

State of Uttar Pradesh

Vs

Lalla Singh and Others

Criminal Appeal No. 85 Of 1974

(P. S. Kailasam, A. C. Gupta JJ)

28.11.1977

JUDGMENT

KAILASAM, J. -

1. This appeal is by the State of Uttar Pradesh by special leave against the judgment dated April 25, 1973 of the High Court of Judicature at Allahabad allowing the criminal appeal filed by the respondents against their conviction and sentence passed by the learned Sessions Judge, Pilibhit and acquitting them of all the charges.

2. The four respondents were committed to the Court of Session to stand their trial on charges under Section 302, Indian Penal Code, relating to the murder of three persons, Phool Singh, Mukhtar Singh and Srimati Jhabbo, on June 18, 1971. They were also charged for offences under Section 201, Indian Penal Code, for removing the dead bodies of these persons and thereby causing the disappearance of evidence and screening themselves from these offences.

3. Ram Swarup Singh and Brij Raj Singh, respondents 3 and 4 are brothers. They are the brothers-in-law of Lalla Singh, the first respondent. The second respondent, Bhagwan Singh, is their friend and they are all residents of the same village. The deceased Phool Singh and Mukhtar Singh were brothers and the third deceased Smt. Jhabbo is the wife of Phool Singh. The accused and the deceased were living in the same village.

4. The trouble arose over the children of Lalla Singh, the first respondent, plucking some unripe 'Jaman' fruit from a 'Jaman' tree in front of the house of the deceased on the evening of the day previous to the occurrence i.e. June 17, 1971. the deceased Smt. Jhabbo, the wife of the deceased Phool Singh, asked the children not to pluck 'Jaman' fruit. The wife of Lalla Singh, the first respondent, arrived at the spot and there was wordy quarrel between the wife of the first respondent and Smt. Jhabbo. Respondent 1, Lalla Singh and respondent 4, Brij Raj Singh, came there armed with lathis and the latter gave some blows to Smt. Jhabbo. Thereafter Brij Raj Singh and Lalla Singh left the scene, Brij Raj Singh threatening her that if a complaint was lodged they would kill them. At the time of the occurrence the two deceased Phool Singh and his brother Mukhtar Singh had gone to the Bazar of Udare. They returned after sunset, along with their sister's son, Brijendra Singh, PW 7, who had gone to the market for the purchase of a bull. Smt. Jhabbo told them about the occurrence. All of them spent the night in the house of the deceased and on the next morning i.e. June 18, 1971 at about 7 a.m. the deceased Phool Singh and Mukhtar Singh, Brijendra Singh, PW 7, the village chowkidar and Satya Pal Sing, the son of Phool Singh started for the police station to lodge a complaint. When they reached near the canal culvert at a place called "Mannia", the four accused came there. Lalla Singh, the first respondent, had a spear, Bhagwan Singh, the second

respondent, and Ram Swarup Singh, the third respondent, had 'Kantas' and Brij Raj Singh, the fourth respondent, had a 'lathi'. They surrounded the two deceased Phool Singh and Mukhtar Singh and started beating them. PW 1, Satya Pal Singh and PW 7 Brijendra Singh and the village chowkidar saw the occurrence from some distance. The occurrence was also witnessed by Nawab Singh, Kishore, Moti Teli and Babu Nai. Nawab Singh and Kishore are PW 2 and PW 8 respectively. After killing Phool Singh and Mukhtar Singh the respondent threw their bodies in the canal and walked away.

5. Satya Pal Singh returned to his house and informed his mother, Smt. Jhabbo, of the occurrence. By that time the four respondents reached the house of Satya Pal Singh and caught hold of Smt. Jhabbo and started beating her. They dragged her and took her away. Satya Pal Singh ran to village called Manpur and narrated the occurrence to Sardar Singh. At that time Balwant Singh PW 4 came there and told Satya Pal Singh that the respondents had also killed his mother Smt. Jhabbo and thrown the body in river Khandania. Satya Pal Singh ran to village Bhadeg Kanja to the house of his cousin-brother-in-law Lallu Singh and along with him went to the police station Bilsand and lodged the First Information Report at 10 a.m. Chunnu Singh Yadav, PW 14, who was the Incharge of the police station registered the case and took up investigation. He along with the complainant, Satya Pal Singh, came to the culvert at Mannia and started search for the dead bodies of Phool Singh and Mukhtar Singh. At that time he took down the statement of Satya Pal Singh. At about 1.30 p.m. the body of Phool Singh was recovered at a distance of 80 or 90 paces from the culvert. Receiving information that the body of Smt. Jhabbo was lying near the river Khandania he proceeded there and recovered her body from the bed of the river. He prepared the necessary reports and despatched the two bodies for post-mortem. He came back to the culvert of the canal at the village Mannia and prepared the site plant of the scene of occurrence. The dead body of Mukhtar Singh could not be recovered at that time. On June 20, 1977 the dead body of Mukhtar Singh was found in the canal. An inquest was conducted and the dead body was sent for the post-mortem examinations. The doctor who conducted the post-mortem found that all the three deceased had died as result of injuries received by them and that the injuries inflicted were sufficient to cause their death in the ordinary course of nature.

