Rai Singh

Vs

The State of Haryana

Criminal Appeal No. 44 of 1971

(J.M. Shelat, I.D. Dua, S.C. Roy JJ)

01.09.1971

JUDGMENT

DUA, J. –

1. In this appeal by special leave under Article 136 of the Constitution, appellant Rai Singh son of Bhikan, challenges inter alia his conviction and sentence of death under Section 302, I.P.C. for double murder of Mohanlal and Bindraban, sons of Ramrakha. The appellant was tried in the Court of Sessions Judge, Ambala along with his two brothers Ram Gopal and Jai Pal alias Jai Gopal for this double murder under Section 302 read with Section 34, I.P.C. and under Sections 307/34, I.P.C. for having fired gun shots at Mehru, Govindram, Bodhraj and Ran Singh. The appellant was further charged under Section 27 of the Indian Arms Act for having used his licenced double barrel gun for illegal purposes. The trial Court convicted all the three brothers under Sections 302/34, I.P.C. but sentenced the appellant Rai Singh to the extreme penalty of death. His two brothers were given the lesser sentence of imprisonment for life because they were not proved to have themselves caused any injury resulting in the murders though they were held to have associated themselves in the commission of the crime. They were also sentenced to a fine of Rs.500/- for this offence. Under Sections 307/34 also all the three brothers were sentenced to seven year's rigorous imprisonment each. The appellant Rai Singh was awarded a sentence of 5 years' rigorous imprisonment under Section 27 of the Indian Arms Act for misuse of his firearm.

2. The High Court, dealing with the appeals of the three convicts and the murder reference of the present appellant, acquitted Ram Gopal and Jaipal alias Jai Gopal, holding their presence at the time of the occurrence not to have been established. The present appellant's conviction and sentence for the double murder of the two deceased brothers was, however, maintained. His conviction and sentence under the other two counts, namely, under Section 307, I.P.C. and Section 27, Indian Arms Act were also upheld. On the view taken by the High Court that the appellant alone was responsible for the murders and the murderous assault, Section 34, I.P.C. was held inapplicable. The appellant challenges in this Court his conviction for all these offences.

3. The prosecution story may now be briefly stated. The appellant and his brothers Ram Gopal and Jaipal alias Jai Gopal belong to village Manglai, Tehsil and District Ambala whereas Bindraban and Mohanlal, deceased sons of Ramrakhan, belong to village Keshopur of the same Tehsil and District. These two villages are situated at a distance of about a furlong or so from each other. The relations between the family of the deceased on the one side and that of the appellant on the other were strained for some time. In village Keshopur there is a khankah, a Muslim religious institution, to which is attached land measuring about 4 killas. After partition of the country in 1947 Mohanlal, deceased and his family members shifted to village Keshopur and some time in 1950 started

