

Natthu Singh and Others

Vs.

State of Uttar Pradesh

Criminal Appeal No. 51 of 1975

(A. C. Gupta, P. N. Shinghal JJ)

11.08.1977

JUDGMENT

SHINGHAL, J. -

1. This appeal by special leave of Natthu Singh and his sons Nirpat Singh, Uttam Singh and Mahipal Singh is directed against the judgment of the Allahabad High Court dated September 2, 1974, upholding their conviction under Section 302, read with Section 34, IPC for committing the murders of Govind Das, Banmali, Basdeo and Prem Narain and confirming the sentence of death awarded to each one of them. The appellants were convicted of an offence under Section 394/397, IPC also for snatching the gun and bandolier of Govind Das (deceased). The High Court has altered the conviction of appellant Mahipal Singh to an offence under Section 404, IPC and reduced the sentence to rigorous imprisonment for three years. The conviction of the other appellants for that offence has been set aside.

2. The appellants and the deceased were residents of village Supa within the jurisdiction of police station Mahoba, in Hamirpur district of Uttar Pradesh. Appellant Natthu Singh sold his "Bandhi" field no. 1053/1 measuring some 16 bighas to Ram Dayal (PW 12) and Smt. Kishori Devi, mother of Govind Das, on June 13, 1963, for Rs. 6000. Natthu Singh wanted to repurchase the field and requested Ram Dayal and Govind Das to resell it to him at the price at which they had purchased it from him, but they refused to do so. Natthu Singh called a "panchayat", about a month before the incident, to compel Govind Das to resell the field. Govind Das agreed to the resale, but only on condition that Natthu Singh would pay for it at the prevailing rate of Rs. 1000 per bigha. This was not acceptable to Natthu Singh and the "panchayat" ended in failure.

3. It is alleged that about a month thereafter, Govind Das, Banmali and Brij Lal (PW 1) went to the aforesaid Bandhi field on November 11, 1970, for sowing work. Govind Das carried his rifle and bandolier with him, while Brij Lal had a lathi. Banmali was empty handed. After sowing the field with the help of some other persons, Govind Das, Banmali and Brij Lal left for their houses. They came near the field of one Rama Shanker at about 4.30 p.m. Banmali was ahead of the other two, Govind Das was behind him, and Brij Lal was behind Govind Das at a distance of about 8 to 10 paces. The appellants, who were hiding in the bushes near Rama Shanker's field, then came out. Natthu Singh, Nirpat Singh and Mahipal Singh were armed with guns, while Uttam Singh was armed with a "pharsa". Those who were armed with guns fired at Govind Das and Banmali. Banmali fell down while Govind Das bent down a little bit. Mahipal Singh fired another shot at Govind Das and he also fell down. Brij Lal ran away, raising an alarm and hid near a mango tree. Appellant Uttam Singh went near Govind Das and Banmali with his "pharsa" and dealt several blows to them. Mahipal Singh snatched the rifle and bandolier of Govind Das. Basdeo was a helper

of Govind Das, and the appellants left towards Misran Har saying that they would go and finish him there.

4. It has been alleged further that all the four appellants then went to the field of one Badri and reached there at about 4.45 or 5 p.m. They stood on the boundary wall of that field. They found that Basdeo and his sons Prem Narain and Ram Autar (PW 5) were returning from their field in a bullock cart. Hiran (PW 4) was following the cart on foot. When the bullock cart reached the field of Malkhan, Natthu Singh gave a call to kill and the appellants jumped down from the boundary wall, on the way. Basdeo, Prem Narain and Ram Autar (PW 5) jumped down from their bullock cart and while Basdeo and Prem Narain began to run ahead of the bullock cart for safety, Ram Autar began to run backwards and hid himself behind the bushes in the field of Kanhaya Lal. Mahipal Singh fired at Basdeo who stumbled, but succeeded in climbing the boundary wall of Malkhan's field and fell down there. He tried to get up, but Nirpat Singh went and shot him at a very close range and he fell down. Uttam Singh went near him and dealt "pharsa" blows to him. Nirpat Singh began to reload his gun. Basdeo's son Prem Narain thereupon lifted Nirpat Singh and his gun and threw him on the ground. A portion (Ex. 2) of the butt-end of the gun broke and fell there. Appellant Uttam Singh gave several "pharsa" blows to Prem Narain. The appellants then ran away, but cap (Ex. 1) of appellant Mahipal Singh fell down and remained lying at the place of the second incident.

