

Mahmood

Vs

State of U. P.

Criminal Appeal No. 178 of 1971

(R.S. Sarkaria, A.C. Gupta JJ)

01.10.1975

JUDGMENT

SARKARIA, J. -

1. This appeal be special leave is directed against a judgment of the High Court of Allahabad upholding the conviction of the appellant for offences under Sections 452 and 302/34, Penal Code in respect of the murder of a villager, Dwarka.
2. The deceased lived all alone in his house in village Gurgawn, police station Nigohi. The deceased used to lend money to one Ramsarup, a distant relation. Over this loan, a dispute arose between Ramsarup and the deceased. Their relations became strained, and Ramsarup started nursing a grudge against the deceased. According to the prosecution story, this Ramsarup, in collaboration with the appellant, murdered Dwarka on the night between January 4 and 5, 1967.
3. On January 4, 1967 at about 6.30 p.m., Ramchander, PW 2, Sheodass, PW 3, Govind and others were sitting by the side of alowa (fireplace) to warm themselves in front of the house of Ramchander at a distance of about 50 paces from the entrance to the house of the deceased. Ramsarup and the appellant came there. They stayed at the fireplace for a few minutes and then went to the entrance of Dwarka's house and called. Dwarka opened the door, and Ramsarup and the appellant (who was a stranger to the witnesses) went into the house.
4. On the following morning, one Mithulal, PW 4, went to the house of the deceased for purchasing gram. On going inside, he found Dwarka lying dead with injuries. Mithu came out and informed PW Ramchander and Karan about what he had seen. Karan further communicated that information to Bhagwandeem, PW 10, a cousin and neighbour of the deceased. Bhagwandeem then went inside the house of the deceased and saw the scene. PWs 2, 3, 4 and 5 were present near the deadbody of Dwarka. These persons apprising Bhagwandeem about what they had seen the preceding evening. Bhagwandeem then scribed a report and thereafter delivered it in police station Nigohi, 6 miles away, at 11.00 a.m.
5. After registering the case, Sub-Inspector K. C. Bhandari, PW 11, reached the scene of occurrence. He found the blood-stained gandasa, Ex. 1, lying near the deadbody. He noticed fingerprints on its wooden handle. He, therefore, put this gandasa in a box which was made into a parcel and sealed with his own seal in the presence of Gajadhar, PW 5 and prepared the memorandum Ex. Ka-3. He then prepared the inquest report and recorded the statements of the witnesses.
6. After Sub-Inspector arrested Mahmood appellant on March 24, 1967 at 8.15 a.m. Mahmood was

directed to conceal his face and he did likewise. Mahmood was taken to the police station. At 12.10 p.m. on the same date he was taken out of the police lock-up and sent in the custody of constable to the District Jail, Shahjahanpur, 20 miles away by bus. A test identification was held on April 5, 1967 before a Magistrate at which PWs 2 and 3 identified the appellant. On April 15, 1967, at the request of the Investigating Officer, proficient Mohd. Sarvar Hussain took the specimen finger impression of the appellant. These impressions along with the sealed parcel containing the blood-stained gandasa, were sent to the CID Scientific Laboratory, Lucknow, on April 21, 1967, through constable Muneshwar Dikshit, PW 18. Inspector Daryao Singh (PW 15) of the laboratory examined these impressions. In this opinion the figure impressions found on the handle of the gandasa, Ex. 1, tallied with the specimen finger impressions of the appellant.

7. At the trial the prosecution examined PWs Ramchander and Sheodass to show how on the proceeding evening they had seen Ramsarup and the appellant going into the house of the deceased. The trial Court disbelieved the evidence of these witnesses, but found that the presence of the fingerprints of the appellant on the handle of the gandasa, Ex. P-1, was a circumstance which by itself was sufficient to show that the murder had been committed by the appellant and convicted him. Mahmood appealed to the High Court. The High Court affirmed the findings of the trial Court and dismissed his appeal.

8. Thus the conviction rests on the solitary circumstance, viz., that the fingerprints of the appellant were found on the handle of the gandasa, P-1, which was found lying near the deadbody at the scene of occurrence.

9. It is well settled that in a case dependent wholly on circumstantial evidence, the Court before recording a conviction on the basis therefor must be firmly satisfied -

(a) that the circumstances from which the inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt;

(b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and

(c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

10. After hearing the learned Counsel on both sides, we are of opinion that in the instant case these conditions have not been satisfied.

