

SUPREME COURT OF INDIA

Vidya Sagar

Vs.

State of U.P.

Crl.A.No.236 of 1971

(Y. V. Chandrachud, P. K. Goswami and P. N. Shinghal JJ.)

22.02.1977

JUDGEMENT

SHINGHAL, J.:-

1. This appeal and criminal appeal No. 579 of 1976 were ordered to be listed for hearing together. As the respondents in criminal appeal No. 579 of 1976 do not appear to have been arrested in pursuance of the non-bailable warrants which were issued against them, and are not before this Court, we have heard the arguments only in Vidya Sagar's appeal No. 236 of 1971 and shall examine the evidence which bears on it.

2. The case arose out of first information report Ex. Ka 1 lodged by Mohan Singh P.W. 1 at 6.40 p.m., at police station Lar situated at a distance of about a mile from Lar town where the incident is alleged to have taken place at about 4 p.m. on July 6, 1968. Vinod Kumar alias Jhabar was a poor boy aged about 12 years. He lived in village Lar, where the accused also used to live. Vinod Kumar is said to have been employed by Kapil Deo, (accused), some 4 or 5 days before the incident, to work at his house. He therefore lived in his employer's house and took his meals there. It has been

alleged that some boys of the locality where Kapil Deo used to live with his wife Smt. Sheo Kumari (accused), his brother Ramapati (accused), and his son Vidya Sagar (accused) were playing near their house. Kapil Deo and Ramapati came to their house at about 4 p.m. They scolded the boys for playing there. They took away appellant Vidya Sagar and Vinod Kumar inside the house and asked the other boys to go away. The other boys including Mohan Singh P.W. 1, Hridyanand P.W.2 and Akhilanand P.W. 3, stopped playing for a while, but resumed the play after Kapil Deo, Ramapati, Vinod Kumar and Vidya Sagar went inside the house. While playing, they heard the cry of Vinod Kumar. They climbed the 'jangla' of the house of the accused and saw what was happening inside it. A door of another room inside the house was open, and, they saw that while Kapil Deo and Ramapati were holding Vinod Kumar against the wall of that room, appellant Vidya Sagar was cutting his throat with a big knife. The boys raised an alarm. Appellant Vidya Sagar thereafter came out from the northern door of the house wearing an underwear, with a blood-stained knife in his hand, and ran away. Smt. Sheo Kumari closed the doors of the room and the window. In the mean time some people assembled outside the house and they and Mohan Singh P.W. 1, Hridyanand P.W. 2 and Akhilanand P.W. 3 ran after Vidya Sagar, but could not catch him. Mohan Singh P.W. 1 then went and lodged the first information report (Ex. Ka 1) at police station Lar as aforesaid. Sub-Inspector Markandey Singh P.W. 11 registered a case and took up the investigation. He found that some persons had collected outside the house of the accused and were making inquiries from Kapil Deo and Ramapati. Markandey Singh also made inquiries and it is alleged that Kapil Deo and Ramapati ultimately pointed out the trunk in which the dead body of Vinod Kumar was found in a gunny bag in a room in their house. A blood-stained 'pyajama' of Vidya Sagar is also alleged to have been found inside the trunk and it appeared to Markandey Singh that some portions of the house had been freshly washed to remove the blood-stains. The dead body of Vinod Kumar was examined by Dr. A.B. Das Gupta and his report Ex. Ka. 17 has been placed on the record. The 'pyajama' of the appellant was sent for chemical examination and found to be stained with human blood. A challan was put up against Kapil Deo, his brother Ramapati, his wife Smt. Sheo Kumari and his son Vidya Sagar for the commission of offences under Section 302, Section 302 read with Section 34 and Section 201 read with Section 34, I.P.C. All of them were committed for trial to the Court of Session, and were tried by the Second Temporary Civil and Sessions Judge of Deoria. While the prosecution examined Mohan Singh P.W. 1, Hridyanand P.W. 2 and Akhilanand P.W. 3 as eye witnesses, and Saklu Gond P.W. 4 and some other witnesses, and relied on some pieces of circumstantial evidence, the accused merely stated that they had been falsely implicated due to enmity. They did not lead any evidence in their defence.

3. By his judgment dated October 27, 1970, the trial Judge convicted appellant Vidya Sagar of an offence under Section 302, I.P.C. He convicted the other accused Kapil Deo, Ramapati and Smt. Sheo Kumari of an offence under Section 302 read with Section 34, I.P.C. He sentenced all the four accused to death. He however acquitted them of the offence under Section 201 read with Section 34, I.P.C.

