

State of Haryana

Vs

Sher Singh and Others

Criminal Appeal No. 320 of 1975

(O. Chinnappa Reddy, Baharul Islam JJ)

24.02.1981

JUDGMENT

ISLAM, J. -

1. This appeal by special leave by the State of Haryana is directed against the judgment and order of the Punjab & Haryana High court setting aside the conviction and sentence passed by the Sessions Judge, Karnal. Respondents Balkar Singh And Dalel Singh are the sons of respondent Sher Singh. The Sessions Judge convicted all the three under Section 302/334 of the Penal Code, and sentenced Sher Singh to death and the other two to imprisonment for life. On a reference by the Sessions judge for the confirmation of the Sentence of death inflicted on Sher Singh and appeal filed by the respondents, the High Court set aside the order of conviction and sentence and acquitted the respondents.

2. The material facts may be stated thus : On October 17, 1973 at about 12 a. m. Mst. Narman, widow of Danna (deceased) submitted the first information report to A. S. L. Ram Sarup (PW 12) at village Pai. Her material allegations in the first information report were that the previous day, respondent Sher Singh and his two younger half-brothers, namely, Danna, her husband, and Hukmi, had effected a family partition amongst themselves and they started living separately. That day, namely, October 17, at about 6.00 a. m., her husband, Danna, along with his brothers Hukmi and respondent Sher Singh came to their bagichi nearby from the house in order to milk cattle. She followed them in order to fetch milk. Respondent Sher Singh, then along with his sons Dalel, Balkar, Keni, Prem and Parwana surrounded her husband and her husband's younger brother, Hukmi, in the courtyard. Sher Singh had a gandasi in his hand, Dalel a lathi shodded with iron blade, the other three had lathis in their hands. Sher Singh dealt a gandasi blow on the head of her husband, Danna, who immediately fell down on the ground. Dalel then dealt a blow with iron-shodded lathi on the head of Hukmi who also fell down on the ground. The other accused then inflicted blows with lathis on the persons after they had already fallen down. Respondent, Sher Singh, dealt another gandasi blow on her husband. She has further stated in the first information report that Mst. Danni, sister or respondent Sher Singh, was also with her and witnessed the occurrence. They screamed seeing the assaults, whereupon they were directed on pain of death to sit in the corner of the courtyard. Out of fear they obliged. Thereafter, it has further been alleged, the accused persons dragged the dead bodies to their nearby heap of cow-dung cakes. Sher Singh spread kerosene on the heap of the cakes and Dalel set fire to it lighting a matchstick. As a result, the two bodies were charred.

3. PW 12 sent the FIR to the police station where a case was registered. Police, after investigation, submitted charge-sheet and arrested the accused persons. Eventually, the accused persons were

charged under Section 302/34 of the Penal Code, and tried in the court of Session. The accused persons pleaded not guilty to the charges. According to them the three brothers were joint in residence, mess and cultivation till the date of the occurrence. The defence of respondent, Sher Singh, was that his two sons, Dalel and Balkar, and the deceased brothers, Danna and Hukmi, used to sleep in the bagichi during the night to keep watch over their cattle tethered there. On October 16, 1973 he and his two deceased brothers were in their fields during the day and in the evening he went to their field where cotton was ripe and he remained there to keep watch over the cotton till next morning. That field was at a distance of about 1-1/2 miles from their bagichi. About 1-1/2 hours after sunrise on October 17, 1973, he returned to the bagichi where he found the heap of cow-dung cakes in the enclosure of bagichi burning. Police then arrested him. The defence of respondent Dalel was that two days before the date of occurrence he went to his maternal uncle, Lalji, at Parwana to borrow a tractor. He returned home on October 17, 1973 at about sunset. He found the heap of cow-dung burning and police inside the bagichi, where he was arrested by the police. The defence of respondent Balkar was that he was a student of 9th class and on October 16, 1973 he had been to school to witness some sports. He passed the following night in village, Diwali, where his sister was married. He returned home on October 17, 1973 and when he reached the bagichi he found the heap of cow-dung burning and, he was arrested by the police there. Thus the defence of all the respondents was alibi.

4. When an accused pleads alibi, the burden is on him to prove it under Section 103 of the Evidence Act which provides :

103. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations

(a) A prosecutes B for theft, and wished the court to believe that B admitted the theft to C. A must prove the admission.

(b) B wished the court to believe that, at the time in question, he was elsewhere. He must prove it.

5. In this case defence did not adduce any evidence to prove the alibi. On the contrary the evidence of PW 11, Lila, is that on October 21, 1973, all the accused were produce by Lalji, the brother of the wife of the respondent, Sher Singh in village Nand Karan Majra around 9 a. m., they were arrested. This was in presence of PW 11, and several others. Police had been there the witness says, from October 17 to 20, 1973. This evidence of PW 11 remains unrebutted. The plea of the respondents that they had been elsewhere at the time of the occurrence and returned to the place of occurrence by themselves on October 17, when they were arrest by police, is untrue.

