

State of U. P.

Vs

Gokaran and Others

Criminal Appeal No. 71 of 1977

(V. D. Tulzapurkar, M. P. Thakkar, V. Khalid JJ)

28.09.1984

JUDGMENT

TULZAPURKAR, J. –

1. On the night between March, 27 and 28, 1972 (around midnight) at the house of Bindra Singh in Village Shah Jalalpur, Police Station Kamlapur, District Sitapur, an incident of dacoity took place during the course of which about 30-32 miscreants variously armed with lathis, dandas, gun, ballam, country-made pistols, 'kanta' etc. indulged in arson, loot, violence and murderous assaults on the inmates of the house. The incident lasted for quite some time but before the miscreants left the place two inmates of the house Phoolan Maharaj (a Brahmin Pandit of the family) and Gautam (the minor son aged 11 of Bindra Singh) were murdered, the former by gunshots and the latter by being roasted alive in the fire while Bindra Singh (PW 2) himself survived a murderous assault on him; in addition the other members including females in the family received injuries. Among the said miscreants, the prosecution alleged, were the three respondents Gokaran, Prahlad and Sunder, who actively participated in the commission of the said crimes which participation was seen by witnesses standing at a short distance near the 'Bhousala' (chaff-store) of Basant Singh in the light thrown up by fire.

2. Admittedly, there was bitter enmity between Gokaran and his men on the one hand Bindra Singh and his family on the other and according to the prosecution the main object of this nocturnal attack on Bindra Singh's house was not so much to loot his property but to wreak vengeance and kill Bindra Singh. The gruesome incident, broadly stated, occurred thus : At about midnight one of the dacoits jumped inside the courtyard by climbing the northern wall and opened the main door making way for the other miscreants to enter. Thereafter looting of the property and beating of the inmates started. Ram Narain Singh nephew of Bindra Singh (PW 1) who was sleeping along with his wife, aunt, sister and cousin brother in one of the Kotharies was injured but finding an opportunity he rushed out and standing near the chaff-store of Basant Singh raised an alarm which brought several villagers and witnesses to the scene of occurrence. A Tarwaha, lying in front of the baithak room, was set on fire; Gokaran, who was armed with a gun started threatening "Call the police and get me locked up" and further threatened that each and every member of the family would be butchered. Gokaran, Sunder and two others went to the roof of the baithak room in which Bindra Singh and Phoolan Maharaj were sleeping and that holes were dug in the roof of that room and through those holes kerosene oil and a palita soaked in kerosene oil were thrown inside the room causing fire inside the room as a result whereof Bindra Singh received burn injuries; Gokaran also resorted to firing through one of the holes. The chapper opposite to that room was also set on fire as also about 20 to 30 heaps of mustard crop. In spite of the attempts made, the door of baithak room could not be opened; therefore, Prahlad brought Gautam from inside the house and forced him

to tell his father to open the door or else he was going to be thrown in the fire. Gautam did so three or four times but Bindra Singh did not open the door and Prahlad, notwithstanding the entreaties by mother and sister of Gautam to spare him, threw Gautam into fire on account of which he died. Gokaran then ran to the southern window of the baithak room with his gun and fired three or four times inside the room. Bindra Singh, who was armed with his gun, fired in retaliation from inside the baithak room. As a result of the shots fired by Gokaran, Phoolan Maharaj got killed but thinking that Bindra Singh had died, Gokaran shouted that his work had been done. Thereafter the miscreants went away and Bindra Singh came out in injured condition and stood near the chaff-store of Basant Singh where Ram Narain Singh and others were standing.

3. It appears that while the incident was in progress Sant Bux Singh, brother of Bindra Singh who was sleeping at the tube-well about 200 yards away from the scene of occurrence, after seeing the incident ran to Barai Jalalpur Railway Station and from there managed to flash two telegraphic/telephonic messages to Kamlapur Police Station through Barai Jalalpur Rly. Station and Kamlapur Rly. Station about the dacoity that was taking place and also sought police help. However, even before these railway messages were received at the police station the Station Officer Gopal Narain Singh (PW 9) had started for Shah Jalalpur on account of information about the dacoity having been received at the police station from a truck driver who was passing that way (which information was also recorded) and on reaching the scene of occurrence, within a short time received at about 2.15 a.m. a written FIR (Exhibit Ka-1) from Ram Narain Singh (PW 1) in which names of 22 dacoits including the names of the three respondents were mentioned. It may be stated that the prosecution did not examine this Sant Bux Singh at the trial but he was examined as a court witness by the High Court in appeal.

