

Mahendra Singh

Vs

State of Rajasthan

Criminal Appeal No. 494 of 1978

(S. Natarajan, A. M. Ahmadi JJ)

19.01.1989

JUDGMENT

AHMADI, J. –

1. The appellant Mahendra Singh son of Sohan Singh was filed this appeal by special leave challenging his conviction under Section 302/34 of the Indian Penal Code. This facts are that on June 20, 1973 PW 1 Mohan Singh and deceased Harbans Singh were requested by the appellant while they were on the way to Prem Pura to attend the betrothal ceremony of the sons of Banta Singh and the appellant. Acceding to this request PW 1 Mohan Singh and deceased Harbans Singh went to the house of Banta Singh and the appellant in village Nav Ghat Ki Tapari. After attending the betrothal ceremony, they expressed a desire to leave but they were persuaded to stay on for dinner. After the guests had completed the meals, dinner was served to PW 1 and Harbans Singh between 8 and 9 p. m. At that time Bua Singh was also having his meals. When the aforesaid two persons were served meals, Bua Singh came and sat by their side and began to partake of food from the thali of PW 1. Presumably because Bua Singh was of lower caste, PW 1 resented his behaviors and asked Bua Singh to eat from his own thali. On Bua Singh persisting in eating from the thali of PW 1 and Harbans Singh, the latter two got up to leave but Bua Singh tried to stop them. As a result a scuffle ensued between PW 1 and Bua Singh. When the deceased Harbans Singh tried to intervene, the appellant stopped him from doing so whereupon he sat down on a cot lying under a tree. The scuffle between PW 1 and Bua Singh continued and in the course of the scuffle Bua Singh ran into the house and returned with a dantar. He inflicted two successive blows with that weapon on the head of the deceased Harbans Singh, causing virtual severance of the head from the trunk. On Harbans Singh collapsing on the ground, the prosecution case is that the appellant took the dantar from Bua Singh and inflicted blows therewith on the back of Harbans Singh. Harbans Singh died instantaneously. It is further alleged that thereafter on the appellant firing four from his gun, PW 4 Kashmir Singh and PW 8 Dilip Singh, who were present there, took to their heels.

2. The second part of the incident is that after Harbans Singh was done to death, PW 1 went to village Sawalpura and informed PW 2 Dayal Singh about the incident. Apprehending that the assailants would try to do away with the body of Harbans Singh, PW 2 Dayal Singh and PW 3 Birsa Singh accompanied PW 1 to go to house of Banta Singh where the incident had taken place. When they were near the canal of village Barundhan they saw four persons, namely; (1) Bua Singh (2) the appellant (3) Mahendra Singh son of Mangal Singh and (4) Milkha Singh carrying the dead body of Harbans Singh on a cot towards village Sawalpura. As all the four persons were armed, PW 1, PW 2 and PW 3 did not think it wise to interfere and returned to village Sawalpura and from there proceeded in a tractor to Talera Police Station where PW 1 lodged the report Ex. P-1. On the basis of the said report SHO Ram Kishore registered an offence and commenced the investigation.

3. So far as the first part of the prosecution case regarding the murder of Harbans Singh is concerned, reliance was placed on the evidence of PW 1 Mohan Singh, PW 4 Kashmir Singh and PW 8 Dilip Singh who, it was claimed, had seen the actual commission of the crime. At the trial PW 4 and PW 8 denied their presence at the scene of occurrence and did not support the prosecution. The learned Additional Sessions Judge came to the conclusion that the presence of both of them was even otherwise doubtful since there was a betrothal ceremony of the son of PW 8 on that very day at his house and hence he could not be expected to be present at the house of Banta Singh. Be that as it may, the fact remains that PW 4 and PW 8 did not support the prosecution case and were treated as hostile. The case, therefore, revolved round the evidence of PW 1 alone.

4. In regard to the second part, the disposal of the dead body, reliance was placed on the evidence of PW 1 Mohan Singh, PW 2 Dayal Singh and PW 3 Birsa Singh. The learned Additional Sessions Judge came to the conclusion that the prosecution story in this behalf was unnatural. He pointed out that it was difficult to believe that these witnesses would think of going unarmed to the house of Banta Singh where the brutal crime was committed only some time back. The version of PW 1 about his going to village Sawalpura to inform PW 2 about the incident was also suspect as ordinarily PW 1 would think of going to the police station which was almost at the same distance and return to the scene of occurrence under police protection rather than proceed to his village Sawalpura to inform PW 2 and seek his assistance for preserving the dead body. The learned Additional Sessions Judge came to the conclusion that the evidence of all the three witnesses was incredible and thoroughly unacceptable. In this view he acquitted all the incredible including Mahendra Singh son of Mangal Singh and Milkha Singh of the charge under Section 201 of the Indian Penal Code.