6. Let us now turn to and examine the prosecution case and see whether the prosecution has proved the guilt of the accused belong reasonable doubt.

7. The death of Danna and Hukmi is not in dispute. That the dead bodies were burnt on the cow-dung heap, by the side of the bagichi is also not in dispute.

8. The only question for decision is whether Danna and Hukmi were murdered and their dead bodies were burnt by the respondents as alleged by the prosecution. The prosecution relies on the following

piece of evidence;

(i) motive of the murder :

(ii) direct evidence of the alleged eyewitnesses, PWs 3 and 4;

(iii) extra-judicial confession alleged to have been made by respondent Sher Singh before PW 10; and

(iv) recoveries of incriminating article on disclosure statement alleged to have been made by the respondents.

(i) Motive

9. PW 3 Mst. Narman has deposed that two days before the date of occurrence, deceased Danna, Hukmi and respondent Sher Singh made an amicable partition of their property. They divided their land (except Shamlat land), house, cattle, utensils and grains. Respondent sher Singh, however, refused to party with the joint cash and jewellery. Danna refused to part with any share of the Shamlat land unless the cash and jewellery were divided. PW 4 Mst. Danni and Jhanda (PW 10) support PW 3. It, therefore appears, that there was some sort of hitch between respondent Sher Singh on the one hand and his half-brothers Danna, and Hukmi on the other., the High Court declined to accept the evidence of PW 10 inasmuch as he had not mentioned the fact of partition in his statement before the police.

10. The prosecution is not bound to prove motive of any offence in a criminal case, inasmuch as motive is known only to the perpetrator of the crime and may not be known to other. If the motive is proved by prosecution, the court has to consider it and see whether it is adequate. In the instant case the motive proved was apparently inadequate, although it might be possible.

(ii) Direct evidence

11. PW 3 Mst. Narman has deposed that 15 days before the date of occurrence, PW 4 Danni who was at her husband's house was brought to their house to help her as she was expecting a child one of those days. In fact she delivered a child 12 days after the occurrence. She has supported the prosecution case in its entirety. She says that in the morning about the time of sunrise on the date of occurrence, deceased Danna and Hukmi were to the Panchayat land where their cattle had been tethered in order to milk them. She followed them to bring milk home. Danni also accompanied her to make cow-dung cakes. At that time she found that the respondents had been standing in the Panchayat land armed with dangerous weapons. Respondent sher Singh gave gandas blow on the head of Danna who immediately fell down on the ground. Dalel also gave a bow on the head of Hukmi who also fell down. All of them thereafter indiscriminately assaulted the two injured persons. Both of them died as a result. She and Danni began to scream whereupon the culprits asked her and Danni to keep quiet on pain of death and they asked them to sit on one side of the place. Both of them out of fear did as directed. She has further deposed that the respondents including the other miscreants dragged the two dead bodies to the nearby heap of cow-dung cakes and places the dead bodies on it. Respondent sher Singh then brought a tin of kerosene oil and sprinkled it on the heap of the cow-dung cakes. Respondent Dalel put fire to the cow-dung cakes. When the heap of the cow-dung cakes was burning they sat weeping there while the respondents were scraping the blood-stains on the earth and throwing them to the burning cow-dung cakes. After some time PW 10 Jhanda and one Bhagtu came to the place of occurrence after the dead bodies were put to fire. They

inquired of Sher Singh as to why they were burning the cow-dung cakes. Sher Singh replied that he had murdered his two brothers and was bringing their dead bodies. He, however threatened them to mind their own business and said that if they raised any alarm, they would be similarly murdered and put to fire, PW 10 Jhanda and Bhagtu then left the place. The process of burning took about three hours. All this time the culprits were at the place of occurrence scraping the blood-stained spots. They then changed their blood-stained clothes, threw them into the fire and put on new clothes and left the place with weapons in hands towards village Bhana. After the departure of the culprits the witness along with PW 4 left for the nearby village. They narrated the occurrence to the villagers and told them as to how her husband and brother-in-law had been murdered and their dead bodies burnt. But they remarked that that was a dispute between brothers and they could not do anything. The witness then left the village for police station at Pundri to lodge a offence report. On the way falls village Pai, at the distance of about 4-5 miles from the place of occurrence. She met at village Pai a police officer and two constables to whom she narrated the occurrence. Her statement was recorded by : PW 12, Ram Sarup, an Assistant sub-Inspector of Pundri Police Station, who was at Pai. She was then accompanied home by two constables, while PW 12 sent the FIR to the police station for registering a case. They reached the place of occurrence, after some time. A short while after the arrival of the witness and the two constables at the place of occurrence, a senior police officer arrived at the place of occurrence. They with the help of some of some other persons who had gathered there in the meantime started to extinguish the fire by putting buckets of water on it.

