

Karan Singh

Vs

State of U. P.

Criminal Appeal No. 210 of 1971

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

22.11.1972

JUDGMENT

ALAGIRISWAMI, J. -

1. This is an appeal by special leave against the judgment of the High Court of Allahabad confirming the sentence of death passed on the appellant by the learned Sessions Judge, Moradabad.

2. On the night of June 14/15, 1969, Kartar Singh, the son of Smt. Moonga, was murdered in the village Harthala, in the district of Moradabad. Her husband, Faqira, had disappeared some time earlier and she had developed illicit intimacy with the appellant a resident of the village of Pachkaura in the same district. Some time later appellant's brother, Charan Singh, was brought in by the appellant to assist him in cultivating Smt. Moonga's land. Smt. Moonga is said to have developed illicit intimacy with Charan Singh and the appellant was suspected of having murdered Charan Singh in the year 1968. The appellant is then said to have formed an idea of doing away with Smt. Moonga's only son, Kartar Singh, so that he could grab her property. Appellant's brother, Dharampal, who was a co-accused with the appellant in the present murder case but was acquitted by the Trial Judge, was also living with Smt. Moonga. On June 14, 1969, the appellant went to his own village Pachkhaura with Smt. Moonga and her children, and after sending the others back to village Harthala he himself remained behind in Pachkaura. The prosecution case was that on the night of June 14/15, 1969, he returned to the village Harthala quietly and knocked at the door of Smt. Moonga and that some body from inside opened the door, and after murdering Kartar Singh and throwing the dead body on the roof, made good his escape. The appellant and his brother, Dharampal, as already mentioned, were tried for the offence of murder. Dharampal was acquitted and the appellant was sentenced to death.

3. Both the Sessions Judge and the learned Judges of the High Court have on a consideration of the evidence come to the conclusion that the motive alleged for the murder was fully proved. Smt. Moonga herself could not be produced. At one stage she had filed a petition saying that the accused should not be released on bail as he had threatened her. Later on the prosecution alleged that the accused had done away with her also. During the trial an application was moved on behalf of the accused giving two addresses where Smt. Moonga was alleged to be hidden, but she could not be found. It was, therefore, obvious that Smt. Moonga could not have been withheld by the prosecution. There was no evidence one way or the other regarding the suggestion that she also had been done away by the appellant. There was evidence that the appellant had returned from his village Pachkaura to village Harthala in the evening on June 14, 1969. P.W. 9, P.W. 17 and P.W. 4 gave evidence about having seen the appellant at various points near the town of Moradabad between 5 p.m. and 7.30 p.m. on June 14, 1969, and the courts below held that their evidence has

established appellant's return beyond doubt. Another fact which the prosecution sought to prove was that on the mid-night of June 14/15, 1969, the appellant was found on the roof of Smt. Moonga's house and this was sought to be established by the evidence of P.W. 10 and P.W. 8. This evidence was held not reliable and sufficient to prove the presence of the appellant on the roof of Smt. Moonga's house. Then there is the evidence of P.W. 15 of having seen the appellant going away from the house of Smt Moonga shortly after. The statement given by P.W. 15 was believed by the courts below. There was also the fact that the blood-stained knife. (Ex. 5), with which the murder was committed was recovered at the instance of the appellant. We have not been impressed by the argument on behalf of the appellant that this evidence is not admissible under the provision of Section 27 of the Evidence Act as the police already knew about the place where the knife could be found. This argument is wholly without substance. This was based on the fact that the appellant first told the police that he would show them the knife and then took them to the place where the knife was hidden. We consider that both the courts below were undoubtedly right in holding that there was no substance in this contention and the evidence regarding the recovery of the knife was admissible. The courts below were not impressed by the appellant's denial of the various facts proved against him and his statement that he was in his own village Pachkaura at the time of occurrence. We have carefully considered the evidence in this case and see no reason to differ from the conclusion arrived at by the courts below. The appeal is, therefore, dismissed and the conviction and sentence of the appellant confirmed. We see no mitigating circumstances of this case warranting the award of any sentence less than death.

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