cultivating this land under the Gurdwara Prabandhak Committee. This position continued till about 1964 when two Muslims Sadhu and Faquiria of that village were appointed by the Collector, Ambala, as Khidmat Guzars of the khankah which means servants acting as agents of the institution. Mohanlal and his family members used to pay rent of the land cultivated by them to the Khidmat Guzars and obtain receipts from them. An application for the ejectment of Mohanlal and his brothers was filed by the Khidmat Guzars in May, 1966 under Section 9 of the Punjab Security of Land Tenures Act. This application was accepted in November, 1967 and Mohanlal and his brothers along with Milkha and Jati were ordered to be ejected from the khankah land. In view of this order the Punjab Wakf Board intervened in this controversy and on November 11, 1967 instituted a suit against Mohanlal and his brothers for the procession of the khankah land, claiming the same to have vested in the Board, giving rise to the right to possession. This suit was finally compromised in March, 1969 between the Wakf Board and Mohanlal and his family members. Mohanlal and his brothers paid two years' rent for the khankah land to the Wakf Board in addition to another year's rent, in advance viz., for the year 1969-70. On this compromise the Wakf Board withdrew the suit which was consequently dismissed. In May, 1968 proceedings for executing the ejectment order of November, 1967 were initiated. The patwari and the field kanungo are stated to have delivered the possession of khankah land to Sadhu and Faquiria through Kalba Rani in June, 1968 and ploughing is said to have been done by Ram Gopal, one of the accused in the trial Court and Sadhu, decree-holder. The three accused persons and their father Bhikhan, in fact came into the picture at the stage of these execution proceedings and started interest in the land in question. According to the accused persons Sadhu and Faquiria had taken actual possession of the khankah land on June 10, 1968 whereas according to the prosecution case the whole story alleged ploughing of land by Ram Gopal and Sadhu on June 10, 1968 is false and the proceedings had been faked for the purpose of helping the accused persons. The actual possession of the khankah land, according to the prosecution story, continued with Mohanlal and his brothers. In any event, Mohanlal and his brothers did not admit their dispossession and continued to claim that they were in actual physical possession of the said land. On June 29, 1969 the members of the rival parties, Mohanlal and his brothers on the one side and the appellant and his brothers on the other, appeared to be in high tempers on account of the dispute over possession of the khankah land. At about 2 p.m. on that day Rai Singh, accused, armed with a double barrel gun, Jaipal alias Jai Gopal carrying gandolia of cartridges and Ram Gopal armed with gandasi proceeded from their house from village Mangalai to village Keshopur with the intention of murdering the family members of Ramrakhan, who, being Brahmins were commonly known as 'Pandits'. They reached a place known as Asthan Mai Basanti outside village Keshopur and saw Mohanlal, deceased, going towards his house. Jai Gopal and Ram Gopal exhorted the appellant Rai Singh to fire at Mohanlal, which he promptly did. The shot hit Mohanlal, deceased, and Mehru (who was dropped by the prosecution as having been won over and was produced by the accused in defence as D.W. 4). Mehru, a Harijan boy was stated to be grazing cattle in the close vicinity and was not far away from Mohanlal. On hearing the report of the gun shop fire Bindraban, Bodhraj, Govindram, brothers of Mohanlal and Ram Singh who were resting in the nauhra nearby rushed out with Bindraban leading. On seeing the three Pandit brothers and Ram Singh coming out of the nauhra, the accused Ram Gopal and Jai Gopal exhorted Rai Singh to fire at the Pandits who had come out of the nauhra. The appellant thereupon fired a second shot hitting Bindraban. Bindraban fell down. His two brothers however laid on the ground for fear of being hit. The appellant then fired a third shot which hit nobody. Bindraban died at the spot whereas Mohanlal died at Ambala Cantonment Railway Station on his way to the hospital, Mehru was taken to Chandigarh hospital and was treated there. He was discharged after about 20 or 25 days.

4. The prosecution produced four eye-witnesses, namely, Ghansham Singh (P.W. 2), Ran Singh

(P.W. 3), Bodhraj (P.W. 4) and Govind Ram (P.W. 7). The two other important witnesses to whose evidence we will have occasion later to refer at some length are Dr. O. P. Gupta (P.W. 5) who conducted the post-mortem examination of Mohanlal and Bindraban, the victims of the gun shots and J. K. Sinha (P.W. 6), Assistant Director-cum-Assistant Chemical Examiner, Forensic Science Laboratory, Chandigarh, who appeared as ballistic expert. Mehr Chand (also called Mehru) who was injured by gun shot when Mohanlal was fired upon by the present appellant was given up by the prosecution on the plea that he had been won over. For the same reason one Ramji Das included in the list of witnesses was also given up. Eleven other witnesses also included in the list were not produced as they were considered unnecessary. Mehru, it may be recalled, was produced by the accused in defence as D.W. 4.

5. The defence version is contained in the appellant's statement under Section 342, Cr.P.C. in answer to question No. 10 in the Sessions Court. It may be reproduced in his own words :

> "Jai Pal and Ram Gopal were not present with me at the time of the alleged incident. In fact at about 1.30 p.m. on June 29, 1969 I am going from my village towards Dhukheri Railway Station on a Pakdandi passing from near village Keshopur, being a short route from my village. I had my gun with me for which I hold a licence. When I reached near Asthan of Mai Basanti I saw Mohanlal. Bindraban deceased, Govind Ram, Bodhraj and some of their companions coming challenging towards me with different weapons, Mohanlal was armed with a kulhari and was ahead of them all. Bindraban followed him at a distance of 8 or 10 yards with a barchha. They were challenging that I be killed and when Mohanlal deceased reached quite close to me and aimed to assault on me, I had no option but to save myself and I opened fire on him. He was hit. Mehru was grazing his cattle and was also standing nearby. He was also hit. Thereafter Bindraban and his companions ran towards me with their respective weapons with the intention to kill him and I shot another fire to save myself which hit Bindraban. After firing two shots I ran towards my village."