12. PW 4 Danni corroborates PW 3 on the commission of murder of the two deceased by the respondents and a few others. PW 10 who came to the place of occurrence on seeing smoke from the heap of cow-dung cakes, inquired of sher Singh as to what was happening. He has deposed that he was told by Sher Singh that he had killed his two brothers and was burning their dead bodies and that he was asked on pain of murder to mind his own business, and not to raise alarm. He and Bhagtu then left the place.

13. PWs 3 and 4 were cross-examined at great length by the defence counsel but nothing significant could be brought out in order to demolish their basic and substantial evidence given in examination-in-chief. Only some minor discrepancies with regard to omissions of details in their statement to the police were brought out. These omissions in our opinion were not contradictions and insignificant.

14. The High Court has rejected the evidence of PWs 3 and 4 on the ground (a) that they were close relations of the two deceased; (b) that PW 3 had omitted to mention in the FIR that she had informed any person the village before leaving for the police station; (c) that it was 'highly improbable and unnatural' that PW 3 would go to the place of occurrence from her home when she was in advance pregnancy; (d) that she was not accompanied to the police by anybody; (e) that none of the villagers came to the place of occurrence; and (f) that she and PW 4 did not physically attempt to save the two deceased who were respectively their husband and brother. Ultimately the High Court found that "most probably both Smt. Narman and Danni were not present on the spot and had not witnessed the occurrence".

15. In our opinion the conclusion arrived at by the learned High Court is untenable. The learned High Court High has taken a very unrealistic view of the situation and of the facts and circumstances of the case. There is no evidence that PWs 3 and 4 could or did raise any alarm. Why they were about to scream they were threatened on pain of murder, to keep quiet and sit. There is evidence that both the deceased as well as PWs 3 and 4 were unarmed, whereas the respondents were armed with dangerous weapons. In such a situation it will be too much to expect of PWs 3 and 4 to try to physically intervene and save the two deceased. Although it is true that PWs 3 and 4 were

close relations of the two deceased, their evidence could not be rejected on that grounds. They were also related to the respondents and there is nothing on record to show that they were inimically disposed to the respondents to falsely implicate the respondents in a murder case like this. They were the most natural witnesses. Although it was not the case of defence that some of the people of the Panchayat conspired with PWs 3 and 4 to implicate the respondents in this murder case, the High Court made out its own theory to that effect. There is no evidence or circumstances from which that inference could be drawn. It was a pure conjecture that "it was best opportunity for the Panchas and Sarpanch and other respectables of the village to take special interest in bringing the culprits to book by contacting the police at the earliest if the culprits were not persons other than the appellants". The High court has also based its finding on conjecture that the two deceased were murdered by unknown culprits and they were falsely implicated by the "village respectables" on suspicion. This hypothesis does not stand any scrutiny. Respondent Sher Singh in his statement says : "It was routine for me and my two elder sons and two step brothers to sleep in the bagichi during night where we used to tie our cattle. Even the High court has found "... that they (deceased) like Sher Singh or Sher Singh's sons used to sleep in the bagichi in the night to keep watch over them (cattle) ". If that be so, had the murder been perpetrated by unknown culprits, there was no reason as to why the respondents did not intervene and inform any of the neighbours. The learned High court, as states above, has rejected the evidence of PW 3 on the ground that she did no mention in FIR that she had informed any person of the village before she lodged the FIR. The FIR need not contain the details of the occurrence. The omission referred to by the High court is an omission of details and to really a contradiction. The High court also right in observing that it was surprising "that as stated by Mst. Narman nobody in the village listened to her story nor did anybody come to her help when she went to abadi land of the village after the departure of the appellants from the place of occurrence". In fact PW 10 had come to the place of occurrence before PWs 3 and 4 left the place of occurrence for the village. The way PW 10 was treated by respondent, Sher Singh was sufficient to desert any other villager to come to the place of occurrence. The High Court has also found it a 'mystery' that none of the villagers came to the place of occurrence and intervened in the matter. There is no evidence on record to show that when the assaults on the deceased were in progress or the dead bodies were being burnt, any of the villagers in fact knew about the occurrence. In fact, PW 10 and Bhagtu had seen the smokes from the cow-dung cakes, and came to the place of occurrence.