4. The accused filed an appeal to the High Court which was partly allowed by its judgment dated April 6, 1971. The High Court upheld the conviction of Vidya Sagar for the offence under Section 302, I.P.C. but reduced the sentence to imprisonment for life. The other accused Kapil Deo, Ramapati and Smt. Sheo Kumari were however acquitted of the offence under Section 302 read with Section 34, I.P.C. While Vidya Sagar has filed criminal appeal No. 236 of 1971 against the

aforesaid judgment of the High Court by special leave, the State of Uttar Pradesh has filed criminal appeal No. 579 of 1976, to which reference has been made above. As has been stated, we shall examine only that part of the evidence which bears on the appeal of Vidya Sagar against the judgment of the High Court dated April 6, 1971.

5. The High Court felt that the main point for consideration in the appeal was whether the prosecution witnesses could be relied on for seeing the actual occurrence from the 'jangla' of the house of the accused. After referring to plausibility of the version given by the prosecution witnesses, it took the view that in its opinion it was not possible to place implicit reliance on Mohan alias Rajesh Kumar, Hridayanand and Akhilanand (P. Ws. 1 to 3) when they stated that they had witnessed the murder of Vinod Kumar (deceased) being committed by Vidya Sagar, Kapil Deo, Ramapati and Smt. Shiv Kumari. The High Court observed in that connection that as Mohan alias Rajesh Kumar P.W. 1 was a cousin of the deceased, Hridayanand P.W. 2 belonged to Mohan's 'biradari', and Akhilanand P.W. 3 was his collateral, their evidence had to be "carefully scrutinised." The High Court did not however undertake any such scrutiny, and proceed to consider that part of the evidence of those witnesses where they had stated that they had seen appellant Vidya Sagar running away from the house with a blood-stained knife. It found that as that evidence was corroborated by the statement of Saklu Gond P.W. 4, who appeared to be an independent witness, that part of the evidence of the prosecution witnesses deserved to be relied upon. The High Court also saw "no reason to discard the testimony of Mohan Singh alias Rajesh Kumar (P.W. 1) and Hridayanand (P.W. 2) when they stated that "the blood-stained pyjama recovered from the gunny bag and the trunk in which the dead body of Vinod Kumar had been kept belonged to Vidya Sagar and he had worn it on that afternoon when he had been playing with the prosecution witnesses." As has been stated, that 'pyjama' was found to be stained with human blood, and the High Court decided to uphold the conviction of appellant Vidya Sagar because of the following circumstantial evidence,-

"1. He had opportunity to commit the crime; sometime before the occurrence he had been seen playing in the company of Vinod Kumar and others near his house. Then at about 4 p.m. both Vinod Kumar and Vidya Sagar along with two other appellants, namely, Kapildeo and Ramapati, had gone inside their house.

2. The murder of Vinod Kumar must have been committed inside the house of the appellants and Vidya Sagar could have an opportunity to do so.

3. The pyjama belonging to Vidya Sagar was recovered from inside the trunk and the gunny bag in which the dead body of Vinod Kumar was kept and it was stained with human blood. The clothes of other appellants were not stained with blood.

4. Vidya Sagar was seen by the prosecution witnesses, namely, Mohan Singh. Hridayanand,

Akhilanand and Saklu (P.W. 1 to 4) running away from the northern door of his house while other members of his family (the remaining three appellants) remained inside that house. At that time he had a blood-stained knife in his hand."

In the opinion of the High Court, these circumstances had been fully established and were "enough to connect Vidya Sagar (appellant) with the offence of the murder of Vinod Kuamr."

6. We have examined the above-mentioned circumstantial evidence on which reliance has been placed by the High Court for upholding the conviction of appellant Vidya Sagar. The first two circumstances relate to the opportunity to commit the murder but they can not be confined to Vidya Sagar. The evidence on the record shows that he was no doubt playing outside the house along with the deceased and other boys, but Mohan Singh P.W. 1, Hridayanand P.W. 2 and Akhilanand P.W. 3 have stated that when Kapil Deo and Ramapati came to the house and rebuked the boys for playing near their house, they took both took Vinod Kumar and Vidya Sagar inside the house with them and asked the other boys to go away. The so called opportunity to commit the crime was therefore equally available to Kapli Deo and Ramapati, and we do not think that the first two circumstances mentioned by the High Court are really of any importance for proving the guilt of Vidya Sagar.

