

Jadunath Singh and Others etc.

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 101 and 102 of 1968

(CJI S. M. Sikri, G.K. Mitter, P.Jagmohan Reddy JJ)

12.08.1971

JUDGMENT

MITTER, J. -

1. In these two appeals by special leave, Jadunath Singh, Dev Singh, Surjan Singh and Sheoraj Singh challenge their conviction under Sections 302 and 307, Indian Penal Code both read with Section 34, I.P.C. and sentence of imprisonment for life on the former charge and to seven years' rigorous imprisonment under the latter, the sentences to run concurrently. They had been acquitted of the charges by the Sessions Judge, Shahjahanpur. The victims of the crimes were Gajraj Singh who was killed, his son Rishipal and two other persons, Mahram and Sohanpal, the last three receiving gunshot injuries.

2. The case for the prosecution was as follows. Jadunath Singh, the first appellant, is a cousin of Gajraj Singh, deceased. They were residents of village Chaura and their houses faced each other with a narrow intervening lane. A village pathway ran in front of their houses from north to south-east and the rathkhana of Jadunath Singh lay close to it. Appellant, Dev Singh, is the husband of the sister of Jadunath Singh and had been living with him for a few years before the incident. The appellant, Surjan Singh, was a cousin of Jadunath Singh's wife while the appellant, Sheoraj Singh, was related to Dev Singh. Govind Singh of village Hareora, an uncle-in-law of Jadunath Singh had a daughter named Bitana who had been married to one Mashal Singh. Rishipal Singh, son of Gajraj Singh, deceased, had eloped with Bitana and was living in the house of Gajraj as man and wife. This misconduct of Rishipal Singh was resented by the relations of Govind Singh and they wanted the girl to be sent back to her father's place. On December 21, 1963, at about 4 in the afternoon, Gajraj who was returning home from village Kilapur was accosted by Jadunath Singh in front of his rathkhana and asked to send Bitana back to her father's house with Surjan Singh. Gajraj replied that he had no hand in the matter and Jadunath should speak to Rishipal. An altercation ensued and Jadunath asked the other appellants who were by his side to kill Gajraj and take away Bitana by force. Dev Singh and Surjan Singh who were carrying spears and Sheoraj who was armed with a lathi fell upon Gajraj and inflicted numerous injuries on him. Rishipal Singh and one Najju who were sitting in the open space in front of the house of Gajraj rushed to save him and raised an alarm which attracted the neighbours. Rishipal, Sohanpal and Mohram (P.Ws. 1, 3 and 4) tried to intervene but Jadunath Singh fired upon them repeatedly with his gun. The assailants thereafter ran away leaving their victims bleeding on the ground. Bitana who had got terrified ran to the house of Raghunandan Singh and informed him about the occurrence. Raghunandan Singh and Bitana approached Gajraj when he told them that he been beaten by the appellants because of Bitana's living in his house with Rishipal. Soon thereafter he expired. It was on the next morning that Rishipal proceeded to police station Kalan, 7 miles away with other injured person and dictated

report at 11.45 a.m. giving the essentials of the prosecution story and naming the appellants as responsible for the crime.

3. P.W. 10, the Sub-Inspector of Police who reached the village the same day found the dead body of Gajraj lying in front of the house of one Ghoorey Khan on the village pathway. Blood was spilt near the dead body. Five fired cartridges, 4 tiklis and one wad were handed over to him by Sripal.

4. The post-mortem of Gajraj was conducted by the Civil Surgeon, Shahjahanpur on December 24, 1963 at 11.05 a.m. showing 3 incised wounds, 6 rectangular penetrating wounds, 4 penetrating wounds, 2 contusions, one contused wound and one abrasion, in all 17 injuries. According to the report the injuries were caused by some sharp-edged weapon, pointed weapon and a blunt object. The duration of the injuries as given by the doctor fitted in with the time of occurrence as alleged by the prosecution.

5. Rishipal, Sohanpal and Mahram were medically examined by one Dr. Agarwal, P.W. 2, on December 28, 1963. The number of gunshot wounds on Rishipal was 107 and Sohanpal too had about a dozen of such injuries. Mahram had two abrasions, one on the left side of the upper lip and the other in front and upper part of the left thigh. Both the injuries were simple and according to the injury report might have been caused by gunshot as alleged. The prosecution rested on the evidence of Rishipal Sohanpal and Najju and Prithviraj who were examined as eye witnesses, Raghunandan and Bitana (P.Ws. 9 and 11) testified to the dying declaration made by the deceased. Rishipal and Bitana also gave evidence of motive.

6. As the conclusion of the High Court was entirely different from that of the Sessions Court, we were taken through the evidence of the eye witnesses and the other relevant evidence.