5. Brij Lal (PW 1) who, it is alleged, was present at the time of the first incident in which Govind Das and Banmali were killed, left the dead bodies in the care of Salig Ram (PW 3), Ganpat (PW 2), Vishwa Nath and Brij Nandan, and went and informed Kesho Prasad (PW 7) about the incident as he was the uncle of Govind Das. While he was doing so, Ram Autar (PW 5), son of Basdeo, also reached there and informed Kesho Prasad about the second incident resulting in the murder of Prem Narain and Basdeo. Kesho Prasad (PW 7), Ram Autar (PW 5), Kesho Prasad's son Reoti and Brij Lal (PW 1) went to the place where Govind Das was murdered. After seeing the dead bodies of Govind Das and Banmali, they went to the place of the second incident where Basdeo and Prem Narain were murdered. Kesho Prasad then left for police station Mahoba, which was at a distance of some 9 miles, in a tractor, and lodged first information report Ex. Ka-5 there at 7 p.m. Both the incidents were narrated in the report, along with the names of all the four appellants, and the eye-witnesses. The police registered the case and investigation was started by Ranbir Singh (PW 19). He recovered fired cartridge Ex. 15 from the place of the second incident, and fired cartridge Ex. 33 from the place of the first incident. Cartridge Ex. 16 was also recovered from the place of the first incident. The broken piece Ex. 2 of the butt-end of the gun was recovered from the place of the second incident, along with cap Ex. 1. These recoveries were made early in the morning of November 12, 1970. The dead bodies were sent for post-mortem examination while the fired cartridges and the broken piece of the butt-end of the gun were sent for examination by the ballistics expert. Appellant Nirpat Singh was arrested on November 12, 1970. His licensed gun Ex. 3 was recovered from his house the same day. Mahipal Singh was also arrested the same day, along with his licensed gun but he managed to escape and proceedings had to be taken against him under Section 87, Cr. P.C. He was rearrested only on August 1, 1971. Appellant Natthu Singh and Uttam Singh could not also be arrested, and similar proceedings were taken against them until their arrest. Investigating Officer Ranbir Singh was suspended during the course of the investigation which was taken over by Rammurti Upadhyaya (PW 15).

6. The appellants were charge-sheeted. They denied the allegations of the prosecution, but did not examine any defence witness. We have made a mention of the offences of which they have been convicted and sentenced by the High Court in appeal.

7. Before examining the arguments of Counsel for the appellants, it would be desirable to refer to the evidence relating to the motive for the crime and the circumstances which led to it. As has been stated, appellant Natthu Singh had sold his "Bandhi" field to Ram Dayal (PW 12) and Smt. Kishori Devi, mother of Govind Das (deceased) for Rs. 6000 on June 13, 1963. The vendees took possession of the field soon after. These facts have been admitted by Natthu Singh in his statement in the trial Court. Kesho Prasad (PW 7) has stated that Natthu Singh sold his other lands to Madan Prasad and Rana Gopal Tiwari, but was able to secure their reconveyance when his financial position improved after some time. These two other sales and reconveyances have been admitted by Natthu Singh. Kesho Prasad (PW 7) and Ram Dayal (PW 12) have stated that Natthu Singh and his sons Nirpat Singh, Uttam Singh and Mahipal Singh asked Smt. Kishori Devi's son Govind Das (deceased) and Ram Dayal (PW 12) to resell "Bandhi" field also to him, at the price at which it had been purchased by them, but they refused to do so. As has been stated, a "panchayat" was held to bring pressure for the resale, about a month before the incident, but Ram Dayal and Smt. Kishori Devi refused to resell the field at the original price of Rs. 6000. Ram Dayal (PW 12) has stated that all the four appellants surrounded his house, some one or one and half years before the incident, and threatened him for the purpose of obtaining the resale of the field. This is evidenced by report Ex. Ka-26 dated May 19, 1969, which was lodged by him with the police. Ram Dayal has stated further that all the four appellants surrounded him about a month after that report, and threatened to kill him, for which report Ex. Ka-27 was lodged by him at the police station on July 17, 1969. Thereafter appellants Natthu Singh, Uttam Singh and Nirpat Singh surrounded Ram Dayal at his thrashing floor on March 19, 1970 and threatened that they would kill him if he went to harvest his crop in the "Bandhi" field. Report Ex. Ka-28 was lodged by Ram Dayal at the police station for that incident. Thereafter, when Ram Dayal was milking his cow on October 10, 1970, the appellants went there armed with guns and lathi, and threatened to kill him. That incident was also reported at the police station and a case was registered against the appellants. Ram Dayal made a complaint Ex. Ka-29 to the Home Minister of Madhya Pradesh in respect of the threats which were given to him by appellant Mahipal Singh as he was serving as a police constable in that State. The Home Minister's acknowledgment Ex. 34 has also been placed on the record and is dated April 4, 1970. Copies of the same complaint were also sent to the Superintendent of Police, Chhattarpur, and the Inspector-General of Police, Madhya Pradesh, and the postal acknowledgments of the same have been placed on the record as Exs. 35 and 36. Ram Dayal made a further report to the Superintendent of Police, Hamirpur on October 10, 1970. Exhibit 37 has been placed on record as an acknowledgment of the report which is dated October 19, 1970. As has been stated, the four murders were committed soon after, on November 11, 1970.