6. The four respondents pleaded not guilty to the charges. As already stated the Sessions Judge found the four accused guilty as charged by the prosecution. The first respondent was sentenced to the extreme penalty of law for causing the death of Smt. Jhabbo. He was also found guilty of causing the death of Phool Singh and Mukhtar Singh and sentenced to imprisonment for life on each of the two counts. The other three respondents were found guilty of causing the death of the three deceased and sentenced to imprisonment for life on each count.

7. On appeal by the respondents, the High Court found that the evidence of the eye-witnesses could not be accepted and therefore acquitted all the respondents of the charges. The present appeal is by the State of Uttar Pradesh against the order of acquittal by the High Court.

8. The case for the prosecution depends upon the testimony of the eye-witnesses, PW 1 Satya Pal Singh, PW 2 Nawab Singh, PW 7 Brijendra Singh and PW 8 Kishore so far as the murders of Phool Singh and Mukhtar Singh are concerned. The evidence of eye-witnesses PW 4 Balwant Singh and PW 9 Babu Singh relates to the murder of Smt. Jhabbo. We will now refer to the evidence of eye-witnesses relating to the murder of Phool Singh and Mukhtar Singh and the reasons given by the High Court for disbelieving it and examine whether those reasons can be accepted.

9. PW 1 Satya Pal Singh who is the son of Phool Singh and Smt. Jhabbo lodged the first

Information Report. He stated that on the morning of the fateful day he went along with the two deceased Phool Singh and Mukhtar Singh accompanied by the village chowkidar and Brijendra Singh PW 7, his cousin brother, for the purpose of lodging a complaint regarding the previous day's occurrence. On the way at Mannia village the respondent attacked the two deceased and caused their death. The High Court found the evidence of PW 1 unacceptable on various grounds. firstly, it was of the view : "It is not understandable that when the father and the uncle were proceeding in the accompaniment of the chowkidar and Brijendra Singh his cousin brother why it was thought necessary to take with them Satya Pal Singh, who was aged about 14-15 years". While the High Court referred to the explanation of Satya Pal that his mother asked him to accompany the party to the police station it found the explanation unacceptable. It expressed the view that as a threat was given on the previous evening by respondent Brijendra Singh that if anyone gave a complaint he would be done to death, it is unnatural for PW 1 to have accompanied the others for giving the complaint at the police station. We are unable to appreciate the reasoning of the High court for coming to the conclusion that PW 1 would not have accompanied his father and uncle. The explanation of the mother is that because of the threat she asked her son to go along with his father and uncle as it would be safer. The second ground on which the evidence of PW 1 was rejected by the High Court was that when a danger was apprehended by the deceased party they would have certainly gone armed with lathis and other weapons prepared to face any threat that might be given by the respondents. Here again we are unable to appreciate the reasoning. It cannot be disputed that Phool Singh and Mukhtar Singh did go and while on their way met with their death. It is also not disputed that they were not armed. One other reason given by the High Court is that there was no necessity at all for Phool Singh and Mukhtar Singh to go to the police station to lodge a complaint as the village chowkidar was present in the village. The reasoning is unsound for there is nothing improbable or unnatural in the aggrieved party choosing to go to the police station and lodging a complaint instead of sending it through the chowkidar of the village. Apart from the reasons which are stated above the High Court also relied on certain discrepancies in the evidence of Satya Pal for rejecting his testimony. One such discrepancy relates to the names of persons who were present at the time when his mother was dragged away from their house. In the First Information Report PW 1 stated that one Pratap Singh was present while in the evidence he stated that Kaptan Singh was also present. As the evidence of the Investigating Officer PW 14 is that Pratap Singh is the same person as Kaptan Singh and they are not two different persons the High Court came to the conclusion that the testimony of the witness is unreliable. We feel that the discrepancy is not of any consequence and the High Court should not have attached any importance to it. Another reason given by the High Court was that while the evidence of Satya Pal Singh was that his mother was dragged away there are no marks of dragging found on the dead body of Smt. Jhabbo. According to PW 1 the deceased Jhabbo was dragged by the hand and pushed by the accused. It is not his evidence that Jhabbo fell down and she was dragged along the ground. This observation of the High Court is due to misreading of the evidence of PW 1. Another circumstance pointed out by the High Court was that while there were other neighbours none of them was examined in regard to the occurrence of the previous evening of the dragging of Smt. Jhabbo. It is a common ground that the villagers are usually reluctant to get themselves involved in an occurrence especially where the accused are desperadoes. Moreover, independent witness have been examined and the prosecution has satisfactorily proved its case. But one defect in the evidence of PW 1 is that while in the First Information Report he did not state that he was an eye-witness to the occurrence of the murder of his mother Smt. Jhabbo in the evidence he claimed to have seen his mother being murdered at a distance of 20 or 25 paces. This part of the testimony is an improvement on the story given by PW 1 in the First Information Report and was rightly rejected by the trial Judge. The High Court was justified in not accepting this part of the story but that would not mean that the entire deposition of