11. There are some suspicious circumstances in this case which cast a grave doubt as to the genuineness of this lone piece of evidence. Firstly, no less a person than the complainant Bhagwandeem, PW 1, admitted in cross-examination that when he first saw the gandasa, Ex. 1, lying near the deadbody at the scene of occurrence, its wooden handle was dirty, but on January 29, 1968, (when this weapon was shown to the witness in court) the wooden part of its handle was clean and the rest dirty. The inference is that somebody might have cleaned the wooden handle and thereafter got the fingerprints of the appellant on it. Cleaning would be necessary to obtain distinct and decipherable finger impressions. Secondly, the investigation in this case was not as fair and cautious as it should have been. The version of the appellant was that he had been arrested by the police on March 23, 1967 at about 5 or 5.30 p.m. from a bus and was then kept in the lock-up of the police station for the night and on the following day at about noon, the Sub-Inspector bandaged the

appellant's eyes, applied some fluid on his fingers, then made him hold some object and forcibly obtained his fingerprints on it. Then on April 26, 1967, that is, long before the start of the proceedings in the court of the committing Magistrate, the appellant sent two petitions through the jailor addressed to the District Magistrate and Superintendent of Police, Saharanpur, complaining how his fingerprints were forcibly taken by the police on some round object.

12. Constable Hardwari Lal, PW 9, falsified the version of the Investigating Officer, PW 11, and confirmed that of the accused about the date of the latter's arrest. In cross-examination, PW 9 admitted that Mahmood accused was arrested on March 23, 1967 and thereafter was kept in the police station till 12.10 noon of March 24, 1967, when the witness took him out of the police station for escorting him to the District Jail, Shahjahanpur.

13. Further, at the test identification parade held before the Magistrate, and again at the trial, the appellant had complained that he had been shown at the police station after his arrest, to PWs Ramchander and Sheodass. After noticing this consistent complaint of the accused, though without accepting its truth in clear terms, the learned trial Judge found that "there appears to be something fishy in the matter". It was *inter alia* on this ground that the evidence of PWs 2 and 3 was discarded as unreliable. The High Court upheld that finding.

14. The purpose of mentioning all this is that the Investigating Officer in the mistaken zeal for the success of his case was prone to resort to "padding" and suppression or distortion of facts. It is in this background of suspicion that this piece of circumstantial evidence collected by him had to be evaluated.

15. Further, the investigator did not take all the necessary precautions which could be taken to eliminate the possibility of fabrication of this evidence, or to dispel suspicion as to its genuineness. Admittedly he sealed the box with his own seal which thereafter remained with him throughout. He did not take the signatures of the sealing the parcel containing the gandasa. He did not after sealing the parcel entrust his seal to the Sarpanch or any other respectable person of the village. According to the prosecution the fingerprints found on the gandasa could possibly be bloodprints and that the blade of the gandasa was all smeared with human blood. But this gandasa was never sent to the Chemical Examiner or the serologist. No explanation of the same is forthcoming. This being the case, the contention of Mr. R. K. Garg at the Bar, that the gandasa, Ex. 1, or smear of the alleged blood on it was not sent to the Chemical Examiner for fear of the fabrication being detected and exposed, cannot be rejected outright.

16. Furthermore, the specimen fingerprints of the appellant were not taken before or under the order of a magistrate in accordance with Section 5 of the Identification of Prisoners Act. This is another suspicious feature of the conduct of investigation. It has not been explained why this magistrate was kept out of the picture.

17. It is to be noted further that the same constable (Muneshwar Dixit, PW 18) collected the specimen fingerprints, presumably from the Investigating Officer, and the parcel containing the gandasa, Ex. 1, from the Sadar Malkhana, on April 21 and delivered it at the Scientific Section, Lucknow on April 22. There was thus a possibility of the Investigating Officer having an access to the parcel containing the gandasa on April 21. Such a possibility has not been positively excluded by the prosecution.

18. Secondly, even if it is assumed that the handle of this gandasa bore the fingerprints of the

appellant, then also it would not inexorably and unmistakably lead to the conclusion that the appellant, and none else was the murderer of Dwarka, unless it was firmly proved further that the fatal injury to the deceased was caused with this weapon. Definite proof of this link was lacking in this case. The missing link could be best supplied by showing that there was blood on this gandas, and that blood was of human origin. But this was not done.

19. Lastly, it may be observed that Inspector Daryao Singh, PW 15, has not given by reasons in support of his opinion. Nor has it bene shown that he has acquired special skill, knowledge and experience in the science of identification of fingerprints. It would be highly unsafe to convict one on a capital charge without any independent corroboration, solely on the bald and dogmatic opinion of such a person, even if such opinion is assumed to be admissible under Section 45, Evidence Act.

20. In the light of the above discussion, we are of the view that the solitary piece of circumstantial evidence on which the prosecution have staked their case, is too shaky, suspicious and fragile to furnish a sound foundation for conviction.

21. These, them are the reasons which we now give in support of our order dated September 22, 1975 whereby accepted this appeal, set aside the conviction of the appellant and acquitted him.

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