6. In answer to the question, if the appellant had surrendered himself before the police in June 30, 1969 in the evening, he replied that he had actually surrendered himself on June 29, 1969 in the evening at about 6 p.m. in police station Mullana and nor in June 30. It was admitted that he had surrendered along with his gun and nine cartridges and his licence which were taken into possession by the police. It may be pointed out that according to the appellant the proceedings which ended in a compromise between the Punjab Wakf Board and Mohanlal, deceased and his brothers, were collusive because in execution of the decree of ejectment Sadhu and Faquiria had obtained possession of the khankah land on June 10, 1969 and thereafter the decree-holders remained in possession thereof. Ram Gopal and Jaipal alias Jai Gopal in their examination under Section 342, Cr.P.C. denied their presence at the place of the occurrence when Mohanlal and Bindraban were killed by the appellant. They both claimed to have been arrested on June 29, 1969 and denied their arrest on June 30.

7. The learned Sessions Judge did not feel impressed by the defence version which was considered by him to be highly improbable. He also felt somewhat suspicious about the story that the appellant was walking by the Pakdandi through the fields instead of going to the railway station by the regular path. The evidence of Dr. O. P. Gupta (P.W. 5) and of J. K. Sinha, Ballistic Expert (P.W. 6) who appeared before the Sessions Judge to corroborate the prosecution version as narrated by the eye-witnesses, also, according to him, belied the defence version of two shots having been fired at a close range. The accused having been greatly annoyed over the attitude and the conduct of

Mohanlal, deceased and his brothers, in respect of the possession of the khankah land appeared to have a motive to kill the deceased and the trial Court felt convinced that the prosecution story as narrated about the incident in question was correct. So holding the three accused persons were sentenced by the Trial Court, as already stated.

8. The High Court, after considering the evidence of the eye-witnesses did not place any reliance on Ghansham Singh (P.W. 2) and Ran Singh (P.W. 3). They were both considered to be not only friendly with the family of the deceased but also inimical to Rai Singh, appellant, and they were further held to have attempted to conceal the facts from which their animosity to the appellant could be established and admitted them only as a last resort when they felt compelled to do so. Ghansham Singh's name did not even figure in the first information report. The story about the slogans shouted by the accused to kill the Brahmins also did not impress the High Court. In the final conclusion the High Court was inclined to hold that Ghansham Singh (P.W. 2) had not seen the occurrence at all and was, therefore, a false witness. The presence of Bodhraj (P.W. 4) and Govindram (P.W. 7) however, was considered to have been admitted on all hands. The presence of Ram Singh (P.W. 3) was also accepted by the High Court as his name appeared in the first information report which had been made with the utmost promptness.

9. All these three witnesses, however, appeared to the High Court to have falsely introduced Ghansham Singh (P.W. 2) as an eye-witness. Indeed, according to the High Court even these three witnesses, namely, Ran Singh, Bodhraj and Govindram (P.Ws. 3, 4 and 7 respectively) were also vitally interested in the deceased and inimical towards the appellant and it was for this reason that the High Court looked for corroboration from some independent source for believing them. In the opinion of the High Court no such corroboration was forthcoming as against Ram Gopal and Jai Gopal and the only overt act attributed to them was the lalkara. The version of Jai Gopal carrying the gandolia of cartridges was also considered by the High court to be improbable with the result that the story of the prosecution with respect to the participation of Jai Gopal was considered to be extremely unreliable. Participation of Ram Gopal was considered to be unbelieveable for the additional reason that according to Ghansham Singh (P.W. 2) this accused was armed with a gandasi whereas according to Bodhraj (P.W. 4) this accused was carrying a lathi and Govindram (P.W. 7) saw nothing in the hands of this accused. This discrepancy in the opinion of the High Court also served to discredit the story of the prosecution in respect of Ram Gopal's participation in the alleged occurrence. The prosecution case against these two accused persons was thus considered to be extremely doubtful. The case against Rai Singh, however, was held distinguishable because there was no gainsaying that he had fire two shots from his double barrel gun so as to kill Bindraban and Mohanlal and injure Mehru. Medical evidence according to the High Court, corroborated by that of the ballistic expert supported the prosecution version. On behalf of the appellant considerable argument was addressed in the High Court on the point of the condition of the wounds on the body of Mohanlal, deceased as found by the doctor. After noticing some divergence between the opinion of Dr. Gupta who had performed the post-mortem examination and of the evidence of the ballistic expert and the observations contained in 'Medical Jurisprudence and Toxicology', by Glaister (1953 edn.) and in "Fire Arms Investigation, Identification and Evidence", by Hatcher (1957 edn.) the High Court, felt, to quote its own words, inclined to accept the finding of the learned Sessions Judge that Dr. Gupta had mistaken some other condition of the wounds for tattooing which would certainly be incompatible with the dispersion of pellets in the case of the shot which killed Mohanlal". The High Court also referred to Modi's Medical Jurisprudence and Toxicology, (1969 Edn.) on the relationship between the range of fire and spread of pellets emanating from shot guns and after reproducing a passage at pp. 236-7 it proceeded to observe :

