

Bhagwan Swarup

Vs

The State of U.P.

Criminal Appeal No. 251 of 1969

(S. M. Sikri, V. Bhargava, I. D. Dua JJ)

18.08.1970

JUDGMENT

SIKRI, J. -

1. In this case we gave special leave because in the petition filed by the appellant through jail it was alleged that his advocate was not heard in the case because he was busy in another case in another court and arrived too late to argue the murder reference and the appeal before the High Court. We had issued notice to the Government to show-cause why special leave should not be given but the Government did not inform us about the true state of affairs. Now, the learned Advocate for the State of U.P., has read to us a letter from the Government Advocate who argued the appeal and murder reference before the High Court, stating that the facts as stated in the petition are not true. But in order to avoid delay resulting from an enquiry into this matter we decided to hear the case on merits. We had appointed a counsel amicus curiae and he was ready to assist us.

2. He has taken us through the evidence and he was urged certain submissions which we will presently notice. It has not been shown to us by the learned advocate that there is any case for disturbing the concurrent findings of the learned Sessions Judge and the High Court.

3. The prosecution story which has been accepted by the learned Sessions Judge and the High Court is as follows :

On December 25, 1967, at about mid-day, the appellant Bhagwan Swarup, and Babu Lal, who has been convicted by the High Court under Sections 326/34/394 of the Indian Penal Code, were going on a bicycle on the service road on the bank of the canal minor in village Dabha. Dhan Singh deceased was going ahead on a new bicycle. When Dhan Singh reached the grove of Jagdish Prasad Sharma, Bhagwan Swarup and Babu Lal dragged Dhan Singh into the grove with the object of robbing him to his new bicycle. When Dhan Singh raised an alarm, Bhagwan Swarup whipped out a knife and stabbed Dhan Singh in the neck. On hearing the alarm raised by Dhan Singh, Ravindra Kumar (P.W. 1), Roshan Lal (P.W. 2) and Gajendra Pal Singh, who were passing on the service road, rushed to the grove and saw the incident. On seeing these witnesses, the two accused picked up the old bicycle as well as the new bicycle of Dhan Singh and ran away - Bhagwan Swarup riding the old bicycle and Babu Lal the new bicycle. They were chased by the aforesaid three witnesses shouting. Kamlu (P.W. 3) who was coming with a bundle of pulas on his head from the opposite side obstructed Bhagwan Swarup and Babu Lal by throwing his bundle in their way. Immediately Roshan Lal and others reached there and after beating them arrested both Bhagwan Swarup and Babu Lal. They were taken along with the bicycle into the grove where Dhan Singh was lying with injuries, bleeding profusely. The report was recorded at the police station at 2 p.m. the same day and

the investigation was undertaken by K. C. Tyagil (P.W. 7), who immediately went to the scene of occurrence and seized the knife which was lying near the body of Dhan Singh deceased.

4. The prosecution story is supported by Ravindra Kumar (P. W. 1), Roshan Lal (P.W. 2) and Kamlu (P.W. 3). Dr. D. N. Tewari, Medical Officer, who conducted the post-mortem examination on December 26, 1967, at 4.35 p.m., found one incised wound on the left side of the neck and one punctured wound below the aforesaid wound and one more punctured wound on the right side of the neck of the deceased. The last two wounds, according to him, may have been caused by one blow. It has been found that neither Ravindra Kumar nor Roshan Lal knew the two appellants before and they had no reason to falsely implicate the appellants. The High Court disbelieved the case of Bhagwan Swarup that there had been a marpit between Roshan Lal and Durjan Kadhera, a cousin of Bhagwan Swarup, and it is because of this fact Roshan Lal had falsely implicated Bhagwan Swarup. It is stated in the judgment of the High Court

that the High Court sent for the records, if any, to ascertain if a report was made in connection with the mar-pit and also for the medical evidence about the injuries suffered by Roshan Lal and Durjan Kadhera and they were informed that the records had been weeded out, and even if a report had been made, it was no longer available. It was however found from the report of the Civil Surgeon that Roshan Lal was treated from October 9, 1959, to November 8, 1959, as an indoor patient and although there was no evidence of the treatment of Durjan Kadhera the record showed that he was X-rayed on the October 23, 1959. The High Court further found that no such plea was taken by Bhagwan Swarup before the Committing Magistrate and it was made out of the first time before the Sessions Judge. The High Court carefully analysed the evidence of Ravindra Kumar and Roshan Lal and they saw no reason to disbelieve either of them. Kamlu (P.W. 3) was also believed by the High Court even though he was examined by the Investigating Officer 19 days after the occurrence. The reason given was that Kamlu went away to consult a doctor as he was suffering from asthma and could be examined only during the next visit of the Investigating Officer of Dhaba village, and his name was mentioned in the First Information Report.

5. Learned Counsel for the appellant, Mr. K. L. Mehta, has urge before us a number of points. His first point is that Bhagwan Swarup had his own cycle and even after the incident he rode on his own cycle and it must have been the other accused who wanted to steal the cycle. Be that as it may, it was not Babu Lal but Bhagwan Swarup who inflicted the injuries. The second point is that Bhagwan Swarup and the deceased Dhan Singh resided in the same village while the other accused Babu Lal resided at Khurrampur village, which is about 20 miles away and it is not probable that Bhagwan Swarup would kill a resident of his own village in the company of a person coming from a village 20 miles away. We see no force in this point. There is no doubt that Bhagwan Swarup and Babu Lal were going together on a cycle and they were captured together. The third point, the learned Counsel for the appellant, raised was that all the eye-witnesses are relations among themselves. This has no relevance unless it is established that there was previous enmity between Bhagwan Swarup and the eye-witnesses. The fourth point raised was that the eye-witnesses were inimical to the appellant but we have already noticed that the High Court did not find any substance in this point. We may add that the incident on which the enmity is alleged to have been founded took place as long ago as 1959 and there are no particulars of the actual incident which are available. The appellant was then 8 years old and it is unlikely that the would be the subject-matter of vengeance. The last point raised by the learned Counsel for the appellant was about the sentence. He said that the appellant was 18 years old at the time of the incident, but the learned Sessions Judge and the High Court have considered that point and awarded the extreme penalty. The learned Sessions Judge said that from his appearance Bhagwan Swarup does not appear more than 19 years of age but age

alone could not be taken as sufficient judicial ground for awarding lesser punishment, though it may be taken in to consideration in a mercy petition. He added that it is unfortunate that these teenagers have indulged in such heinous and violent crime, so as to commit the murder of an innocent person who had not given them any offence. The High Court said that the sentence of death awarded to Bhagwan Swarup under Section 302 of the Indian Penal Code was proper. No ground has been shown for us to interfere in an appeal arising out of the special leave granted by us. In the result, the appeal fails and is dismissed.

</html