PW 1 should be rejected. On a consideration of the testimony of PW1 we are satisfied that it was natural for him to have accompanied his father and uncle for the purpose of giving complaint to the police station and he is a truthful eye-witness. The reasons given by the High Court for rejecting his testimony are unsound and unacceptable. Without any delay PW 1 went to the police station and lodged the complaint giving all the relevant facts of the case. The learned Sessions Judge who had the opportunity of seeing this witness had no difficulty in accepting his testimony. We feel the reasons given by the High Court are totally unacceptable.

10. Brijendra Singh, PW 7, is the sister's son of Phool Singh and Mukhtar Singh. According to this witness he met the two deceased at the market where he had gone to buy bullocks and returned along with his uncles to their village and stayed there as it was dark and heard the incident narrated to them by Smt. Jhabbo. His testimony is that the next morning he accompanied the deceased, the chowkidar and PW 1 to the police station. While on the way he witnessed the occurrence. The High Court rejected his testimony on the ground that he went to the market to purchase bullocks but did not buy any on that day and even though he stated that he purchased bullocks subsequently in the village he did not produce any receipt. It is too much to expect villagers, buying anything especially from persons in the same village, to always insist on any receipt being given. Another circumstance found by the High Court against the testimony of this witness is that he would not have accompanied the deceased to the police station but would have returned in the morning to his own village. The High Court also adversely commented on his conduct after the incident by observing that instead of going to the house of the deceased he stayed in the village of Mannia and returned to his village the next day. We do not find anything unnatural in the witness's staying with his uncles during the night as it was late by the time they reached the village and in his accompanying them next morning for lodging a complaint. The name of the witness is mentioned in the first Information report and he was examined by the police on the same day. Another point that has been made by the High Court against this witness is that Lalla Singh, the first respondent, struck Phool Singh with the Bhala once and subsequently used the stick portion for beating him. The High Court was of the view that this is most unnatural as the Bhala is a sharp-edged weapon and as such is not likely to be used as a lathi. The medical report disclosed that Phool Singh had only one punctured wound and we do not see any discrepancy between the evidence of the witness and the medical report. In fact, the medical report corroborates the testimony of PW 7. The evidence of this witness was accepted by the trial Judge and we are of the view that the reasons given by the High Court for rejecting his testimony are not sound.

11. The other two witnesses to the incident are PW 2 Nawab Singh who is the Sabhapati of village Mannia, and PW 8 Kishore who is also a resident of village Mannia. These two witnesses are not mentioned in the First Information Report but from their testimony it is clear that they are natural witnesses to the occurrence and there are no grounds for disbelieving their testimony. PW 2 stated that about 7 o'clock in the morning when he was going to answer the call of nature and while he was near the culvert of Mannia he heard an alarm raised by the chowkidar that the accused were belabouring Phool Singh and Mukhtar Singh. He saw the incident and the accused chasing PW 1 Satya Pal Singh. The main reason given by the High Court for disbelieving this witness is that the witness being an important personality of the village PW 1 would not have omitted to mention his name in the First Information Report. PW 2 as well as PW 8 belong to Mannia. The scene of occurrence is different from the villages in which the deceased and these two witnesses were living. Though PW 1 knew PW 2 there is nothing improbable in PW 1 not mentioning PW 2's name in the first Information Report. It is not necessary that the names of all the eye-witnesses should be mentioned in the first Information Report. PW 1 while narrating the occurrence and the part played by the accused also mentioned the witnesses who accompanied the party and were prominent in his

mind. The mere non-mention of the names of the eye-Witnesses will not justify the rejection of the evidence of the eye-witnesses. PW 2, as already stated, is the Sabhapati of the village and there is no reason why he should testify falsely against the accused. No enmity has been proved between PW 2 and the accused. Moreover, this witness was examined by the police on the same day. Equally unconvincing is the reason given by the High Court for rejecting the testimony of PW 8, an independent witness and a resident of the village near the scene of occurrence. According to PW 8 he was going to his sugarcane field when he heard an alarm and saw the incident. The reason given by the High Court is that according to the testimony of the witness he heard the alarm while he was in the village and then left for the scene of occurrence and not as he would now say that while he was on his way to the sugarcane field he heard the alarm, ran to the scene and saw the occurrence. The scene of occurrence was very close to the village and according to the witness he saw it from a distance of 20 or 30 paces. We do not see any material discrepancy in the evidence of PW 8 which warrant its rejection.

