

SUPREME COURT OF INDIA

Kameshwar Singh

Vs.

State of Bihar

Crl.A.No.903 of 2012

(Ranjan Gogoi and Mohan M.Shantanagoudar, JJ.,)

09.04.2018

JUDGMENT

Mohan M. Shantanagoudar, J.,

1. This is yet another case of the brutal murder of a person with a view to prohibit such person from deposing before the Court in a case against his assailant. This is a case wherein the dead body was cut into two pieces, and thrown at two different places, in order to destroy the evidence.

2. These appeals are directed against the judgment dated 16.08.2010/06.09.2010 passed by the High Court of Judicature at Patna in Criminal Appeal No. 291 of 1988, confirming the judgment of conviction passed against the appellants herein by the 8th Additional Sessions Judge, Sasaram in Sessions Trial No. 192/117 of 1977/1983, for the offences punishable under Section 302 read with Section 149 and Section 201 of the Indian Penal Code. The appellants were sentenced to undergo rigorous imprisonment for life under Section 302 read with Section 149, and a further period of three years under Section 201 of the Indian Penal Code.

3. Seven accused including the appellants were tried. Among the seven accused, two accused have died. Five accused are before us as appellants in these two appeals.

4. The case of the prosecution in brief is that, on 14.10.1973 at 11:00 p.m., deceased - Gupteshwar Singh along with PW6- Shambhu Singh carried meals for his farm worker; the farm worker was staying in the pump house of the deceased which is situated at the west of Pusauli railway station. The first informant, viz., Srimati Surajbansi Kuer, PW11, who is none other than the step-mother of the deceased - Gupteshwar Singh, found that the deceased had omitted to take his torch light along with him. Since it was pitch dark and as the pump house was located at quite a distance from her house into the fields, she along with Muneshwar Singh, PW-14, the brother of the deceased, went to handover the torch to the deceased. When she reached the lane situated east of the cattle shed of one Chhabi Koiri, she found PW6 - Shambhu Singh, who accompanied the deceased, coming back running from

south. He told the informant that seven accused including the appellants caught hold of the deceased, pushed him down on the ground near the south-eastern corner of the cattle shed of Chhabi Koiri and were pressing his neck at the place which was a shallow land. When she reached along with PW6 - Shambhu Singh and PW14 - Muneshwar Singh near the said spot, she heard the moaning sound - 'Aah aah' of the deceased. When she flashed the torch light, they saw seven accused including the appellants holding the deceased - Gupteshwar Singh. One of the accused, namely, Shesh Badan Singh (now expired) was armed with a gun and the remaining accused were having lathis. When she raised hue and cry that the seven accused were killing her son(deceased), accused Shesh Badan Singh instigated the other accused to kill the informant and others declaring that, by that time they had already killed the deceased - Gupteshwar Singh. Immediately, thereafter, the deceased stopped moaning. All the accused lifted and took the deceased towards the railways yard situated to the east of the place of occurrence. PW6, PW11 and PW14 being frightened by the threats given by the accused - Shesh Badan Singh, rushed to their house. Thereafter, PW11 went to Kudra Police Station in the morning of 15.10.1973 to lodge a complaint, wherein there was a huge assembly of persons in connection with the auction of cement, which was being carried out by an Assistant Sub-Inspector of Police. As such, she could not lodge the information then. Since she was an illiterate rural lady, and as one of the person from the mob advised her to go to Dehri Police Station to lodge the complaint, she went to Dehri Police Station on 15.10.1973 wherein the information was not received by the officer at Dehri Police Station. Immediately, thereafter she boarded the train and came back to Kudra and reached Kudra Police Station in the midnight, i.e., the intervening night of 15.10.1973 and 16.10.1973. As the police officer was not immediately available and was taking rest, the first information report came to be recorded at 4:00 a.m. on 16.10.1973 at the said police station by PW15 (Sub-Inspector of Police). The crime was registered and thereafter the investigation took off.

5. During the course of investigation, the police recovered the dead body of Gupteshwar Singh in two pieces. His head was found out in a gunny bag along with a big stone from the well, which was located at a deserted place and which belonged to one Rameshish Singh. The other portion of the body was also found tied in a gunny bag and was lying in a bogie of a goods train. PW11 - informant identified not only the face of the dead body but also the wearing clothes and apparel of the deceased.

