

Gajendra Singh

Vs

State of U. P.

Criminal Appeal No. 137 of 1974

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

25.04.1975

JUDGMENT

FAZAL ALI, J. –

1. The appellant Gajendra Singh has been convicted under Section 302 and sentenced to death as also under Section 307 I.P.C. and sentenced to ten years' rigorous imprisonment. The High Court on appeal has affirmed the conviction and sentence passed on the appellant Gajendra Singh. Accused Raj Bahadur Singh, father of the appellant who was convicted by the Sessions Judge under Section 302/34 has been acquitted of that charge but his conviction under Section 323 and sentence for one year's rigorous imprisonment has been affirmed by the High Court. There was the third accused before the Court of Session namely Bishram Singh who has been acquitted because the prosecution produced no evidence against him. The appellant has filed the present appeal by special leave against the order of the High Court affirming the conviction and sentence passed on him.

2. Briefly put the prosecution case is that on August 10, 1971 sometime about the noon the deceased Badam Singh who was accompanied by his cousin Shyampal Singh found that the accused were grazing their she-buffaloes in his field at Abrewala where jawar had been grown and the crop was being damaged by the she - buffaloes belonging to the accused. The deceased Badam Singh protested against the highhanded act of the accused in trying to damage his crop which fell on the deaf ears and the accused continued to graze their she-buffaloes in the field in spite of remonstrance by the deceased. Being fed up with the unwanted conduct of the accused in persisting with the mischief Badam Singh and Shyampal Singh rounded up the she-buffaloes and proceeded to take them to the cattle-pound. The path to the cattle-pound, it appears, passed in the front of the house of the accused Raj Bahadur Singh. The prosecution case is that while the deceased Badam Singh and Shyampal Singh were passing in front of the house of Raj Bahadur Singh, Raj Bahadur Singh gave a lathi blow on the head of Badam Singh and the appellant Gajendra Singh ran inside the house and brought out a gun. Thereafter Raj Bahadur Singh ordered his son Gajendra Singh to kill Badam Singh and Shyampal Singh, for having had the courage to take the she-buffaloes to the cattle-pound. On his exhortation Gajendra Singh is alleged to have fired twice on Badam Singh and Shyampal Singh causing serious injuries to their person. Attracted by the altercation at the spot Hari Ram, Sukhendra Singh and Anangpal Singh eyewitnesses reached the scene of offence and witnessed the murderous assault. Sukhendra Singh, the father of PW Shyampal Singh and uncle of Badam Singh, lodged a written report of the incident at police outpost Amritpur of police station Rajeypur, and a case against the accused was registered by the police at 6 p.m. During the incident Smt. Rambeti, wife of Raj Bahadur Singh and the mother of the appellant Gajendra Singh, was also found to have received gunshot injuries and a counter-report appears to have been lodged at the police outpost Amritpur at 5 p.m. an hour earlier than the F.I.R. lodged by Sukhendra Singh. This counter - F.I.R.

forms the subject-matter of the cross case which ended in the acquittal of the accused persons in that case, namely, the prosecution party here. After the report was lodged the two injured persons, namely, Badam Singh and Shyampal Singh were sent for medical examination to District Hospital, Fatehgarh, but Badam Singh succumbed to his injuries before he could reach the hospital and died on August 11, 1971. Thereafter the dead body of Badam Singh and the injured Shyampal Singh were taken to the District Hospital, Fatehgarh, where Dr. R. P. Chaudhry examined Shyampal Singh and performed autopsy of the deceased Badam Singh. After usual investigations the police submitted charge-sheet which ended in the ultimate conviction of the deceased as indicated above. The gist of the F.I.R. lodged by Bishram Singh in the counter-case forms the main part of defence in this case. It was alleged by the accused that in fact Sukhendra Singh, Nanku, Badam Singh and Shyampal Singh entered the house of Raj Bahadur Singh, hurling filthy abuses on him and chased Raj Bahadur Singh who ran to his house. It was further alleged that Sukhendra Singh and Nanku were armed with lathis, whereas Badam Singh had a rifle and Shyampal Singh had a double-barrel breach loading gun. It was also alleged that a single-barrel breach loading gun of Virpal Singh, son the Bishram Singh which was hanging on a peg under the tin shed was picked up by Shyampal Singh and handed over to Nanku. Smt. Rambeti the mother of the appellant Gajendra Singh protested on which Shyampal Singh fired at her which resulted in serious injuries on her person and she fell on the ground. A report of this incident was lodged by Bishram Singh at the police outpost Amritpur at 5 p.m.

