

Bhagwan Dass

Vs

State of Rajasthan

Criminal Appeal No. 116(A) of 1973

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

18.07.1974

JUDGMENT

KHANNA, J.

1. Bhagwan Dass (25) was convicted by learned Sessions Judge Udaipur under Section 302 Indian Penal Code for causing the death of three persons Manna (35), Smt. Dhulki (45) and Heerka (25) and was sentenced to death. Bhagwan Dass was also convicted under Section 307 Indian Penal Code for causing injuries to PW Chunki (50). In view of the sentence of death, no separate sentence was imposed upon the accused for the offence under Section 307. On appeal and reference the Rajasthan High Court affirmed to judgment of the trial Court. Bhagwan Dass thereafter filed the present appeal by special leave.

2. The prosecution case is that Bhagwan Dass accused is a resident of village Dhol. Wardi (DW 1), the younger sister of the accused, was married to Bheru Dass (PW 5) of village Sancholi, at a distance of about four miles from Dhol. Manna deceased was the uncle of Bheru Dass, while Dhulki was the latter's grandmother. Manna, Dhulki, Bheru Dass as well as PW Chunki (50), who made her living by grazing cattle, lived together in village Sancholi. Heerka deceased lived in their neighbourhood. The relations of Bheru Dass and his wife Wardi got strained after the marriage and she used to frequently run away from the house of her husband. About two months prior to the present occurrence Bhagwan Dass accused quarrelled with Manna and Dhulki deceased. Ten days after that Bhagwan Dass again came to the house of Manna and Dhulki and quarrelled with them. Two or three days after that Wardi left the house of Bheru Dass and went to the house of the accused.

3. On the night between April 25 and 26, 1971 Bheru Dass PW was away from the house. At about mid - night hour, it is stated, the accused came to the house of Bheru Dass. Manna opened the door and lit a lamp. He also arranged for a bedding for Bhagwan Dass accused. Manna and the accused then slept near each other on the Chabutari. Chunki slept on the roof, while Dhulki slept in a room which was facing the Chabutari. Shortly thereafter Chunki heard alarm. She then saw the accused stabbing Manna with a knife. Dhulki then came out of the room and enquired as to what had happened. The accused thereupon replied that Manna had taken liquor and was crying under intoxication. Immediately thereafter the accused caught hold of Dhulki, threw her on the ground and gave knife blows to her. After that the accused enquired from Chunki as to whether she was awake or not. When Chunki replied that she was awake, the accused got on to the roof, caught hold of Chunki from her hair and gave knife blows to her. Chunki raised alarm whereupon Heerka came there. Heerka enquired as to what the matter was and on being told that Chunki was being assaulted by Bhagwan Dass accused, Heerka started going to the other houses. Bhagwan Dass accused then

left Chunki and went after Heerka and gave him knife blows. Chunki in the meanwhile got down from the roof and hid herself behind fuel wood at a little distance from the house. The accused thereafter went away.

4. On the following morning at about 7 a.m. Dhaneshwar Shanker (PW2) passed that way when he saw Chunki weeping. Chunki had a number of injuries on her person and was besmeared with blood. On the enquiry of Dhaneshwar Shanker Chunki narrated to him as to what had happened during the previous night. Dhaneshwar Shanker then had a look on the dead bodies of Manna and Dhulki. Heerka who was on his last breath also died soon thereafter. Dhaneshwar Shanker then went to police station Saira, at a distance of five miles from the place of occurrence, and lodged there report p-6 at 8.30 a.m.

5. Sub Inspector Zabar Singh (PW 11) after registering the went to the place of occurrence. The Sub Inspector also took with him Dr. Mahendra Singh Tyagi. The Sub Inspector found the three dead bodies lying at the place of occurrence. Inquest reports were then prepared by the Sub Inspector. The injuries of PW Chunki were examined by Dr. Tyagi. The doctor also subsequently performed post mortem examination on the three dead bodies. Bhagwan Dass accused was taken into custody on April 27, 1971. His Dhoti and Baniyan were found to be blood stained and were taken into possession. The accused was found to have injuries on his person and he was got examined from Dr. Tyagi. The doctor found five scratches on the hands and the right forearm of the accused. In addition to that, the accused had a cut wound on the left palm and a lacerated wound on the middle finger of the right hand.

6. On April 30, 1971 DSP Keshari Singh, who had taken over the investigation of the case, interrogated the accused. The accused then disclosed that he had kept his bush-shirt concealed in a pit inside his house. The accused also disclosed that he had kept the knife at the house of Patwari Jodh Singh of his village. The accused thereafter got recovered the bush-shirt and the knife. Both these articles on examination were found to be stained with human blood. Likewise, the Dhoti and the Baniyan of the accused were found to be stained with human blood.

