

Ranjeet Singh and Another

Vs

State of Rajasthan

Criminal Appeal No. 304 of 1987

(G.L. Oza, B.C. Ray, K. Jagannatha Shetty JJ)

25.01.1988

JUDGMENT

JAGANNATHA SHETTY, J. –

1. This appeal by special leave has been preferred against the judgment dated July 31, 1986 of the Rajasthan High Court, Jodhpur Bench in Criminal Appeal No. 208 of 1985 maintaining the conviction and accepting the reference on sentence of death awarded to the appellants under Section 302 read with Section 34 of the Indian Penal Code by the Additional Sessions Judge in SC No. 115 of 1979.

2. In the night between July 16-17, 1979, the entire family consisting of father, mother, son and five daughters were done to death when they were fast asleep in the residence in village Birkali. The prosecution story, to put it briefly, was that the deceased victim Bhagtu Ram Khumbhar was the real brother of the accused Shyolal. They were the original residents of village Cigorani district Sirsa in the State of Haryana. Nearly 15 or 20 years ago, both the brothers came to live in village Birkali and they purchased 50 bighas of agricultural land for cultivation. Both the brothers jointly lived in Birkali for two or three years and thereafter Shyolal returned back to his native village Cigorani. Before leaving village Birkali, he had mortgaged his share in the property in favour of someone for a sum of Rs. 1200. The deceased Bhagtu Ram redeemed that mortgage. Shyolal thereafter, demanded his share in that property. Bhagtu Ram agreed, provided Shyolal paid him the amount of Rs. 1200 which he had paid to the mortgagee. That was not acceptable to Shyolal. Two or three months before the incident, the parties appeared to have approached the influential persons of the village to get the matters settled. Nanusingh, (PW 10) the ex-Pradhan of the Panchayat Samiti, Nohar and the other persons of the village Birkali tried to settle the dispute between the two brothers. Evidently, they did not succeed. Shyolal was not willing to pay the amount of Rs. 1200 to Bhagtu Ram. The accused Shyolal told Nanusingh and others that he would himself settle the dispute without anybody's intervention. It is said that thereafter Shyolal started harbouring an ill-will against his brother Bhagtu Ram.

3. On Sunday preceding the incident, Shyolal and other accused said that they would go next day to village Birkali and would take back the possession of the fields from Bhagtu Ram. On July 16, 1979, the appellants and two other persons including Banwari armed with different weapons went to the village Birkali. They entered the house of Bhagtu Ram in the dead of night and started killing the inmates one by one. One of the daughters of Bhagtu Ram raised some cries and tried to escape, but was instantaneously done to death. Hearing her cries, Khyali Ram, (PW 3) and Ram Kishan (PW 4) whose houses are situated not far away, came there and saw a part of the occurrence. They could not do anything since they were terribly frightened. So they quietly left the place. Jaisingh, PW 9,

who was sleeping on the roof of the neighbouring house, got up on hearing the noise. He also got frightened and did not intervene. The accused, after committing the eight murders left the village Birkali.

4. At about sunrise, Birkali (sic), (PW 5) while passing by the house of Bhagtu Ram, saw the dead bodies of Bhagtu Ram and members of his family. He rushed to the Sarpanch, Sahi Ram (PW 6) and told him what he had seen. Sahi Ram also came and saw the place. The police was informed by sending a message with the signature of Sahi Ram (Ex. P-22) sent through Saheb Ram (PW 7), the peon of the Gram Panchayat.

5. The prosecution in all examined 18 witnesses in the course of the trial and the accused, Banwari was granted pardon under Section 307 of the Code of Criminal Procedure. He thus became an approver. The learned Sessions Judge found all the accused guilty of the offences they were charged with. Since one of them was held to be a child, as defined in the Rajasthan Children Act, 1970, his case was referred to the Children Court, Bikaner. The remaining two accused, who are the appellants before us, were sentenced to death with a reference to the High Court. The High Court, accepted the reference, and maintained the conviction and sentence awarded by the Sessions Judge.

6. Hence this appeal.

7. We have heard the counsel on both sides. The first question that falls for determination is whether the approver, Banwari (PW 2) is a reliable witness. The next question for consideration is whether the approver's evidence receives sufficient corroboration from the other evidence adduced by the prosecution. The first question presents no problem. The approver is related in equal degrees to the accused and also the deceased victims. He has given a detailed version of the incident including his own participation in the commission of the crime. The courts below have accepted him as a truthful witness. They have stated that there was no reason for the approver to implicate the appellants on false charges. We have no reason to disagree with that conclusion.

8. The second question relates to the evidence of corroboration, to the testimony of the approver. The law in this regard has been well settled by several decisions of this Court (i) Rameshwar Kalyan Singh v. State of Rajasthan (AIR 1952 SC 54 : 1952 Cri LJ 547); (ii) B. D. Patil v. State of Maharashtra (AIR 1963 SC 599 : 1963 (1) Cri LJ 489); (iii) Saravanabhavan v. State of Madras (AIR 1966 SC 1273 : 1966 Cri LJ 949); (iv) Piara Singh v. State of Punjab (AIR 1969 SC 961 : (1969) 3 SCR 236 : (1969) 1 SCC 379). In the Piara Singh case (AIR 1969 SC 961 : (1969) 3 SCR 236 : (1969) 1 SCC 379) this Court observed : (SCC p. 384, para 7)

An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious taint in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. It would not, however, be right to expect that such independent corroboration should cover the whole of the prosecution case or even all the material particulars of the prosecution case. If such a view is adopted it will render the evidence of the accomplice wholly superfluous. On the other hand, it will not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

9. We may also point out that while looking for corroboration, we must first look at the broad spectrum of the approver's version and then find out whether there is other evidence to lend assurance to that version. The nature and extent of the corroboration may depend upon the facts of each case. The corroboration need not be of any direct evidence that the accused committed the crime. The corroboration even by circumstantial evidence may be sufficient. But such evidence as to corroboration must be independent and must not be vague or unreliable.

10. In the instant case, we have plenty of such corroborating evidence. The evidence of Hanuman (Pw 15) is trustworthy. He is a khatai (carpenter). He was very much known to the accused. He saw the accused along with the approver at the sunset time near the waterkund from where they proceeded towards the house of the deceased. He saw them taking their meals at that kund. Khyali Ram, (PW 3) and Ram Kishan, (PW 4) saw a part of the incident. They saw the accused in the house of the deceased. The evidence of Jaisingh, (PW 9) further established the presence of the accused along with the approver in the house of the deceased. There is no reason to discard the testimony of these three witnesses.

11. The prosecution has been able to recover weapons of the crime from the accused. The recovery of the weapons has been made at the instance of the accused. It also lends reassurance by way of corroboration to the evidence of the approver.

12. All these evidence if taken together, gives no scope to doubt the prosecution version. The appellants in our opinion have been rightly convicted for the murders in question.

13. With regard to the sentence of death, there cannot be two opinions. The manner in which the entire family was eliminated indicates that the offence was deliberate and diabolical. It was predetermined and cold-blooded. It was absolutely devilish and dastardly. The innocent children were done to death with lethal weapons when they were fast asleep. The sentence of death awarded cannot therefore, be said to be inappropriate.

14. In the result, the appeal fails and is dismissed.

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