3. The learned Sessions Judge as well as the High Court of Allahabad - after full consideration and detailed discussion of the evidence and circumstances of the case came to the conclusion that the prosecution case against the accused was fully proved and the High Court accordingly affirmed the conviction and sentences passed on the accused. The High Court, however, did not believe the allegations of the prosecution that Raj Bahadur Singh had given the orders to the appellant Gajendra Singh to kill the deceased and accordingly Raj Bahadur Singh was given the benefit of doubt of the charge under Section 302/34, I.P.C. It seems to us that the High Court lured by the attractive ingenious, daring and dexterous defence taken by the accused proceeded to deal with the defence case even before giving its finding on the truth or otherwise of the prosecution case against the accused. Such an intertwined approach appears to have provided sufficient material for argument by learned Counsel for the appellant that the High Court had made a completely wrong approach to the case put forward by the prosecution in the instant appeal. After going through the judgment of the High Court we are, however, satisfied that the discussion of the defence case before the prosecution case has not resulted in any material prejudice to the accused and therefore although the High Court should have dealt with the prosecution case before touching the defence version, the error committed by the High Court is not of any consequence.

4. The central evidence in the case consists of the testimony of three eyewitnesses, namely, Sukhendra Singh, Hari Ram and Anangpal Singh. Sukhendra Singh was no doubt to some extent interested inasmuch as he was a relation of the deceased, but the other two witnesses Hari Ram and Anangpal Singh were independent witnesses and no animus against these witnesses has been proved by the accused. The only comment regarding Anangpal Singh made by Counsel for the appellant was that he was a chance witness and had come from another village after covering a distance of 40 miles. The witness, however, has fully explained the reasons why he had gone to the village to see his ailing sister and has stated that while he was returning to the village where the offence took place he happened to be present near the field where the incident took place and thereafter he has given a complete narrative of the prosecution case leading to the murderous assault on the deceased by the appellant Gajendra Singh. In the F.I.R. which was lodged by the Sukhendra Singh at 6 p.m. the names of all these witnesses have been clearly mentioned. There, however, cannot be any doubt

regarding the presence of Shyampal Singh and Sukhendra Singh at the spot because even according to the defence version they had participated in the occurrence and Shyampal Singh is alleged to have shot Smt. Rambeti. Moreover being close relations of the deceased they were only natural witnesses to see the occurrence which took place in front of the house of the parties. The High Court was dealt with the evidence of the eyewitnesses on merits and has pointed out that there is absolutely no reason to distrust their testimony.

5. Mr. R. K. Garg learned Counsel for the appellant has submitted four points in support of his contention that the High Court should have found that the prosecution has miserably failed to prove their case against the accused.

(1) Firstly, it was submitted that although Smt. Rambeti has been proved to have sustained gunshot injuries the prosecution has failed to give any convincing explanation for the presence of these injuries on her person.

(2) That the defence version is more probable than that of the prosecution case because it came to light before the F.I.R. was lodged by the prosecution and it should, therefore, have been believed.

(3) That as the Investigating Officer did not find any blood at the place where, according to the prosecution, the occurrence took place, but found blood in the angan inside the house of the accused, the prosecution has changed the place of occurrence and the finding of the blood in the house of the accused lends a ring of truth to the defence version.

(4) That at any rate this was not a case in which the extreme penalty of death should have been awarded to the appellant Gajendra Singh.

6. Taking the first contention regarding the non-explanation of the injuries on Smt. Rambeti, the learned Counsel for the appellant relied on a recent decision of this Court in *State of Gujarat v. Bai Fatima* ((1975) 2 SCC 7 : 1975 SCC (Cri) 384), where one of us (Untwalia, J), observed as follows : [SCC p. 13 : SCC (CRI) p. 390, para 17]

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow :

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self-defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) it does not effect the prosecution case at all.

As regards this contention the matter has been dealt with elaborately by the High Court which was pointed out that the prosecution had given sufficient explanation for injuries on the person of the accused, or at any rate as the eyewitnesses did not appear to have noticed the injuries on the person of Smt. Rambeti there was not question of giving any explanation for her injuries. The High Court has pointed out that what really happened in this case was that Smt. Rambeti on hearing the alarm left her baithak and arrived near the scene of offence and while Gajendra Singh was firing at the

deceased Badam Singh some of the pellets accidentally hit her. This is corroborated by a crucial circumstance, namely, that the size of the injuries suffered by Smt. Rambeti was 1/8" x 1/8" completely coincides with the injuries received by the deceased in the abdomen. In these circumstances the possibility that some of the pellets bypassed the deceased and hit Smt. Rambeti cannot be excluded. Indeed if this was so, then it would be difficult for the witnesses to have noticed any injuries on Smt. Rambeti and that explains why no explanation was given at all for the injuries sustained by Smt. Rambeti. The High Court has also led great emphasis on the fact that all the injuries received by Smt. Rambeti were inside the umbilicus and would not be visible unless the clothes she was wearing were taken off and this may be enough reason why the eyewitnesses failed to notice the injuries on the person of Smt. Rambeti. We find ourselves in complete agreement with this line of reasoning adopted by the High Court.

7. The High Court further points out that Smt. Rambeti who is said to have been hit by a gunshot fired by Shyampal Singh was the most material witness to prove the defence version and yet she has not been examined and no explanation for her non-examination has been given by the defence. Mr. Garg suggested that as she was a woman so the defence could not take the risk of examining her. We are, however, not impressed with the reasoning put forward by the Counsel for the appellant. In our opinion, the non-examination of Smt. Rambeti is the strongest possible circumstance to discredit the defence version, because she alone could have been in the best position to explain whether the injuries were caused as a result of the shot fired by Shyampal Singh or just accidentally.