5. The learned Additional Sessions Judge, however, thought that the evidence of PW 1 could be relied upon insofar as the part played by Bua Singh and the appellant in the murder of Harbans Singh was concerned, since it was corroborated by the version in the first information report as well as the medical evidence. The evidence of Dr. S. K. Gautam who conducted the post-mortem examination shows that the head of the victim was chopped off and in addition there were incised wounds on the body, namely : (i) an incised wound 3(1/2) "x 1/2" x 1/2" on right thoracic region, back, (ii) an incised wound 1/2" x 1/2" horizontally placed on left scapula region, back, simple sharp and (iii) two incised wounds both of size 3" x 1" x 1" obliquely placed at lower one-third of left leg cutting shaft of tibia. All these injuries were possible by a sharp-edged weapon. The skull which was found from the river was brought for examination of June 24, 1973. PW 6 opined that it was the skull of a 55 year old man who had passed away 4 of 5 days before. He found three injuries on the skull, namely : (i) Cut fracture 4" x 1/4" left half of left occipital bone, in suture line with left parietal bone, (ii) Fracture of original place of right frontal bone and (iii) Crack fracture of petrons part of right temporal bone. In the opinion of this witness, injury no. 1, namely chopping off of the head was sufficient in the ordinary course of nature to cause death.

6. On the basis of the evidence of PW 1 coupled with the corroboration found from the first information report as well as the evidence of the medical man, the learned Additional Sessions Judge convicted the accused Bua Singh under Section 302 Indian Penal Code and the appellant under Section 302/34, IPC and sentenced each of them to suffer imprisonment for life and to pay a fine of Rs. 1000 in default to suffer rigorous imprisonment for a further period of six months. He did not accept the evidence of PW 1, PW 2 and PW 3 in regard to the second part of the incident and, therefore, acquitted all the accused of the charge under Section 201, IPC. Both the convicted accused preferred an appeal to High Court which was heard and disposed of by a Division Bench of August 24, 1977. The High Court also thought that it was safe to place reliance on the sole

testimony of PW 1 and confirmed their convictions dismissing the appeal. Bua Singh did not approach this Court but the appellant sought special leave which was granted by this Court's order dated December 5, 1978.

7. The learned counsel for the appellant submitted that the prosecution story in regard to the involvement of the appellant is incredible, in that, it is not possible to believe that the appellant who had invited PW 1 and the deceased Harbans Singh to attend the betrothal ceremony would involve himself in the murder of Harbans Singh. He further submitted that in any case it was hazardous to place implicit faith on the testimony of PW 1 because it is found that his entire version regarding the second part of the prosecution case is thoroughly unacceptable, the insofar as the first part of the incident is concerned, it is found that he has been shifting his version in that behalf. We see considerable force in the submissions of the learned counsel for the appellant.

8. As pointed out earlier, the conviction of the appellant is based solely on the testimony of PW 1. There is no doubt that Harbans Singh was done to death at the residence of Banta Singh where he had gone with PW 1 to attend the betrothal ceremony. However, PW 4 and PW 8 who were examined as eyewitnesses to the occurrence did not support the version of PW 1 at the trial. PW 1, in the course of his evidence before the court stated after Bua Singh had inflicted two blows with the dantar on the head of Harbans Singh and the latter had fallen on the ground, the appellant took the dantar from Bua Singh and inflicted many blows on the back of the deceased. He has further deposed that thereafter the appellant fired four shots from his revolver whereupon PW 4 and PW 8 took to their heels. When the panchnama of the scene of occurrence was drawn up on the next day in the morning nothing was found to indicate that the appellants had fired four shorts from his revolver. If the appellant was armed with a revolver and had intended to kill Harbans Singh, we fail to understand why instead of using the revolver he chose to use the dantar. PW 1 wants us to believe that the appellant inflicted blows with dantar on the back of the deceased even though the head of the deceased was virtually chopped off by Bua Singh. However, it is found that in the FAIR lodged at about 1.30 p. m. on June 21, 1973 PW 1 had stated that the appellant had inflicted three or four blows on the head of the deceased. In his evidence before the committal court also PW 1 stated that the appellant had dealt blows with the dantar on the head of deceased. It was, therefore, rightly pointed out by the learned counsel for the appellant that the version given out by PW 1 in his FAIR as well as evidence recorded in committal court was that the appellant had inflicted blows on the 'head' of the deceased while during the trial he testified that the blows were inflicted on his 'back'. He changed his version in his evidence at the trial on realising that otherwise it would conflict with medical opinion. Finding that there were incised wounds on the back and leg of the deceased which would go unexplained and only a limited number of wounds on the head which would falsify his statement of having dealt three or four blows on the head he stated that the appellant had inflicted blows with the dantar on the back of the deceased after letter had fallen down. The learned counsel for the appellant rightly pointed out that he had raised this contention before the learned Additional Sessions Judge as well as the High Court but the same was not effectively dealt with. We think that having regard to the deliberate improvement made by PW 1 as regards the seat of injuries caused by the appellant to make his version consistent with medical opinion, both the courts below erred in concluding that it was safe to place implicit trust on his testimony. Since the evidence of PW 1 in regard to the presence of PW 4 and PW 8 as well as the second part of the incident is found to be thoroughly unacceptable, his evidence regarding the murder also has to be accepted with a pinch of salt and cannot be acted upon in absence in independent corroboration.

9. In the above circumstances we are of the opinion that the testimony of PW 1, insofar as the role assigned to the appellant is concerned, is suspect and cannot be accepted in the absence of

dependable corroboration. We, therefore, think that a serious doubt arises as regards the involvement of the appellant and the benefit of that doubt must go to him. We, therefore, allow this appeal, give the benefit of doubt to the appellant and set aside his conviction and sentence under Section 302/34, IPC, and direct that he be released at once unless required in any other case. The fine, if paid, to be refunded.

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