

State of U. P.

Vs

Harihar Bux Singh and Another

Criminal Appeal No. 14 of 1974

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

13.08.1974

JUDGMENT

KHANNA, J. -

1. Harihar Bux Singh (62), his two sons Rudra Pratap Singh (30) and Mahesh Pratap Singh (27) and their employee Ram Singh (45) were tried in the Court of Civil and Sessions Judge Hardoi in connection with the murder of Hargovind Singh alias Lalla Singh (45). The learned Sessions Judge convicted Harihar Bux Singh under Section 303 Indian Penal Code and sentenced him to death. Rudra Pratap Singh was convicted under Section 302 Indian Penal Code. He too was sentenced to death. Mahesh Pratap Singh and Ram Singh were convicted under Section 302 read with Section 34 Indian Penal Code and each of them was sentenced to undergo imprisonment for life. On appeal and reference, the Allahabad High Court acquitted all the four accused. The State of Uttar Pradesh has now filed the present appeal by special leave against Harihar Bux Singh and Rudra Pratap Singh.

2. Hargovind Singh deceased was a first cousin of Harihar Bux Singh accused. The two lived together in adjoining houses in village Andharra, at a distance of five miles from police station Bilgram in district Hardoi. The prosecution case is that there was some dispute between Harihar Bux Singh accused and Hargovind Singh deceased regarding partition of their joint properties. On January 13, 1972 a quarrel took place between the children of the two families at about 5 p.m. A four-year-old son of Hargovind Singh came weeping inside the house and stated that he had gone to the Chaupal and Bitua had beaten him. Bitua, who is aged about 27 years, is the daughter of Harihar Bux Singh accused. The Chaupal mentioned by the son of Hargovind Singh belonged jointly to Harihar Bux Singh accused and Hargovind Singh deceased and was at a short distance from their houses. Hargovind Singh deceased on being told of the beating given to his son went out after saying that he too was the owner of the Chaupal. Rajeshwari Devi wife of Hargovind Singh, who was also present in the house, then heard exchange of abuses from outside. Rajeshwari Devi wanted to come out but in the meantime Hargovind Singh came inside the house followed by Rudra Pratap Singh, Harihar Bux Singh, Mahesh Pratap Singh and Ram Singh accused. Rudra Pratap Singh had a gun in his hand, while Harihar Bux Singh had a rifle. Mahesh Pratap Singh and Ram Singh were armed with lathis. Harihar Bux Singh and Mahesh Pratap Singh instigated Rudra Pratap Singh to kill Hargovind Singh so that the dispute about the partition of the property might be finished for ever. Rajeshwari Devi then caught hold of the hand of her husband Hargovind Singh with a view to take him inside the room. Harihar Bux Singh, Mahesh Pratap Singh and Ram Singh again instigated Rudra Pratap Singh to kill Hargovind Singh. Rudra Pratap Singh then fired a shot from his gun at Hargovind Singh. Hargovind Singh fell down and died immediately thereafter. The occurrence, it is stated, was witnessed by Rajeshwari Devi as also by Gajraj Singh, Jograj Kachhi, Ram Kumar, Sadulla Gaddi, Ram Sarup and Shanti Kumari, wife of Vishwanath Singh, a collateral of Harihar

Bux Singh accused and Hargovind Singh deceased. When Gajraj Singh protested against the killing, the four accused went away.

3. Report Ka-2 about the occurrence was not written by Rajeshwari Devi from Vishwanath Singh's son. She then sent the report through Suresh Pratap Singh to police station Bilgram. A case was registered upon the basis of that report at the police station at 7.30 p.m.

4. The case of the prosecution further is that Harihar Bux Singh was under a sentence of imprisonment for life during the days of the present occurrence in connection with a murder which had taken place about 26 or 17 years ago. Harihar Bux Singh had, however, been released on probation under Section 2 of the U.P. Prisoners (Release on Probation) Act on his executing a bond for good behaviour.