8. Thirdly it was pointed out by the High Court that the definite case of the defence being that it was Shyampal Singh who had fired at Smt. Rambeti, yet when Shyampal Singh was examined as a witness for the prosecution, the accused gave no suggestion to him at all whether he was armed with a gun and had fired a shot at Smt. Rambeti. In fact the evidence of the prosecution clearly shows that the entire prosecution party was absolutely unarmed and none of them had either a lathi or a gun. Therefore, the question of hitting Smt. Rambeti with a gun does not arise at all.

9. We have given our anxious consideration to the reasons set forth by the High Court and we feel ourselves in complete agreement with the same. We are clearly of the opinion that in the circumstances of the present case the defence version was not at all proved, nor was it even probable. The prosecution has given sufficient explanation for the injuries received by Smt. Rambeti. Even assuming it had not, it was a case which falls within the third category of the principles laid down by the judgment of this Court in *State of Gujarat v. Bai Fatima* (supra).

10. Mr. Garg drew our attention to the statement of PW 13 the Investigating Officer, Jagdish Prasad, where he stated that while investigating the cross case *State v. Sukhendra Singh* he had made enquires from the witnesses Shyampal Singh, Sukhendra Singh and Nanku as to how Rambeti received injuries but they had showed their ignorance. It was argued on the basis of this statement that the prosecution had deliberately suppressed the manner in which Smt. Rambeti sustained injuries. In the first place this Statement is absolutely inadmissible because it was a statement made under Section 161 of the Code of Criminal Procedure during investigation of the cross case which was not at all admissible in the present case. Secondly, before the attention of Jagdish Prasad could be drawn to the statement it should have been put to the witness Shyampal Singh in this case which was not done. In these circumstances, therefore, this statement must be excluded from consideration. Even if we take this statement of Jagdish Prasad into consideration, that does not put the prosecution case out of court, because we have already pointed out that there were a number of circumstances which went to show that the defence version was not true at all and that what really happened was that Smt. Rambeti sustained injuries accidentally because some of the pellets which bypassed the

deceased hit her. For these reasons, therefore, the first contention raised by Mr. Garg is overruled.

11. As regards the second contention that the defence case was more probable than the prosecution version, because the defence F.I.R. lodged by Bishram Singh came to light an hour before the F.I.R. lodged by Sukhendra Singh, we may observe that this contention appears to be based on pure speculation. There is positive evidence of the informant in this case to show that he had reached the police outpost earlier than Bishram Singh but the police which was not favourably disposed towards the prosecution party did not record the statement of Sukhendra Singh but insisted on a written report and by the time the written report had to be made, the defence who forestalled Sukhendra Singh lodged the F.I.R. That apart we have already dealt with the defence version on its merits and found that it is not true at all. In these circumstances, therefore, the mere fact that Bishram Singh managed to get the F.I.R. lodged a little earlier than Sukhendra Singh by itself will not be sufficient to demolish the prosecution case.

12. Coming now to the third contention regarding the absence of blood at the place of occurrence and finding of the blood in the angan of the accused, nothing much turns upon it, the High Court has specifically adverted to this aspect of the matter and has pointed out that immediately after the occurrence it rained heavily and the place of occurrence became very muddy and that explains why no blood was found at the spot where the deceased was assaulted. The High Court has also explained that Smt. Rambeti must have, after receiving injuries at the spot, gone back to her house inside and that explains the blood in the angan of the house of the appellant.

13. Furthermore, all the three contentions raised by the learned Counsel for the appellant are essentially pure questions of fact and matters of factual inferences and when the two courts of fact have dealt with this aspect and have come to a certain conclusion, this Court in an appeal by special leave will not upset the conclusion of the High Court and reappraise the evidence for itself.

14. Lastly it was urged that at least, having regard to the peculiar facts of the present case, the sentence of death was not at all called for. This contention, in our opinion, is well founded and must prevail. The High Court has already acquitted Raj Bahadur Singh of the charge of abetment of murder by disbelieving the evidence that he ordered his son Gajendra Singh to kill the deceased. If that is so, then there is no premeditation on the part of the appellant Gajendra Singh, who must have got excited at the spot and fired at the deceased no doubt intending to kill him. There is no brutality or dastardliness about the crime committed by Gajendra Singh. Indeed if he had intended to act in a more cruel fashion, he could have aimed the blow at the heart or at the head of the deceased, particularly when his father had already hit a lathi blow on the head of the deceased. The appellant, however, did not do so. In view of these special circumstances we are of the opinion that this is not a fit case in which the sentence of death is called for. We would, therefore, affirm the conviction of Gajendra Singh under Section 302 I.P.C. but commute the sentence of death to one of life imprisonment.

15. The appeal is dismissed with the aforesaid modification.

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