12. On a careful consideration of the evidence of the four eye-witnesses we do not see any reason at all for rejecting their testimony. The trial Judge who had the opportunity of seeing the witnesses accepted their testimony. The reasons given by the High Court for rejecting the testimony of the eye-witnesses are totally unsound, and unacceptable.

13. Regarding the murder of the third deceased Smt. Jhabbo the prosecution has let in the evidence of PW 4 Balwant Singh and PW 9 Babu Singh, in addition to the testimony of PW 1. We have already stated that it is not safe to rely on the evidence of PW 1 when he states that he saw the attack on his mother. This version is not given in the First Information Report. But he did see his mother being dragged away by the four respondents which is mentioned in the First Information Report. PW 4 stated that he saw the accused dragging Smt. Jhabbo by holding her hands. The High court observed that according to PW 4 the accused fell her on the ground and while Brij Raj Singh and Ram Swarup Singh pressed the feet of Smt. Jhabbo, Bhagwan Singh pressed her head and Lala Singh took the 'Kanta' from Bhagwan Singh and chopped off her head. The High Court found the testimony of this witness not acceptable because if according to the witness Smt. Jhabbo was dragged there would have been abrasions on the dead body of Smt. Jhabbo which were not disclosed in the post-mortem. PW 4 did not in his testimony state that Smt. Jhabbo was dragged along the floor. The witness had stated that the accused dragged Smt. Jhabbo by holding her hands. It was only when she reached the spot where she was done to death that she was pushed down and held while the first respondent severed her head. The reasoning of the High Court that there would have been abrasions on the dead body of Smt. Jhabbo is due to misreading of his evidence. No doubt, the name of the witness is not mentioned in the First Information Report but this is not a sufficient ground for rejecting his evidence. As already pointed out by us he is not a resident of the village to which PW 1 belonged and that mere omission in the F.I.R. would not justify the rejection of the testimony of the witness.

14. The other eye-witness who speaks about the murder of Smt. Jhabbo is Babu Singh PW 9. The witness is the first cousin of Phool Singh and Mukhtar Singh. The reason given by the High Court for not accepting his testimony is that in view of the close relationship the witness would have made an attempt to collect people and protect Smt. Jhabbo from being dragged and murdered. We do not think it could be expected from a witness like PW 9 to make any attempt to rescue Smt. Jhabbo from the hands of four persons who were determined to murder her. The High Court also found that the testimony of this witness is un-acceptable because he is closely related to the deceased. The deceased as well as the accused are related as amongst themselves and there is no justification for rejection of the testimony of PW 9 on the ground that he is related to the deceased.

15. On reading the testimony of the eye-witness we are satisfied that they are telling the truth. They are all natural witnesses and the First Information Report was lodged without any delay. The trial Court relying on the testimony of the eye-witnesses found the accused guilty of the murder of the three deceased. The evidence of the eye-witnesses is convincing and we can find no reasonable ground for rejecting it. In our opinion the High Court has rejected the evidence of the eye-witnesses on wholly unacceptable and flimsy grounds.

16. We are fully conscious of the fact that his appeal is by special leave under Article 136 of the Constitution and is an appeal against acquittal. In such a case this Court would not interfere, if there are not sufficient grounds for doing so, with the decision arrived at by the High Court. We are satisfied that the conclusion arrived at by High Court is speculative and in disregard of the evidence and therefore unsupportable. We therefore allow the appeal, set aside the judgment and order of acquittal passed by the High Court and restore the conviction of the four respondents on the various charges as found by the Sessions Judge.

17. Regarding the sentence, the Sessions Judge has imposed death sentence on the first respondent, Lalla Singh, for the murder of Smt, Jhabbo as he had severed her head. On the other two counts Lalla Singh was sentenced to imprisonment for life and as already stated the other three respondents were sentenced to imprisonment for life on each of the three counts for causing the death of the three deceased.

18. Mr. Mukherjea, the learned counsel for the respondents, submitted that in the event of this Court allowing the appeal by the State the question of sentence of the first respondent should be considered. The trial Judge inflicted the extreme penalty on the first respondent as he has found guilty of the most gruesome act of cutting the head of the deceased Smt. Jhabbo. While we are unable to say that the learned Sessions Judge was in error in imposing the extreme penalty, we feel that as the offence was committed on June 18, 1971 more than six years ago, the ends of justice do not require that we should confirm the sentence of death passed on the first respondent. While reducing the sentence of death passed on the first respondent to one of imprisonment for life, we confirm the convictions and sentences imposed on all the accused, by the trial Judge.

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