

Purnia

Vs

State of Orissa

Criminal Appeal No. 323 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

22.03.1979

JUDGMENT

CHINNAPPA REDDY J.

1. The appellant was convicted by the learned IInd Additional District and Sessions Judge, Kanpur, of an offence under Section 302 Indian Penal Code and sentenced to death. The conviction and sentence were confirmed by the High Court of Allahabad. Alongwith the appellant Ram Sanehi was tried for an offence under Section 302 read with Section 120B I.P.C., while Munshi Lal was tried for an offence under Section 302 read with Section 34 I.P.C. Ram Sanehi was acquitted by the Trial Court while Munshi Lal was convicted under Section 302 read with Section 34 I.P.C. and sentenced to death by the learned Sessions Judge. The sentence of death passed on Munshi Lal was set aside by the High Court and the sentence of imprisonment for life was substituted in its place. Ramesh alone has appealed to this Court by special leave.

2. The prosecution case was that there was enmity between Nand Kishore, deceased and Ram Sanehi. Ram Sanehi had been beaten earlier and it was suspected that the beating was at the instance of Nand Kishore. Ram Sanehi, according to the prosecution, hired Ramesh and Munshi Lal to murder Nand Kishore. Ramesh and Munshi Lal, it may be mentioned here belong to a different village. On February 23, 1973, at about 7.30 a.m. Jai Ram (PW 1) who is related to Nand Kishore as a distant nephew was going towards the fields to the west of the village in order to ease himself. Ramesh and Munshi, the two accused were going ahead of him. Nand Kishore was going ahead of the two accused. Ram Gopal (PW 3) and Shankar Kori were going behind PW 1. When PW 1 reached the cluster of mango trees in the grove of Rama Kant he saw Munshi pointing Nand Kishore to Ramesh and Ramesh firing a shot from a pistol at Nand Kishore. Nand Kishore stumbled and was about to fall when Ramesh fired a second shot. PW 1 was not, however, sure whether the 2nd shot hit Nand Kishore. Nand Kishore, however, fell down. PW 1 then chased the accused. He was joined by Ram Gopal (PW 3), Shankar Kori, Faqir Singh (PW 2), Bhawani Singh and others. After the witnesses chased the accused for some distance they were joined in the chase by others - Pattar (PW 4) Ram Nath, Lallu, Chetkau Kori, Ram Kumar. Ramesh was caught in the field of Labhadwaj Singh while Munshi Lal went ahead. Munshi Lal was further chased and he was also caught in the field of Ram Shankar and brought to the place where Ramesh had been apprehended. A pistol and a belt containing 15 cartridges were seized from Ramesh while 5 live cartridges were recovered from Munshi Lal. At the time of catching Ramesh and Munshi Lal both of them were given a sound beating. In fact the hands of Munshi Lal were cut. The two accused were taken to the place where Nand Kishore was lying. Nand Kishore was dead by that time. PW 1 went to his house taking with him the pistol and the cartridges which had been seized. At his house he prepared a written report. He then proceeded to the Police Station at Ghatampur one mile away and handed

over the report, the pistol and the cartridges to the Sub-Inspector incharge of the Police Station at 10.30 a.m. In the report it was mentioned that Ramesh fired two shots at Nand Kishore at the instigation of Munshi Lal. It was also mentioned that the occurrence had been witnessed by PW 1, PW 3, PW 2, Bhawani Singh, Shankar Kori and others and that all of them had chased the assailant and caught them. The recovery of the pistol and cartridges from Ramesh and Munshi Lal was also mentioned in the report. After receiving the report PW 12, Sub Inspector of Police went to the village, held the inquest and arranged to send the dead-body for post mortem examination. He also sent the two accused to the hospital as he found that they had serious injuries on them. At the scene of occurrence he found a fired cartridge and a lota, which he seized. He also seized blood stained earth from the place where the deceased had fallen. After completing the investigation he filed a charge-sheet against Ram Sanahi, Ramesh and Munshi Lal.

3. In support of the prosecution case PWs 1, 2 and 3 were examined as direct witnesses to the occurrence. PW 1 spoke to the case of the prosecution substantially as set out in the previous paragraph. PW 2 stated that he was returning home after easing himself. When he was near the western ridge of the field of Shree Narain, he saw the deceased going with a lota to ease himself. Behind him were the two accused persons Ramesh and Munshi Lal. When Nand Kishore reached the ridge between the fields of Shiv Nath Singh and Putni Singh, on the signalling of Munshi Lal, Ramesh fired shots from a pistol. After shooting, the two accused persons started running away. They were chased by him and several others. First Ramesh was caught. Later Munshi Lal was caught. PW 2 also spoke about the recovery of pistol and cartridges as also to the severe beating that was given to the two accused by the villagers. PW 3 Ram Gopal stated that he was going to his field on the morning of the day of the occurrence. He was going behind PW 1. The two accused were ahead of PW 1. Nand Kishore was going ahead of the two accused. When PW 3 had reached the mango trees of Rama Kant, he saw Munshi signalling and Ramesh firing from a pistol. PW 3 also spoke of the chasing of the two accused and their apprehension. PW 4 did not see the occurrence but he stated that when he was going to Jalala from his village and had reached the field of Kedar Nath, he heard two pistol shots and saw PW 1 and others chasing the two accused persons. He also joined the chase and the two accused persons were apprehended.

4. In addition to these four witnesses, the prosecution examined Babu Singh (PW 5) to establish the charge of conspiracy.