4. At the trial apart from medical evidence and other evidence of formal nature, evidence of five eye-witnesses, namely, Ram Narain Singh (PW 1), Bindra Singh (PW 2), Puttu Lal (PW 3), Kallo Singh (PW 4) and Sarojini Devi, daughter of Bindra Singh, (PW 5) was led by the prosecution. Relying upon this evidence, particularly the evidence of PWs 1, 2 and 5 who were injured witnesses, the learned Fourth Additional District and Sessions Judge, Sitapur convicted the three respondents for offences under Section 436/149, 302 read with 149 and 307/149 IPC and passed appropriate sentences of imprisonment. Gokaran was sentenced to death for the murder of Phoolan Maharaj under Section 302 simpliciter while Prahlad was sentenced to death for the murder of Gautam under Section 302 IPC simpliciter. In appeals preferred by the respondents and death reference, the High Court acquitted all the respondents outright. The State has come up in appeal against their acquittal.

5. We might state that during the pendency of this appeal both respondents 1 and 2 (Gokaran and Prahlad) are reported to have died. Hence the appeal abates so far as they are concerned. We are required to consider this appeal only in regard to Sunder's acquittal.

6. We are conscious that we are dealing with an appeal against acquittal and it is true that ordinarily this Court does not interfere with the acquittal recorded by High Court but when incriminating evidence of a satisfactory character is brushed aside mainly by relying upon a few circumstances which do not go to detract from the value of such incriminating evidence it becomes the duty of this Court to interfere with the acquittal in order to redeem the course of justice. On a consideration of the judgment of acquittal recorded by the High Court and after hearing counsel on either side we find that the High Court has adopted a hyper-technical approach to the entire prosecution case, particularly the direct ocular evidence furnished by the three injured witnesses whose presence at the scene of occurrence could not be doubted and much has been made of the circumstances which

do not detract from their evidence. We shall presently deal with those circumstances on which the High Court has relied resulting in an unwarranted acquittal.

7. The six circumstances are :

(a) None of the named dacoits, though fully known, had concealed their presence by covering their faces.

(b) The messages sent through two railway stations did not contain the names of any miscreants; and the High Court has found fault with the investigating agency for not contacting Sant Bux Singh to record his statement and for not examining him as a witness and this according to the High Court was deliberate as names had not been mentioned in the messages; and the written FIR (Ka-1) mentioning 22 names was the product of mature deliberation and consultation with the investigating agency.

(c) Since no burn injuries were found on the body of Phoolan Maharaj during autopsy it was difficult to believe that the body was found inside the baithak room as claimed by the prosecution.

(d) In view of extensive burn injuries received by Bindra Singh he could not have on his own come out of the room and stood along with others near the chaff-store of Basant Singh as claimed by the prosecution but must have been rescued out by villagers or the investigating officer after everything was over.

(e) Since neither on its roof nor inside the baithak room were any pellets or wads or marks of shooting noticed by the investigating officer Phoolan Maharaj must not have been killed inside the baithak room as claimed but somewhere else; moreover it was difficult to believe that the dacoits who wanted to kill Bindra Singh would have left when actually Phoolan Maharaj got killed in baithak as suggested by the prosecution because Phoolan Maharaj on receiving gunshots must have cried out betraying his voice.

(f) There was a delay in sending the special report to the District Magistrate under Section 157 CrPC which was received on March 29; also there was a delay in sending the necessary papers to the medical officer which were received by him on twenty-ninth although the bodies were sent for post-mortem on twenty-eighth morning and were received in mortuary at 7.30 p.m. on March 28, 1972.

