

Hukam Singh

Vs

State of Rajasthan

Criminal Appeal No. 299 of 1971

(Syed M. Fazal Ali, P.N. Bhagwati JJ )

07.02.1977

JUDGMENT

BHAGWATI, J. –

1. The appellant and one Gangia were tried before the Sessions Judge, Jodhpur for the offences of murder, house trespass and robbery. The scene of the crime was a hutment situate in a 'Jod', that is, pasture land belonging to the Government between the villages of Palasni and Kharia Khurd in Jodhpur District. One Sujan Singh, who was a forest guard, was living in the hutment with his wife Inder Kanwar, three sons Kan Singh, Bhanwar Singh and Roop Singh and his mother Lad Kanwar. On October 19, 1967 Sujan Singh went to village Thakarias to bring his daughter and he was away from his hutment until October 22, 1967. Khan Singh also left the hutment for going to Bisalpur for purchase of bajra on October 21, 1967. When he returned to the hutment in the morning of October 22, 1967, he was shocked to find his mother Inder Kanwar, his two brothers Bhanwar Singh and Roop Singh and his grandmother Lad Kanwar lying murdered in the hutment. He saw a box lying outside the room and he also found that the shutters of the door of the room were unhinged and were lying inside the room and other household articles were lying scattered. He immediately ran to the village Khari and informed Kanji Panch about the incident and both of them then went to Bisalpur and apprised Sarpanch Shri Kishan about what had happened. Shri Kishan asked Kan Singh to return to the hutment and he proceeded to the police station Maha Mandir for the purpose of lodging information with the police. The police arrived at the scene of the crime around mid-day and started investigation. The police found in the course of investigation that the death of all the four persons had taken place as a result of gun-shot injuries and they also came across two articles, one a mirror Ex. 1 and the other a Dibbi Ex. 2, on which certain finger prints were noticed. These finger prints were subsequently got examined by a finger print expert and the evidence established that the finger prints on the mirror Ex. 1 were those of the appellant. It appears that at about 6.30 p.m. on the same day, that is, October 22, 1967, one Umed Singh, who is the brother of the appellant, produced the appellant and Gangia before Balbir Singh, Station House Officer, who was investigating into the offence. Both the appellant and Gangia were arrested and at the time of arrest, a shirt worn by the appellant was taken possession of by Balbir Singh as he suspected that there were blood stains on it. The shirt was sent to the Chemical Analyser and the Serologist and their report went to show that the shirt was stained with human blood. Balbir Singh interrogated the appellant whilst he was in custody and in consequence of disclosure alleged to have been made by him, a gun and bag containing pellets and gun powder were recovered under a heap of sheafs of grass lying in his field known as 'Ramsariwala' and from a heap of chaff lying on the trashing floor of that field, a cotton 'kesla', that is, a bag, containing certain articles was also recovered. The kesla was found to be blood stained as a result of examination by the Chemical Analyser and the Serologist and the articles in the kesla included inter alia various ornaments which were all

subsequently identified by Sujan Singh to be belonging to him. Gangia also made a disclosure statement in consequence of which certain recoveries were made but since the case of Gangia is not before us, it is not necessary to refer to the same. The appellant and Gangia were, on the basis of this material, put up for trial before the Sessions Judge, Jodhpur and the learned Sessions Judge, on a consideration of this material, held the appellant guilty of the offence of theft in respect of the articles in the kesla and convicting him under Section 380 of the Indian Penal Code, sentenced him to suffer rigorous imprisonment for seven years, but acquitted him so far as the offence of murder of Inder Kanwar, Lad Kanwar, Bhanwar Singh and Roop Singh was concerned. Gangia was acquitted of both the offences by the learned Sessions Judge.

2. The State preferred an appeal to the High Court against the order of the learned Sessions Judge in so far as it acquitted the appellant of the offence of murder and Gangia of both the offences. The High Court affirmed the acquittal of Gangia but so far as the appellant was concerned, the High Court took the view that the circumstances established in the case clearly and unmistakably pointed to the guilt of the appellant in so far as the murders of Inder Kanwar, Lad Kanwar, Bhanwar Singh and Roop Singh were concerned, and accordingly set aside the acquittal of the appellant and convicted him of the offence under Section 302 and sentenced him to imprisonment for life. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

3. Now, if we closely analyse the judgment of the High Court, it will be apparent that the High Court has relied only on three circumstances for the purpose of reversing the acquittal of the appellant in so far as the offence of murder is concerned. These three circumstances are, first, the recovery of kesla containing ornaments and other articles belonging to Sujan Singh in consequence of the disclosure statement made by the appellant; secondly, the recovery of blood stained shirt from the person of the appellant at the time of his arrest; and thirdly, the presence of the finger prints of the appellant on the mirror Ex. 1. We shall presently examine these three circumstances but before we do so, we may refer briefly to the recovery of the gun and the pellets and gun powder as a result of the disclosure statement made by the appellant. The recovery of these articles was assailed on behalf of the appellant, but for the purpose of the present discussion, we shall assume that this recovery was genuine, particularly since it has not been doubted either by the High Court or by the Sessions Court. But this recovery does not in any way help the prosecution, because the evidence of the ballistic expert was that it was not possible for him to say whether the gun powder and pellets recovered from the place of occurrence or from the dead bodies of Bhanwar Singh and Inder Kanwar had actually been fired from the gun seized as a result of the disclosure by the appellant. This circumstances of recovery of the gun and the pellets and gun powder was, therefore, rightly not relied upon by the High Court, even though it reversed the acquittal of the appellant. The only circumstances which, in the result, require to be considered are the three mentioned above.