8. It would thus appear that the prosecution has led satisfactory evidence to prove how the appellants were bent upon obtaining the reconveyance of the "Bandhi" field from Ram Dayal and Smt. Kishori Devi, mother of Govind Das, at the original price of Rs. 6000. It will be recalled that they convened a "panchayat" for that purpose about a month before the date of the occurrence, but without success.

9. It has also been proved by satisfactory evidence that the Police made report Ex. Ka-30 against appellants Natthu Singh, Nirpat Singh and Uttam Singh for action under Section 107, Cr. P.C. but they did not enter appearance in the proceedings. It may also be mentioned that it is not disputed before us that appellants Natthu Singh, Nirpat Singh and Mahipal Singh had licensed guns with them. Ram Dayal (PW 12) made an application Ex. Ka-31 to the Collector of Hamirpur on October 27, 1970 for cancellation of the licenses and he initially succeeded in obtaining an order in his favour, but it was stayed by the Collector. The three appellants thus continued to have the licensed guns with them which, according to the prosecution, were used by them soon after, on November

11, 1970, in committing the four murders.

10. There is thus satisfactory evidence on the record to prove the motive for the crime, the possession of licensed guns by appellants Natthu Singh, Nirpat Singh and Mahipal Singh and the circumstances which led up to the murders. Nothing of any importance has been urged against this part of the evidence.

11. The evidence of those who have been examined by the prosecution as eyewitnesses of the incidents has been criticised by Counsel for the appellants. He has however not been able to advance any useful criticism against the statements of Brij Lal (PW 1), Ganpat (PW 2) and Salig Ram (PW 3). Salig Ram is the brother of Banmali, but he had a field close to the place of occurrence. All three of them were named as eye-witnesses in the first information report which was lodged without loss of time and there is no reason to interfere with the concurrent findings of both the Courts that they are reliable witnesses. Hiran (PW 4), Ram Autar (PW 5) and Chandra Bhan (PW 6) have been examined as eye-witnesses of the second incident. Nothing worthwhile has been urged against the statements of Hiran and Ram Autar, and Ram Autar cannot be disbelieved merely because he is the son of Basdeo (deceased). There is thus no reason to disagree with the assessment of both the Courts that they are also reliable witnesses.

12. In fact both the Courts have arrived at the conclusion that the statements of the eye-witnesses have been corroborated by the medical evidence. Then there is the further fact that when appellant Nirpat Singh was arrested on November 12, 1970, gun Ex. 3 was recovered from his house and it was found that a part of its wooden butt-end was missing. It will be recalled that the broken piece Ex. 2 of the butt-end had been recovered from the place of the second incident the same day, before the seizure of the gun, so that there can be no doubt that it fell down at the place of the incident. The ballistics expert has stated that the broken piece Ex. 2 belonged to the recovered gun Ex. 3. The evidence which has been led in this connection lends further assurance to the correctness of the evidence of the eye-witnesses.

