

Hari Har Singh and Others

Vs

The State of U. P.

Criminal Appeal No. 94 of 1974

(N. L. Untawalia, Syed Fazal Ali JJ)

15.04.1975

JUDGMENT

UNTWALIA, J. –

1. There are five appellants in this appeal by special leave. Appellants Girja Singh and Hari Har Singh have been convicted under Section 302/149 of the Indian Penal Code and each of them has been sentenced to death. A sentence of three years rigorous imprisonment has also been awarded to each of them under Section 148. Appellants Ram Adhar Singh, Hardwar Dubey and Ram Sudhar Dubey have been convicted under Section 302/149 and Section 147 of the Penal Code. Each has been awarded life imprisonment under the former count and a concurrent sentence of two years' rigorous imprisonment under the latter.

2. In the occurrence which took place at Chochakpur Bazar, police station Karanda, district Ghazipur the person killed was Amaladhari Singh resident of Lachmanpur, hamlet of village Chochakpur Bazar. The occurrence took place on January 20, 1972 at about 5.00 p.m. on the road running east to west through the bazar. Appellants Hari Har Singh, Girja Singh and Ram Adhar Singh are brothers - all sons of Bibhuti Singh. The other two appellants inter se are also brothers and they are sons of Anar Deo Dubey. It would appear from the evidence of Kawaladhari Singh, PW 1 brother of deceased Amaladhari Singh that there have been a lot of litigation between the family of the deceased and that of Bibhuti Singh. The Dubey's have been in the camp of the latter. The immediate cause of the occurrence is said to be the incident which occurred at about noon on January 20, 1972. One Sudama had moved an application under Section 92 of the Code of Civil Procedure against one Mahant Shanta Nand Giri. Appellant Girja Singh was doing the pairvi on behalf of Sudama while Amaladhari Singh was doing pairvi for the Mahant. At about noon time on the date of the occurrence, the Sub-Divisional Officer Shri Ram Yag Sings had gone to the Math which is not far from Chochakpur Bazar to make some local investigation in respect of the enquiry which was proceeding on the application filed by Sudama. Appellant Girja Singh and Amaladhari Singh were present to do pairvi on behalf of their respective parties. After the Sub-Divisional Officer had left the Math there was a quarrel between them. Girji Singh held out threat to kill Amaladhari.

3. In the afternoon Amaladhari Singh along with this brother Kawaladhari Singh, PW 1 came to Chochakpur Bazar from their house in Lachmanpur to purchase some cloth. They went to the shop of Kamta Rai, PW 4 a little before 5.00 p.m. They could not select any cloth for purchase. At about 5.00 p.m. both the brothers came out of the shop of Kamta Rai and proceeded towards West. Kawaladhari Singh was proceeding about 50 or 60 paces ahead of Amaladhari. Suddenly the five appellants emerged from another shop and attacked Amaladhari. Appellants Girja Singh and Hari

Har Singh were armed with pistols and the other three were armed with lathis. Amaladhari raised an alarm and ran towards West. The three appellants inflicted lathi blows from behind. Each of the two appellants who were armed with a pistol fired shots at him. On receiving shots Amaladhari fell on the ground and thereafter again appellant Ram Adhar Singh inflicted a lathi blow on him. After committing the assault the appellants ran away.

4. Amaladhari was put on a cot in no time and taken to Nandganj wherefrom he was taken to Ghazipur hospital in a taxi which was coming from Varanasi side. Dr. Om Prakash, PW 16 soon examined him and declared him dead. Dr. A. K. Verma, PW 9 was incharge of the Emergency duty and he sent a memo to police station Kotwali Ghazipur. Amaladhari dictated a report to Dhananjai Singh, son of the victim and the latter took the report to the police station. On the basis of this report a case was instituted. Since the incident took place in Chochakpur Bazar which lay within the jurisdiction of Karanda police station, a copy of the Chik Report was sent there through Sub-Inspector Kalika Singh of Kotwali police station. The autopsy on the dead body of Amaladhari Singh was performed by Dr. K. S. Rai, PW 7 who prepared a post-mortem report. The doctor found 13 injuries on the person of the deceased, 11 of them were contusions, abrasions or lacerated wounds caused by lathi blows or by fall. Two gunshot injuries were found and bullets were recovered from those injuries.

5. The defence was that Amaladhari had many enemies, he was killed somewhere by some unknown persons, and the appellants had been falsely implicated due to enmity.