7. The third piece of circumstantial evidence referred to by the High Court is that relating to the recovery of Vidya Sagar's blood-stained 'pyjama' from inside the trunk and the gunny bag in which the dead body of Vinod Kumar was found by the investigating officer. But even this piece of evidence cannot be said to be sufficient because the possibility that Vidya Sagar's 'pyjama' might have been kept in the gunny bag and the trunk by someone else, to cover up or hide the dead body after the murder, cannot be excluded. It may be mentioned that no effort was made by the prosecution to have the 'pyjama' identified by the eye-witnesses or to question them why they were in a position to say that it was the same 'pyjama' which was worn by appellant Vidya Sagar when he was playing with them outside the house.

8. The forth circumstance mentioned by the High Court is that Mohan Singh P.W. 1 Hridayanand P.W. 2, Akhilanand P.W. 3 and Saklu Gond P.W. 4 saw that appellant Vidya Sagar was running away from the northern door of the house with a blood-stained knife in his hand. As has been stated, the High Court has placed reliance on the evidence of those who have been examined as eye-witnesses, in this respect, because it found support from the testimony of Saklu Gond P.W. 4, who was held to be an independent witness. It has however not been controverted before us that Saklu Gond was not examined by the investigating officer Markandey Singh until some one and a half months after the incident even though Saklu Gond has stated that he was present at the place of occurrence when the investigating officer arrived there. If he had been such a reliable witness as has been found by the High Court, the investigating officer would have examined him much earlier. In any case, the inordinate delay in recording his statement has not been explained. Moreover while Saklu Gond has stated that he also 'chased' Vidya Sagar when he was running away with the blood-stained knife, he has admitted that all those who gave the chase went "upto 40-45 paces from the Neem tree" and then

returned because they found that Vidya Sagar was some 30-35 paces ahead of them. It would thus appear that no real effort was made to chase and catch him, and we have no doubt that the High Court did not read all the evidence bearing on the fourth piece of circumstantial evidence, namely, the running away of Vidya Sagar from the place of occurrence with a blood-stained knife and his pursuit by the three alleged eye-witnesses and Saklu Gond P.W. 4. The High Court also did not notice that while Mohan Singh P.W. 1 had stated that Vidya Sagar ran away towards the west, Hridayanand P.W. 3 had stated that he ran away towards the south.

9. It would thus appear that the High Court failed to appreciate that the four pieces of circumstantial evidence mentioned by it did not really forge such a chain of circumstantial evidence as to support the sole hypothesis that the appellant committed the murder of Vind Kumar.

10. We also find that the High Court did not carefully examine the statement of Dr. A. B. Das Gupta although it had a direct bearing in the allegation against appellant Vidya Sagar. Dr. Das Gupta found on post mortem examination that the neck of Vinod Kumar had been completely severed by one stroke and had been cut "clearly". He was not asked whether such a decapitation was possible even with a large knife, and no effort was made to lead satisfactory evidence to prove the size of the knife. It is also not without significance that although appellant Vidya Sagar was taken in the police custody on July 15, 1968, the investigating officer was unable to recover the knife with which the murder was alleged to have been committed, or to explain how it was disposed of or destroyed in the mean time. It is not disputed before us that Vidya Sagar was 14 years old at the time of the incident and the High Court did not consider whether a boy of that age could sever the head of the deceased by a single clean-cut stroke.

11. It would thus appear that the four pieces of circumstantial evidence on which reliance has been placed by the High Court for upholding the conviction of appellant Vidya Sagar, could not be said to prove beyond reasonable doubt that he committed the murder of Vinod Kumar. Those circumstances do not answer the well-established test that where evidence is circumstantial, it must be consistent with the sole hypothesis that the accused is guilty of the crime charged. Moreover, as has been pointed out, the High Court did not examine the other evidence and circumstances referred to above which had a bearing on the guilt of the appellant.

12. The appeal is therefore allowed, the conviction and the sentence of appellant Vidya Sagar are set aside, and he is acquitted of the offence under Section 302, I.P.C. He is in jail and shall be released forthwith if not required in any other case.

13. Before leaving the case it may be mentioned that, as has been stated we have confined the examination of the evidence on the record to the case of appellant Vidya Sagar and nothing in this judgment should be taken to have any bearing on the appeal of the State Government against the acquittal of accused Kapil Deo and Ramapati. That appeal may, perhaps, require examination of the

question whether by reason of the concealment of the dead body in the trunk, those two persons could not be convicted under Section 201, even if they were not held guilty of the offence under Section 302 of the Penal Code.

Appeal allowed.