7. At the trial the accused denied the prosecution allegations against him about his having caused injuries to the three deceased persons as well as to Chunki PW. The accused admitted that he had injuries on his person and that his Dhoti and Baniyan were stained with blood. According to the accused, he received those injuries while working as a mason. The stains on the Dhoti and Baniyan were stated by the accused to have been caused with his own blood. The accused denied that he got recovered the bush-shirt and knife. In defence two witnesses were examined by the accused. One of them was his sister Wardi, according to whom the accused was present in village Dhol on the night of occurrence in connection with the recitation of Bhajans. The other defence witness was Smt. Ganga who deposed about her having filed an application alleging that Chunki PW was being subjected to police pressure.

8. The trial Court accepted the prosecution case and accordingly convicted and sentenced the accused as above. The evidence of Wardi PW was rejected. On appeal and reference the judgment of the trial Court, as already mentioned, was affirmed by the High Court.

9. In appeal before us Mr. Rana who has argued the cases amicus curiae has contended that the material on record does not warrant the conviction of the accused. The above contention has been controverted by Mr. Jain on behalf of the State and, in our opinion, is not well founded.

10. It cannot be disputed that a number of injuries were caused to Manna, Dhulki and Heerka as a result of which they died. Dr. Tyagi who performed post mortem examination on the dead body of Manna found five incised wounds and three punctured wounds on the face, neck and chest of Manna. Dhulki had seven incised wounds and four punctured wounds on her clavicle, chest, epigastrium, arms, scapula and thoracic region. Heerka had six incised wounds and two lacerated wounds in his head and neck. The injuries on each of the bodies were sufficient in the ordinary course of nature to cause the death of the deceased. According to the prosecution case, the injuries to the three deceased persons as well as to Chunki were caused by the accused. To substantiate the above allegation, the prosecution has examined Chunki (PW 2) and she was supported the prosecution case as given above. The evidence of Chunki in this respect was accepted by the trial Court and the High Court, and after having been taken through the same, we see no sufficient ground to take a different view. Chunki was present in the house wherein Manna and Dhulki were assaulted. Both Manna and Dhulki were given a large number of blows. It is but natural that Chunki who was the third occupant of the house should see as to what was happening to Manna and Dhulki. There can also be hardly any doubt regarding the the presence of Chunki at the spot because she herself received a number of injuries. According to Dr. Tyagi, Chunki had 15 injuries consisting of cut wounds, incised wounds and lacerated wounds on the different parts of her person. Seven of the injuries of Chunki were found by the doctor to be grievous. It is further in the evidence of the doctor that the injuries on the person of Chunki as well as the three deceased persons could have been caused with knife Ex. 1 which had been recovered at the instance of the accused. We also see not reason to disbelieve the evidence of Chunki that when Heerka deceased arrived near the house of Manna and Dhulki on hearing alarm the accused left Chunki and went after Heerka and assaulted him.

11. We are not impressed by the argument advanced on behalf of the appellant that Chunki on account of the darkness of night could not have identified the assailant. If the assailant could go after the victims one after the other and cause them injuries, there is no reason to suppose that Chunki who was one of the victims could also not identify the assailant. The accused was not a stranger and was known to Chunki. Chunki who received as many as 15 injuries at the hands of the accused could not in the circumstances have made any mistake regarding the identity of the assailant. It is also difficult to believe that Chunki would spare the real assailant and falsely mention the name of the accused as the person who was responsible for the injuries caused to her and the three deceased persons. Chunki, it may be stated has not been shown to have any animus against the accused.

12. There is no force in the argument that there were more than one assailants who caused injuries to Chunki and the three deceased persons. No such suggestion appears to have been made during the cross-examination of the witnesses. The evidence of Dr. Tyagi shows that all the injuries which were found on the bodies of the three deceased persons as well as Chunki could have been caused by the same weapon. We also see no reason as to why if there were more than one assailants, Chunki PW should depose about the assault having been made by the accused alone.

13. The presence of injuries on the person of the accused lends further support to the prosecution case. In addition to that, we have the evidence of DSP Keshari Singh regarding the recovery of knife and bush-shirt at the instance of the accused. Both these articles were found to be stained with human blood. This evidence also affords further corroboration to the testimony of Chunki.

14. In our opinion, the conviction of the accused- appellant is well founded. We see no ground to interfere with the sentence. The appeal fails and is dismissed.

</html