

Kartarey and Others

Vs

The State of U. P.

Criminal Appeal No. 153 of 1973

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

25.09.1975

JUDGMENT

SARKARIA, J. -

1. This appeal by special leave is directed against a judgment of the High Court of Allahabad. Six persons, viz., Kartarey (30), Sitaram (45), Baljeet (45), Smt. Kaila (27), Benarsi and Ram Karan all residents of Giaspur were tried by the First Temporary Sessions Judge, Meerut for rioting and committing the murder of their covillager, Tejpal. He convicted all the six under Section 302/149, Penal Code. Each of the first three was sentenced to death and the rest to imprisonment for life. They were also convicted under Section 148, Penal Code. The convicts appealed, while a reference under Section 374 Cr. P.C. was made by the Sessions Judge for confirmation of the death sentences. The High Court set aside the conviction of Smt. Kaila, Benarsi and Ram Karan and acquitted them on all the counts. It set aside the conviction of Kartarey, Sitaram and Baljeet in respect of an offence under Section 148, Penal Code. It, however, maintained the conviction of Kartarey, Sitaram and Baljeet but altered it from the under Section 302/149 to one under Section 302 read with Section 34, Penal Code. Their death sentences were also commuted to imprisonments for life.

2. Kartarey, Sitaram and Baljeet have now come to this Court in appeal after obtaining special leave under Article 136 of the Constitution. The facts of the prosecution case are as follows.

3. Tejpal deceased was a thakur. He owned considerable landed property in village Giaspur. The accused are Harijans of the village. In the last week of April, 1961, the deceased found Smt. Kaila and another woman cutting sugarcane and scraping grass in his field. The deceased rebuked them and snatched away the khurpi from Smt. Kaila. She resented this behaviour of the deceased and threatened to wreak vengeance upon him.

4. On May 1, 1969, at about noon, the deceased was returning home from his fields. When he reached in the lane in front of the house of Kartarey, all the six accused caught hold of him and pulled him into Kartarey's house. On seeing this, Khacheru PW and Sripal, PW 2 who were sitting under a tree in the same lane, sensed mischief. So they ran to the house of Kartarey raising shouts for help. By the time they reached the house, the accused had taken the deceased inside and bolted the entrance door from within. The alarm raised by these witnesses attracted Nain Singh, PW 1, father of the deceased, Subrati, PW 3, Prahlad Singh PW 4, Attar Singh and one Kantu Singh. These persons heard the shrieks of the deceased emanating from inside the house. They tried to force open the door but were unsuccessful. Leaving Khacheru at the entrance door, the other witnesses climbed the eastern wall of Kartarey's house and saw, in the courtyard, Smt. Kaila, Benarsi and Ram Karan holding the deceased while Kartarey was assaulting him with a chhura and

Baljeet and Sitaram with katars. The witnesses jumped into the courtyard whereupon the assailants dragged the deceased into the kotha. The witnesses succeeded in apprehending Kartarey, and in seizing the bloodstained chhura from him. They also secured Mst. Kaila and Benarsi. The remaining three assailants, however, escaped through the adjoining house of Sitaram. The witnesses found Tejpal lying dead in the kotha.

5. Nain Singh, PW 1, accompanied Charan Singh and the sarpanch went to the police station, Civil Lines, Meerut, 5 miles away, and handed over the written report, Ex. Ka-2, at 2 p.m. the same day. After registering the case, Sub-Inspector Murari Lal, PW7, reached the scene of occurrence. He found Kartarey, Benarsi and Mst. Kaila in the custody of the villagers. The clothes on the persons of Kartarey and Smt. Kaila were found blood-stained. The investigator seized and same. The investigator took over the custody of the three accused and of the blood-stained chhura that had been seized from the Kartarey. The sealed parcel containing this chhura was sent to chemical examiner and serologist who reported that there was human blood on this weapon.

6. Baljeet was arrested the same day, Sitaram, there days later. Ram Karan surrendered in court on May 6, 1969.

7. Kartarey, Benarsi and Mst. Kaila had injuries. The investigator sent them for medical examination. He also held the inquest. The post-mortem examination of the deadbody of Tejpal was performed by Dr. Radha Mohan who found 16 stab wounds on the chest, abdomen, back and left middle finger of the deceased. Both the lungs were found punctured. The heart was found punctured at the base of the left auricle and so was the diaphragm. The other internal organs also were found injured. In the opinion of the doctor, the death of the deceased was due to injury to the vital organs, inflicted with a sharp edged weapon like a knife or a katar.

