

Sultan and Another

Vs

State of Haryana

Criminal Appeal No. 144 Of 1971

(P. Jagmohan Reddy, D. G. Palekar JJ)

05.01.1972

JUDGMENT

PALEKAR, J. -

1. The appellants Sultan and Chatru who have come to this Court by special leave have been sentenced to death by the Additional Sessions Judge, Rohtak, and the death sentence as been confirmed by the High Court of Punjab and Haryana at Chandigarh. The charge against them was under Section 302, read with Section 149, I.P.C. They were jointly tried with Giani Ram and Dhare. Chandan Singh who was the fifth person to form the unlawful assembly was absconding and was, therefore, not available at the time of the trial. Giani Ram and Dhare have been acquitted and the appellants who were then convicted under Section 302, read with Section 34, I.P.C., are before us in this appeal.

2. The victim of the assault was one Sardara. The appellants and Sardara belonged to the village Kulsi within the jurisdiction of the police station Bahadurgarh in Rohtak District. He was murdered on May 18, 1969. The relations between Sardara and the appellants were far from cordial. It appears that on July 24, 1968, the appellant Sultan had applied to the Police Sub-Inspector, Bahadurgarh, to take action against Sardara under Section 107, Criminal Procedure Code. Along with Sardara he had also complained against Bhim Singh, P.W. 3 and others. On August 4, 1968, at the intervention of other respectable villagers the parties settled their differences and thereafter the chapter proceedings were dropped. Some four days before the murder, i.e., on May 14, 1969, the marriage of the sons of one Parshada, the deceased brother of Sultan, was to take place. Appellant Chatru is Sultan's other brother. For the purposes of the Ghurchari ceremony, a procession consisting of woman and children was taken out in the village and the procession was to terminate near the village tank. While the procession was moving forward with the usual tom-toming Sardara happened to come there with his bullocks. Owing to the noise the bullocks shied and so Sardara asked the processionists to stop the noise. Thereupon the procession was abandoned and the people went back. This was resented by the appellant Sultan and the other members of the family who must have regarded it as an ill-omen.

3. Four days later on May 18, 1969, Bhim Singh left his village at about 7-15 a.m. for Ashodha-a neighbouring village in a bullock-cart. He was taking with him wheat for being ground and paddy to be husked.

After he had gone a little distance, he saw Sardara following him in his cart in which Mukhtyar Singh, P.W. 4 and Ran Singh, P.W. 5, were also seated. The latter two were also taking some wheat of their own for being ground at Ashodha. The two carts were going to Ashodha one behind the

other. When they came near Arawala pond within the limits of village Ashodha, the appellants along with their sons Giani Ram and Dhare and the absconding Chandan Singh came there on bicycles. According to the prosecution Sultan was armed with a gun and his brother Chatru was armed with a pistol. The other three were armed with Gandasas. They kept arise their bicycles and came in front of Sardara's cart. They told Sardara that he had broken up the Ghurchari procession which made their life difficult and they would not leave him now. On seeing this Bhim Singh, P.W. 3, Mukhtyar Singh, P.W. 4 and Ran Singh, P.W. 5, got down from their carts and started imploring the appellants and others not to put their design into effect but Sultan asked them to move away and immediately fired his gun which hit Sardara in his chest. The second shot was fired by Chatru from his pistol which hit Sardara on the left clavicle in between the left shoulder and the neck. Sultan re-filled his gun and fired the third shot and this hit Sardara above the abdomen on the left side. Sardara who was in the cart lay down with his head on the bags in the cart. At this stage the other three companions of the appellants are alleged to have got up into the cart and each one of the gave a blow with the Gandasas on the back of the head of Sardara and on the left lumber region. The prosecution witnesses ran towards a nearby village and thereafter all the five assailants got on their bicycles and proceeded towards the side of village Bherai. The three prosecution witnesses then went to village Kulsi and informed Jailal, the father of Sardara, about the occurrence. Jailal took them to the village Sarpanch Bani Singh. On the suggestion of Bani Singh, P.W. 12, Bhim Singh, P.W. 3, went to the Police Station Bahadurgarh on a bicycle and lodged his report Ext. P.A. at about 11.00 a.m.

4. Dalip Singh, P.W. 17, the Assistant Sub-Inspector recorded the first information report and proceeded to the scene of occurrence. Sultan was arrested on the night between 19th and 20th May, 1969, at a place between Kulsi and Ashodha villages. The further investigation was taken over by Sub-Inspector Moti Lal, P.W. 15, to whom Sultan made a disclosure statement on May 25, 1969, which led to the recovery of a broken gun concealed in the heap of 'pural' behind the kotah in the field. Chatru was arrested on May 26, 1969 and is supposed to have made a disclosure statement on May 31, 1969, which led to the recovery of a country made pistol concealed in the fodder room of his house.