13. Then there is the further fact that while fired cartridge Ex. 15 was recovered from the site of the first incident early in the morning of November 12, 1970, fired cartridge Ex. 33 was recovered from the site of the second incident. It has been proved by the ballistics expert that these cartridges had been fired from appellant Nirpat Singh's gun Ex. 3. Cartridge Ex. 16 was also recovered from the site of the first incident, but it was found that it had not been fired from Nirpat Singh's gun. This shows that another gun was also used in the incident.

14. Appellant Mahipal Singh was employed as a constable at police station Bajna, in Madhya Pradesh, which was at a distance of some 90 miles from the place of the incident. It is significant that he had taken two days' casual leave as stated by C.B. Ahirwar (PW 21) who was the Station House Officer there. The witness has stated that the casual leave was for November 11 and 12, 1970, and that the accused travelled with him in the same bus on November 11, 1970 at 7 p.m. upto Chhattarpur. Evidence has also been led to prove that while Mahipal Singh was arrested along with his gun on November 12, 1970, he escaped from custody, failed to report on duty at police station Bajna after the expiry of two days' casual leave, and could be re-arrested only on August 1, 1971, after proceedings were taken against him under Section 87, Cr. P.C. It will be recalled that cap Ex. 1 was recovered from the place of the second incident on November 12, 1970, in the early morning, and the evidence on the record shows that it was a part of the uniform of appellant Mahipal Singh which fell down at the time of the incident and was left in a hurry.

15. The above parol and other evidence on the record has therefore rightly been held to be satisfactory for the purpose of the conviction of the appellants.

16. We may however refer to the other arguments of Mr. Pramod Swarup. He has pointed out that the first information report Ex. Ka-5 does not state that appellant Nirpat Singh was caught by Prem Narain (deceased) at the time of the second incident and was thrown on the ground along with his gun when he was re-loading the gun after firing at Basdeo. It is true that this is so, but the omission may be due to the fact that the report was lodged by Kesho Prasad (PW 7) who was not an eye witness. Moreover the omission relates to a matter of detail which might have been left out as unimportant. But the fact all the same remains that the broken piece of Nirpat Singh's gun was actually recovered from the place of the incident and, as has been stated, evidence has been led to prove that it was a part of that gun. The omission is therefore of no consequence.

17. Mr. Pramod Swarup has pointed out that it was not stated in the first information report that the cap of appellant Mahipal Singh fell down at the place of the second incident and that some fired cartridges were also found at the places where the murders were committed. It has been urged that if these articles had really been found as alleged by the prosecution, they would have been seized as soon as the Investigating Officer arrived there. Now, in so far as the omission in the first information report is concerned, its maker Kesho Prasad (PW 7) has stated that he stayed for about 1 or 2 minutes at the place of the first incident, he saw the dead bodies at the place of the second incident from a distance of about 2 or 3 paces, and left for the police station to lodge a report as his nephew had been murdered and he could not bear the sight of the dead bodies. The witness has stated further that he did not care to see whether the cap, broken piece of the butt-end and the cartridges were lying at the place of the incident. This is quite a satisfactory explanation.

18. As regards the non-seizure of the cap, broken piece of the butt-end and the cartridges, the Investigating Officer has stated that he thought it proper to leave the place of the incident in the charge of a constable as it was night time and to make an inspection of the site early next morning. This he did, and seized the articles without further delay.

19. An argument has been made that while constable Abadullah Khan (PW 22) has stated that 17 sealed bundles remained in his custody on November 12, 1970, there is no explanation how the number of the bundles rose to 21 thereafter as stated by constable Siddh Gopal Tiwari (PW 16). An attempt was made to argue further that the 4 additional bundles contained the cap and the three fired cartridges and were made up subsequently. We have examined the argument, but it cannot really be said to arise from the statements of Abadullah (PW 22) and Siddh Gopal Tiwari (PW 16). If the appellants had any reason to think that the four bundles were added surreptitiously, they should have cross-examined the Investigating Officer in that respect. But this was not done even though the Investigating Officer was cross-examined at considerable length. On the other hand, the evidence on the record leaves no room for doubt that the cap, the three cartridges and the broken portion of the butt-end of the gun were recovered early in the morning of November 12, 1970 and were sealed soon after. An attempt was also made to argue that Nirpat Singh's gun could not have been recovered and shown to Syed Ahmad Sultan (CW 2) as alleged by the prosecution because the witness returned from tour late in the evening while the gun was seized much earlier. The argument is futile because recovery memo Ex. Ka-8 shows that it was drawn up at 11.30 p.m.