8. All the accused denied the prosecution case. Before the committing, in answer to the last question, Smt. Kaila said :

Tejpal went to my house and entered the house forcibly. He struck kirpan on my hands and face. He forcibly loosened my petticoat. He started outraging my modesty. When I kicked him, he fell down. I got his kirpan and saved myself.

9. In that court, Kartarey said :

They entered into my house and beat me. I did not beat. They are big men. They got me challaned by colluding with the police.

10. Benarsi also alleged false implication. He is a bind person Sitaram, Ram Karan and Baljeet pleaded alibi.

11. At the trial, also, Smt. Kaila stated :

I was all alone in my house. Tejpal came and started beating me badly. He wanted to outrage my modesty. I finished him in self-defence.

12. In answer to question No. 5, at the trial, Kartarey said :

The house of Sitaram adjoins my house, but there is no opening in the middle wall. Neither Ram Karan, Sitaram and Baljeet were present there, nor they ran away. As

soon as I came inside my house after taking the bath the Chauhans started beating me with lathis and I having fallen down became unconscious.

13. In reply to the last question he said :

I did not beat Tejpal, nor do I know anything about his death. I and my brother and my wife were beaten by having entered my house. Chauans are zamindars. They are big people.

14. We have reproduced the statements of Kartarey, appellant and Smt. Kaila as some argument was built thereon.

15. The evidence against the appellant has been concurrently believed by the courts below. As a rule of practice, this Court is loathe to disturb a concurrent finding of fact unless it is shown that the finding is manifestly erroneous, clearly unreasonable, unjust or illegal or violative of some fundamental rule of procedure or natural justice. We have therefore to see whether such exceptional circumstances exist in the case which would warrant an interference by this Court.

16. The learned Counsel for the appellants contends that this was a case in which the injuries to the deceased were caused, if at all, by Kartarey and Smt. Kaila in the exercise of their right of private defence. In support of this contention, Counsel has drawn attention to these observations of the High Court.

Coming to the appeal of Smt. Kaila, as already indicated we find it difficult to believe that merely because a few days earlier she and another woman had been found by Tejpal cutting sugarcane plants, from his chak whereupon Tejpal had snatched the khurpi from her, the six appellants made common cause to commit murder. The injuries found on the person of Tejpal are indicative that some stronger motive must have existed for such a ferocious attack to be made upon the victim. We are unable to ignore the possibility that Tejpal might have entered Kartarey's house that noon in the expectation that Kaila would be alone in the house and men-folk would be away but contrary to his expectation, Kartarey and Baljeet turned up shortly afterwards and found Tejpal inside the house. Kartarey appears to have jumped to the conclusion that Tejpal had come there to have illicit connection with his wife and got enraged. This explains the ferocious nature of the attack made upon Tejpal.

17. With great respect, the observations appear to us to have no foundation in the evidence on the record. They are exceedingly speculative. The defence story was extremely unnatural and improbable. Smt. Kaila wants to have it believed that the deceased was so bold that in broad daylight he entered her house and simultaneously attempted to ravish and belabour her with a weapon, in the presence of her husband and husband's brother (Benarsi). This is too fantastic a story which cannot be swallowed even by the most credulous man. Moreover, against the background of the incident which took place four or five days earlier in the field, the deceased would be the least disposed to venture into the house of Kartarey. The fact that there was blood in the courtyard, apart from the blood inside the kotha, corroborates the ocular account of the eyewitnesses that the deceased had been forcibly taken into the hind courtyard and assaulted and thereafter taken into the kotha and finished there.

18. Kartarey, in his statement which we have reproduced above, rather took up the position that he had come to his house after the occurrence, when he was assaulted and captured by the Chauhans

who were already there. His stand militates against the story that he had assaulted the deceased as the latter was found attempting to rape Smt. Kaila.

19. We have, therefore, no hesitation in rejecting this contention canvassed by the Counsel. The charge against Kartarey had been proved to the hilt. He was arrested redhanded at the spot near the dead body in his house and the blood-stained chhura Ex. 1, was seized from him. We would therefore, uphold his sentence and conviction.