5. The plea of the accused was one of denial. Ramesh stated that he had some dispute with Jai Ram in connection with the milk business and the collection of charges for keeping a cycle at the cycle stand at the school. On the day of occurrence when he was passing through Jai Ram's house, Jai Ram caught hold of him and falsely implicated him in this case. He was also beaten by him. Munshi Lal stated that he was going to the place of his maternal uncle and was passing through the village Bhadras when five or six persons caught him, beat him and cut his hands. He became unconscious and did not know what happened afterwards. Ramesh examined PWs 1 and 2 to establish that he had a sub-contract of the cycle stand at the school in which Jai Ram was working as a Peon.

6. The learned Sessions Judge rejected the evidence of PW 5 and acquitted Ram Sanahi of the charge of conspiracy. He accepted the evidence of PWs 1 to 4 and convicted Ramesh, under Section 302 IPC, and Munshi Lal under Section 302 read with Section 34 IPC. Both were sentenced to death. The High Court confirmed the conviction and sentence passed on Ramesh. In regard to Munshi Lal, the High Court disbelieved the story of the prosecution that Munshi Lal signalled Ramesh, but nevertheless convicted him under Section 302 read with Section 34 IPC on the ground that his presence along with Ramesh and the other circumstances of the case showed that he shared

with Ramesh the common intention to kill Nand Kishore. The sentence passed on Munshi Lal was, however, altered to imprisonment for life.

7. The learned counsel for the appellant took us through the entire evidence. The learned counsel argued that Ramesh had been falsely implicated by Jai Ram and his friends because of enmity. He drew our attention to the suggestion made to PW 1 that PW 1 himself was responsible for the murder of Nand Kishore and that he had got the case foisted against the accused. The learned counsel argued that Jai Ram knew the accused Ramesh well and yet denied that he never knew him before the occurrence. The learned counsel also argued that PWs 2 and 3 could not have seen the occurrence from the places where they were. He further argued that all these witnesses were responsible for the serious injuries caused to Ramesh and Munshi Lal and in order to save themselves they were now trying to support the prosecution case.

8. We are unable to see any substance in any of the submissions of the learned counsel. PW 1 gave a full and detailed account of the occurrence and his evidence is corroborated in all material particulars by the report which was given at the Police Station, within three hours after the occurrence. The suggestion made to him that he was responsible for the murder of Nand Kishore can only be described as a fantastic suggestion. Nand Kishore was his distant relative and in fact in the dispute between Ram Sanehi and Nand Kishore, PW 1's father and brother were on Nand Kishore's side and had even been sentenced in a criminal case. There was no reason whatsoever for Jai Ram to kill Nand Kishore. The suggestion appears to be made just for the sake of making a suggestion. It was also suggested that PW 1 had some dispute with Ramesh in connection with a milk business and the collection of charges at the cycle stand near the School. In regard to the alleged milk business nothing was elicited and no evidence was adduced to substantiate the suggestion. In regard to the cycle stand DW 1 and 2 were examined to say that Ramesh had taken a sub-contract of the cycle stand from DW 1. Though DW 1, asserted that he was the contractor for the cycle stand, it turned out ultimately that it was his father and not DW 1 who was the contractor. Even assuming that Ramesh was the sub-contractor of the cycle stand it does not follow that PW 1 had any enmity with Ramesh. The evidence of PW 1 is corroborated by the First Information Report and also by the weighty circumstance that the accused were apprehended immediately after the occurrence. In other words the accused were caught almost red handed. Against PWs 2 and 3 all that was suggested was that they had falsely implicated Ramesh and Munshi Lal at the instance of PW 1. The suggestion is entirely without substance and receives no support from the evidence. The learned counsel argued that PW 2 could not have witnessed the occurrence from the place from where he claims to have witnessed the occurrence. In the cross-examination of the witnesses nothing was elicited from the witnesses to substantiate this argument. We think that the learned Sessions Judge and the High Court were right in accepting the evidence of the three eye witnesses PWs 1, 2 and 3. One general criticism of the learned Counsel against these three witnesses was that they did not mention who caused the injuries to the two accused persons and since they were obviously suppressing material information their evidence regarding the attack on the deceased should not also be accepted. We see no force in the submission. It is patent that after the deceased was shot dead the two accused were chased and caught by PWs 1, 2, 3 and 4 and other villagers. All of them had apparently joined in giving a good beating to the two accused persons and causing serious injuries to them. PWs 1 to 4 were not willing to give details of the beating of the two accused persons for the obvious reason that they did not want to implicate themselves. On that ground we are not prepared to reject their evidence. The learned Counsel urged that the seizure memo showed that the shirt worn by the deceased was not blood stained though the banyan and sadri were blood stained. This according to the learned Counsel showed that there was some tampering with the dead body. There is no substance in this submission. The report of the Chemical examiner shows that the banyan, shirt

and sadri were all of them drenched in blood. The learned Counsel further urged that PW 1 admittedly washed the blood stains on his shirt, his shirt having become blood stained at the scene of occurrence. We are unable to see anything sinister in Jai Ram washing away the blood stains on the shirt. He was proceeding to another village where the Police Station was situate in order to give the report. If he thought that he should wash the blood stains on the shirt before going, we see nothing wrong.

9. Another important item of evidence against the appellant is the opinion of the ballistic expert. The empty cartridges found at the scene of occurrence were fired from the pistol which was seized from the accused. Though the ballistic expert was cross-examined at some length, nothing was elicited to render his opinion unacceptable. We, therefore, have no hesitation in confirming the conviction of Ramesh under Section 302 IPC. The learned Counsel argued that the sentence may be altered to one of imprisonment for life. The appellant was a hired assassin. He committed the murder of Nand Kishore for no motive except to earn a reward. We are unable to find any outweighing circumstance to interfere with the discretion concurrently exercised by the Sessions Judge and the High Court. The appeal is, therefore, dismissed.

</html