

Sheo Darshan

Vs

State of U.P.

Criminal Appeal No. 179 of 1970

(G. K. Mitter, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

30.04.1971

JUDGMENT

MITTER, J. -

1. This appeal is from a judgment of the High Court at Allahabad convicting the appellant under Sections 302 and 307 of the Indian Penal Code and sentencing him to death for the first offence and to rigorous imprisonment for six years on the second. The sentence under Section 302 was imposed for the murder of a boy of fourteen by the name of Sheopal while the conviction under Section 307 was in respect of the attempt to murder one Ram Kumari, the mother of the said deceased.

2. The prosecution story, in brief, was that there was enmity between Mathura, the husband of Ram Kumari and father of Sheopal, and the appellant mainly arising out of Mathura's helping his brother Mangali, in litigation for recovery of a sum of Rs. 720/- loaned to one Bulaqi on the basis of a promissory note and Bulaqi being helped therein by the appellant. The appellant was said to have set fire to Mathura's Khaliyan in respect whereof a panchayat was held in which the appellant had acknowledged setting fire to the Khaliyan and had asked for pardon. The villagers had made up the loss occasioned to Mathura by making contributions themselves but apparently this had not put an end to the enmity and it was said that Bulaqi had refused to pay his debt to Mangali at the instigation of the appellant. The appellant was further said to have fired a shot at Girwar, brother of Mathura, shortly before the date of the incident out of which this appeal arises and had also threatened to kill both Girwar and Mathura. A report in respect of this was lodged by Girwar at the police station. On the morning of November 9, 1967, the boy Sheopal, accompanied by his mother had gone to a field of Karbi at a short distance from the village to cut and collect a load of it. At about 8 a.m. the mother and the son were returning from the field when the son had a load of Karbi on his head and a scythe in his hand. The mother was following the some distance behind. The appellant who had armed himself with a Kanta came out from a Jhundri field of Ramlal and ordered Sheopal to stop. The boy raised an alarm after throwing the load of Karbi but the appellant began to give him Kanta blows. The mother ran towards her son when the appellant hit her also and gave her two blows with the Kanta as a result whereof she fell down on the ground. An alarm raised by the two victims brought several persons, namely, Puttu, Maiku, Dularey, Lekhai and others to the spot. The appellant ran away with the Kanta in his hand. All this was noticed by Mathura who had left his house at about 8 o'clock in the morning to go to the field himself. The police station was at a distance of 8 miles from the place of occurrence and the first information report was lodged by Mathura at about 11 in the morning. When the police came they found the dead body of the boy on the village pathway, his mother lying on a cot at a distance of about 100 paces from the spot where the boy was lying. A load of Karbi and a blood-stained piece of cloth found near the head of the boy were taken possession of by the police, as also the other clothes on the body of the boy which were

soaked in blood.

3. The post-mortem examination of the dead body of the body revealed three incised wounds on the head and an abraded contusion on the outer aspect of middle of the right arm. The doctor was of the view that the incised wounds were caused by a weapon like a Kanta and the abraded contusion by a blunt weapons like a Lathi and that the head injuries were sufficient, in the ordinary course of nature, to cause death. The medical examination of the mother showed that she had one contusion with swelling around it on the left eye and temple, a contused wound muscle deep on the left side of the skull above the left ear, one incised wound muscle deep on the mastoid of left ear and another incised wound cartilage deep cutting it on the back of the left ear middle. According to the doctor the contusion and the contused wound were caused by a blunt weapon like a Lathi and the incised wounds were caused by a sharp-edged weapon like Kanta, The eye-witnesses were Mathura, father of the boy, P.W. 2 Puttu, P.W. 3 Dularey, P.W. 12 Maiku, P.W. 15, Ram Kumari, P.W. 16, Jhallu and P.W. 17, Lekhai.

4. The Sessions Judge arrived at the conclusion that the prosecution had failed to prove beyond reasonable doubt the appellant's complicity in the crime on the following grounds :

1. The prosecution could not prove affirmatively the places as suggested by it to be the scene of the offences, there being material contradictions between the statements of the witnesses with regard to this aspect. Although earth taken by the police from the places where the deceased was said have been done to death and where his mother was given Kanta blows were declared by a Serologist to have been stained with human blood, there was no independent witness who spoke to the recovery of the specimens of earth from these particular places. He found himself unable to rely on the interested statement of the Sub-Inspector of police that the earth was found to be blood-stained had been actually taken from these two spots where the crimes were said to have been perpetrated.

2. The investigating officer had not given any plausible explanation as to why he did not record the statement of Mathura at the police station where he is said to have gone to lodge the report.

3. The investigating officer did not explain how Ram Kumari came to be found lying on a cot at a distance of about 100 paces from the place where the deceased was lying when the said officer had himself mentioned in the inquest report that Ram Kumari was lying on a cot at some distance to the north of the place where the dead body was lying.

4. The investigation officer did not make any effort to locate the Karbi field of Mathura on the site plan or to find out whether any load of cut Karbi was at all lying on that field.

