Mohd. Ilyas

Vs

State of U. P.

Criminal Appeal No. 107 of 1969

(V. R. Krishna Iyer, R. S. Sarkaria JJ)

18.02.1974

JUDGMENT

SARKARIA, J. -

1. Ilyas, aged 16 years has preferred this appeal by special leave against the judgment of the High Court of Allahabad whereby his conviction and sentence of life imprisonment under Section 302/34, Penal Code was maintained.

2. The facts are these : Nathu Singh of village Bhainsi Police Station Khatauli was a sonless old man of 70 years. He had two daughters, named Smt. Qabooli (P.W. 6) and Smt. Harphooli. Smt. Qabooli was residing with her father in this village for a few months preceding the occurrence in question. On the night between January 21/22, 1968, Nathu Singh deceased was asleep in his Dukarya (two-door room) while his daughter, Smt. Qabooli, was sleeping in the tathri of the house separated by a courtyard from the Dukarya. At about 2 or 2.30 a.m. she woke up on hearing a noise. She thought that their servant had come to take the cart. She called her servant by name. She at the same time saw one or two strangers moving inside the room. She raised an alarm, but, on account of fright, recoiled into her apartment of the house. After about half an hour, she heard the voices of the villagers. Reassured, she came out to the Dukarya and found Ilyas appellant and his co-accused Mahabir in the custody of the witnesses.

3. The alarm which she had raised earlier, had attracted the villagers viz. Gyan Singh (P.W. 1), Ved Singh (P.W. 9) and Mangat Singh (P.W. 5) and others to the house. These persons saw the appellant and his companions Mahabir, Ranpal, Ram Swarup and Jai Prakash inside the Dukarya. Satya Prakash was strangulating Nathu with a safa; Ranpal accused was procuring his thumb impression on a sheet of paper. Ilyas appellant was holding Nathu's hand and helping Ranpal. Mahabir and Ram Swarup accused were holding the feet of Nathu. The witnesses challenged the miscreants. Satya Prakash, who was armed with a gun, scared them away. Ranpal, Satya Prakash, Jai Prakash and Ram Swarup succeeded in running away. Mahabir and Ilyas were, however, caught by Gyan Singh and the other prosecution witnesses. The witnesses then saw that Nathu was dead. The left thumb of the deceased was found smeared with ink.

4. Ved Singh (P.W. 9) wrote a note and sent it to the Police Station, Khatauli, two miles away, through one Qabool Singh. On receiving this note, the case was registered at 3.45 a.m. in the Police Station. Brahmanand Sharma reached the scene of occurrence at 4.45 a.m. He held the inquest and interrogated Gyan Singh (P.W. 1). He interrogated P.W. 8 Mangat and Mangey. He took over the custody of Mahabir and Ilyas. He searched for the other accused persons but could not find them. Satya Prakash and Ranpal Surrendered in Court on January 23, 1968. Jai Prakash and Ram Swarup

absconded and were proceeded against under Sections 88 and 87 of the Criminal Procedure Code.

5. The trial Court convicted Satya Prakash under Section 302 and sentenced him to death. It convicted Ilyas appellant, Mahabir and Ranpal under Section 302 read with Section 149, Penal Code, and sentenced each of them to imprisonment for life. They were further convicted under Section 147, Penal Code.

6. On appeal by the convicts, the High Court maintained the conviction of Ilyas and Mahabir, but acquitted Satya Prakash and Ranpal. Hence this appeal by Ilyas. Mahabir has not appealed.

7. The plea of the accused in his examination under Section 342, Cr.P.C was one of denial of the prosecution case. He pleaded innocence. He said that he was plying rickshaw on hire. He had brought Mahabir in his rickshaw on hire from Khatauli to Bhainsi. He was waiting with his rickshaw on the road to collect his hiring charges. Villagers on suspicion caught him on the road and seized his rickshaw. They gave him a beating and confined him in the kotha. He and his rickshaw were taken to the Police Station next morning.

8. Appellant is a rickshaw puller by occupation, and is a resident of village Jaooda, Police Station Kotwali.

9. At the trial, the prosecution examined three eye-witnesses, namely, Gyan Singh (P.W. 1), Mangat Singh (P.W. 5) and Ved Singh (P.W. 9).

10. The High Court found that out of these witnesses, Mangat Singh (P.W. 5) only was a witness of the vicinity, while the other two lived far away. It further found that all these three witnesses have "given a parrot-like story narrating to have seen what he could not have seen on account of their houses being at a long distance". It, therefore, concluded that in all probability, they were "tutored witnesses and their statements cannot be accepted in full". It was added :

Smt. Qabooli has made a completely true statement and the statements of the other witnesses can be accepted only to the extent it is corroborated by the version given by Smt. Qabooli.

11. On the above premises, the High Court held :

What has, therefore been established beyond doubt is that two persons (Mahabir and Ilyas) were arrested soon after the murder of Nathu Singh . . . . . Mahabir had given out the names of his companions as Ranpal, Ram Swarup and Satya Prakash. The testimony of the three eye-witnesses can, therefore, be accepted only to the extent that they were in a position to arrest these two persons soon after the incident.

It rejected the plea of Ilyas in these terms :

The plea of Ilyas is thus without substance. It may be that he plies a rickshaw but it does not mean that he had brought Mahabir to the village that night and he was wrongly arrested and implicated in this case.

