

Ghasita alias Ghasi Ram

Vs

State of U. P.

Criminal Appeal No. 303 of 1971

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

14.11.1972

JUDGMENT

DUA, J. -

1. The appellate Ghasita alias Ghasi Ram in this appeal by special leave has been convicted by the Sessions Judge, Hamirpur for the offence of murder under Section 302 I.P.C. and sentenced to death. His appeal has been dismissed by the High Court of Judicature at Allahabad and the sentence of death confirmed on reference under Section 374, Cr.P.C.

2. The appellant was originally a resident of village Beera. He was married to the daughter of one Mataiyan Chamar in village Bargarh and had started living in the village of his father-in-law about a year prior to the murder in question. He was employed with one Mahadeo Lodhi as a plough-man. It appears that he had purchased some articles on credit from Binda, a shop-keeper of village Bargarh of the value of about Rs. 5 or 6. As the appellant had not paid the sum due for some time in spite of several demands by Binda and his father, on September 7, 1969, when the appellant was ploughing his master's field, Binda passed that way and demanded the money due to him. Ghasita, appellant, who was at that time mending Haraini of the plough on the southern mend of his master's field replied that he had no money at that time and would pay the same as and when he is in a position to do so. On Binda's insistence on payment of the dues the appellant abused him. Binda in return gave a slap on the appellant's cheek. The appellant then got hold of an axe and gave a blow on Binda's neck. As a result of this blow Binda fell down on the ground. The appellant gave three or four more blows with the axe on Binda's neck, killing him instantaneously. Soon thereafter the appellant ran away from the place of occurrence carrying the axe with him. This occurrence was witnessed by Chunta son of Dhani Ram, P.W. 2, Mahadeo son of Birbal, P.W. 3, with whom the appellant was employed and Rajdhar son of Ramnath, P.W. 4, Mahadeo went to the village and informed Punna, father of the deceased, about his son's murder. Punna came to the place of occurrence and after entrusting the dead body of his son to the witnesses, went to the police station Majahgaon along with the village Chowkidar to lodge the report of his son's murder.

3. The evidence of the eye witnesses is clear, consistent and convincing. Nothing has been elicited in the cross-examination to discredit their testimony or to throw any suspicion about the correctness of the version given by all of them consistently.

4. In the statement made by the appellant under Section 342, Cr.P.C. he denied every allegation except that he had started living in village Bargarh since about a year. The reason given by him for the prosecution witnesses deposing against him was that one Brijbhan who was married in the appellant's village had strained relations with him and that the said Brijbhan being the cousin

brother of Rajdhar and Mahadeo they have falsely implicated him, adding that he had also refused to do begar for these persons.

5. Mr. M. S. Srivastava, learned counsel appearing as amicus curiae in support of the appeal, which has been forwarded from District Jail Bara Banki, submitted that the medical evidence is inconsistent with the testimony of the prosecution witnesses who claimed to have witnessed the occurrence. The evidence of these witnesses should therefore, be discarded. According to the counsel the injuries found on the person of the deceased could not have been inflicted by an axe. We are unable to sustain this submission. The four injuries described by Dr. R. N. Zaida, Medical Officer, Rath (P.W. 6) to be ante-mortem are all around the neck and their description does not suggest that they could not be caused by an axe. P.W. 6 has clearly deposed in cross-examination that these injuries could be caused by an axe. It is not understood on what basis it can be urged that these injuries could not have been caused by an axe. It is true that we have to go on the printed record the description of the axe which is said to have been used by the appellant but if the testimony of the eye-witnesses was sought to be discredited on the basis of medical evidence it was for the appellant to have this aspect specifically clarified from the evidence of the doctor. A suggestion was, however, thrown by the learned counsel that injuries 3 and 4 as given in the post-mortem report must have been caused by different weapons and that, therefore, the prosecution story that they are both caused by the same axe is unbelievable. We do not find any material to support this submission. Injury No. 3 is an incised wound 2" x 5/10" vertebrae, transverse, over right side of neck 1 3/4" below right ear. A small piece 1/3" x 1/2" x 1/10" of lower part of 3rd cervical vertebrae body was cut and separated. All the soft tissues including blood vessels of the right side of neck were also completely cut underneath. The fourth injury is an incised wound at the back of the neck about 1" above 7th cervical spine. Spinous process of 5th cervical vertebrae was completely cut underneath and so were all the soft tissues over back of neck under the injury. From the description of these injuries we are unable to infer that they could not be caused by an axe and indeed no suggestion to that effect was made to Dr. Zaida, P.W. 6.

6. It was next contended that the F.I.R. suggests Punna was present when the alleged occurrence took place because it is not stated therein that he was reproducing the version conveyed to him by the eye-witnesses. On this assumption it was argued that in the F.I.R. there being no mention of the fact that the appellant was repairing the Haraini, the whole version of the alleged occurrence must be considered to be doubtful. The submission is wholly misconceived. It completely ignores that part of the F.I.R. where it is stated that the Mahadeo had gone to the village to inform Punna of all the facts. This contention is thus devoid of merit.

7. The learned counsel also submitted that failure on the part of the investigating agency to take into possession Haraini of the plough, which having got broken was being repaired by the appellant at the time of the alleged occurrence, suggests that the investigation has not been thorough, fair and straightforward. We do not think it was necessary for the investigating officer to take into possession the Haraini, which is not directly connected with the commission of the offence. The commission of the offence has been witnessed by the eye-witnesses whose evidence is free from suspicion. The production of the Haraini could not have rationally added more credibility to the testimony of the eye-witnesses.

8. Finally it was submitted that the sentence is too severe. Looking at the nature of the injuries which suggest that their author intended to sever the neck of the deceased from his body and the circumstances in which this brutal murder was committed, in our view, the sentence imposed can by no means be considered to be too severe. The appeal accordingly fails and is dismissed.

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