

Shyam Behari

Vs

State of U. P.

Criminal Appeal No. 148 of 1971

(P. N. Bhagwati, R. S. Sarkaria JJ)

09.09.1975

JUDGMENT

SARKARIA, J. -

1. Shyam Behari and Ram Prakash were tried by the Sessions Judge, Etawah, for the murder of Barey Lal of village Bhatpura. The prosecution story was as under.

2. On October 30, 1966, at about 8 p. m. Shyam Behari, the appellant herein went to the house of Barey Lal deceased in village Bhatpura and inquired from Vijai Bahadur about the deceased. Vijai told Shyam Behari that the deceased was taking his food. In the meantime Barey Lal finished his meals and came out. The appellant after a brief talk with the deceased took the latter with him into the fields. About 20 minutes after their departure, Vijai heard outcry of the deceased. Thereupon Vijai (PW 1) his immediate neighbour, Babu Singh (PW 2), one Prem Narain (PW 3) and others of the village ran towards the spot from where the cries were emanating. Misri Lal PW who was easing himself in the vicinity was also attracted to the spot. When these witnesses were at a distance of 15 or 16 paces from the field of one Ram Sewak they saw the appellant repeatedly stabbing the deceased with a knife while another person was pinning the deceased to the ground. Prem Narain flashed his torch towards the assailants. There was also bright moonlight, the night being one immediately succeeding the night of full moon. On seeing the witnesses, the assailants ran away. After a hot pursuit, the witnesses succeeded in arresting the appellant after giving him a harsh beating from the field of Radha Krishan wherein he had attempted to hide. His companion, who was later on identified as Ram Prakash, managed to escape. The witnesses seized a bloodstained knife which the appellant was carrying. After his arrest, the appellant was brought to the scene of occurrence. Barey Lal who was then alive told the witnesses that the appellant had decoyed him from his house on the pretext of an abducted woman, and thereafter inflicted the injuries on him while he was accompanied by another person. He further stated that the appellant had done all this at the instance of Jai Lal and Raja Babu Pandey. On being questioned by the villagers, the appellant confessed his crime. Escorted by PWs Vijai, Misri Lal, Prem Narain and others, Barey Lal injured and the appellant (Shyam Behari) were taken in a cart towards the police station Dibiapur, 4 miles away. When the cart reached near Sewar-Ki-Mathia, at about 9.30 p. m., Barey Lal succumbed to his injuries. Vijai PW 1 lodged the F. I. R. (Ex. Ka-2) in the police station same night at 10 p. m. The appellant and the bloodstained knife were also made over to the custody of the police there and then. The knife was sealed into a parcel and was sent in due course to the Chemical Examiner and serologist. The serologist reported that there was human blood on this knife.

3. The post-mortem examination was conducted by Dr. S. S. Anand on the following day. The doctor found 22 injuries, out of these 21 incised wounds located on the neck, the chest, the

abdominal region, the left thumb, the back and the things of the deceased.

4. The plea of the accused was one of denial of the prosecution case. The appellant stated that he had been arrested from his house at about 12 midnight and was thereafter given a severe beating in the village at the instance of the Sub-Inspector. He denied his arrest from the field of Radha Krishan in the manner alleged by the prosecution witnesses. He further denied the seizure of bloodstained knife from his possession.

5. The prosecution demanded conviction of the appellant on the basis of evidence which may be catalogued as under :

1. Ocular account of the eyewitnesses Vijai PW 1, Babu PW 2, Prem Narain PW 3 and Misri Lal PW 4.
2. The circumstances of his arrest by these PWs and others after a hot pursuit from the field of Radha Krishan and the seizure of bloodstained knife from him.
3. Oral dying declaration made by the deceased at the spot in which he denounced the appellant as his actual assailant.
4. Extrajudicial confession made by the appellant soon after his arrest.
6. The trial Court rejected this evidence in toto and acquitted both the accused.
7. On appeal by the State, the High Court of Allahabad reversed the acquittal of the appellant and convicted and sentenced him to imprisonment for life for the murder of Barey Lal. It however maintained the acquittal of Ram Prakash. Hence this appeal by Shyam Behari.
8. Shri R. L. Kohli, learned Counsel for the appellant has taken us through the judgments of the courts below. His main contention is that the view of the evidence taken by the Sessions Judge was also reasonably possible. This being the case, the High Court should have stayed its hands from reversing the acquittal and substituting its own evaluation of the evidence.
9. The contention cannot be accepted. Having heard the Counsel and scrutinized the record, we are of opinion that the view taken by the learned Sessions Judge was manifestly erroneous. His very approach was odd and conceived in a fanciful setting. That was why what in reality were insignificant, neutral or self-explanatory features of the case appeared to him odd features throwing a cloud on the veracity of the prosecution. The exceedingly speculative nature of his "reasoning" is patent. We will state the same only to be rejected :
 - (i) The motive for the crime has not been established.
 - (ii) Raja Babu Pandey and Jia Lal who according to the dying declaration of the deceased were behind this crime, have not been examined.
 - (iii) The appellant was admittedly a notorious character; he was prosecuted for abduction of a woman. A man of such character is

"not expected to act so foolishly as to create evidence against himself of being the last person in whose company the deceased was seen moving away from his house".

(iv) The circumstances that Barey Lal was directly removed from the spot towards the police station - and was not first brought to his house - shows that Barey Lal was already dead when he was found at the spot and placed in the cart.

(v) The conduct of the eyewitnesses in running to the scene of occurrence stealthily without raising any shouts till they were within 15 or 16 ft. of the spot was queer and the explanation, that they wanted to catch the miscreants given by them was unconvincing.

