

Abdul Ghani S/O Mohammad

Vs

The State of U. P.

Criminal Appeal No. 203 of 1971

(J. M. Shelat, I. D. Dua, A. Alagiriswami JJ)

10.11.1972

JUDGMENT

DUA, J. -

1. This is an appeal by special leave from the judgment and order of the High Court of Judicature at Allahabad dismissing Abdul Ghani, appellant's appeal from the judgment of the Additional Sessions Judge, Aligarh, convicting him under Section 302, I.P.C. for the murder of Ahmad Husain and sentencing him to death. The High Court confirmed the sentence imposed by the trial court.

2. The appellant used to reside at Aligarh and the deceased Ahmad Husain in the village Chakhatal, police station Atrauli, district Aligarh. They were distantly related to each other, the appellant's wife being the daughter of the brother of the deceased Ahmad Husain's wife. The appellant had come to reside with the deceased about 3 months prior to the murder in question. The appellant, it appears, developed illicit intimacy with the wife of the deceased. When the deceased came to know of this intimacy he got annoyed with the appellant and asked him to leave his house but, it is said that, the wife of the deceased intervened, and the appellant continued to live in the house of the deceased. This happened about 7 or 8 days before the murder in question. The appellant and the deceased were both engaged in the business in selling gola (copra) and misri (sugar candy) and they used to go from their house in the morning for selling goal and misri and return in the evening at about 6 or 6.30 p.m. On July 21, 1969, Ahmad Husain, deceased, as usual went out on his usual business of selling gola and misri at about 6 or 7 a.m. The appellant did not accompany him on that day. The deceased did not return home in the evening and this naturally caused anxiety to the members of his family. After waiting for his return till about 8.30 p.m. Chaman, son of the deceased aged about 14 years, went to the house of his uncle Hamid (a first cousin of the deceased) and informed him about this fact. Hamid promised to make a search for the deceased the following morning, as it had by then grown dark. Chaman accordingly returned to his house. The following morning the son against went in search of his father. When he reached the bank of the river Neem he found lying there a pair of scales and weight belonging to his father. Leaving the weight there he took the pair of scales with him to Hamid and told him that the said pair of scales had been found at the river bank. They both then took Liladhar, chowkidar of the village along with them towards the river. The pair of scales was placed at the spot from where it had been found. The three persons then entered the river and found the dead body of Ahmad Husain lying at its bed. The water in the river was only knee-deep at that place. They took the dead body out. The chowkidar and Chaman were sent to the Pradhan of the village. Hamid himself staying with the dead body. When the Pradhan came to the spot he asked Hamid to go to the police station Atrauli for lodging the report. Hamid accordingly went to that police station on a bicycle and lodged the report about the occurrence at about 10 a.m. The police station was at a distance of 8 miles from the place of occurrence. In this report there was no mention

of the appellant, apparently because till then neither Chaman nor Hamid suspected him of complicity in the murder. When Chaman returned to his house he found Abdul Ghani, appellant, present, Abdul Ghani was looking somewhat restless and perturbed. This excited Chaman's suspicion. He, therefore, decided to inform the Pradhan of the village about the appellant's behaviour. The Pradhan on getting this information accompanied Chaman to the house of the deceased. On the way he met Malkha Singh and Roshanlal whom also he took along with him. The appellant, on seeing these persons, tried to run away but was captured by them. He was found to have a cut mark on his right hand and an abrasion on his left leg. When questioned as to how he had sustained these injuries he is said to have replied that it had happened while he was striking the deceased with the knife. The appellant was then taken to the house of the Pradhan where he is stated to have made an elaborate extra-judicial confession about his having murdered the deceased. According to Rajendra Prasad, the Pradhan of the village who appeared as P.W. 5 the appellant said :

"I developed illicit intimacy with the wife of Ahmad Husain. About 8 days ago, Ahmad Husain came to know of this. On his knowing this, a marpit took place between me and Ahmed Husain. For these reasons I murdered him yesterday at about 7.30 p.m. with a Chura (large knife) on the bank of the river Neem and the dead body is lying in the river Neem."

