

Surya Mani

Vs

State of U. P.

Criminal Appeal No. 11 of 1970

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

16.12.1970

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad confirming the conviction of the appellant under Section 302, I.P.C., and the sentence of death passed on him by the learned Sessions Judge, Partapgarh.

2. The prosecution case is that on July 16, 1970, at about 6 p.m., the appellant assaulted Smt. Mahdei while she was grazing her cattle in the field of Kedar Nath, and she died as a result of the injuries inflicted on her. The incident was witnessed by Nanku (P.W. 1), Ram Khelawan (P.W. 2) and Bachai (P.W. 4). It is alleged that the reason why the appellant murdered Smt. Mahdei was that she was objecting to the appellant having relations with her daughter, Smt. Rani (P.W. 6.)

3. Ram Khelawan, P.W. 2, who was a Police Constable posted at Police Station Cantonment, Allahabad, was then on leave. He took down the report and sent it to the Police Station through the Chowkidar. The First Information Report was registered at 9.10 p.m. The post-mortem examination revealed that there were four punctured wounds and one contusion on the body of the deceased.

4. The learned Sessions Judge relied on the evidence of the three eye-witnesses. It was urged before him, as before us, that Ram Khelawan did not know the accused before and, therefore, it was the duty of the prosecution to have put up the accused for a test identification by this witness. It appears that a number of applications were moved in this respect. Those applications are not printed on the record and as a matter of fact they were not even available when the case was argued before the High Court.

5. It appears that on July 21, 1967, the appellant moved an application in the Court of A.D.M. (J), when he surrendered himself in the Court, and on this application the Public Prosecutor reported that since it was not clear from the First Information Report whether the accused was to be put up for identification he may be ordered to be made Baparda, and on the basis of this report the A.D.M. (J) ordered that the appellant should be made Baparda. On July 26, 1967, the appellant made an application that he be released on bail. In this application no request was made by the appellant that he be put up for identification. On August 3, 1967, S.O. Police Station Jethwara submitted a report to the A.D.M. (J) in which he stated that the appellant was named in the F.I.R. and the police did not want that he should be put up for identification. It was on October 6, 1967, that the accused for the first time moved an application before A.D.M. (J) stating that he had made an application on September 15, 1967, praying that he may be put up for test identification by Ram Khelawan, and

that no orders had been passed on this application upto then.

6. The learned Sessions Judge perused the entire record of the lower Court but could not find any application on behalf of the accused presented to the learned Magistrate either on September 15, 1967 or on any other date prior to October 8, 1967, requesting that any test identification should be held. The learned Sessions Judge was satisfied that it was deliberately and wrongly stated that the appellant had moved an application on September 15, 1967.

7. On the application of the accused, dated October 6, 1967, the Magistrate requested the District Magistrate that a Magistrate be deputed for holding identification proceedings of the accused. It was arranged that Shri Faujdar Singh would hold the parade on October 20, 1967, which date was later changed to October 27, 1967. On October 26, 1967, i.e., a day before the date fixed for identification, the appellant moved another application alleging that the police deliberately delayed the holding of the identification proceedings and that on the date of the application, i.e., October 26, 1967, the police succeeded in snatching away from his house his photograph, and, therefore, the appellant did not want to get his identification proceedings conducted. As a result the Magistrate ordered that the identification proceedings need not be held.

8. On these facts the learned Sessions Judge came to the conclusion that the conduct of the accused was suspicious and the application had been made by him with some ulterior motive to gain advantage in the course of the trial. The learned Sessions Judge was also satisfied that the appellant was known to Ram Khelawan from before.

9. When the appeal was argued before the High Court the papers pertaining to the application were not traceable. It was urged before the High Court that the records had been removed deliberately. The High Court did not accept this plea and came to the conclusion that it was clear that Ram Khelawan knew the appellant beforehand and therefore no importance should be attached to the non-holding of the identification proceedings.

10. The learned counsel for the appellant, Mr. S. P. Sinha, brought to our attention the fact the a question was put to S. O. Ram Narain, P.W. 9, about the recovery of the photo of the accused from his verandah, and he had replied that "it is wrong to say that I recovered the photo of the accused from his verandah and for that reason the accused did not get his identification conducted".

11. Ram Khelawan, in his examination-in-Chief had stated that he knew the appellant but he did not know Mahadei, deceased. In cross-examination he stated :

"I knew the accused from before. I did not know Mahadei. The accused was not on visiting terms with me. The accused did not pay visits to me, either. The accused himself once told me his name. He told me, his name was Kallan. Thereafter I had seen him several times in the Chakbandi Court."

12. We see no reason to differ from the finding of the High Court that Ram Khelawan knew the appellant from before. The High Court also found Ram Khelawan a disinterested person and not connected with the local disputes. To make sure that it could act upon the testimony of Ram Khelawan, the High court summoned him for further cross-examination, which convinced the High Court that Ram Khelawan was an independent witness and he was not on bad terms with the appellant.

13. Regarding the evidence of Nanku, P.W. 1, and Bachai, P.W. 4, the High Court observed that it

would not be safe to act fully upon their evidence but that their testimony could be used to corroborate the other evidence.

14. This is an appeal by special leave and there are concurrent findings of the two Courts below that Ram Khelawan is a trustworthy witness. Nothing has been brought out before us why we should differ from the Courts below.

15. Finally the learned counsel said that in the circumstances the sentence of death was not appropriate. Nothing has been brought out why we should interfere in a special leave with the sentence imposed by the learned Sessions Judge and confirmed by the High Court.

16. In the result the appeal fails and is dismissed.

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