It is obvious that some of the circumstances are inferential in nature, while some are innocuous or immaterial and in any case none is of such a nature as would detract from the probative value of strong and consistent ocular evidence furnished by the eye-witnesses particularly the injured inmates of the house namely Ram Narain Singh (PW 1), Bindra Singh (PW 2) and Sarojini Devi (PW 5) who had seen with their eyes how brutally their two inmates were treated by the respondents and their companions.

8. Turning to the first circumstance it cannot be disputed that it really depends upon the frame of the mind in which the participants were at the time of the incident and if it is borne in mind that the object of the attack was not to loot the property but to wreak vengeance by killing Bindra Singh it is not inconceivable that Gokaran and his companions might have thought of indulging in the crimes in a bravado fashion to strike terror in the inmates of the house and the villagers. The evidence

shows that Gokaran unquestionably behaved like a daredevil when with a gun in his hands he uttered the words "Call the police and lock me up" and by further saying that each member of the family would be butchered. The mere fact that none out of the 22 named persons had covered his face in order to conceal his presence cannot, therefore, cast any doubt on the prosecution case that they had been seen by witnesses participating in the occurrence.

9. As regards the second circumstance it is true that the messages flashed by Sant Bux Singh through the station masters of Barai Jalalpur Railway Station and Kamlapur Railway Station did not mention the names of anyone but from that no immediate conclusion can be drawn that the attackers were unknown robbers or dacoits. In our view this is not the way to appreciate the railway messages in their proper perspective; admittedly, Sant Bux Singh had left the scene of occurrence while the incident was in progress and secondly after rushing to Barai Jalalpur Railway Station he flashed messages which were in the nature of an SOS sent to the police station giving intimation that dacoity was taking place and seeking immediate police help; even the message taken down at Kamlapur Railway Station records that the life of station staff at Barai Jalalpur may be in danger and, therefore, two porters were despatched to the police station to give urgent information. If the purpose of the messages was as just indicated then the messages were not expected to contain either the details of the incident or the names of the persons participating in it. Looked at from this angle, the omission of the names of the participants in an SOS type of message is clearly understandable and no adverse inference against the prosecution can be drawn. Similarly, the insinuation that the omission to contact Sant Bux Singh or to record his statement or even to examine him at trial on the part of the investigating officer was deliberate is difficult to sustain, for admittedly, Gopal Narain Singh (PW 9), the station officer had proceeded to Shah Jalalpur on the basis of the information about the dacoity that was received earlier through a truck driver and not on the basis of railway messages which had been received at the police station at about 1.30 a.m. and after reaching the spot he had received a written FIR (EX. Ka-1) from Ram Narain Singh at about 2.15 a.m. and in that situation he may not have felt the necessity of contacting Sant Bux Singh for verifying the railway messages. Moreover, from the evidence of Ram Narain Singh, which is corroborated by the station officer as well as by the timing mentioned in the FIR (Ex. Ka-1) it will have to be observed that the written FIR was promptly lodged mentioning the names of the 22 dacoits; naturally the various details of the incident which occurred in different parts of the house must have been collected by Ram Narain Singh from the inmates who had seen the occurrence within a short time and then submitted his written FIR and the criticism that it was a result of the mature deliberation and consultation with the investigating agency is really unwarranted.

10. As regards the third circumstance, we would like to observe that the baithak room appears to be a fairly big and large room as can be seen from the site plan produced in the case and it is not difficult to conceive that as a result of throwing of a palita soaked in kerosene oil inside the baithak room through one of the holes dug in the roof Bindra Singh received burn injuries on several parts of his body and articles and things lying in the room were reduced to ashes but Phoolan Maharaj may have avoided the fire keeping himself away from the fire. Moreover, the post-mortem report shows that there was singeing of his hair and the medical officer also found some parts of his loongi burnt though he actually died of gunshot injuries but from the mere fact of absence of burn injuries on any other part of his body no inference can be drawn that his body was not found inside the baithak room. In any case this circumstance cannot detract from the evidence of the eye-witnesses on the manner in which he was gunned down by Gokaran.