The appellant was detained at the house of the Pradhan where the Sub-Inspector came at about 1 p.m. On interrogation the appellant is said to have narrated the story to the Sub-Inspector. The appellant was then taken by the Sub-Inspector to the house of the deceased. The Pradhan, Malkha Singh and Roshan Lal (P.W. 11) also accompanied them. The appellant produced the blood-stained shirt from his kothri (room) in which he had been living. He also took the party to the river Neem and produced the knife and other articles from the places near the river. The Sub-Inspector thereafter took away the appellant and the various articles.

3. Apart from the extra-judicial confession of the appellant the evidence in this case is entirely circumstantial. Both the trial court and the High Court, however, considered the evidence, though circumstantial, to be sufficiently convincing and incriminating and consistent only with the appellant's guilt. The trial court summarised the circumstances which were fully proved on the record in the following words :

"1. That the deceased was related to the accused, the daughter of the brother-in-law (sala) of the deceased was married to the accused and the accused had been living in the house of Ahmad Husain about 2 or 3 months prior to the occurrence.

2. That the accused developed illicit intimacy with the wife of the deceased.

3. That about a week prior to the murder of Ahmad Husain, there had been altercation between the accused and the deceased as the deceased came to know about the illicit intimacy of the accused with his wife.

4. That both the accused and the deceased used to go out to other villages to sell gola and misri but on the date of the murder the accused did not accompany the deceased he remained behind at the house of Ahmad Husain. He, however, left at about 3 p.m. and returned to the house only at about 10 or 10.30 p.m.

5. That on the date of the occurrence at about 7 or 7.30 p.m. the accused was seen on the bank of the river Neem with the Chhuri Ex. 4 in his hand.
6. That on the date of the occurrence at about 8 p.m. the accused was seen running from the river Neem towards the village. He was wearing the shirt, Ex. 19. He did not reply when asked by the villagers as to why he was running.
7. That next morning when the dead body of Ahmad Husain had been recovered from the river the accused was found moving about restlessly in his kotha and was seen peeping hither and thither.
8. That when on the information received from Chaman about the restless condition of the accused Rajendra Prasad Pradhan and other witnesses came to the house of Ahmad Husain, the accused tried to run away but he was overpowered and arrested.
9. That when the accused was caught by the Pradhan and other villagers a cut mark and an abrasion were found on his person.
10. That after the accused has been arrested by the Investigating Officer he made a disclosure statement to the effect that he could produce his blood-stained shirt. Thereafter he took the police and the witnesses to the Kotha of Ahmed Husain in which he lived. There was a Handiya in the Kothri and from inside the Handiya he produced the shirt, Ex. 19 which was found to be stained with human blood by the Serologist.
11. That he made a disclosure statement to the effect that he could produce the Chhuri and the things belonging to Ahmed Husain, Subsequently he took the Sub-Inspector and the witnesses towards the river Neem and produced from the river Chhura, Ex. 4 and a number of articles belonging to Ahmed Husain."

The High Court did not consider the recovery of the knife to be free from suspicion. The High Court based the appellant's guilt on the following circumstances in addition to the extra-judicial confession -

- (1) relationship of the appellant with the wife of the deceased as a result of which the appellant started living in the house of the deceased;
- (2) the appellant's intimacy with the wife of the deceased;
- (3) that the appellant and the deceased used to go out together every morning to sell gola and misri;
- (4) on July 21, 1969, the appellant did not go out to sell gola and misri in the morning;
- (5) on that day he remained in the house right up to 3 p.m.;
- (6) he left the house on that day at 3 p.m. and returned at about 10 or 10.30 p.m.;
- (7) on July 21, 1969, at about 7 or 7.30 p.m. the appellant was seen by Manzoor,

