless the blood spurted out to some extent, event the Pant of Bhusai could not have got blood-stained.

8. The appellants have come forward with explanations of how blood appeared on their clothes. According to Bhusai, he received injuries when he was captured, though, he was not captured on the spot, but later on by the police. The Medical Examination report of Bhusai shows that he had

scratches including scratched on the leg. It is quite possible that the blood-stains on the pant came from one of those scratched. So far as Mohammad Ibrahim is concerned, he says that he got the blood-stains when, after Abdul Haq had been murdered, he arrived and helped in putting Abdul Haq on the cot on which he was carried to the hospital. This version is much more consistent with the circumstance that blood-stains were found on both the Baniyan as well as the Tahmad which were worn by Mohammad Ibrahim. It is interesting in this concussion to note that, in the recovery report, the Tahmad and the Banyan, which were blood-stained, were described as belonging to Mohammad Ibrahim. Later, however, during the trial in the Court of Sessions, the Investigating Officer, Udaibir Singh, as well as the recovery witness, Kamil, made contrary statements alleging that the Baniyan was recovered from Bhusai. The High Court thought that this was a mere mistake on which the Sessions Judge should not have relied to hold that the evidence of recovery of blood-stained clothes did not prove the guilt of he appellants. The High Court did not pause to consider why there should have been blood on the both the Baniyan and Tahmad of Mohammad Ibrahim. It seems that the investigating officer realised that, according to the prosecution version, it was very unlikely that there would be blood on both the clothes of Mohammad Ibrahim while it is found that there is only one blood-stain on the Pant of Bhusai, who was the person who actually inflicted the dagger blows. It appears that it was to explain away this circumstance that Udaibir Singh, Investigating Officer, changed his version and alleged that the Baniyan belonged to Bhusai and not to Mohammad Ibrahim. The circumstance that no blood was found either on the cot or on the Chabutra underneath the cot, on which Abdul Haq was alleged to have been murdered, while blood-stains are alleged to have been caused on the Tahmad and Baniyan of Mohammad Ibrahim and the Pant of Bhusai, fully supports the view of the Sessions Judge that the murder could not have taken place in the manner stated by the prosecution witnesses, so that it was doubtful whether these witnesses woke up in time to see the actual assault on Abdul Haq. It is to be noted that two out of the three eye-witnesses are the father and son of the deceased and they had a grievance against Mohammad Ibrahim because, according to them, Ibrahim was living in their house on sufferance and was yet obstructing their passage of cattle without any justification. The third witness, Abdul Wajid, was sleeping on the roof of his own house where he first heard the shrieks of Abdul Haq and almost simultaneously heard the shouts of Akhtar and Sattar. He stood up and saw Ibrahim holding Abdul Haq while Bhusai saw stabbing him with a dagger. Only three blows were given with a dagger. Abdul Haq could have shouted only after he had received at least the first blow. The second and the third blows must have followed very quickly and there could not be enough time for Abdul Wajid to stand up and see the actual stabbing when he says that he woke up on hearing the shriek of Abdul Haq followed by the shuts of Akhtar and Sattar. In fact, Akhtar and Sattar were at quite some distance from Abdul Haq, and it is very probable, as suggested by the defence, that even they were unable to see the actual assault, because the whole incident must have ended in a short time. Having failed to recognise the real assailants, this case was made up against the two appellants.

9. One circumstance that appealed to the Sessions Judge as casting doubt on the prosecution case is the manner in which the First Information Report was recorded. The High Court, on the other hand, felt that, in case Mohammad Akhtar had reached the Hospital with Abdul Haq at 2.30 a.m. the report could have been lodged at the Police Station, Colonelganj, at 3.10 a.m. as alleged by him, so that the view of the Sessions Judge that the report had been ante-timed was not correct. The Judge, before recording his opinion, acceded to the request of the defence counsel with the consent of the Public Prosecutor that Mohammad Akhtar be asked to write a fresh report in order to judge how long he would have taken in writing the report which he said he scribed at the hospital and which he carried to the Police Station. Mohammad Akhtar wrote a report, which, in substance, contained the same material as the report alleged to have been written by him at the hospital, though it had a