7. According to P.W. 1, Rishipal Singh, he heard an altercation between Jadunath Singh and his father and the command of Jadunath Singh to Dev Singh, Surjan Singh and Sheoraj Singh to beat his father up and Jadunath Singh further said that if anybody tried to intervene he would beat them. When Rishipal tried to intervene, Jadunath Singh fired five to six shots from his gun the pellets whereof hit him and Sohanpal. The accused thereafter ran away. Gajraj was alive and was speaking. The witness sent his brother to bring a cart but none was available and it had become dark. Being afraid of the party of the accused he did not go to the police station in the night. Next day, the three injured persons including himself went to the police station and the report lodged by him was taken down by the Head Constable.

8. He tried to make out in his evidence that Bitana had in fact not been married to Mashal Singh and that she was secretly married to him Govind Singh's house about two years before the incident. The inmates of his own house did not participate therein. It is noteworthy that he had not mentioned the fact of his marriage in the first information report and Mashal Singh had already filed a case under Section 494/497, I.P.C., against him and Bitana.

9. Although Rishipal Singh's evidence about his marriage with Bitana cannot be accepted, the admitted case is that Bitana was living with him and that Mashal Singh had before the day of the incident filed a criminal case against him and Bitana. The fact that he received no less than 107 pellets in his body in the course of firing is ample evidence of his having been present at the spot when his father was injured and if the hour of the incident can be fixed at or about the time alleged, there can be no doubt that he had sufficient opportunity to notice his assailants.

10. Dr. Agarwal, the medical officer, who examined Rishipal Sohanpal and Mahram stated that as regards the duration of time between the incident and his examination of the injured there could be a difference of 2 or 3 hours on either side.

11. P.W. 3, Sohanpal's evidence was that his house was at a distance of 25 paces north from that of Gajraj Singh, that he was sitting at his door some time before sunset when on hearing an alarm he rushed to the house of Gajraj and saw Dev Singh, Surjan Singh and Sheoraj Singh beating Gajraj. According to him, Surjan Singh had a ballam, Sheoraj Singh had a lathi and Dev Singh had a bhala. Rishipal and Najju were already there when he reached the spot. It was Jadunath Singh who had fired the shots by which he was hit. Before a cart could be procured the sun had set and out of fear they could not proceed to the police station. He admitted that his brother, Raghunandan and one Rishipal had licensed guns but he did not ask either of them to go with the injured persons to the police station in the night.

12. Mahram, P.W. 4, lived in a house adjoining that of Jadunath Singh. He too on hearing the alarm, had rushed to the place where the quarrel was taking place. He noticed Jadunath with a gun in his hand, Dev Singh with a bhala, Surjan Singh with a ballam and Sheoraj with a lathi. As they tried to save Gajraj, Jadunath Singh fired from his gun.

13. P.W. 5, Najju, said that he was seated at the door of Gajraj close to Rishipal when the incident took place. His evidence was on the same lines as of the other witnesses already mentioned. P.W. 7, Prithvi Raj said that he was coming to his house from his field a little before sunset on the day of the incident. Hearing an alarm he had gone to the spot and found the appellants Dev Singh, Surjan and Sheoraj assaulting Gajraj.

14. Bitana, P.W. 11, also spoke about the incident and about her marriage with Rishipal Singh. She said that out of fear she had run to the house of Raghunandan Singh and she heard Gajraj say that Surjan Singh, Sheoraj and Dev Singh had beaten him on account of her.

15. The High Court took the view that the findings of the Trial Judge were not based on a reasonable appreciation of evidence and their acquittal had resulted in a miscarriage of justice.

16. The Trial Judge took the view that there could be no sufficient motive for the accused to commit the murder of Gajraj Singh; on the contrary, it was possible that Rishipal had an eye on the property of Jadunath Singh who was in a far more affluent state than himself, and if Jadunath Singh could be put out of the way he could become the owner of Jadunath's property which was not inconsiderable. In our view the learned Sessions Judge clearly fell into an error. The evidence shows that Jadunath Singh's father was alive at the time although he was over 90 years of age. His wife was pregnant and there was no possible chance of Rishipal succeeding to Jadunath's property should anything happen to him. It was not even shown that there were no other nearer heirs in the event of Jadunath Singh's losing his life at or about that time.

17. The Sessions Judge was of the view that there was considerable delay in lodging the first information report which had not been reasonably explained and that certain improvements had been made for the first time in the evidence in the Sessions Court. The High Court did not accept this and we are unable to hold that the High Court did not come to the correct conclusion. When one person loses his life through injuries caused by three assailants and three others receive gunshot injuries... one of them rather badly... it stands to reason that the injured people would have considerable apprehension of proceeding at night to a police station which was seven miles away.

