

Maharaj Singh and Another

Vs

State of Rajasthan

And Khilku Singh

Vs

State of Rajasthan

Criminal Appeals Nos. 56 and 280 of 1974

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

16.12.1980

JUDGMENT

SARKARIA, J. –

1. Criminal Appeal 56 of 1974 by Maharaj Singh and Hotam Singh, sons of Kanchana, and Criminal Appeal 280 of 1974 by Khilku Singh alias Ajmer Singh, are directed against a common judgment, dated December 17, 1973, of the Rajasthan High Court, whereby the acquittal of these three appellants recorded by the trial Court, was reversed and each of them was convicted under Section 302 read with Section 34, Penal Code, for the murder of Gupta and sentenced to imprisonment for life. The appeals arise out of these facts :

2. Three or four days before Deepawali, on October 27, 1967, Gupta deceased was proceeding in the company of the Sarpanch Jhandel Singh, Mohan Singh, Durge, Kanhaiya, Mohanle and Prabhu Kumar of village Soha to village Bari for making purchases for the coming Deepawali festival. At Kanchanpur Tonga Stand, they were looking for a tonga for going to Bari. The appellants maharaj Singh, Hotam Singh and Khilku (hereinafter referred to as 'the accused' came there and caught hold of Gupta and forcibly took him to a chabutra. Soon thereafter, on his return to Kanchanpur from village Maharashtra, where he had gone of the begging, Munshi, brother of Gupta, was informed by a boy in front of the chakki of Reghubir Singh, that Gupta had been caught and forcibly taken away by the accused with them. Munshi then went to the house of the accused and saw Gupta tied there to a neem tree with a rope. Munshi and his companions, Jhandel Singh and Mohan Singh etc. entreated the accused to release Gupta. The accused told them that Gupta had stolen their Bajra crop and they would release him only if 50 maunds of Bajra grain were Given to them, otherwise they would take him to Dholpur police Station. Jhandel Singh asked the accused persons to either allow Gupta to take oath and state the truth regarding the charge of theft, or, in the alternative, the accused should take the oath and then take away the Bajra which would be supplied. This offer was not accepted by the accused and they did not release Gupta but forcibly took him to the Haveli of the Thakurs where the accused were residing. Munshi and Kanhaiya followed the accused and Gupta to the house of the accused. Munshi ad Kanhaiya wanted to follow the accused and the deceased into the Haveli but were not allowed to do so by the accused. After sometime, all the three accused came out of the Haveli and brought out Gupta whose hands had been tied with a rope and the rope was handled by

Maharaj Singh, Khilku was area with a muzzle-loading gun and Hotam Singh had a country-made pistol within Bigha (PW) 11) joined Munshi and Kanhaiya. All these three entreated the accused, in vain, to release Gupta. The accused then forcibly them. They took Gupta to a distance of about two furlongs from the villages where Hotam accused told the other accused that it was a proper place for the filed purpose. Thereupon, all the other accused forcibly took Gupta into the filed under arhar crop. Munshi, Bigha and Kanhaiya, also, wanted to follow the accused, but under threat of dire consequences, were made to halt on the ridge of the filed. After going a few paces into the filed, Hotam Singh fired two shots. On being but, hit, Gupta fell down. Thinking that Gupta was still alive, Khilku fired his gun, wounding the deceased on the neck Khilku reloaded his gun and fired against toward Gupta. Thereafter, all the three accused ran away from the spot. Munshi then went to the Police Station, Bari, 6 1/2 miles away, and lodged the first information report (Ex. P-10) there at 3.30 p. m. The investigating Police officer came to the spot, prepared the inquest report and sent the body for post-mortem examination. Dr. R. B. Nigam (PW 13) found these five external injuries on the dead body :

- (1) Blackish burn 3/4 inch x 1/2 inch behind the left ear.
- (2) Blackish burn 1 inch x 1/2 inch on the outer and upper margin of left ear.
- (3) gunshot wound 1/2 inch x 1/4 inch with blackish margins up to 3/4 inch all round the wound on the let side of neck behind the angle of mandible causing fracture of the body of the left mandible and fracture of the molar tooth of left side.
- (4) gunshot wound 1 1/4 inches x 1 1/4 inches circular entering the abdominal cavity on the left side of abdomen 5 inches away and parallel to umbilicus with gunpowder burn nearly 3 inches all round the would.
- (5) Gunshot wound 1 1/4 inches x 1 1/4 inches circular entering the abdominal cavity on left side of the abdomen in the mid axillary in the kidney region with blackish gunpowder stain nearly 3 inches all round the wound. These three gunshot wounds has inverted margins and were the wounds of entry. There was no exit wound.