20. Counsel next contends that the charge against Sitaram and Baljeet appellants had not been brought home beyond a reasonable doubt. It is submitted that if these two persons had participated in the assault on the deceased, they could not have escaped arrest by the witnesses. It is maintained that the wall which separates the house of Sitaram from that of Kartarey is 7 ft. high and there is no ghati (opening or passage) through that these appellants could have escaped. In this connection, it is stressed that the Investigating Officer, in his deposition or in the site-plan, Ex. Ka-14, does not say about any such ghati in this wall.

21. All the witnesses have stated that there is a ghati in this wall through which Sitaram and Baljeet went from the house of Kartarey into the house of Sitaram and escaped. The version of the witnesses in regard to the existence of this ghati was not challenged in cross-examination. Although in the site-plan, the Investigating Officer has not specifically shown this ghati, he has indicated the escape route of these appellants by an arrow mark. No question or suggestion was put to the Investigating Officer as to whether he had seen any such ghati in the wall. His silence on this point was therefore not a ground to hold that no such ghati existed. Its existence had been cogently established by the unquestioned testimony of the eyewitnesses.

22. Nor could the circumstance of these appellants' successful escape be a ground to disbelieve the eyewitnesses and to doubt the appellants' participation in the commission of the crime. This only shows that the crime was committed after proper planning and the route and the manner of escape were thought out in advance. Further, the escape route lay in the direction in which they could not have been intercepted by the witnesses. A glance at the site-plan would show that the entrance door of the house of Kartarey faces the north. The witnesses are supposed to have come from the north to this entrance door, while Sitaram and Baljeet, according to these eyewitnesses, escaped through the adjoining house of Sitaram towards the south. In this situation therefore, it was comparatively easy for these two appellants to elude arrest by these witnesses.

23. Counsel further submits that no marks caused by dragging were found on the deceased, that all the stab wounds found on his body might have been inflicted with a chhura by one person. The medical testimony, it is contended, does not definitely exclude that possibility. He placed particular stress on the point that the chhura Ex. 1, was not shown to the medical witness, nor was his opinion specifically invited as to whether all or any of the injuries of the deceased could be caused with this weapon.

24. It is true that neither the parties nor the trial Court asked the medical witness, Dr. Radha Mohan, as to whether the injuries found on the deceased could be caused with this particular chhura Ex. 1. It seems that this weapon was not shown to the doctor at all. The prosecution remained content with the general answer given by the doctor that the injuries to the deceased appear to have been caused with "sharpedged weapon such as chhuri and katar".

25. The learned Judges of the High Court also did not care to measure the breadth and length of the

chhuri Ex. 1 and relate it to the dimensions of the wounds noted by the medical witness. All that they say is that this knife was "one span long, the blade was of 7 fingers' breadth", and as such it was a formidable weapon. We are unable to appreciate this crude way of measuring the weapon. It hardly furnishes any guide for relating it to the injuries of the deceased.

26. We take this opportunity of emphasising the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for the proper administration of justice, particularly in a case where injuries found are forensically of the same species, e.g. stab wounds, and the problem before the Court is whether all or any of those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may, sometimes, cause aberration in the course of justice. Fortunately, in the instant case, the number, nature and dimensions of the injuries of the deceased, as deposed to by Dr. Sohan Lal, afford a sure indication that they were caused with three different weapons. There were sixteen stab wounds which fall into three groups, the wounds in each group being of almost identical length and breadth. Thus, the length of each of the wounds Nos. 1, 3, 4, 5 and 15 was 3 cm. The breadth of each of these wounds (excepting that of Nos. 1 and 15 which was slightly less) was 1.5 cms. Wound No. 2 was 3.5 cm. x 1.5 cms. The length and breadth of wound No. 15 was 2.5 x 1 cm. The length of wounds Nos. 6, 8, 11, 12, 13 and 16 was 4cms. each. Giving allowance for slight variations, it can be said that the breadth of these six injuries was very nearly the same.

27. The length and breadth of wounds Nos. 9 and 10 was 6 cm. x 2 cm. each, while those of wound No. 7 were 6.5 cm. x 2.5 cm. This dimension-wise classification of the injuries into three groups points with reasonable certainty to the conclusion stabs Nos. 1, 2, 3, 4, 5 and 15 were caused with one weapon, stabs Nos. 6, 8, 11, 12, 13 and 16 with another and stabs Nos. 7, 9 and 10 with a third. Thus the medical evidence lends valuable corroboration to the ocular account of the eye-witnesses inasmuch as they say that these injuries on the deceased were inflicted by three persons, one with a chhura, Ex. P-1, and by the other two with katars.

