

Ram Adhar

Vs

State of U. P.

Criminal Appeal No. 370 of 1975

(V. D. Tulzapurkar, O. Chinnappa Reddy JJ)

18.10.1978

JUDGMENT

Tulzapurkar, J. -

1. The appellant-accused was sentenced to death by the second Temporary Civil and Sessions Judge, Kanpur under Section 302 IPC for committing the murder of his uncle Phool Chand in Sessions Case 279 of 1972 on November 25, 1972, which conviction and sentence were confirmed by the Allahabad High Court in Criminal Appeal 3336 of 1972 and Reference Case 128 of 1972. He has challenged his said conviction and sentence in this appeal by special leave granted on December 2, 1975.

2. The incident during the course of which Phool Chand was assaulted by the appellant-accused with a 'Karauli' inflicting numerous injuries is said to have taken place on March 16, 1972 at about 6.00 p.m. in the 8-Biswa field of Phool Chand in village Bhagwantpur and the motive for the assault was property dispute. Briefly stated the prosecution case was that deceased Phool Chand, whose only daughter had died some 16/17 years ago, had brought his son-in-law Salig Ram and three grandsons Babu, Chote Lal and Raghuraj (PW 1) to his village Bhagwantpur and they were living with him. About 10 months prior to the occurrence Phool Chand had executed a gift deed (Ex. Ka-27) in respect of his 1/3rd separated share in the ancestral lands (admeasuring 11 1/2 bighas) in favour of Smt. Rajeshwari widow of Babu (who had in the meantime died), Chote Lal and Raghuraj (PW 1). This was not relished by the appellant-accused and his brother Mahadev (nephews of Phool Chand). After the execution of the gift deed Phool Chand had applied for the grant of a Bhumidari Sanad in respect of his lands after despoiling 20 times the rent of his share in the aforesaid lands and in spite of objections filed by the appellant-accused and his brother Bhumidari Sanad had been granted to him on December 31, 1971; thereafter Raghuraj (PW 1), his brother Chote Lal and his brother's wife Smt. Rajeshwari applied for the mutation of the said lands in their names in the revenue records but the appellant-accused and his brother Mahadev preferred objections to it on June 3, 1972 and the application for mutation was pending at the time of the occurrence. On March 16, 1972 at about 6.00 p.m. Phool Chand and Raghuraj (PW 1) went to the 8-Biswa field in which wheat crop was standing; they had gone there for uprooting 'Hariyali' (green fodder). Raghuraj started uprooting the 'Hariyali' near a jack-fruit tree at the western 'mend' (Bandh) of the field while Phool Chand sat on the southern 'mend' (Bandh) in the south-east corner of the field and according to the prosecution at that time the appellant-accused came to the field armed with a 'Karauli' and started stabbing Phool Chand after pulling him down from the Bandh. Phool Chand raised shouts; Raghuraj also shouted with the result that Khushi Ram (PW 2), Hussain Bux (PW 3) and Chote Lal (PW 4) went running to the spot from different directions. But, in the meantime, the appellant-accused had inflicted a number of injuries on Phool Chand who had fallen down. On being