> "Like those quoted from Glaister above, these observations also provide a rough and ready method of judging the distance from which a firearm caused a particular injury by reference to the spread of the pellets but then, in our opinion, they provide a fair guide on the point, speaking broadly. Their application to the facts of the present case leads us clearly to the conclusion that when the eye-witnesses for the prosecution take the stand that they saw Rai Singh appellant firing at Mohanlal from a distance of about 55 feet, no improbability can be said to attach thereto and that, on the other hand, the position taken up by Mehru (D.W. 4) about the range from which the spot was fired is falsified."

10. A consideration of the injuries found on the dead body of Bindraban led the High Court to a similar conclusion. The medical evidence, in the opinion of the High Court, conclusively showed that the distance between Bindraban and Rai Singh when the latter fired at the former was considerably more than that from which Mohan Lal had been hit and that may well have been 250 feet. It was on the basis of this opinion that the evidence of the doctor who conducted the post-mortem examination was considered to have been mistaken. The defence version was thus also considered to have been refuted by the medical evidence and it was in addition considered to be unacceptable by reason of its inherent improbability that from a distance of 250 feet the deceased armed with a mere hatchet would have taken the risk of rushing to attack a man carrying a gun. It may be pointed out that the High Court did not pay any serious attention to the testimony of Mehru (D.W. 4); nor did it refer to some other important material on the record suggesting unfairness on the part of the investigating authorities and improper pressure by them on this witness and his father, which shows that the evidence of this witness should not have been completely ignored.

11. Before us Shri Nuruddin Ahmad, learned counsel for the appellant, strenuously contended that the High Court having disbelieved the eye-witnesses with respect to the complicity of Ram Gopal and Jaipal (the two co-accused brothers of the present appellant) in the occurrence and having ruled out even the presence of Ghansham (P.W. 2) at the time and place of the occurrence to which the other eye-witnesses had deposed, it was wholly wrong on the part of that court to have believed the prosecution version with respect to the charges against the appellant, Rai Singh. It was emphasised that there being no State appeal against the acquittal of Ram Gopal and Jaipal the verdict of the High Court that the witnesses had falsely implicated them in this case must be considered to be conclusive and binding. On this promise we were asked to hold that there being no eye-witness in support of the prosecution version with respect to the actual shot alleged to have been fired at Mohan Lal the defence version given by the appellant in his statement under Section 342, Cr.P.C. and the story as deposed by Mehru (D.W. 4) should have been believed. This submission was sought to be reinforced by reference to the medical evidence and the evidence of the ballistic expert. That evidence, said the counsel, fully supports the defence version. In any event, so proceeded the submission, there was a serious element of doubt about the truth of the prosecution version and the High Court was, therefore, in error in convicting the appellant on the present evidence. It was pointed out that the High Court had, while dealing with the murder reference under Section 374, Cr.P.C, a duty itself to scrutinise the record and come to its own independent conclusion both about the guilt of the accused and the property of imposing the sentence of death. Considerable stress was laid by the appellant's counsel on the omission on the part of the High Court to scrutinise and evaluate the evidence of Mehru (D.W. 4) in the background of the allegations made on his behalf about the police pressure on the witness and his father for supporting the prosecution version.