(vi) Even if the witnesses approached the scene without raising shots, the assailants could see the witnesses from a far-off distance and must have escaped after finishing their job, before the arrival of the witnesses. This according to the trial Judge was an odd feature which indicated that the witnesses did not actually see the murder being committed or the murderers escaping.

(vii) Persons from the neighbouring villages, Kanarpur and Mandaiya, who are also said to have joined the chase at some stage were not produced.

(viii) Abdul Ghani of village Bhatpura who was supposed to be out of the eyewitnesses has not been examined. His non-production makes the story of the arrest of the appellant after a hot pursuit, extremely doubtful.

(ix) The investigating officer did not care to send the clothes of the appellant for examination to the Chemical Examiner and the serologist.

(x) The presence of 21 stab wounds on the body of the deceased shows that this was the job of a person who had plenty of venom against the victim and not of a hired assassin like the appellant who admittedly is a pahalwan.

(xi) Two dandas were recovered from the place where the deceased's torch was found in the sugarcane field of Raghunath Joshi; no witness has said that the appellant was carrying any danda when he called the victim from his house.

(xii) The appellant being a bad character, and allegedly carrying a knife was found to whip out his knife before submitting tamely to the arrest.

(xiii) Semi-digested food was found in the stomach of the deceased which indicated that the fatal assault had been made on the deceased two hours and not 20 minutes after the ingestion of the food.

(xiv) After his arrest and the seizure of the knife from him, the appellant was asked as to what sort of knife it was. Such a question, according to the trial Judge was incompatible with the confession said to have been made by the appellant.

(xv) In all probability, the deceased died immediately after the assault and did not survive long enough to make a dying declaration.

(xvi) The location of the injuries found on the appellant indicated that they had been inflicted after his arrest and not in the course of the pursuit.

10. The learned Judges of the High Court have considered and dispelled and in our opinion rightly those of the above reasons which were less flimsy and merited some discussion to be rejected. We therefore do not propose to go over the entire field again.

11. The learned trial Judge brushed aside the evidence of Vijai PW merely for the reason that he was the real brother of the deceased. He cast aside the testimony of Babu Singh on the ground that since he had sold away his entire land in this village his presence at Bhatpura at the time of the occurrence was improbable. He dubbed Misri Lal as an "interested" witness merely for the reason that he along with Vijai had accompanied the cart in which Barey Lal was taken to the police station. As regards Prem Narain, the learned Judge observed that

the is a chance witness whose story about his presence on the scene does not carry conviction.

12. The learned Judges of the High Court have very cogently discounted these so-called "reasons" advanced by the Sessions Judge and found that the testimony of Vijai Babu Sing and Misri Lal was creditworthy. We entirely agree with that assessment of the evidence made by the High Court. The account given by PWs Vijai, Babu Singh and Misri Lal was highly probable. The field of occurrence was hardly one furlong from the habitation of village Bhatpura. The occurrence took place at about 8-30 p. m. It was quit natural for the witnesses to be awake and present at or near their houses. At that hour in the stillness of the night, the screams of the deceased must have been heard by the villagers, including these PWs. Vijai had only 20 minutes earlier seen the deceased going away with the appellant. He was present in front of his house and so was Babu Singh at the adjoining house when they heard the outcry of the deceased. It was therefore, quite natural for these two witnesses to rush together towards the field from where the cries were emanating. There were as many as 22 injuries on the deceased. The latter also must have struggled hard to escape the blows. The assault therefore must have been going on for about 4 or 5 minutes at least. There was thus ample time for these PWs to reach near the spot when the assault was in progress. At least they must have in all probability seen the appellant and his companions running away from the scene. The truth of the version that these witnesses had actually seen the appellant assaulting the deceased and then running away is guaranteed by the circumstance that the appellant was arrested soon after the assault after a hot pursuit and the bloodstained knife was also seized from him. The appellant's plea that he had been arrested from the house of his father-in-law in another village at midnight was palpably false. By 10 p. m. the F. I. R and the appellant had both been lodged in the police station which is four miles from village Bhatpura. There was no time for the PWs to stage-manage a fake arrest or to spin out a false story. The fact that Barey Lal expired on his way to the hospital, also lends assurance to the conclusion that they must have seen the assault on the deceased. This also lends strength to their version that the deceased had made a dying declaration in which he had denounced the appellant as his assailant.

13. As rightly observed by the learned Judge of the High Court, Babu Singh still owns his house in village Bhatpura. His family lives there. By no stretch of imagination therefore his presence at his own house in Bhatpura could be called unnatural. Misri Lal could not be branded as "interested" simply because he had accompanied the deceased and his brother to the police station.

14. Mr. Kohli contended that both the courts below had found that Prem Narain had been falsely inducted as a witness in this case and this circumstance alone was sufficient to hold suspect the

testimony of the eyewitnesses. We are afraid this contention cannot prevail. The courts below have not positively held that Prem Narain was a false witness. We have already noticed why the trial Judge found his evidence "unconvincing". The High Court also, did not rely on him as a matter of caution. It never held that Prem Narain was a downright liar.

15. Thus, no inference against the veracity of PWs 1, 2 and 3 can be drawn on that score. Nor was it necessary for the prosecution to produce all those who had at some later stage joined the chase.

16. In short, the view taken by the trial Court was such that no reasonable tribunal would have taken on the basis of the evidence on record. The acquittal of the appellant was therefore rightly reversed by the High Court.

17. For the foregoing reasons, the appeal fails and is dismissed.

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