number of omissions and was more brief. Even then, it took him 20 minutes to write out the report. The report, which he filed at the Police Station, was longer and, as noticed by the Sessions Judge, appears to have been written out much more carefully, as the handwriting indicates that it was written slowly and not fast like the report written out by Mohammad Akhtar in Court. The report filed at the Police Station must have, therefore, taken much more then half an hour. This aspect has been completely ignored by the High Court. Further, a reading of the report, which was filed at the Police Station by Mohammad Akhtar, a gives a clear indication that it could not have been written at the hospital. Mohammad Akhtar was a young boy who was still a student and was not an expert in writing reports of incidents. The report written by him contains sentences which could not have been introduced in it unless he was guided by some police officer. The last few sentences are particularly significant in this behalf. He says that he went to Beli Hospital taking his father, but his father dies after reaching there. Leaving the dead body of his father at that very place, he had come of lodging the report. The knife, which was recovered from the appellants, was being deposited by him. necessary action may be taken. A person making the report for the first time would hardly say in the report that he had come to lodge it after leaving the dead body of his father at the hospital. The sentence that the knife, which was recovered from the assailants, is being deposited by him clearly means that the report was being written at the police station. Such a sentence that necessary action may be taken is the usual from in which policemen record the reports. That is not the manner in which any one would scribe a report, unless he was familiar with police methods. A look at the First Information Report, therefore, makes it clear that he was writing down the report in the presence of the police, so that Mohammad Akhtar is an unreliable witness and this First Information Report cannot be held as useful to corroborate the evidence of the eye-witnesses.

10. The Sessions Judge held that the motive for the murder attributed to Mohd. Ibrahim was not at all convincing. He discussed the evidence relating to tit and, in our opinion, rightly came to the view that Mohd. Ibrahim could have no adequate motive for committing the murder of Abdul Haq. So far as Bhusai appellant is concerned, he was not shown to have any motive at all. The prosecution suggestion that Bhusai and Mohd. Ibrahim were friends was also unlikely because of the difference in age between the two of them. On the other hand, Abdul Sattar and Mohd. Akhtar could have motive to implicate Mohd. Ibrahim for the murder if, in fact, they failed to see the assailants of Abdul Haq altogether and knew that the real culprit or culprits could not be caught.

11. This take us to the evidence of the three witnesses produced by the prosecution to prove the capture of the appellants immediately after murder. These witnesses are Majid Husain, Nazar Husain and Badrudin. The Sessions Judge considered it very doubtful that, at that hour of the night, they should have been at the scene of occurrence to catch hold of the appellants. The High Court gave the benefit of poor idea of time and distance to these prosecution witnesses and held that it was possible that this occurrence may have taken place earlier than 1.30 a.m., so that these three witnesses could arrive at the scene of occurrence after attending the Qawwali at the Mazar arranged by Ibrahim Khan, as the Qawwali must have ended some time after mid-night. The alternative explanation, according to the High Court, was that the Qawwali may have continued longer, so that these witnesses were delayed and did come at about 1.30 a.m. In accepting this evidence, the High Court did not take notice of the fact that it appears to he too good a coincidence that these three persons should arrive close to the scene of occurrence just at the time when the murder is being committed and Abdul Haq shouts that he is being killed. The existence of this coincidence in the case of these witnesses is not a solitary instance. Both Majid Husain and Nazar Husain live in house whence the scene of occurrence is not visible. Even the house, in which Abdul Haq and Mohd. Ibrahim lived, is not visible from their houses and, yet, both of them stated that they were present on both the earlier occasions when quarrels took place between Mohd. Ibrahim and Abdul Haq in their

joint houses. It seems to be surprising that these two persons, Majid Husain and Nazar Husain, should always, be coincidence, arrive at the precise moment so as to be witnesses on behalf of Abdul Sattar and Mohd. Akhtar and against appellant Mohd. Ibrahim. Such repeated coincidence do not take place. This circumstance clearly shows that the evidence of these witnesses is unreliable. The sessions Judge, in our opinion, was right in holding that it was not at all likely that these persons would be present at the scene of occurrence at that hour of the night so as to help in capturing the appellants.

12. Badruddin, who is the third witness of this capture, is contradicted by Majid Husain on the question whether he accompanied Abdul Haq and Mohd. Akhtar to the hospital or not. Badruddin, Nazar Husain and Majid Husain ar close associated or relations. According to the prosecution, there was a fourth person Chaudhary Pasi who also assisted in capturing the appellants. That witness has not been produced, though he would have been the only independent person and one who did not, by coincidence, a appear at the crucial moment every time.

13. The witnesses, who have tries to prove the capture of the appellants, are also, therefore, unreliable. On these facts and in these circumstances, we consider that the High Court had no justification at all for setting aside the orders of acquittal passed by the Sessions Judge.

14. The appeal is consequently allowed, the judgment of the High court is set aside and that of the Sessions Judge is restored, so that the acquittal of the appellants is upheld.

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