12. On behalf of the State the principal argument urged was that the High Court and the trial court had both believed the prosecution story as deposed by the eye-witnesses so far as the present

appellant is concerned. Therefore, under Article 136 this Court should not reappraise the evidence and differ with the concurrent conclusions of the two courts below by taking a different view of appreciation of evidence. Merely because they eye-witnesses have not been relied upon with respect to the presence of the two co-accused brothers of the present appellant can be no ground by itself for discarding their evidence in its entirety. Particular emphasis was laid on the fact that the appellant has expressly admitted that Mohan Lal and Brindaban did die as a result of gun shots fired by him and the only controversial point in the present case relates to his defence version on the plea of right of private defence which has been disbelieved by both the the the the courts below. This, according to the respondent's learned counsel, cannot justify a reappraisal of the defence version by this Court on appeal by special leave under Article 136 of the Constitution.

13. We propose first to deal with the respondent's last argument that this is not a fit case for interference under Article 136 of the Constitution. Under this Article this Court, of course, does not normally proceed to interfere in criminal cases unless the trial is vitiated by some illegality or material irregularity of procedure or the trial is held in violation of rules of natural justice resulting in unfairness to the accused or the judgment or order appealed against has resulted in miscarriage of justice by the reason of misreading or unjustifiably ignoring important evidence or relevant material circumstances. Where no right of appeal exists under the law this Article does not serve to create such a right and this Court cannot be treated as a general Court of review of correcting all errors in all criminal cases. It has, however, to be borne in mind that where grave injustice is shown to have occurred then this extraordinary constitutional power reserved to this Court is meant to be exercised.

14. Now we proceed to deal with the contentions on the merits. The argument that the witnesses who have been disbelieved in respect of the acts imputed to Ram Gopal and Jaipal cannot be relied upon for convicting the present appellant has merely to be rejected. It is now well settled that in each case the Court has to appraise the evidence to see to what extent it is worthy of acceptance and merely because in one respect Court considers if unsafe to rely on the testimony of a witness it does not necessarily follow as a matter of law that it must be discarded in all other respects as well. Experience in this country has shown that in cases like the present there is a tendency on the part of interested witnesses to exaggerate the guilt of the opposite party and then the imperfection of human memory and of observation also shows that the broad rule canvassed on behalf of the appellant cannot be laid down as a safe guide for all cases. The Court has to sift the evidence with care in each case and on full consideration of all the relevant material circumstances to come to a decision, which part of the testimony of the witness to accept and which to reject.

15. Now, the only eye-witnesses regard to the shots alleged to have been fired at Mohan Lal is Ghansham (P.W. 2) about whom the High Court has said, to quote its own words, "he did not see the occurrence at all but is a got up witness". The High Court also noticed that Ghansham Singh's name did not find mention in the F.I.R. and that the story given by him about the accused persons coming out of their house shouting slogans, that they would kill the Brahmins, was highly improbable. The importance of this opinion of the High Court with regard to Ghansham Singh's evidence has to be kept in view. The other three witnesses arrived at the scene of occurrence after the trouble had started and are, therefore, unable to depose to its origin. In this context the evidence of Mehru assumes considerable importance. This witness was admittedly present at the spot when Mohan Lal is alleged to have been fired upon because he is also alleged to have received injuries by the same shot. He was in a hospital at Chandigarh for treatment of the injuries received during the course of this occurrence. According to S.I. Girdhar Gopal (P.W. 22) who was Station House Officer, Police Station, Mullana on June 29, 1969, Mehru was cited as an eye-witness to support the prosecution case, and his statement was got recorded at the instance of the S.I. under Section 164, Cr.P.C. on

August 1, 1969 after his discharge from the hospital. Mehru was, however, dropped as P.W. on the plea that he had been won over. The Sub-Inspector was cross-examined at length about the beating said to have been given by the police to Mehru and about the illegal pressure put upon him and his father but the witness denied all such allegations. There is, however, unimpeachable documentary evidence suggesting such pressure by the police on both Mehru and his father. The evidence of P.W. 22 in his cross-examination on this part of the case has not impressed us at all and we are far from satisfied that Mehru and his father were not subjected to undue pressure for inducing them to support the prosecution case.