6. In sum and substance, the accused were charge-sheeted, and tried, convicted and sentenced, as mentioned supra. However, in the meanwhile, two of the accused died. The High Court, by its impugned judgment, has affirmed the judgment of conviction and sentence rendered by the trial Court, so far as the five appellants are concerned. Hence, these two appeals are filed by the convicted accused.

7. The prosecution, in all, examined 16 witnesses; out of them PW1-Muni Lal and PW5-Rameshwar Singh have turned hostile. PW6-Shambhu Singh, PW11-Surajbansi Kuer and PW14-Muneshwar Singh are the three eye witnesses. PW2-Kapildeo Singh gave evidence on the recovery of the head from the well and preparation of the inquest report. PW4-Badri Narayan Pandey was the official of Railway Protection Force. He was on his duty during the night of 14.10.1973 at Pusauli Railway Station along with other constable Surendra Singh.

He heard the moaning sound - 'Aah-Aah' at about 11:30 p.m., which was coming from Koiri-tola of village Baraon, which was only about 60 to 70 yards to the north of Pusauli Railway Station. He further deposed that he heard someone's voice twice and it matched the voice of a dying person. The voice was once in a loud volume and a second time in a low volume. PW9-Ravindra Nath Singh was the officer-in-charge of Railway Protection Force, Dehri-on-Sone in the year 1972-73. He deposed that he had registered a case on 12.10.1972 under section 3 of The Railway Protection (Unlawful Possession) Act, 1966, and also another case in the same section of the same Act, wherein Kameshwar Singh (appellant in criminal appeal no. 903 of 2012) was an accused in both the cases along with certain other persons. He further deposed that the statement of the deceased - Gupteshwar Singh, who was a witness in both the cases, was recorded in both the cases in Hindi and the said statements were produced before the trial Court and marked as Exhibits 4 and 4/1. In one of the two cases, Suresh Koiri, son of Chhabi Koiri, (who is one of the genitive brothers of Nagina Koiri, one of the accused in criminal appeal no. 904/2012), was also an accused. PW9-Ravindra Nath Singh, being an independent officer of the State, has deposed in respect of the motive for the commission of the offence. PW12-J.B. Singh is the guard of a goods train. He along with another guard T.P.Sinha, PW13, saw the bag lying in the open boxes of goods train from which the legs of a dead body were peeping through. The evidence of PW 11 is also of the same effect. The post-mortem on the head of the deceased was conducted by Dr. Mirza Hussain. It seems the said doctor could not be examined before the trial Court, either in view of the death of the said doctor, or the non-availability of the said doctor during the relevant point of time.

PW15-Gopal Krishna Jha was the investigating officer.

8. To satisfy our conscience, we have carefully gone through the evidence of all the witnesses, more particularly, the evidence of the three eye witnesses, PWs 6, 11 and 14, and the evidence of PW15, the investigating officer. The supporting witnesses such as the officials of Railway Protection Force fully support the case of the prosecution to prove the recovery of the dead body in two pieces and to prove the motive for commission of the offence.

9. The evidence of three eye witnesses is consistent, cogent and reliable insofar it relates to the accused - Kameshwar Singh. At the inception itself, PW11, the step-mother of the deceased (PW11 had fostered the deceased) had stated in her first information that when she went to the spot of the incident along with PW6 and PW14 during the night of 14.10.1973, she not only heard the moaning sound of the deceased but also saw Kameshwar Singh throttling the neck of the deceased. Other accused were said to be holding the deceased. Among other accused, one accused, namely Shesh Badan Singh (since deceased) was holding a gun and the other accused were holding lathis. Thereafter, all the accused took the deceased, who fell down because of the throttling, towards the railway station. Such fact, which has come into existence at the initial stage in the form of first information lodged by PW11 is fully supported by the evidence of all the three eye witnesses. We do not find any reason to suspect the versions of the three eye witnesses with regard to the part played by the accused - Kameshwar Singh in the commission of the offence. As mentioned supra, all the

three witnesses, without any hesitation, have deposed that the accused - Kameshwar Singh was throttling the deceased. Even in the cross-examination, their version could not be shaken by the defence. As a matter of fact, there was a scanty cross-examination by the defence in respect of the actual incident. The defence in their cross examination concentrated mainly on other factors and not on the main incident. The defence could not shake the versions and credibility of the three eye witnesses regarding the actual incident of throttling the deceased by the accused - Kameshwar Singh.