Ilyas had not pleaded enmity with any of the witnesses and there could be no reason for them to arrest him without any cause. Smt. Qabooli is a reliable witness. She was not asked, if Ilyas was then pleading his innocence. His conduct was thus not of an innocent person who did everything possible to impress upon the people that he had been arrested by mistake and was innocent to the

crime. No witness was examined by Ilyas in his defence. It was vehemently argued by the learned Advocate for Ilyas that he was a Muslim aged only 16 years belonging to another village Jaooda and could have no cause to join others in the commission of the crime. We need not make any comment on this point. Ilyas, even though a Muslim and a young boy, could be friendly with other offenders. He may have been hired for the purpose. When the circumstances of the case establish the guilt beyond doubt, it is not necessary to indicate why and in what circumstances a particular person joined in the commission of the crime.

12. Mr. Vimal Dave, Advocate, learned counsel for the appellant vehemently contends that the evidence of P.Ws. 1, 5 and 9 which according to the High Court's finding was "parrot-like", "tutored" and not fully reliable, had not been corroborated by Smt. Qabooli (P.W. 6) with regard to the precise manner and place of the arrest of Ilyas appellant. It is urged that all that Smt. Qabooli stated was that when she came out about half an hour after the occurrence, she saw Ilyas in the custody of the villagers. This solitary circumstance - it is maintained - was too slender a ground to hold that the appellant was one of the culprits. It is argued that the appellant has been asserting from the earliest opportunity that he had been arrested from the road while standing there with his rickshaw and not from the scene of occurrence. In this connection Mr. Vimal Dave, has drawn our attention to Ex. Kha-2 which is an order, dated February 16, 1968, passed by A.D.M. (J) on an application made by Ilyas on February 14, 1968 (i.e. about 23-24 days after the occurrence) requesting for return of his rickshaw which had been taken away by the police from the pucca road near Bhainsi. This order, Ex. Kha-2, is to the effect :

> "rickshaw malik ki supardagi men dia jave"

(Rickshaw be handed over to the custody of the owner)

13. Counsel has further referred to the cross-examination of Gyan Singh (P.W. 1), Mangat Singh (P.W. 5), Ved Singh (P.W. 9) and Mr. Sharma, Investigating Officer to whom this defence version was specifically put.

14. We find force in these contentions. We are conscious of the rule of practice that in the exercise of its special jurisdiction under Article 136 of the Constitution, this Court does not reappraise the evidence unless there are exceptional features warranting that course. Present is a case where the order of the High Court so far as the conviction of the appellant is concerned, suffers from a manifest error. The evidence of P.Ws. 1, 5 and 9 inasmuch as they claimed to have seen the accused persons, including Ilyas appellant, inside the Dukarya collaborating in the strangulation etc. of the deceased was clearly unbelievable, if not positively false. All the three prosecution witnesses say that they went to the spot on hearing the hue and cry raised by Smt. Qabooli. The houses of Ved Sing and Gyan Singh were admittedly situated at a long distance from the house of occurrence. Mangat's house was no doubt in the vicinity. But according to Mangat's own statement, on hearing the alarm of Smt. Qabooli, he did not immediately come out of his house. He first shouted to his father for help. He went out only after the arrival of P.Ws. Ved Singh and Gyan Singh, and then, in their company went to the house of Nathu. All this must have taken some time. In the circumstances - as the learned Judges of the High Court also rightly held - these witnesses were "narrating to have seen what they could not have possibly seen". On parity of reasoning, the account given by these witnesses, in regard to the place and manner of the appellants' arrest was equally unreliable. Their infirm evidence on this precise point was not confirmed by the testimony of Smt. Qabooli who was found to be a truthful witness.

15. Smt. Qabooli disclosed in cross-examination that when she started raising an alarm, one of the intruders silenced her under pain of shooting her dead. Out of fright she kept quiet for some time and raised the alarm again, presumably after she had gone back into her room tathri and chained the door from inside. She did not stir out for about half an hour, till she recognised the voices of her co-villagers, outside. Thereupon she went out into the courtyard and saw Mahabir and Ilyas in the custody of these prosecution witnesses and others.

16. All that Smt. Qabooli's evidence established was that Ilyas was seen about half an hour after the occurrence in the custody of the prosecution witnesses in the house. Her evidence falls short of proving that Ilyas was arrested inside the house or while running away from the house. Even the learned Judges of the High Court did not go to the length of holding that Ilyas had been arrested inside the house as alleged by P.Ws. 1, 5 and 9. The only firm finding reached was that he had been arrested soon after the incident. This tenuous circumstance, in our opinion was not sufficient to fasten the guilt on the appellant, conclusively. At the most, it raised a strong suspicion against him, which could be no substitute for proof.

17. In the final analysis, the whole case against the appellant with regard to the manner, place and other circumstances of his arrest, had narrowed down into a conflict between the untrustworthy version of P.Ws. 1, 5 and 9 on one side, and the statement of the appellant under Section 342, Cr.P.C on the other. The plea set up by the teenaged appellant, who was admittedly a rickshaw-puller by occupation, viz., that he had brought Mahabir in his rickshaw on hire from Khatauli, and was beaten and arrested by the villagers on suspicion while standing with his rickshaw on the pucca road at Bhainsi, could not be called an after-thought. It was asserted by him as early as February 14, 1968, i.e., only 23-24 days after the incident when he made an application to the A.D.M. (J) for the return of his rickshaw. This version was specifically and persistently put to P.Ws. 1, 5, 8 and 9 in cross-examination, also. In the ultimate analysis, this conflict had to be resolved in favour of the appellant. He had no apparent motive to join the co-accused, who were residents of village Bhainsi, in committing the murder of Nathu,

18. For the foregoing reasons, we would allowed the appeal, accord the benefit of doubt to Ilyas appellant and acquit him. He be set at liberty forthwith.

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