The High Court saw no reason to accept the evidence that a cart was not available. The Sessions Judge seemed to think that the injured persons, if they were so minded, could have called upon the two persons Raghunandan and Rishipal who possessed guns to accompany them but this, to our mind, is a mere speculation. Once it is known that one of the accused was using a gun which had injured three people and they were in the neighbourhood it would require more than ordinary courage for village people to go to a far away police station at night in the dark. The Sessions Judge further doubted whether the incident had taken place in the manner deposed to by the three injured people as according to him the witnesses did not appear to be straightforward, honest and reliable persons and there was some discrepancy between their oral evidence and the medical evidence. The suggestion made by the defence to the prosecution witnesses was that Gajraj was a person of bad character and probably he had been killed in the early hours of the morning and the three injured persons had received the injuries when they had gone out on hearing the alarm raised by Gajraj. The suggestion, to our mind, is not one that merits serious consideration. Even if the incident had taken place early in the morning as suggested Rishipal's presence at the spot would not be unnatural but the same cannot be said of the other two injured persons. According to the Sessions Judge "the incident had possibly taken place some time in the night". This to our mind is not a suggestion worthy of acceptance. The High Court held that Mahram, P. W. 4, belonged to a different fraternity and the same was the case with Najju and no reason had been adduced to show that they had made a common cause against the accused.

18. The Sessions Judge also held that as there was no mention of the dying declaration in the first information report, there was reason for holding that it was not a genuine report. The High Court held that this circumstance could not belie the story of the dying declaration and was satisfied that Raghunandan and Bitana must have gone to see the deceased and "it was not inherently improbable if on their questioning the injured person had given out the name of his assailants". According to the High Court :

"Even if the story of the dying declaration.....was not accepted as beyond reproach that cannot affect the veracity of the prosecution story which has been supported by the injured witnesses whose testimony inspires complete reliance."

19. The High Court held that there was "no inconsistency worth the name between the oral evidence and the medical evidence". The prosecution case was that two of the assailants were armed with spears, one with a lathi and one with a gun. The picture of injuries which emerged from the medical evidence was that the deceased had received a number of, (i) penetrating wounds, (ii) rectangular penetrating wounds, (iii) incised wounds and (iv) a contusion. The High Court took the view that the incised wounds found on the dead body were not of a type which could not have been caused by spears. The penetrating wounds found on the body of Gajraj were rectangular which went to show that the spear which was used was of a rectangular shape. In the first information report it had been merely mentioned that two of the assailants were armed with spears without any further details. The High Court held that the testimony of the eye-witnesses that one of the spears carried by the assailants was rectangular in shape did not detract from the first information report where this detail was not given.

20. It may also be noted that Gajraj received no gunshot wounds and if the incident had taken place at night it is hardly likely that the gun would be used only against Rishipal, Mahram and Sohanpal and not against Gajraj. On the other hand, the first information report and the testimony of the witnesses are consistent in that the gun was not used on Gajraj and it was at the behest of Jadunath Singh that the other three appellants had inflicted injuries on Gajraj with the weapons in their hands

and when these three witnesses rushed to the spot it was Jadunath who turned his gun on them.

21. Lastly, the motive for the crime alleged by the prosecution seems to be quite a believable one. If the fact was that Bitana who had been married to Mashal Singh, was the daughter of the uncle-in-law of Jadunath Singh and that Surjan Singh had come to take her away it would not be unnatural for Jadunath Singh and his group to take exception to the conduct of Rishipal and of Gajraj's acquiescence therein. There can be no doubt that Rishipal had done a grievous wrong to the uncle-in-law of Jadunath. It is quite likely that Gajraj's attitude in refusing to aid in the return of Bitana to her father after the launching of the criminal case by Mashal Singh had considerably upset Jadunath and his group. Besides, it is difficult to believe that three persons who received gunshot injuries which were not grievous could fail to notice their real assailants and would not mention their names in the first information report but implicate persons who were not guilty even if it be a fact that there was some enmity between some of the prosecution witnesses and the accused. Once the time of the incident is fixed at 4 p.m. in the afternoon or sometime before sunset, it is not possible to hold that the injured persons would not be able to spot and recognise their assailants.

22. This Court has consistently taken the view that in an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate Court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in *Sheo Swarup v. King Emperor*, (61 IA 398.) and *Nur Mohammad v. Emperor*. (AIR 1945 PC 161.) These two decisions have been consistently referred to in judgments of this Court as laying down the true scope of the power of an appellate Court in hearing criminal appeals : see *Surajmal Singh and Others v. The State*, (1942 SCR 193 : AIR 1952 SC 52 : 1952 SCJ 32.) and *Sanwat Singh and Others v. State of Rajasthan*. ((1961) 3 SCR 120.)

23. In our view, the High Court had not gone wrong in taking a view different from that of the Sessions Judge on the evidence adduced. It was the Sessions Judge who appears to have taken an unreasonable view of the whole affair and of the testimony of the witnesses. The appeals are therefore dismissed and the convictions and sentences imposed will stand.

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