5. Sub-Inspector Purnanand Misra after the registration of the case came to the place of occurrence. He found the dead-body of the deceased lying there. Three pellets were also found near the dead body. After preparing the inquest report, the Sub-Inspector sent the dead-body of the deceased to Hardoi where post-mortem examination was performed by Dr. K. B. Barnwal on January 15, 1972 at 9.15 a.m. The doctor found besides two scratches one gun shot wound on the left side of the chest and another such wound in the abdominal cavity. There was no blackening or tattooing present near either of the two gun shot wounds. One pellet was recovered from inside the cavity of the right lung. The left side pleura, the lung and the peritoneum were found punctured.

6. The four accused were therefore arrested and were sent up for trial.

7. The prosecution examined three witnesses, Rajeshwari Devi (PW 1), Gajraj Singh (PW 2) and Shanti Kumari (PW 3) as witnesses of the occurrence. According to Shanti Kumari, she went to the place of occurrence on hearing noise but when she reached there, she saw a crowd and as such she did not go inside. Shanti Kumari added that she had not seen anything relating to this occurrence. Rajeshwari Devi and Gajraj Singh, who is the maternal uncle of the deceased and belongs to another village, gave eyewitness account of the occurrence and supported the prosecution case as given above.

8. The accused in their statements under Section 342 of the Code of Criminal Procedure denied their participation in the present occurrence.

9. The learned Sessions Judge did not place any reliance upon the evidence of Gajraj Singh and expressed the view that he was probably not present at the scene of occurrence. Reliance was, however, placed upon the evidence of Rajeshwari Devi (PW 1) although one or two parts of her evidence were found to be not reliable. The four accused were accordingly convicted and sentenced as mentioned earlier.

10. On appeal the learned Judges of the High court for reasons to which we shall presently refer held that it was difficult to place reliance upon the testimony of Rajeshwari Devi. In the result the accused were acquitted.

11. We have heard Mr. Uniyal on behalf of the appellant-State and Mr. Garg on behalf of the two accused-respondents, and are of the opinion that no case has been made for interference with the judgment of the High Court. As would appear from the resume of facts given above, the conviction of the accused was based by the trial Court upon the ocular evidence of Rajeshwari Devi alone. The High Court discussed her evidence at great length and found the same to be vitiated by a number of

infirmities.

12. No motive was found to have been proved on the record. The allegation that there had been a dispute between Harihar Bux Singh accused and the deceased regarding partition of properties was found to be without basis. It was further held that there was no evidence of any quarrel between the children. The High Court also found that though Rajeshwari Devi in the first information report stated that Rudra Pratap Singh had fired at the deceased while being present in the verandah, in her statement in Court she denied that fact and stated that the shot had been fired by him from the Tarwaha in the Chaupal. It was observed that Rajeshwari Devi had departed from her previous statement so that her version might not be belied by the medical evidence. Another fact to which reference was made by the High Court was that Rajeshwari Devi was acting as a tool in the hand of Devi Bux Singh who was inimical to and had litigation with Harihar Bux Singh accused. Devi Bux Singh stood by the side of Rajeshwari Devi when she gave her deposition before the committing Magistrate. The first information report was sent to the police station also through the son of Devi Bux Singh. The fact that Rajeshwari Devi involved four persons even though the actual death of the deceased was caused by one assailant showed, according to the High Court, that Rajeshwari Devi prepared to falsely implicate a number of persons. This, in the opinion of the High Court, was apparently done under the influence of Devi Bux Singh. Another finding of the High Court was that Rajeshwari Devi had tried to show a number of persons as eye-witnesses of the occurrence, even though they were not present at that time.

13. After having been taken through the evidence of Rajeshwari Devi and the judgment of the High Court, we find no such infirmity in the appraisal of the evidence of Rajeshwari Devi by the High Court as might justify interference by this Court.

14. In an appeal under Article 136 of the Constitution, this Court does not interfere with the finding of acquittal recorded by the High Court unless that finding is vitiated by some glaring infirmity in the appraisal of evidence. The fact that another view could also have been taken on the evidence on record would not justify interference with the judgment of acquittal. The judgment of the High Court in the present case has not been shown to suffer from any such weakness as might induce us to interfere. The Appeal consequently fails and is dismissed.

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