In the opinion of Dr. Nigam, Gupta died due to severe hemorrhage and shock resulting from gunshot injuries which were sufficient in the ordinary course of nature to cause the death. The doctor also found in the abdominal cavity two cardboard khokhas, 6 cardboard round pieces and 72 small pellets. In the opinion of the doctor, the shots which caused the fatal injuries had been fired from a point-blank range. He further opined the two separate firearms must have been used in inflicting the gunshot injuries found on the body of Gupta. In cross-examination, Dr. Nigam Clarified that the injuries found on the body of the deceased were the result of not more than three gun-fires.

3. Maharaj Singh and Hotam Singh were arrested on January 11, 1968 from a nearby jungle. Maharaj Singh and Hotam Singh were first put on trial. Khilku had absconded. He was arrested later on November 28, 1968 and was tried separately. The Sessions Judge acquitted the accused persons in both the trials. The State went in appeal against those acquittals to the High Court with the aforesaid result. Hence, these appeals which are being disposed of by a common judgment.

4. At the trial of Maharaj Singh and Hotam sigh, the statements of Kanhaiya (PW 5) and Bigha (PW 11) recorded by the Committing Magistrate, were transferred under Section 288, Cr P C to the

Sessions record. Munshi was also examined as the eyewitness. At both the trials, Munshi had substantially supported the prosecution story set out above six prosecution within, namely, PW 1, PW 3, PW 4, PW 5 and PW 11 turned hostile and were cross-examined by the public Prosecutor.

5. Learned counsel for the appellants contends that it was highly unsafe to convict Khilku on the testimony of the sole eyewitness, Munshi, who was the elder brother of the deceased. Great stress has been laid on the fact that the medical, officer, who conducted the post-mortem examination, did not find any ligature marks on the hands or arms of the dead body; that the rope (Article 2) had no blood-stains on it. The absence of imprints of the rope on the arms, or wrists of the deceased, and the absence of blood-stains on the rope, according to the learned counsel, falsify the evidence of Munshi (PW 7), inasmuch as he testified that the arms and (wrists) hands of Gupta had been tied with a rope when he was forcibly into the arhar filed ad shot dead there by the accused.

6. At Khilku's trial, Dr. Nigam (PW 10) said in cross-examination, that he did not find nay mark of tying by string on either wrist of the deceased. Roop Chand (PW 9), Investigating Officer, testified that when he saw the dead body at the spot, both its hands were found tied with a rope. The witness took that rope into possession. In cross-examination, he stated that he had seen the marks left by the bandage of the rope on the wrists of the dead body, but there were no such signs of the bandage of the string on the arms. He, however, admitted that he had not made any mention about the presence of such marks on the wrists of the dead body in the Panchanama which was prepared by him before untying the string or in the note which he had sent to the medical officer. This non-mention, according to the investigator was due to a slip of mind.

7. In our opinion, the mere fact that the doctor who conducted the autopsy did not note or find any imprints of a rope on the wrists of the dead body, is hardly a ground for rejecting the evidence of Munshi that the hands of the deceased had been tied at his back when he was forcibly taken by the accused into the arhar filed and shot dead there. The wrists around which the rope had been tied are not flabby limbs of the body. The deceased was a rustic, hardskinned villager. The rope was therefore, not likely to leave any distinct imprints on the wrists.. in any case, they might have disappeared or become extremely faint at the time of the post-mortem examination which was syndicated about 24 hours after the string had been untied by the investigating officer. There was no reason to doubt the testimony of the investigating officer that he fund the hands of the dead body tied with the string (Ex. Article 2) which he had untied and taken into possession there at the scene of offence before the Panchayatdars.

8. Even the hostile witness, Jhandel Singh (PW 4) in whose presence the investigating officer had untied the rope from the writs of the deceased, did not categorically deny that the hands of Gupta were found tied at his back with a string. When the Public Prosecutor read out to him his previous statement (ex. P-6) in which he had spoken to that fact, the witness replied that ' he might have stated like that". Much capital therefore, can be made out of the fact that the medical officer, who conducted the post-mortem examination, did not find any imprints of the rope or string in the wrists of the dead body.