questioned and admonished by these three witnesses, the appellant-accused ran away towards north. Raghuraj and others went near Phool Chand but after one or two hiccoughs Phool Chand died on the spot. Blood had flown out from his wounds and his clothes were also stained with blood. Raghuraj got a report prepared in his house and carried it to the police station Gajner after walking a distance of 4 miles from his village and lodged the same with Bhoop Singh, Head Constable, at 8.45 p.m. The Head Constable forwarded the papers to the Station House and left for the village along with one Babu Ram Constable. A. S. I. Falah Uddin (PW 5) received the papers at about 1.00 a.m. at night at Bishnupur where he had gone in connection with some other investigation and from there he proceeded to Bhagwantpur village. In the morning of March 17, 1972 he held an inquest of the dead body and sent it for post-mortem examination. He recorded the statements of the witnesses and prepared site plan whereafter further investigation was done by Station House Officer S. I. Shashidar (PW 6). The autopsy on the dead body of Phool Chand was performed by Dr. A. K. Khanna (Medical Officer) on March 18, 1972 to 1.00 p.m. and he found as many as 18 injuries - 13 incised wounds, some on the neck, some on the chest and some on the face, and 5 abrasions; out of the 13 incised wounds 5 or 6 were on the neck and about 5 were on the chest and on internal examination it was noticed that both right and left pleura were incised at the apex, and the right pleura cavity contained 1 1/2 lbs. of clotted blood and the left pleura cavity contained 1 lb. of clotted blood; that trachea was incised at the 6th tracheal ring on the right side and the right and left lungs were ruptured at the apex. According to Dr. Khanna death was due to shock and haemorrhage on account of the aforesaid ante-mortem injuries and the death could have taken place in the evening of March 16, 1972. On completion of the investigation a charge-sheet was submitted against the appellant-accused on May 13, 1972 and after the preliminary inquiry the Additional District Magistrate (J) Kanpur sent the appellant-accused to the Sessions Court to take his trial under Section 302 IPC.

3. The appellant-accused denied having committed the crime and contended that he had been falsely implicated in the case on account of enmity. He suggested that a false case had been made out against him so that he may not be in a position to contest the Bhumidari and mutation proceedings.

4. At the trial four eyewitnesses were examined, they being Raghuraj (PW 1), Khushi Ram (PW 2), Hussain Bux (PW 3) and Chote Lal (PW 4). On an appreciation of the oral evidence of these four eyewitnesses as well as the medical evidence and the evidence pertaining to the investigation done by A. S. I. Falah Uddin (PW 5) and S. O. Shashidar (PW 6), the learned Sessions Judge, came to the conclusion that the prosecution had established the guilt of the appellant-accused beyond reasonable doubt and, therefore, convicted him under Section 302 IPC and having regard to the brutal manner in which the murder had been committed out of greed for property he sentenced him to death. As stated earlier, the High Court confirmed the conviction and sentence in appeal preferred by the appellant and in the confirmation case.

5. At the outset it may be stated that counsel for the appellant-accused did not seriously challenge the lower court's findings as regards the time, place and the factum of murder of Phool Chand. He, however, urged that the motive suggested by the prosecution would cut both ways and should furnish a ground for coming to the conclusion that the appellant-accused had been falsely implicated in the case with a view to prevent him from contesting the mutation proceedings that were pending before the Revenue Authorities. He also contended that the witnesses on whose testimony the lower courts have relied for connecting the appellant-accused with the crime should be regarded as witnesses who belonged to one party and as such their evidence was liable to be discarded. For the reasons which we shall indicate presently, it is not possible to accept either of these contentions.

6. It is true that there was some property dispute between deceased Phool Chand on the one hand and the appellant-accused and his brother Mahadev on the other but on an appraisal of the evidence pertaining to the dispute it will be clear that it was the appellant-accused who had adopted a wrong attitude. After all, Phool Chand had no issue except a daughter who was married to one Salig Ram; that daughter had died some 16 or 17 years ago with the result that his son-in-law and grandchildren had gone to stay with Phool Chand in village Bhagwantpur. One of the grandsons Babu died leaving his widow Smt. Rajeshwari and in that situation it was natural for Phool Chand to have executed a gift deed in favour of Smt. Rajeshwari and two grandsons Chote Lal and Raghuraj (PW 1). It was the appellant-accused and his brother Mahadev who felt offended at the execution of such gift deed and filed objections in Bhumidari proceedings and mutation proceedings that were commenced by deceased Phool Chand and his grandsons respectively. The Bhumidari proceedings were over in the sense that notwithstanding the objections filed by the appellant-accused the Bhumidari Sanad had been issued to Phool Chand and at about the time of occurrence only mutation proceedings were pending. If this property dispute is looked at from this angle it would appear clear that it would be the appellant-accused who would be more aggrieved by the steps that were taken by deceased Phool Chand in transferring his lands to his grandchildren rather than the deceased Phool Chand and his grandchildren harbouring any grudge against the appellant-accused. In our view, both the courts have correctly appreciated the evidence on the point of motive and have rightly come to the conclusion that it was the appellant-accused who had motive to indulge in the fatal assault on the deceased Phool Chand on the day of occurrence.