10. It is no doubt true that the conduct of PWs 6, 11 and 14 appears to be artificial after the incident, inasmuch as they came home without trying to save the life of the deceased by raising hue and cry in the village. However, we will have to keep in mind the actual realities of life, particularly having regard to the material on record. It has come in evidence that Shesh Badan Singh and Kameshwar Singh were powerful persons in the village. They had got licenced guns. When the three eye witnesses flashed the torch towards the accused to see the incident and the plight of the deceased, the accused - Shesh Badan Singh pronounced that they have just then killed Gupteshwar Singh and now they should kill the three eye witnesses. Being frightened, the three eye witnesses fled from the scene. At that point of time, it was about 11:30 p.m., during which time generally the villagers would be fast asleep. However, the evidence of these eye witnesses discloses that they have told 3-4 persons in the village about the incident, but such persons did not come to the spot and help the deceased.

11. It must further be kept in mind that the reactions of these witnesses in running away from the site of occurrence appears to be a natural human reaction under the facts and circumstances of the case. Behaviour of the witnesses or their reactions would differ from situation to situation and individual to individual. Expecting uniformity in their reactions would be unrealistic, and no hard and fast rule can be laid down as to the uniformity of the human reaction. The evidence of the three eyewitnesses cannot be faulted merely because they ran away. This Court in similar circumstances in the case of *Rana Partap v. State of Haryana*¹, observed as follows:

“6....Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter- attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

The aforementioned observations aptly apply to the matter on hand.

12. We hasten to add here itself that the presence of the three eye witnesses cannot be doubted. PW6-Shambhu Singh went along with the deceased - Gupteshwar Singh to provide meals for the farm worker of the deceased. At that point of time, he was caught hold of by the accused and others. Being frightened, PW6-Shambhu Singh started running back to the

village and at that point of time, PW11 and PW14 came from their house towards the place of the incident, in order to give the torch to the deceased. The said torch was seized during the course of investigation, which was found to be in working condition. As the mother of the deceased and as a brother of the deceased, PW11 and PW14 immediately proceeded towards the deceased along with PW6 in order to give him a torch light, since it was pitch-dark. Even in cross-examination, the defence was not successful in proving that the presence of the three eye witnesses on the spot of the incident was doubtful.

13. Learned advocates appearing for the accused argued that much can be commented on the evidence of PWs 6, 11 and 14; so also, much can be commented on the aspect of delay and the conduct of PW11 before lodging the first information. It is no doubt true that there is a delay of about 30 hours in lodging the first information. The incident had taken place at 11:30 p.m. on 14.10.1973 and the first information was lodged at 4:00 a.m. on 16.10.1973. In our considered opinion, the prosecution has fully and satisfactorily explained the delay in lodging the first information. PW11 is a resident of a remote village and she was an illiterate and poor lady. Besides, she had personally seen her son being throttled and being taken away by the accused persons. She was threatened with dire consequences by one of the accused, namely Shesh Badan Singh, who was holding a gun. Not even a suggestion is made by the defence that the family of the deceased was powerful or influential. Even a suggestion is not made that they are rich people. Under such circumstances, the trial Court and the High Court are justified in taking into consideration all the relevant factors including the explanation offered by the informant as well as PW15 to conclude that the prosecution had proved satisfactorily the reasons for delay in lodging the first information.

14. As mentioned supra, the case of the prosecution is further supported by the evidence of PWs 2, 12 and 13, who are none other than the officials of Railway Protection Force regarding the recovery of the dead body in two pieces. Identity of the dead body was not in doubt, inasmuch as the head of the dead body was identified by PW 11, who is none other than the step mother of the deceased.

15. The aspect of motive also points towards the accused - Kameshwar Singh. PW9 - Ravinder Nath Singh, who is the inspector of Railway Protection Force has deposed that the two cases were lodged against the accused - Kameshwar Singh in the years 1972 and 1973 with regard to theft of railway property and in both these cases the deceased-Gupteshwar Singh was a witness. The evidence of this witness cannot be doubted, inasmuch as he has produced the statements of Gupteshwar Singh in both the criminal cases before the trial Court and the same are marked as Exhibits 4 and 4/1. PW9 has identified the accused - Kameshwar Singh, who was present in the dock by saying that he was a man against whom cases under the Railway Protection (Unlawful Possession) Act, 1966 were lodged and were pending. PW11 has supported the evidence of PW9 by deposing that just prior to the incident, Kameshwar Singh had threatened the deceased - Gupteshwar Singh by telling him not to give evidence against him in the criminal cases. Accused Kameshwar Singh had said that the deceased would be done to death in case he deposes against him.