5. Near the scene of offence Dalip Singh, P.W. 17, had already recovered three empty cartridges. These cartridges along with the gun and the pistol were sent to the Ballistic Expert, Mr. J. K. Sinha, P.W. 16. Mr. Sinha who was at that time Assistant Director of the Forensic Science Laboratory, Chandigarh, was examined in the Trial Court and also by the High Court under Section 428, Criminal Procedure Code. The evidence of Mr. Sinha was not treated as of much consequence in the present case because there was clear evidence of eye witnesses that a gun and pistol had been used. Three shots had been fired and three empty cartridges had been found at the place soon after the offence. The Sessions Court and the High Court accepted the evidence of Bhim Singh, P.W. 3, Mukhtyar Singh, P.W. 4 and Ram Singh, P.W. 5, as thoroughly reliable. The Sessions Court agreed with their evidence that the deceased had been also hit with Gandasas, but since even one person armed with a Gandasas was quite capable of inflicting three injuries it gave the benefit of doubt to Giani Ram and Dhare and convicted the appellant under Section 302, read with Section 34, I.P.C. The appellants were sentenced to death. The conviction and sentence have been confirmed by the High Court.

6. There is no longer any dispute that the deceased Sardara had received three gun shot wounds. Dr. P. N. Chabra who performed the post-mortem examination noted in all six injuries - the first three of which are described as follows :

(1) Penetrating lacerated wound 1" X 1 1/4" on the left upper abdomen near the lowest cartilage. It was abdominal cavity deep.

(2) Penetrating lacerated wound 1 1/4" X 1" on the left chest, fifth intercostal space 4" from the sternum. It was chest cavity deep.

(3) Penetrating contused wound 1" X 1" just above the left inner clavicle. It was directed to the right.

7. All these three wounds were gun shot wounds and according to the Medical Officer, injuries Nos. 1 and 2, were individually sufficient in the ordinary course of nature to cause death. Both the courts have accepted the evidence of P.W. 3 Bhim Singh, P.W. 4, Mukhtyar Singh and P.W. 5 Ran Singh, especially, as they were corroborated by the actual injuries caused. According to them Injuries 1 and 2 referred to above have been caused by Sultan by firing his gun and injury No. 3 near the left inner clavicle was caused by the shot fired by Chatru from his pistol. It is true that P.W. 3 Bhim Singh, was one of those against whom Sultan had made his complaint for action under Section 107, Criminal Procedure Code. But we also know that the dispute was later compromised and there was no particular reason for Bhim Singh to give a false story. So far as the other two witnesses are concerned namely Mukhtyar Singh, P.W. 4 and Ran Singh, P.W. 5, nothing tangible has been suggested why they should have falsely implicated the appellants. There has been practically no delay at all in filing the first information report. Before the same was filed the three witnesses had gone to Jailal, the father of the deceased Sardara, to inform him about the occurrence and it is admitted by Bani Singh, P.W. 12, the Sarpanch of the village that Jailal had come to him with Bhim Singh, Mukhtyar Singh and Ran Singh and told him about the occurrence. Immediately, Bani Singh along with others went to the spot indicated and found Sardara lying dead in the cart. He remained near the cart along with the Sarpanch of Ashodha who had come there, in the meantime. At about 12.00 noon according to Bani Singh, the police arrived on the spot. Bani Singh further says that three empty cartridges which were laying at the scene were attached. The evidence of Bani Singh is also accepted as substantially true which only goes to show that the first information must have been lodged very soon after the occurrence. Both the courts have believed that the appellants were armed with fire-arms. Appellant No. 1 with a gun and Appellant No. 2 with a pistol and that while the Appellant No. 1 fired two shots from his gun, Appellant No. 2 fired one shot from his pistol. It is not possible for us to reappraise the evidence especially when there is no case made out for the same. Indeed a feeble attempt was made by Mr. Achar to suggest that the High Court had not independently assessed the evidence but approached the case as a court would do in appeal. His contention was that though the appellants had appealed against their conviction and sentence, there was also before the court a proceeding for the confirmation of the death sentence and in such a case, it was contended, the High Court must re-assess the evidence independently under Section 374, Criminal Procedure Code and not merely dispose of the case as in appeal. We do not want to express our opinion as to which is the correct mode of approaching such evidence because we are satisfied from the judgment of the High Court that the evidence of the eye witnesses, especially, has been fully considered and even if we were to reappraise the evidence we would not have come to a different conclusion. The conviction of the appellants under Section 302, read with Section 34, I.P.C., cannot, in our opinion, be assailed.

8. As regards the sentence both the courts have been of the opinion that the appellants deserved the extreme penalty because there was no mitigating circumstance. It is true that the appellants felt insulted because of the breaking up of the Ghurchari procession but we do not think that the appellants need have taken law in their hands four days later and committed the murder of Sardara

in cold blood. So far as Sultan is concerned he had fired two shots and both those shots separately were sufficient in the ordinary course of nature to cause death. We do not think that so far as the sentence on him is concerned we can justify interfere. But so far as Appellant No. 2 Chatru is concerned, though there can be no doubt that he had fired the pistol with the intention to kill Sardara, we actually find that the shot which hit the clavicle was not sufficient to cause death.

9. We think, under the circumstances, that he lesser penalty under Section 302, I.P.C., would meet the ends of justice. Consequently we dismiss the appeal of appellant Sultan but partly allow the appeal of appellant Chatru to the extent that the sentence of death imposed upon him will be reduced to imprisonment for life.

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