

Brahm Singh and Others, Etc.

Vs

The State of Uttar Pradesh

Criminal Appeals Nos. 75 And 76 of 1971

(A. N. Grover, M. H. Beg, A. N. Ray JJ)

14.03.1972

JUDGMENT

GROVER, J. -

1. These appeals are by special leave from a judgment of the Allahabad High Court.
2. Originally 8 persons were tried by the Additional Sessions Judge, Meerut, of offences punishable under Sections 147, 148, 380 and 452, Indian Penal Code, as well as Sections 302, 307, 323 and 325, read with Section 148 of the Penal Code. One of the accused persons Sher Deen was acquitted. The other seven persons were convicted. Brahm Singh and Sardare were sentenced to death. The other five were sentenced to life imprisonment. For the other offences sentences of imprisonment were imposed on the convicted persons. The sentences were to run concurrently.
3. Appeals were preferred to the High Court by the seven convicted persons. A reference was also made under Section 374 of the Criminal Procedure Code for confirmation of the death sentence imposed on Brahm Singh and Sardare. The High Court acquitted Om Pal but maintained the conviction of others under the main offences although the conviction of some of the accused persons was set aside under Section 380, read with Sections 109 and 114 of the Penal Code. The sentence of death awarded to Brahm Singh was confirmed. The appeal of Sardare was allowed only to the extent that the sentence of death was set aside and instead he was sentenced to undergo life imprisonment. The present appeal has been brought to this Court by all the six persons whose conviction was maintained.
4. The High Court in its judgment has set out the pedigree table of the party of the appellants as also of the complainants and has set out seriatum the long-standing history of enmity, criminal proceedings and litigation between the two sides. It is unnecessary to repeat the facts set out by the High Court on which there is no dispute and which clearly establish that the relations between the two parties were highly strained.
5. The occurrence took place on the night intervening July 31 and August 1, 1969. According to the case of the prosecution 14 persons including the appellants entered the gher of Ram Narain P.W. 1 by jumping over the wall and then opening the main gate which provided access to the gher. Ram Narain, who was sleeping in that gher near the door woke up. The assailants approached Rajendra a nephew of Ram Narain who was also sleeping there along with Magan Singh, P.W. 3, the brother of Ram Narain and Mahabir Singh, P.W. 8, Mst. Naraini, P.W. 9 sister of Ram Narain along with other ladies of the house was sleeping in the Zanana section. Brahm Singh fired a pistol at Rajendra after which all the assailants attacked the occupants of the gher and the Chabutra with their respective

weapons. Ram Narain picked up his torch, ran inside his house and escaped by climbing the back wall. He shouted for help. Sukhbir Singh, P.W. 2, Raghunath, P.W. 5, Sukhpal, P.W. 6, Bhooley, P.W. 7, and other villagers came running to the spot and stood outside the main gate of the gher. Some of them had torches with them. It was also a moonlit night. The case of the prosecution was that Brahm Singh fired shots repeatedly from his pistol injuring Rajendra and some of the persons. Rajal who was leading the party of the assailants instigated his companions to remove the cash and ornaments inside the house. Accordingly some of the appellants went inside and broke open the boxes and took away ornaments and cash worth Rs. 9,000/-. Magan P.W. 3, Mahabir, P.W. 8, Naraini, P.W. 9, Bugli and Babu sustained injuries at the hands of the assailants. Rajal shouted that Rajendra was still alive and should be completely finished. Thereupon Sardare appellant gave three blows on the head of Rajendra with a phaora. The villagers who were standing outside the gate of the gher then shouted that enough injuries had been caused to the complainants' party and they would come and intervene if the attack continued. Thereupon Rajal exhorted his companions to leave the gher and they escaped.

6. Ram Narain lodged the first information report at 4.45 a.m. on August 1, 1969. The police station was three miles from the place of the occurrence. The post-mortem examination on the dead body of Rajendra was performed on August 2, 1969. He had nine injuries consisting of five incised wounds, three gunshot wounds and an abrasion. Two of the gunshot wounds were on the chest. The incised wounds were mostly in the region of the head and had done a lot of damage.

7. Out of the eye-witnesses those who had been injured were P.W. 3 Magan uncle of the deceased, P.W. 8 Mahabir Singh a brother, and P.W. 9 Naraini father's sister of the deceased. These witnesses were not examined by the police until after the lapse of 25 days from the occurrence. The other eye-witnesses, namely, Ram Narain P.W. 1, Sukhbir Singh P.W. 2, Raghunath P.W. 5, Sukhpal P.W. 6 and Bhooley P.W. 7 included some of the villagers who are living in the neighbourhood and who were attracted by the firing of the pistol and by the shouts of Ram Narain.

8. It is stated in the judgment of the High Court that after going carefully through the testimony of the eye-witnesses there was no doubt that all the appellants before it with the exception of Om Pal had been guilty of participation in the murder of Rajendra and inflicting injuries on the injured persons. It was argued before the High Court that no reliance could be placed on the testimony of the prosecution witnesses inter alia for the following reasons :

(1) The statements of Magan P.W. 3, Mahabir P.W. 8 and Naraini P.W. 9 were recorded after great delay, namely, On August 25, 1969.