16. From the entire evidence, including the ocular testimony of PWs 6, 11 and 14, in our considered opinion, it can be concluded that the prosecution has proved its case beyond reasonable doubt as against the accused - Kameshwar Singh. However, omnibus and vague evidence is forthcoming as against the other appellants. The incident had taken place abutting the cattle shed of Nagina Koiri, accused no.7. Certain articles were seized from the cattle shed of Nagina Koiri. Two iron rods from the window shutter were found to be cut, which were presumably used for the commission of the offence. However, there is no specific evidence which points towards the guilt of other persons or the participation of Nagina Koiri in the commission of the offence. It is no doubt true that the evidence on record creates suspicion in the mind of the Court about the participation of the other accused, but any amount of suspicion may not take the place of proof.

17. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is not being used in India. Virtually, it is not applicable to the Indian scenario. Hence, the said maxim is treated as neither a sound rule of law nor a rule of practice in India. Hardly, one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is the duty of the Court to scrutinise the evidence carefully and, in terms of felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. Efforts should be made to find the truth. This is the very object for which Courts are created. To search it out, the Court has to disperse the suspicious cloud and dust out the smear of dust, as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So, it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the Court, within permissible limits to find out the truth. It means, on one hand that no innocent man should be punished, but on the other hand to see no person committing an offence should go scot free. If in spite of such effort suspicion is not dissolved, it remains writ at large, benefit of doubt has to be credited to the accused. The evidence is to be considered from the point of view of trustworthiness and once the same stands satisfied, it ought to inspire confidence in the mind of the Court to accept the evidence.

18. The evidence on record points towards the guilt of Kameshwar Singh. It is no doubt true that one man alone could not have committed such a ghastly crime by separating the dead body into two pieces. He must have taken the assistance of others. The prosecution has come out with seven names including Kameshwar Singh, but so far as the other accused are concerned, particularly in respect of the other appellants (except Kameshwar Singh), except the omnibus and vague evidence that they were also present and they also joined hands with the accused - Kameshwar Singh, no other specific and reliable material has come on record. Common object is also not proved. As mentioned supra, any amount of suspicion will not take the place of proof and hence after removing the grain from the chaff, we are of the opinion that the judgment of conviction passed against the accused Kameshwar Singh needs to be confirmed, and the same is hereby confirmed.

Insofar as other appellants are concerned, since there is no reliable evidence on record, the benefit of doubt needs to be given to the other appellants.

19. Accordingly, Criminal Appeal No. 903 of 2012 filed by the accused - Kameshwar Singh stands dismissed, and the judgment dated 24.05.1988 passed by the VIII Additional Sessions Judge, Sasaram in Sessions Trial No. 192/117 of 1977/1983, convicting and sentencing the accused - Kameshwar Singh to life imprisonment under Section 302 IPC and three years rigorous imprisonment under Section 201 IPC, as confirmed by the High Court by the impugned judgment, stands confirmed. Record reveals that the accused - Kameshwar Singh is in custody. He is directed to serve out the sentence imposed upon him by the trial Court, and as confirmed by the High Court.

20. Insofar as the accused-appellants Tarkeshwar Singh, Bahadur Ram Kahar, Bikarma Dusadh and Nagina Koiri in Criminal Appeal No. 904 of 2012 are concerned, they are being given the benefit of doubt. Accordingly, the judgment of the trial Court convicting them under Sections 302/149, IPC and Section 201, IPC and sentencing them to undergo life imprisonment on the first count and rigorous imprisonment for three years on the second count, as confirmed by the High Court by the impugned judgment, stands set aside, by giving them the benefit of doubt. The accused Tarkeshwar Singh, Bahadur Ram Kahar, Bikarama Dusadh and Nagina Koiri (appellants in Criminal Appeal No. 904 of 2012) be released forthwith, if not required in any other case. Criminal appeal no. 904 of 2012 is allowed accordingly.