

Shiv Singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 273 of 1973

(H. R. Khanna, Y. V. Chandrachud JJ)

17.07.1974

JUDGMENT

KHANNA, J.

1. This is an appeal by Shiv Singh (68) against the judgment of the Madhya Pradesh High Court affirming on appeal and reference the conviction of the appellant for an offence under Section 303 Indian Penal Code and the sentence of death.
2. The prosecution case is that the accused was convicted by the Sessions Judge Garoth on December 23, 1938 for an offence under Section 302 read with Section 109 Indian Penal Code and was sentenced to undergo imprisonment for life. The accused while undergoing that sentence escaped from Central Jail Indore on November 27, 1946.
3. On December 29, 1960, it is stated, Head Constable Bahadur Singh of police station Jharda went along with Ramgopal constable to village kantharia at about 11 a.m. The Head constable while sitting on the bank of the river asked Ramgopal constable to call the village chowkidar. After Ramgopal had left, the Head Constable saw the accused going with a 12 bore gun at a distance of about 50 yards. The Head Constable shouted to the accused to come to him. The accused on seeing the Head Constable who was in uniform ran away. In the meanwhile, Ramgopal constable also came there and the Head Constable asked Ramgopal to join him in securing the accused. Both the Head Constable and Ramgopal ran after the accused. The accused then hid himself in the bushes and from there fired two shots at the Head Constable and Ramgopal. The shots hit Ramgopal. The accused thereafter made good his escape.
4. Head Constable Bahadur Singh collected some persons and with their help took Ramgopal towards the police station. Ramgopal succumbed to the injuries received by him on the way. After arrival at the police station Jharda, which is at a distance of about eight miles from the place of occurrence, Head Constable Bahadur Singh lodged report Ex. P-6 at 4.30 p.m. In that report it was mentioned by him that he had learnt on enquiry that the name of the assailant of Ramgopal was Shiv Singh.
5. After inquest report had been prepared, post mortem examination was conducted by the Doctor Incharge on the dead body of Ramgopal. Eleven gun-shots wounds were found on the dead body. The death of the deceased was stated to be due to shock and haemorrhage following injuries to the heart, lungs and intestines.
6. The accused, it is further alleged, absconded after the occurrence. He was arrested by Sub

Inspector Prakash Chandra Dube (PW 2) on September 15, 1972. An identification parade of the accused was held by Shri. Raghunath Singh Tahsildar (PW 14) on October 11, 1972. Bahadur Singh in that parade correctly identified the accused.

7. At the trial the prosecution Head Constable Bahadur Singh (PW 4) as eye witness of the occurrence and he supported the prosecution case as given above. The accused in his statement under Section 342 of the Code of Criminal Procedure denied the prosecution allegations. The trial Court accepted the prosecution case and based the conviction of the accused on the testimony of Bahadur Singh. The High Court on appeal and reference took the same view as had been taken by the trial Court.

8. In appeal before us Mr. Gupta who has argued the case amicus curiae contends that the material on record is too slender to base thereon the conviction of the accused-appellant. After hearing Mr. Gupta as well as Mr. Shroff on behalf of the State, we find considerable force in the above contention of Mr. Gupta. As would appear from the resume of facts given above, the conviction of the appellant is based upon the testimony of Head Constable Bahadur Singh alone. Bahadur Singh admittedly did not know the assailant before the present occurrence. He saw the assailant when the latter was at about a distance of 50 yards and it is in the testimony of Bahadur Singh that as soon as the assailant saw him in uniform he turned back and ran away. Bahadur Singh as such could have had only a fleeting glimpse of the assailant. Bahadur Singh did not see the assailant thereafter for about twelve years and for him to be in a position to identify the culprit after the expiry of that period seems to us to be rather difficult. The suggestion which was made on behalf of the accused appellant during the cross-examination of Bahadur Singh was that the accused had been shown to him at police station Jharda before the identification parade and that the two had stayed together at the police station for three days thereafter. It is not necessary to express an opinion on the point as to whether there was any truth in that suggestion because in any case we find it extremely hazardous to maintain the conviction of the accused appellant upon the testimony of Bahadur Singh alone.

9. It is no doubt true that the name of the accused as the assailant of the deceased was mentioned in the first information report, but in this respect we find that according to Bahadur Singh, the name of the accused was given by one Jon Singh. Jon Singh was admittedly not present at the scene of occurrence. In the circumstances, it is not clear as to how Jon Singh could be in a position to say that it was the accused appellant who was responsible for the injuries caused to Ramgopal deceased. Jon Singh was also not examined as a witness at the trial.

10. According to the first information report, Pratap Singh too was present along with Head Constable Bahadur Singh at the time of occurrence. Pratap Singh was not produced by the prosecution and was examined in defence. According to Pratap Singh, he learnt at the spot that it was one Karan Singh who had fired at Ramgopal deceased. We thus find that the other person who according to Bahadur Singh was present at the scene of occurrence, has given a version inconsistent with that of Bahadur Singh.

11. In our opinion, it is not possible on the material on record to sustain the conviction of the accused appellant. We accordingly accept the appeal, set aside the conviction and sentence of the accused appellant and acquit him. He should be released unless required in any other case.

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