11. The next circumstance mentioned at (d) above is, in our view, quite immaterial. Whether in view of the extensive burn injuries received by him Bindra Singh could and did come out of the baithak

room on his own and stood along with other near the chaff-store of Basant Singh or was rescued by the villagers has no bearing on the veracity or truthfulness of the main story of the prosecution, for, even according to the prosecution it was after the dacoits had left that Bindra Singh rushed out of the baithak room and stood near the chaff-store of Basant Singh.

12. As regards the Fifth circumstance, it is difficult to accept the High Court's imaginary inference that Phoolan Maharaj must have been shot elsewhere and not inside the baithak room from the mere fact that neither on the roof nor inside the room were any pellets or wads or marks of shooting found by the investigating officer. Such an inference cannot be drawn in face of positive evidence of eye-witnesses and the investigating officer, that the body was found lying in the baithak room during the investigation. The latter inference of the High Court mentioned at item(e) above is obviously a conjectural one based on the assumption that on receiving the gunshot injuries Phoolan Maharaj must have cried out betraying his voice for which assumption there is no warrant on the record.

13. As regards the last circumstance, it is true that the special report was received by the District Magistrate on March 29 but it is not as if every delay in sending such special report to the District Magistrate under Section 157 CrPC necessarily leads to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or that the investigation is not fair and forthright. As has been pointed out by this Court in *Pala Singh v. State of Punjab* ((1973) 1 SCR 964 : (1972) 2 SCC 640 : 1973 SCC (Cri) 55 : 1973 Cri LJ 59) the relevant provision contained in Section 157 CrPC is really designed to keep the Magistrate informed of the investigation of a cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under Section 159 CrPC but if in a case it is found that the FIR was recorded without delay and the investigation started on that FIR then however improper or objectionable the delayed receipt of the report by the Magistrate concerned that cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. In the instant case the material on record clearly shows that steps in investigation by way of drawing inquest report and other Panchanamas had been taken in the early morning of March 28 and these could only follow the handing over of FIR Ex. Ka-1 by Ram Narain Singh to the station officer at about 2.15 a.m. In view of these facts the delayed receipt of the special report by the District Magistrate on March 29 would not enable the court to dub the investigation as tainted one nor could Ex. Ka-1 be regarded as ante-timed or ante-dated. For the same reasons the delay in sending the necessary papers to the medical officer which were received by him on March 29 will be of no significance.

14. Having regard to the above discussion we are of the view that the High Court had clearly erred in relying upon the aforesaid six circumstances for the purpose of rejecting the prosecution story.

15. Out of the oral testimony of 5 eye-witnesses, leaving aside the evidence of Puttu Lal (PW 3) who has been regarded by the High Court as a chance witness and whose evidence suffers from serious omissions, we do not find any justifiable reasons for rejecting the testimony of the remaining four witnesses. In any case, the evidence of the three injured witnesses, namely, Ram Narain Singh (PW 1), Bindra Singh (PW 2) and Sarojini Devi (PW 5), whose presence at the time of occurrence cannot be disputed, who are the most natural witnesses and who have consistently given evidence attributing specific overt acts to the three respondents deserves to be accepted. So far as respondent Sunder is concerned, it has come in their evidence that he along with Gokaran and two other dacoits had climbed the roof of the baithak room in which Bindra Singh and Phoolan Maharaj were sleeping and that he had dug holes in that roof which facilitated the throwing of a palita soaked in kerosene oil in the baithak room which caused severe burn injuries to Bindra Singh

and damage to movable property lying in that room and also facilitated the firing with a gun by Gokaran through one of the holes which ultimately resulted in the death of Phoolan Maharaj and barring a few contradictions and some minor omissions nothing worthwhile has been elicited in their cross-examination which would go to discredit their evidence, particularly with regard to the overt act attributed to Sunder. In our view, the learned trial Judge has correctly appreciated the evidence of these witnesses and we prefer the trial Court's appreciation of their evidence to that of the High Court.

16. In the result the appeal succeeds and so far as respondent Sunder is concerned, his acquittal is set aside and the convictions and sentences imposed upon him by the learned trial Judge on all counts are restored. He shall surrender to his bail forthwith. Warrant for his arrest shall issue and he shall be taken into custody to serve out the sentences imposed upon him.

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