P.W. 3 and Salim, P.W. 6 at the bank of the river Neem with a knife in his hand;

(8) at about 8 p.m. on July 21, 1969, the appellant was seen running from the side of the river towards the village and on being questioned by Charanjit Singh, P.W. 8 and Ganga Sahai, P.W. 10 as to why he was running he gave no reply;

(9) after the recovery of the dead body from the river the appellant was noticed moving about restlessly in the house of the deceased;

(10) on the arrival of the village Pradhan along with others the appellant tried to run away; and

(11) the recovery of blood-stained shirt, on the pointing out by the appellant.

4. The question arises if these circumstances in law justify the conclusion of the High Court with regard to the appellant's guilt and imposition of the extreme penalty of death on him. The legal position with respect to the sufficiency of the circumstantial evidence for sustaining criminal conviction is well-settled. The circumstances established on the record according to the law of evidence must be consistent only with the guilt of the accused and wholly inconsistent with his innocence. The chain of evidence furnished by those circumstances must be complete and leave no reasonable ground for a conclusion consistent with his innocence. In *M. G. Agarwal v. State of Maharashtra* ((1963) 2 SCR 405, 491 : AIR 1963 SC 200 : (1963) 1 Cri LJ 235), this Court observed :

"It is well established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. If the circumstances proved in the case are consistent either with the innocence of the accused or with his guilt, then the accused is entitled to the benefit of doubt. There is no doubt or dispute about this position. But in applying this principle, it is necessary to distinguish between facts which may be called primary or basic on the one hand and preference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts the Court has to judge the evidence in the ordinary way, and in the appreciation of evidence in respect of the proof of these basic or primary facts there is no scope for the application of the doctrine of benefit of doubt. The Court considers the evidence and decides whether that evidence proves a particular fact or not. When it is held that a certain fact is proved, the question arises whether that fact leads to the inference of guilt of the accused person or not and in dealing with this aspect of the problem, the doctrine of benefit of doubt would apply and an inference of guilt can be drawn only if the proved facts is wholly inconsistent with the innocence of the accused and is consistent only with his guilt."

5. Now the circumstantial evidence in the present case has to be considered along with the extra judicial confession. Both the trial court and the High Court have considered the circumstantial evidence to be strong and convincing enough to leave no scope for any reasonable doubt about the guilt of the appellant. We have not been able to find any flaw in the reasoning of the High Court in holding the circumstantial evidence to be complete and convincing in this respect. The extra-judicial confession in this case is, in our opinion also free from any infirmity and no reason has been shown

as to why it should not be considered as both voluntary and true. This extra-judicial confession was made by the appellant before the village Pradhan soon after he was apprehended. From its very nature it impresses us to be spontaneous, free from suspicion, voluntary and true. The words actually used by the appellant have been reproduced so far as possible in the circumstances of the case. No doubt the appellant has denied having made this extra-judicial confession. This may be considered to amount to retraction of the confession but a retracted extra-judicial confession can also legally form the basis of a conviction, though as a matter of prudence the courts try to look for corroboration from some independent source so as to satisfy their conscience that the confession is true. In *Pyare Lal Bhargava v. State of Rajasthan* (1963 Supp 1 SCR 689, 695 : AIR 1963 SC 1094 : (1963) 2 Cri LJ 178), this Court observed :

A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances such a conviction can be made without corroboration, for a court may, in a particular case, be convicted of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars."

In the present case the confession considered in the background of the attending circumstances, clearly seems to us to be both voluntary and true as also free from suspicion. The circumstantial evidence is also complete and convincing so as to leave no scope for any reasonable ground of appellant's innocence. This evidence amply serves to corroborate in material particulars the confession, if any corroboration were needed. We have, therefore, no hesitation in agreeing with the conclusion of the High Court about the appellant's guilt. With respect to the sentence also we do not think any interference is called for the appeal accordingly fails and is dismissed.

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