(2) The Investigating Officer S. D. Tyagi P.W. 14 was greatly biased against the appellants because of the complaints which had been made by some of them to higher authorities against him. The various complaints that were made are set out in the judgment of the High Court. Therefore the Investigating Officer had falsely implicated the appellants.

(3) The murder took place at night when the victims and other persons who had come forward as witnesses were asleep. It were some unknown dacoits who had actually come and committed the crime and whose object was to loot and carry away as much property as they could as their names were unknown. The complainant party falsely implicated the appellants owing to the longstanding enmity subsisting between the parties. The High Court fully considered these matters and was satisfied that the

delay in recording the statements of some of the eye-witnesses did not affect the prosecution case and that the filing of the complaints against the Investigating Officer was done with object of putting forward a defence that he was prejudiced against the appellants. It was found that owing to the firing of a number of pistol shots the persons living in the vicinity must have woken up and come to the rescue of the victims. It was a moonlit night and they every opportunity of identifying the assailants.

9. Mr. Nurrudin Ahmed appearing for the appellants has, apart from raising some additional points, reiterated the contentions urged before the High Court. Even if the evidence of the witnesses whose statements were recorded by the police after 25 days is excluded from consideration there are still independent witnesses who have fully supported the case of the prosecution. We have ourselves perused the evidence of Sukhbir, P.W. 2, who was a neighbour and whose house was at a distance of about 200 to 250 paces from the place of occurrence. According to Mr. Nurrudin Ahmed it was not possible for him to reach in time to witness the occurrence but he did not depose to the first part of the incident. When he arrived he found the assailants injuring the members of the complainant party. The importance of his testimony is that he clearly named the present appellants and nothing was brought out in his cross-examination to show in what way he was interested in involving them falsely. Sukhpal Singh P.W. 6 is another witness whose gher is to the west of the gher of some of the other neighbours of the complainant party. He had come on leave as he was service in the Delhi Police. He woke up on hearing the gunfire and alarm raised by Ram Narain. He rushed to the scene of occurrence with his torch and found Sukhbir and other witnesses there. According to him the appellants were among those who were inflicting injuries on the various persons. The criticism of Mr. Nurrudin Ahmed of this witness is two-fold. The first is that he is a member of the Police Force and he must have given his testimony because of the enmity of the Investigating Officer whom he would naturally like to favour. There is no suggestion in the cross-examination that the Investigating Officer had any hold or influence over him, particularly, when he belonged to the Police Force of Delhi. The second criticism is that according to his testimony the boxes were found open inside the Zanana section of the gher of the complainants and Ram Narain told him that cash and ornaments had been taken away by them. It has been pointed out that the High Court has disbelieved the prosecution story so far as theft of any such property of the complainants is concerned. Sukhpal, however, never stated that he had seen any of the assailants taking away any item of the property belonging to the complainants. All that he deposed was that he had been informed by Ram Narain that certain amount of cash and ornaments had been taken away by the miscreants. We have not been shown any such infirmity in his statement which would have persuaded either the High Court or which could persuade us to disbelieve him.

10. Mr. Nurrudin Ahmed has also subjected the evidence of Ram Narain, P.W. 1, to a great deal of criticism including the first information report lodged by him. Ram Narain may have introduced certain matters of an exaggerated nature but we do not consider that in the presence of the evidence of the witnesses mentioned before with regard to the persons who were involved in the murder of Rajendra and the infliction of injuries on the members of the complainant party could be rejected. The theory of some unknown dacoits having committed the crime has not been substantiated and we are not inclined to believe that when so many villagers had come the appellants would have been falsely involved and implicated if they never came to the scene of the occurrence as was their case.

11. As regards the sentence imposed on the appellants we see no reason to interfere except with regard to Brahm Singh appellant. The reason for imposing the lesser penalty on Sardare given by the High Court was that the pistol shots which had been fired by Brahm Singh might have caused

the instantaneous death of Raj Narain and phaora blows were given only subsequently by Sardare. This appears to be based on a pure conjecture and wrong appreciation of the medical evidence. According to the statement of Dr. N. D. Ghera who performed the post-mortem examination the death of the deceased had been caused by the shock and haemorrhage as a result of gunshot injuries and injuries over the head. It was admitted by him that injuries Nos. 1,2 and 3 were bone-deep with fracture underneath. He did say that instantaneous death could be caused by injuries Nos. 5, 6 and 7 which were gunshot injuries. But it is quite obvious that the nature of the injuries caused by phaora was such that their result could have been equally fatal. The doctor also attributed the death to both sets of injuries. According to the witnesses Rajendra was alive and that was the reason why Sardare was exhorted by others to finish him with phaora which he did. We are unable to make any distinction between the case of Sardare and Brahm Singh. It is difficult to say that the injuries caused by Brahm Singh alone by gunshot led to the death of Rajendra and not the injuries caused by Sardare with the phaora. In such circumstances Brahm Singh might not to have been sentenced to death when Sardare's sentence was reduced to one of life imprisonment.

12. We allow the appeals only to the extent that the sentence of death imposed on Brahm Singh is set aside and instead he is awarded a sentence of imprisonment for life. In all other respects the conviction and sentences in respect of the appellants are maintained and the appeals dismissed.

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