4. So far as the kesla containing ornaments and other articles belonging to Sujan Singh is concerned, it is no doubt true that it was recovered at the instance of the appellant and, therefore, there can be no doubt that the appellant was found in possession of Stolen property soon after the incident and this circumstance clearly justified the conviction of the appellant for the offence of theft punishable under Section 380. But the question is : how far it could have any evidentiary weight for connecting the appellant with the gruesome and ghastly murders which took place in the hutment ? Obviously, something more would be required to connect the appellant with the murders than mere possession of ornaments and other articles belonging to Sujan Singh, because it is quite possible that the appellant may have had nothing to do with the murders and he might have merely stolen the ornaments and other articles belonging to Sujan Singh after the murders were committed by some others. The prosecution, however, relied on the presence of stains of human blood on the kesla

containing the ornaments and other articles. But the presence of blood stains on the kesla cannot carry the matter any further, because if the theft was committed by the appellant after the crime of four murders had been committed by some others, it is possible that the kesla might receive stains of human blood either by reason of the blood of the victims splashing on the kesla which might be lying outside in the small hutment or by reason of the kesla coming into contact with the blood of the victims while being filled with ornaments and other articles or being taken out of the hutment in a hurry. The presence of blood stains on the kesla is not a circumstances which is incompatible with the innocence of the appellant in so far as the offence of quadruple murders is concerned.

5. Then the next circumstance which was relied upon on behalf of the prosecution was the presence of stains of human blood on the shirt worn by the appellant at the time of his arrest. But this is also not such a circumstances as points clearly and unmistakably to one and only one conclusion, namely, that the appellant committed the murders of Inder Kanwar, Lad Kanwar, Bhanwar Singh and Roop Singh or any one or more of them. If the kesla was stained with human blood, then it is quite possible that while the kesla was being carried from the scene of crime to the place where it was hidden, the shirt worn by the appellant might also have received some blood stains by contact with the kesla. The blood stains on the shirt were very small and few and the possibility cannot be ruled out that they might have been caused by reason of contact with the kesla. This circumstances is, in our opinion, quite consistent with the innocence of the appellant.

6. The last circumstance on which reliance was placed on behalf of the prosecution was the presence of finger prints of the appellant on the mirror Ex. 1. We fail to see how this circumstances can be regarded as necessarily implicating the appellant in the commission of the murders. It was admitted by Sujan Singh that the appellant was on visiting terms with this family and it is, therefore, possible that during one of his visits, the appellant might have touched the mirror Ex. 1 and left his finger prints on it. It is also not altogether unlikely that even when the appellant was in the hutment of Sujan Singh for the purpose of committing the theft of ornaments and other articles belonging to Sujan Singh after the quadruple murders had been committed by some other persons, he might have touched the mirror Ex. 1 and in the process left his finger prints upon it. The presence of the finger prints on the mirror Ex. 1 is not such a circumstances as would necessarily lead to the inference that the appellant must have committed the murders of these four members of Sujan Singh's family.

7. It is now settled law that in case of circumstantial evidence, all the incriminating facts and circumstances should be fully established by cogent and reliable evidence and the facts so established must be consistent with the guilt of the accused and should not be capable of being explained away of any other reasonable hypothesis than that of his guilt. In short, the circumstantial evidence should unmistakably point to one and one conclusion only that the accused person and none other perpetrated the alleged crime. If the circumstances proved in a particular case are not inconsistent with the innocence of the accused and if they are susceptible of any rational explanation, no conviction can lie. Judged from this stand point, it is not possible to affirm the conviction of the appellant for the offence of murder of any one or more of Bhanwar Singh, Roop Singh, Lad Kanwar and Inder Kanwar. The three circumstances relied upon by the prosecution are not incompatible with the innocence of the appellant in so far as the murders of these four persons are concerned. They are capable of being explained away on a hypothesis other than that of guilt of the appellant. We may point out that in any event the view taken by the Sessions Court that the circumstances were not sufficient to found the conviction of the appellant was a reasonable view and the High Court was not justified in reversing it.

8. We accordingly allow the appeal, set aside the order of the High Court reversing the acquittal of

the appellant and convicting him of the offence under Section 302 and acquit him of that offence. The conviction of the appellant for the offence under Section 380 will, however, stand. We are told that the appellant has already undergone the full sentence of imprisonment imposed on him under Section 380. If that is so, the appellant will be set at liberty forthwith.

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