16. According to Mehru, who has appeared as D.W. 4, about five or six days after his discharge from the hospital at Chandigarh he and his father were summoned by the police to Ran Singh's nohra and on his insistence to speak the truth he and his father were both given beating. On the following day they were both summoned to the P. S. Mullana and were detained three for three nights. Mehru was beaten there also and threatened that if he did not make a statement as desired by the police he would be arrested. He was then taken to Ambala City and his statement was got recorded by a Magistrate. After his statement was so got recorded he was taken back to the police station Mullana. He and his father were then allowed to return to their village. On August 2, 1969 Mehru (Mehar Chand) complained in writing to the S.P. as per D.W. 4/1 which supports his version as given in the court. Mehru's father Milkha has also appeared as D. W. 5 and he too has deposed about the pressure put by the police on him and his son. He has also prove his application filed in the court of the Judicial Magistrate, Ambala complaining about the harassment at the hands of the police; D.W. 5/1. Mehru's harassment at the hands of the police is further deposed to by Bachna (D.W. 6) brother of Milkha and uncle of Mehru. This witness also complained to the higher authorities by means of letters and telegram which were duly prove by him in court. In this background it cannot be said with confidence that the testimony of Mehru as D.W. 4 is necessarily false merely because it is contradicted by his earlier statement recorded by a Magistrate under Section 164, Cr.P.C. It may be observed that normally statement of a witness is got recorded under Section 164, Cr.P.C. when the investigating agency feels that he is an unwilling witness and steps should be taken to pin him down. In the present case one cannot help looking at Mehru's earlier statement record under Section 164, Cr.P.C. with grave suspicion. His statement in court as a defence witness deserves to be noticed and it cannot be summarily discarded merely because of his earlier statement being different.

17. The High Court, while considering the medical evidence with respect to the condition of the wounds found on the body of Mohan Lal, deceased, felt, to quote from the judgment, "that Dr. Gupta had mistaken some other condition of the wounds for tattooing which was incompatible with the dispersion of pellets in the case of the shot which killed Mohan Lal". It is noteworthy that the possibility of this mistake was not put to Dr. Gupta. He was not required by the prosecution to express his opinion whether there was any reasonable chance of such a mistake. It may be pointed out that in the committing Magistrate's Court Dr. Gupta had clearly stated that considering the tattooed marks visible with wounds of entrance on the person of Mohan Lal, the maximum distance between the barrel of the gun and the deceased could not be more than six feet and yet when Dr. Gupta appeared in the Court of Sessions Judge no suggestion was made by the Public Prosecutor to the witness that he could be mistaken in considering some other conditions of the wound as tattooing marks. And this in spite of the fact that the Public Prosecutor had taken pains to put a large number of supplementary questions to this witness after his statement recorded in the Court of the committing magistrate had formally been read out and transferred to sessions file as evidence. The supplementary questions asked related to various aspects except to the really important aspect of the possibility of mistake as to the tattooed marks. The High Court in our view, grievously erred in

imputing mistake to the doctor without cogent material. This cannot but cause prejudice to the appellant.

18. On the view taken by us we consider it unnecessary to deal at length with the manner in which the High Court considered the question of distance from which the appellant fired at Mohan Lal. Suffice it to say that the High Court considered the error on the part of Dr. Gupta on the existence of tattooing marks as decisive as would be obvious from the following passage :

> "They (the counsel for the appellant) contend, however, that tatooing of all the gun shot wounds of entry sustained by Mohan Lal deceased is incompatible with the distance between him and the muzzle of the gun being more than two yards. If the tattooing was really there, it would certainly require some explanation which may well be that the gun powder used was not smokeless in which case tattooing could have been present even if the shot was fired from a range of more than two yards."

19. On the existing material on the record we are, therefore, unable to hold that the prosecution has brought home to the appellant Rai Singh the offence of committing the murder of Mohan Lal beyond reasonable doubt. The prosecution evidence leaves an important lacuna and the evidence of Mehru (D.W. 4) considered along with the statement of the appellant under Section 342, Cr.P.C. seems clearly to negative the prosecution story that the appellant was the aggressor. We are, therefore, constrained to give him the benefit of doubt and acquit him. The appeal accordingly succeeds and setting aside the judgment and order of the High Court we acquit the appellant. On this view his conviction under the Arms Act is also set aside.

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