20. It has next been argued by Mr. Pramod Swarup that there was no reason why the plea of alibi taken by Nirpat Singh, Uttam Singh and Mahipal Singh should have been rejected. We find however that appellant Nirpat Singh was employed as a clerk at a short distance of 6 miles from the place of

the incident. He did not even take the plea of alibi in the Court of the committing magistrate. All the same, the trial Judge examined Rasool (CW 1) and he proved that Nirpat Singh remained on duty only upto 3 p.m. on November 11, 1970 and went away thereafter. It is therefore futile to argue that he should have been held to be on his duty as a telephone clerk at Mahoba from 10 a.m. to 4 p.m. As has been stated, Mahoba was close by, and could be reached within a short time. Uttam Singh was employed as a teacher in a school at village Supa, where the murders took place, and it appears that the place of the first incident was at a distance of only 175 yards from the school. The trial Judge has rejected the plea of alibi for the reason that no such defence was taken in the Court of the committing magistrate and also because of the proximity of the school to the place of the incident where Uttam Singh could have reached well in time even if he had left at the close of the school at 4 p.m.

21. It has not been argued that appellant Natthu Singh was in a position to make out a plea of alibi and it only remains for us to examine a similar argument on behalf of appellant Mahipal Singh. He also did not take the plea in the Court of the committing magistrate that he was far away from the place of the incident owing to his posting at police station Bajna at the time of the incident. Moreover there is no justification for the argument of Mr. Pramod Swarup that the trial Court and the High Court have found it in Mahipal Singh's favour that he left Bajna police station only at 1 p.m. on the date of the incident. We have gone through the two judgments, and we find that no such finding has been arrived at there. All the same, the trial Court and the High Court have examined the plea of alibi even on the Assumption that Mahipal Singh left Bajna at 1 p.m., and have given reasons for holding that he could still have reached the place of the incident. It will be recalled that the participation of Mahipal Singh in the crime has been established not only by the parol evidence on the record, but also by the recovery of his cap from the place of the second incident and his conduct in escaping from police custody. He claims to have taken leave of absence for November 11 and 12, 1970, but he failed to report at the place of his posting even after the expiry of the leave. He in fact escaped from police custody and was re-arrested after several months on August 1, 1971 when proceedings were taken against him under Section 87, Cr. P.C. There is thus no force in the argument that the plea of alibi has been rejected out of hand.

22. It has lastly been argued on behalf of the appellants that there was no justification for awarding the extreme penalty of death for the murders because of the delay in the trial, and reference in this connection has been made to *Vivian Rodrick v. The State of West Bengal* [AIR 1971 SC 1584 : (1971) 1 SCC 468 : 1971 SCC (Cri) 192.], *State of Maharashtra v. Manglya Dhavu Kongi* [AIR 1972 SC 1797 : (1972) 3 SCC 46 : 1972 SCC (Cri) 237.] and *Shanker v. State of U.P.* [AIR 1975 SC 757 : (1975) 3 SCC 851 : 1975 SCC (Cri) 270.]. There is however no force in the argument because, as has been stated, appellants Natthu Singh, Uttam Singh and Mahipal Singh absconded and were apprehended after proceeding were taken against them under Section 87, Cr. P.C. Mahipal Singh was finally arrested on August 1, 1971. The trial Judge convicted and sentenced the appellants on December 12, 1973, and the High Court confirmed the death sentence on September 2, 1974. It cannot therefore be said that there has been any such delay as to justify the lesser sentence. On the other hand, the evidence on the record leaves no room for doubt that the appellants had on several occasions tried to take the law in their own hands and that led up to the murders which were committed after premeditation, with lethal weapons and in broad daylight when there was really no occasion for any provocation. There was no justification for murdering Banmali, Basdeo and Prem Narain for they had not even purchased the field from Natthu Singh. There is therefore no extenuating circumstances to justify the lesser sentence.

23. As we find no force in this appeal, it is hereby dismissed.

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