6. The appellants were convicted by the trial Judge for forming an unlawful assembly and for committing the murder of Amaladhari Singh. They were sentenced by the trial Court and the sentences of all the appellants were confirmed as stated above.

7. Mr. S. N. Mishra, learned Counsel for the appellants urged the following point :

1. That since the case before the High Court was not only in appeal but also is a reference for confirmation of the death sentence on two of the appellants, it was the duty of the High Court to reappraise and scrutinize the entire evidence. The High Court has failed to do so.

(2) That the place of occurrence and the time of occurrence was not proved and the High Court did not examine this aspect of the matter carefully.

(3) That the prosecution witnesses who claimed to have witnessed the occurrence were all partisan witnesses. There were other persons present who were named as eyewitnesses in the first information report but were not examined by the prosecution. It was the duty of the trial Court or the High Court to examine them as court witnesses.

(4) That in any view of the matter it is not a case where the death sentence on two of the appellants ought to have been confirmed.

8. In support of the first point reliance was placed on a passage which occurs at page 407 in the judgment of the Court of the case of Bhupendra Singh v. State of Punjab ((1968) 3 SCR 404 : AIR 1968 SC 1438 : 1969 Cri LJ 6). It runs thus :

Ordinarily, in a criminal appeal against conviction, the appellant Court, under

Section 423 of the code of Criminal Procedure, can dismiss the appeal, if the Court is of the opinion that there is no sufficient ground for interference after examining all the grounds urged before it for challenging the correctness of the decision given by the trial Court. It is not necessary for the appellants to examine the entire record for the purpose of arriving at an independent decision of its own whether the conviction of the appellant is fully justified. The position is, however, different where the appeal is by an accused who is sentenced to death, so that the High Court dealing with the appeal has before it, simultaneously with the appeal, a reference for confirmation of the capital sentence under Section 374 of the Code of Criminal Procedure. On a reference for confirmation of sentence of death, the High Court is required to proceed in accordance with Sections 375 and 376 of the Code of Criminal Procedure and the provisions of these sections make it clear that the duty of the High Court in dealing with the reference, is not only to see whether the order passed by the Sessions Judge is correct, but to examine the case for itself and even direct a further enquiry or the taking of additional evidence if the Court considers it desirable in order to ascertain the guilt or the innocence of the convicted person.

In our judgment, in this case the High Court has substantially followed the above dictum. The High Court has examined the case for itself and has found it proved beyond reasonable doubt. On the facts and in the circumstances which emerged from the evidence no further enquiry was necessary to be directed not the taking of any additional evidence was called for.

9. It was submitted on behalf of the appellant that the occurrence took place not at 5.00 p.m. but some time later after the fall of darkness which must have been between 5.30 and 6.00 p.m. in the month of January. Nobody saw the occurrence. Therefore, Amaldhari was taken to Ghazipur and after consultations and deliberations a written report was given there late in the night or the following morning. It was further submitted that Amaldhari Singh was involved in several case. He had several enemies. Some others might have killed him. The appellants were falsely implicated. It was pointed out that no blood was found at the place of occurrence nor any bullet.

10. We see no substance in this argument. According to the doctors Amaldhari Singh after receiving the injuries must not have died instantaneously. He must have died at least after 45 minutes. It was therefore, natural for Kawaldhari and others to take the seriously injured Amaldhari to a bigger hospital at the Ghazipur district headquarters. He could not be properly looked after at the small dispensary at Karanada or Nandganj. On a cot he was taken to Nandganj in the hope of getting a taxi there. From Nandganj there is a direct route to Ghazipur. The shorter and the other route to Ghazipur from Chochakpur in the circumstances was not the proper route to take. On the testimony of Head Constable Ram Kawal, PW 5 it was sought to be argued that the Register at the Kotwali station was kept open and no special report was sent in this case to the higher officers. Our attention was also drawn to the testimony of Uma Kant Singh, PW 17 who was the first Investigating Officer in this case that no special report regarding the occurrence was sent to the superior officers. We do not accept this argument to be correct. The register was not kept open to make any false entry or an anti-timed one. The Circle Inspector who was present at the Kotwali at 8.30 p.m. On January 20, 1972 had affixed his signature on the Chik Report. He said in his evidence that at 8.30 p.m. on January 21 a special report relating to this case was sent to the superior officers. Even before this he had informed the Superintendent of Police, Ghazipur on phone about it.