16. The High Court has also observed that it was unlikely that PW 3 would go to the bagichi in such an advanced stage of pregnancy in order to bring milk from there at sunrise inasmuch as PW 4 had already come there to help her in domestic work. It is common experience that in villages women who regularly attend to their domestic chore and work in the field, work some time till the very moment of actual child birth. PW 4 was brought to help her as in advanced stage of pregnancy as she could not work as briskly as before. The learned High court has also observed that presence of PW 4 Danni at the place of occurrence was "not natural because had she been present there she would have out of love for her real brothers physically intervened and tried to save them from the clutches of assaults". It has been observed before that they were asked to keep quiet and sit on pain of murder. It cannot be forgotten that Danni was also an unarmed village woman and the first instinct of a being is the instinct of self-preservation. In our opinion, therefore, it was not unnatural that she would not, as she could not, attempt to save the two deceased from murder. The High court has also observed that in any case PW 4 would have raised hue and cry. She could not raise an outcry as she was told by Sher Singh that she would be murdered and burnt, if she did so. It was therefore but natural that she did not raise any hue and cry.

(iii) Extra-judicial confession

17. The evidence of PW 10 has also been referred to above. He has deposed that when on seeing the smoke he went to the place of occurrence and inquired of Sher Singh as to why they were burning the heap of cow-dung cakes, he replied that he had murdered his two brothers and was burning their dead bodies. This is an extra-judicial confession so far as Sher Singh is concerned. The High Court has not accepted the evidence of PW 10 on the ground that this was not mentioned by PW 3 in the first information report. This was an omission. That apart, it must be remembered that PW 4 who saw with her own eyes such a brutal murder of her husband and brother-in-law must have been dazed and at her wits' end. In such a situation, it could not be expected of her to give all the details in the first information report. And on account of the omission, PW 10 could not be disbelieved.

(iv) Recoveries of incriminating articles

18. The last piece of evidence on which reliance has been place by the prosecution is the recoveries of incriminating weapons. The evidence of PW 13, the investigating officer, is that respondent Sher Singh on October 23, 1973 made a disclosure statement which is Ex PL. The disclosure was that Sher Singh had kept concealed a gandasi in the bundle of sugar-cane in hi field and he could get the same recovered. In pursuance of his disclosure the gandasi Ex. P-26 was recovered from that place. The gandasi was stained with blood and was seized under Seizure Memo Ex. PL/1. On the same day respondent Dalel Singh made a disclosure statement Ex. PM and disclosed that he had kept concealed a lathi to which an iron piece was attached in his gowar field and he could get the same recovered. In pursuance of his disclosure, lathi Ex. P-27 which was stained with blood was recovered. It was seized under Seizure Memo Ex. PM/1. On the same day respondent Balkar Singh made a disclosure statement, Ex. PN that he had kept concealed a lathi in his Kikar branched fence and he could get the same recovered. In pursuance of his disclosure statement, lathi Ex. P-28 which was stained with blood was recovered. It was seized under Seizure Memo Ex. PN/1. These discoveries were made in presence of PW 11 Lila, who was Sarpanch of the local Panchyat. The High court declined to put any importance to the recoveries as the respondents were not interrogated by police from October 20 to 22. In our opinion that cannot be a sufficient justification to hold that the recoveries were 'fake'. The weapons were recovered at the pointing of the respondents.

19. In addition the investigating officer seized an empty kerosene tin lying at the place of occurrence. The tin was emitting smell of kerosene oil and it was seized under Seizure Memo Ex. PJ which was attested by PW 11. In addition another circumstance tends to support the complicity of the respondents in the offence. It is the conduct of the respondents. The two deceased who had been murdered, by whomsoever it might be, were near blood-relations of the respondents. If the murder had been committed by some others, as supposed by the High Court, they would not have quiet. Of course, they have stated in their defence that they were away from home in some other places and returned to the place of occurrence on October 17, 1973 which has been found by us to be untrue. This conduct of the respondents in incriminating.

20. As a result of the above discussions we hold, agreeing with the learned Sessions Judge, that the guilt of the respondents has been established by the prosecution beyond all reasonable doubt. In the result we allow, the appeal, set aside the judgment and order of acquittal of the High Court and convict the respondents under Section 302/34 of the Penal Code.

21. Now comes the question of sentence. The murder is ghastly and brutal. Respondent Sher Singh deserved the extreme penalty provided by law. The learned Sessions Judge was right in imposing death sentence on him. But in view of the fact that the learned Sessions Judge passed the order of conviction and sentence as early as July 27, 1974 and the High Court passed the order of acquittal as

early as April 2, 1975, we refrain from visiting respondent Sher Singh with the extreme penalty provided by law for murder. We sentence all the respondents to imprisonment for life. We are told that respondents Balkar Singh and Dalel Singh are on bail. Their bail bonds are cancelled. They shall surrender forthwith to serve out their sentences.

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