5. It was not improbable that the crimes were committed between 3 and 4 a.m. when it was too dark for anybody to identify the real assailant. This conjecture was based on consideration of the evidence of Dr. Dwivedi and Mathura's statement that people used to go to the field at that early hour to cut crops for fodder. According to Dr. Dwivedi who conducted the post-mortem the injuries on the person of the deceased could have been caused between 3 and 4 in the morning on November 9, 1967. It

was also possible that the incident may have occurred between 6 to 10 hours of the last meal taken by the victim because digested food was found in the lower-end of the small intestines. Combining the above with Mathura's admission that villagers used to go out to work in the fields at about 3 or 4 in the morning, the Sessions Judge held that it was not improbable for Mathura's son to have gone there at that hour and getting killed by an unidentified assailant.

5. In our view, the Sessions Judge allowed his mind to be clouded by chimerical speculations ignoring the direct evidence of the eye-witnesses and the High Court on an examination of the evidence came to the correct conclusion. According to the High Court there was no reason to doubt that the occurrence happened at the spots mentioned by the prosecution. The dead body was found by the investigating officer at the place almost midway on the way between the house of Mathura and his field. There was blood-stained earth near the body and the blood was found to be of human origin. The mother was lying unconscious at some distance from the spot where the boy fell and earth picked up from there was also found to be stained with blood of human origin. The presence of a scythe and a load of cut fodder near the dead body of Sheopal was another positive indication of the fact that the boy was done to death at that very spot. The inquest memo mentioned the presence of blood-stained earth, the scythe and the cut fodder near the body. The investigating officer had proved the recoveries and he was corroborated by Maiku, P.W. 12, one of the panchas at the inquest. The High Court found no reason to disbelieve these witnesses simply because the other witnesses who had signed the recovery memos were not examined.

6. With regard to the exact time of occurrence as deposed to by the witnesses, the High Court observed that undoubtedly there were some statements which could place the occurrence at about 10 a.m. But the High Court noted that it was a matter of common experience that the time given by witnesses and specially in the villages is often by guess and not very accurate. The discrepancy did not go to show that the prosecution case about the occurrence having taken place at 8 a.m. was incorrect. If the incident had taken place at 10 a.m. report thereof could not have been made all 11 a.m. at a police station eight miles away. The High Court discountenanced the suggestion that the boy and his mother could have gone to the field to cut fodder at 3 or 4 a.m. in the month of November. The presence of the scythe and the load of fodder near the dead body of the boy negated the suggestion on behalf of the defence that the occurrence had taken place in the field round about 4 in the morning. The High Court found the evidence of Ram Kumari quite convincing wherein she had said that it was some time after she was brought to the hospital that she came to know about the death of her son. According to the High Court as she had become unconscious as a result of the injuries inflicted on her, she could not know that her son had died and what she had seen was only that her son had been assaulted and had been felled down. The doubt expressed by the Sessions Judge with regard to the presence of Mathura, the father, at the spot at the time of the commission of the crime was found by the High Court to be without any substance. According to the High Court the Session Judge had misread a portion of the evidence of Mathura and has read "ghanta" as "ghari". Mathura had said at one place of his testimony that he was at a distance of about 150 paces from the place where his son was murdered when he heard the alarm and saw for the first time the bundle to Karbi on the head of his son and at another place in his evidence he had said that he was at a distance of about 140 paces from the deceased when the first Kanta below was given by the appellant to the deceased. How the Sessions Judge could pick up this as an important variance in testimony passes one's comprehension. The father heard the alarm raised by the son and ran towards him. Was it possible for him to measure or remember with any exactitude the number of paces between him and his boy ? Further, the High Court held that there was no discrepancy between the medical evidence about the nature of the injuries and the weapon allegedly used to

inflict them. In the case of the body the major injuries were incised wounds and the abraded contusion could well have been caused by the fall of the boy on the ground or by the Lathi portion of the Kanta.

7. The High Court further held that there was no valid reason for rejecting the evidence as to the hour of the occurrence being 8 a.m. and not 4 a.m. The Sessions Judge relied mostly on the fact of the presence of faecal matter in the lower intestines and from that came to the conclusion that the boy had not evacuated early in the morning which normally he would have done soon after sunrise. The High Court took the view that the presence of faecal matter in the intestines was not conclusive on the point because the boy might have been suffering from constipation. In the face of positive evidence of the father that the boy had gone to the field in the morning before he had evacuated the Sessions Judge should not have speculated.

8. The High Court meticulously examined the evidence of all the witnesses and all the circumstances of the case and came to the conclusion that the assault was pre-planned, that the appellant was hiding himself in the field of Ram Lal and had come out of it armed with a Kanta as soon as he noticed the boy approaching.

9. Although both the High Court and the Sessions Court dealt at some length on the question of motive, there can be little doubt that there was enmity between the appellant and Mathura because of the latter siding with his brother Bulaqi and the appellant espousing the cause of his friend.

10. In our view, the High Court came to the correct conclusion while the judgment of the Sessions Judge was based on conjectures and minor variances in the evidence adduced. The commission of the two crimes by the appellant, to our mind, was established beyond any doubt. The appellant had not only taken the life of a young boy who had done him no harm but he was about to kill his mother merely because he was inimically disposed towards the father. The High Court had rightly held that there was no extenuating circumstance and the penalty of death was the proper penalty with which the appellant should be visited. The appeal therefore fails and the conviction is maintained.

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