11. It is no doubt true that neither any bullet nor any blood was found at the spot where the occurrence is said to have taken place. It appears from the evidence that each of the two appellants

fired two shots from his pistol. Thus four shots were fired. Only two hit the victim. Two bullets must have fallen on the ground. No attempt seems to have been made to find out the small bullets. The portion of the road where the occurrence took place was not pitched. There was dust. The Investigating Officer was not asked any question as to whether he had searched for the bullet or not. No substantial quantity of blood fell on the spot. The two bullet injuries caused internal haemorrhage. One litre of blood was found inside the body of the deceased on post-mortem examination. Blood only oozed out from his head injuries received by lathi. Amaldhari was wearing a sweater and a kurta. Nobody was there to guard the place of occurrence till after midnight when some police officer and constables came from police station Karanda. By the trampling of the feet of the passers-by, traces of blood must have vanished. We find that the courts below have rightly held that the occurrence did take place at the place and time as alleged by the prosecution.

12. The three eyewitnesses in this case are PW 1 Kawaldhari Singh, brother of the deceased, PW 4 Kamta Rai, the shopkeeper to whose shop the deceased and his brother had gone to purchase some cloth and PW 2 Shyam Narain alias Shyama. The High Court naturally has treated Kawaldhari Singh to be a partisan witness as he was the brother of the deceased. Kamta Rai has also been characterised as a partisan witness as in some case was a coaccused with Amaldhari in the year 1956. The High Court seems to have committed an error in thinking that PW 2 was not a partisan witness. It was rightly pointed out by the learned Counsel for the appellants that he also belonged to the party of the prosecution. In the proceeding under Section 92 of the Code of Civil Procedure the family of Kawaldhari being a transferee of certain land from the Mahant was implicated as a party. PW 2 had deposed on behalf of Kawaldhari in that proceeding. Even then on perusal of the relevant pieces of evidence in this case, we could entertain no doubt in our mind that the version of the eyewitnesses was truthful and trustworthy. There were two factions in the village and persons residing in the neighbouring villages. In such a situation it was difficult to find any independent witness coming forward to depose.

13. Mr. O. P. Rana, learned Counsel for the State brought to our notice two applications filed by the prosecution in the Sessions Court - one on January 3, 1973 and the other on January 10, 1973. In the first application names of the witnesses who were mentioned in the first information report were given but it was not though useful to examine them on behalf of the prosecution in Court. They were tendered for cross-examination by the defence. Defence allowed them to be discharged and did not want them for cross-examination. Some other persons were named in the other petition and they were also tendered for cross-examination. Defence did not want them to be examined. Nor, at any time was any prayer made in Sessions Court to examine any of them as a court witness. No defence witness was examined by any of the appellants. No prayer was made in the High Court to take any additional evidence. We, therefore, do not think that the testimony of three eyewitnesses was fit to be rejected merely because they were interested and partisan witnesses. On careful scrutiny of their evidence the two courts below have believed it. We do not find any sufficient reason to upset the concurrent findings of the courts below and to take a different view on any material question in this case.

14. We however, think that this was not a case where death sentence ought to have been imposed on either of the two appellants, who was armed with a pistol. Neither has been convicted under Section 302 simpliciter. On the medical evidence it could not be proved which of the two gunshot injuries was sufficient in the ordinary course of nature to cause the death of Amaldhari Singh. The appellants who were armed with lathis first assaulted the victim. Pistols were fired by the two appellants from some distance. The victim died not on the spot but some time later as a result of the cumulative effect of all the injuries caused to him. Death sentence is to be imposed when the murder

is committed in a brutal manner or when the nature of the crime is ghastly. In our opinion, sentence of life imprisonment on appellants Hari Har Singh and Girja Singh would meet the ends of justice. For the murder of one man, three brothers of one family and two brothers of another have to suffer life imprisonment and that would be sufficient. Hanging any is not called for.

15. For the reasons stated above, we maintain the convictions of all the appellants. We maintain the sentence of appellants Ram Adhar Singh, Hardwar Dubey and Ram Sudhar Dubey but commute the death sentence of each of the appellants Girja Singh and Hari Har Singh to imprisonment for life and maintain their concurrent sentence under Section 148 of the Penal Code. Subject to the modification in the death sentence of two of the appellants, the appeal fails and is dismissed.

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