9. The second contention of the learned counsel for the appellants is that there was a conflict between the statements of munshi and Dr. Nigam, inasmuch as Munshi has testified that Hotam /Singh and Khilku Singh had fired four shots at the deceased, whereas in the opinion of Dr. Nigam, the injuries found were the result of three gun-fires only. This so-called conflict between the ocular account given by Munshi and testimony of Dr. Nigam was pressed into argument before the High Court, also. The learned Judges negatived this contention, - and rightly so-with these observations :

The doctor discovered 5 external injuries at the time of post-mortem examination. Injuries Nos. 1 and 2, which were noted on the left ear of the deceased could be caused by one gunshot only and, therefore, it is difficult to accept the statement of the doctor which he made in the cross-examination that only three fires were opened at the deceased because injury No. 3 is on the left side of the neck, injury No. 4 is on abdomen and similar injury No. 5 is on abdomen. Munshi (PW 7) has categorically stated that two shots were fired on the abdomen and two on the neck. The ear is not far from, the neck and, therefore, the injuries Nos. 1, 2 and 3 were perhaps considered by the doctor as the result of one gunshot fire. In our opinion, the importance that has been given by the learned trial Judge to the alleged discrepancy which was discovered by him in the statements of Munshi and the medical expert loses all its importance.

10. We agree with this reasoning which furnishes a complete answer to the argument advanced on behalf of the appellant.

11. Learned counsel next pointed out some more discrepancies in the statement of Munshi (PW 7). It was urged that he had in his testimony rendered at the trial of Khilku, contradicted his earlier statement made at the trial of Maharaj Singh and Hotam Singh; that in his earlier statement (Ex. D-1), the witness has stated that he has informed by a boy that his brother Gupta had been caught hold of by the accused whereas in his subsequent statement at the trial of Khilku he had said that Gupta was caught by the accused at the chakki of Raghubir Singh. When the witness was confronted with this variation in his earlier statement, he explained that whatever he had stated at the trial of Khilku was correct.

12. As rightly pointed out by the High Court, Munshi was examined at the trial of Khilku about two years after the incident in question. This discrepancy had therefore, crept in owing to a lapse of memory. In any case, this discrepancy relates only to the initial phase of the events preceding the murder. Sufficient time must have been taken by the events that following the initial capture of the deceased and culminated in his murder by the accused in the field, two furlongs away from the village. The deceased was first charged by the accused publicly with the theft of Bajra and in spite of the entreaties of Munshi and others was forcibly taken into their Haveli and then was openly and forcibly marched away from the village to the place of his execution in the field. There was sufficient time and opportunity, therefore, for Munshi (PW 7) to come and implore the accused to release his brother, Gupta. It was therefore, natural of Munshi and his companions to follow the accused when they were forcibly taking away Gupta from the village. Munshi, being the elder brother of the victim, was naturally most constrained to see what the accused doing to Gupta. Munshi was not disposed to give up easily his entreaties and efforts to secure the release of the victim. The witness was a land-less beggar by profession, while the accused were Thakurs, i. e. erstwhile feudal properties of the village. They were carrying (PW 7) and the circumstances, therefore, it was not possible of Munshi (PW 7) and his companions to rescue Gupta by use of physical force. There was nothing unnatural in the story narrated by Munshi in the witness-box that he saw the murder, while standing on the ridge of the field of occurrence.

13. The High Court has dealt with and effectively dislodges all the arguments given by the trial Court for discarding the testimony of Munshi. He could not be disbelieved merely because he was the elder brother of the deceased. Munshi's evidence received ample corroboration in material particulars from the first information report (Ex. P-10) which had been lodged by him on the very day of occurrence at 9 a. m. (sic 3.30 p. m. (para 2 supra). At the trial of Maharaj Singh and Hotam Singh, the evidence of Munshi received substantial corroboration from the transferred statements of

Kanhaiya (PW 5) and Bigha (PW 11). The High Court has fully discussed the evidence and dispelled the main reasons given by the trial Court for acquitting the accused persons.

14. We agree with the High Court that the view of the evidence taken by the trial Court was manifestly erroneous and the arguments employed by it for acquitting the accused persons, were utterly unsustainable.

15. For the foregoing reasons, we dismiss appeals and maintain the conviction and sentence of the appellants. If any of the appellants is on bail, he/they shall surrender to his/their bail bonds to serve out the sentence inflicted on him/them.

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