28. The absence of any marks caused by dragging on the body of Tejpal does not in any way undermine the veracity of the ocular account of the eyewitnesses. It all depends on the manner in which the deceased was taken from the courtyard into the kotha. If he was carried into the kotha, no such marks or injuries would be caused in the process. Then, it is not known whether the ground was soft or hard. The presence of blood in the courtyard on the doorframe of the kotha and inside the kotha coupled with the marks of dragging noticed by the Sub-Inspector PW 22, were more than sufficient to lend credence to the prosecution story that the deceased was first assaulted in the courtyard and then taken into the kotha and killed there.

29. Learned Counsel has urged that Sitaram and Baljeet appellants had led evidence to show that at the time of occurrence, they were not present in the village. The High Court, it is pointed out, simply ignored the defence evidence as if it did not exist.

30. It may be recalled that Sitaram and Baljeet while denying the prosecution allegations against them, had pleaded alibi. Sitaram's case was that from April 28 to May 3, 1969, for six days he was in village Kishanpur Birana to assist his sister's husband for threshing his crop. On May 3, Sitaram's brother came and informed him that Tejpal had been murdered and that the appellant had been named as one of the culprits. Thereupon the appellant went to the police station and was arrested there. He examined Rumal, DW 4, and Sukhey, DW 5, to substantiate his story.

31. Baljeet's plea was that at the time of occurrence, he was in the paith (market) at Maidpur for selling baan (cord). He examined Jagram (DW 1) to prove his alibi.

32. The High Court has not dealt with this defence evidence at all. Time and again this Court has pointed out that proceedings upon reference under Section 374, before the High Court, in fact are a continuation of the trial on the same evidence or additional evidence. Therefore, it is the duty of the High Court to reappraise the entire evidence and consider the proceedings in all their aspects and then come to an independent conclusion on the merits of the case. The High Court's approach inasmuch as it did not itself consider the defence evidence, was not in conformity with this settled rule of practice. On account of this lapse, we would have remitted the case to the High Court for rededecision but for the fact that such a course would entail unnecessary hardship to the appellants, the case being already six years old. In this situation, it has become necessary for us to examine the defence version.

33. We will first take up the defence evidence of Sitaram. His first witness is Rumal, DW 4. He is a Harijan resident of village Kishanpur Birana. He stated that Sitaram's sister is married to Bhondu of his village. Bhondu suffers from asthma and is sonless. Consequently, Sitaram used to come to this assistance for threshing the harvest. For that purpose Sitaram came to his village on April 28. Witness saw him there in Bhondu's threshing floor till the evening of May 3 when Sitaram's brother came and informed him about Tejpal's murder and Sitaram's implication in it.

34. Rumal's evidence does not inspire confidence. It is inherently flimsy. In cross-examination he admits that his field is situate at a distance of 5 or 6 chaks - which would be a considerable distance - from the land of Bhondu in which the latter's threshing floor was located. He further swears that he has not been on visiting terms with Bhondu or Sitaram. Still he wants to have it believed - which is impossible - that he has made his threshing floor also in Bhondu's fields just close to the latter's threshing floor. Although he claimed that Sitaram used to visit his village frequently, yet he could not, when asked in cross-examination, give the date of any of the visits of Sitaram, excepting the one he deposed to in examination-in-chief. He belongs to the caste of the appellants. He admitted that he had been brought to court for evidence by Salanga, brother of Sitaram.

35. Sukhey DW 5 is also a resident of Kishanpur Birana. His evidence is more or less on the same lines as of DW 4. He is a nephew of Rumal "by village relationship". He also belongs to the brotherhood of Bhondu. His memory about dates was also shaken in cross-examination. His land is situated at a far-off place from the land and threshing floor of Bhondu. Still he claims he has made his threshing floor not in his own land but in that of Bhondu. He also did not mention about Sitaram's presence in his village at the material time to any officer before his appearance in court. His evidence also is not better - if not worse - than that of Rumal.