7. Coming to the incident itself it cannot be disputed that all the four eyewitnesses have given consistent story about assault by the appellant-accused on Phool Chand with a 'Karauli'. Further, the FIR was lodged by Raghuraj (PW 1) at Gajner police station on the same day within two hours of the occurrence and in this report the names of other three eye-witnesses namely, Khushi Ram, Hussain Bux and Chote Lal have been mentioned. Nothing has been elicited in the cross-examination of any of these witnesses which would detract from their evidence given in examination-in-chief, except for some minor contradictions which are of no consequence. There is, therefore, no reason to reject their evidence. Counsel for the appellant-accused, however, urged that all the four witnesses should be regarded as belonging to one party and as such should be regarded as interested witnesses and, therefore, their evidence was liable to be rejected. It is true that Raghuraj (PW 1) happens to be the grandson of deceased Phool Chand; that by itself would be no ground to view his evidence with any distrust. Khushi Ram (PW 2) cannot be said to be interested in deceased Phool Chand or Raghuraj (PW 1). In cross-examination a suggestion was made to him that the brother of the appellant-accused had lodged a report against his brother Ram Chand a month before the occurrence but the witness stated that he did not know whether such a report had been lodged against his brother Ram Chand. It was also suggested to him that he was a partner with Salig Ram in the 20-Bigha cultivatory holding and, therefore, he was deposing falsely against the appellant-accused, but he denied the suggestion emphatically and no material was brought on record to render that suggestion reasonably probable. Same is the case with regard to Hussain Bux (PW 3); the witness belongs to a different community and cannot be regarded as an interested witness; it was suggested to him that he had taken Salig Ram's land on 'Batai' (crop share basis) and that he was working as a labourer at Salig Ram's place but he emphatically denied both the suggestions and again no material was brought on record to render those suggestions reasonably probable. As regards Chote Lal (PW 4) (being another Chote Lal and not the grandson of Phool Chand) who is a body of 15 years, nothing has been elicited whatsoever in his cross-examination which should go to discredit his evidence in examination-in-chief; a suggestion was made that in the land dispute appellant-accused on the one hand and Phool Chand on the other, the witness's father was a helper

and Pairokar of Phool Chand but he denied that suggestion; he however, admitted that Phool Chand, had taken a loan of Rs. 600 from his father to contest that case but Salig Ram had returned that amount to him one month after the incident of murder; we do not think that this casts any reflection or doubt on his evidence touching the occurrence which he had seen.

8. In our view, therefore, it is not possible to accept the contention of counsel for the appellant-accused that all the four witnesses should be regarded as witnesses belonging to one party; in fact, apart from Raghuraj (PW 1), none of the other witnesses could be said to be interested in the deceased Phool Chand nor any of them had any enmity towards the appellant-accused. The conviction of the appellant-accused for the offence of murder under Section 302 IPC was, therefore, perfectly justified.

9. Counsel for the appellant-accused, however, urged, that having regard to the fact that six years have elapsed since the occurrence, the capital sentence imposed upon the appellant-accused should be commuted to life imprisonment. It cannot be disputed that six long years have elapsed since the occurrence and it would be really hard to confirm the death sentence imposed upon the appellant-accused. Moreover, the appellant-accused is not responsible in any manner for such lapse of time that has occurred. We, therefore, commute the sentence of death and sentence the appellant-accused to life imprisonment. Subject to this modification in the sentence the appeal is dismissed.

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