36. Sitaram did not examine his brother Salanga who is supposed to have gone to village Kishanpur Birana on May 3, and informed the appellant about his implication in Tejpal murder. Evidently he was the best informed person regarding the whereabouts of Sitaram on the day of occurrence and for four days thereafter. It is not claimed that Salanga or any of three defence witnesses appeared before the Investigating Officer.

37. In this state of the evidence, we have no hesitation to hold in agreement with the trial Court that Sitaram had miserably failed to establish his alibi. In fact, he intentionally remained absent from his village for four days after the occurrence.

38. This takes us to the defence evidence of Baljeet. His witness Jagram, DW 1, is a barber of village Nagla. His evidence-in-chief is as under :

I know Baljeet accused. He does the work of preparing baan. I attend the paith (market) of Maidpur. This paith is held on Thursday. Baljeet also sells baan in the market. Baljeet had also gone there. Baljeet sells at a distance of 4-5 paces from the spot where I cut hair in the market. That day I was in the paith from 9 a.m. to 4 p.m. Baljeet had left a little earlier at about 3.30 p.m. Baljeet did not go anywhere from the paith from 9.30 a.m. to 3.30 p.m.

39. Cross-examined, the witness admitted that he had never been to village Giaspur, although it is hardly 1 or 1 1/2 Kms. (1 1/4 or 1 3/4 miles) from the paith. He could not name any of the 25 persons whom he claims to have shaved in the paith on May 1. He could not tell the date on which he last time attended the paith before his examination in court. He admits that at times he fails to attend the paith; that Baljeet also fails to attend the paith occasionally. Witness could not say on which particular dates Baljeet attended the paith, and on which he did not. He was then asked as to how he remembered that Baljeet attended the paith on the first May. He replied because of the murder committed on that day at Giaspur.

40. Jagram's evidence is far from being cogent and convincing. It is as vague as his memory. He does not remember any other date, excepting May 1, on which he or Baljeet attended or not attended the paith. He says he has never been to village Giaspur, yet he knew that the murder in question had been committed at Giaspur on May 1. Village Giaspur is less than two miles from the paith. Even on foot, it was not difficult for the appellant to come to the paith within 20 to 25 minutes of the occurrence which took place at about noon. With regard to dates and times, as revealed by cross-examination, Jagram was not a dependable witness at all. The trial Judge was therefore, right in holding that the witness had no particular reason to remember the date of occurrence. The inference is that this date was put into his mouth by the defence. In any case, Jagram's statement was hardly the kind of evidence that could establish even a reasonable probability in favour of the alibi set up by Baljeet.

41. The last submission of the learned Counsel for the appellant is that the prosecution case against Baljeet stands on a different footing. According to the Counsel, two circumstances entitle Baljeet, at least to the benefit of doubt. Firstly, he had no conceivable motive to join in the fatal assault on the deceased. He was not related to Kartarey or even to Sitaram through whose house the culprits are alleged to have escaped. Secondly, unlike Sitaram, he never absconded and was admittedly arrested from the village in the evening of the day of occurrence.

42. At first flush we were somewhat impressed by this argument. But on a close examination we find that this contention does not rest on sound premises and must be rejected. While the prosecution did not allege that Baljeet had a motive to join Kartarey in the commission of the crime, the appellants, strangely enough, brought out in the testimony of the defence witness, Shambhoo, DW 3, - who is none else but Baljeet's wife's brother - that Nain Singh who is the father of Tejpal deceased, and is sarpanch of the village, had imposed a fine on Baljeet's father-in-law. If that is true, Baljeet had a conceivable ground of grudge against the deceased and his father.

43. Further it is wrong to say that Baljeet never absconded. Contrary to what Baljeet has said in his examination under Section 342, Cr. P. C., the Investigating Officer, PW 7 testified that Baljeet was found hiding in a chhappar in the village from where he was arrested. This account of Baljeet's

arrest was not challenged in cross-examination. To be an 'absconder' in the eye of law, it is not necessary that a person should have run away from his home, it is sufficient if he hides himself to evade the process of law, even if the hiding place be his own home. We therefore, do not find any ground to distinguish the case of Baljeet from that of Sitaram and to treat him differently.

44. All said and done, no good reason has been shown why we should disturb the concurrent findings of the courts below against the appellant.

45. Accordingly, we dismiss this appeal and maintain the conviction of the appellants.

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