

## **Mahmood vs State Of U.P. on 1 October, 1975**

**Equivalent citations: AIR1976SC69, 1976CRILJ10, (1976)1SCC542, 1975(7)UJ875(SC), AIR 1976 SUPREME COURT 69**

**Author: R.S. Sarkaria**

**Bench: A.C. Gupta, R.S. Sarkaria**

### **JUDGMENT**

R.S. Sarkaria J.

1. This appeal by special leave is directed against a judgment of the High Court of Allahabad upholding the conviction of the appellant for offences under Sections 452 and 302/34, Penal Code in respect of the murder of a villager, Dwarka,
2. The deceased lived all alone in his house in village Gurgaon, Police Station Nigohi. The deceased used to lend money to one Ram Sarup, a distant relation. Over this loan, a dispute arose between Ramsarup and the deceased. Their relations became strained, and Ramsarup started nursing a grudge against the deceased. According to the prosecution story, this Ramsarup, in collaboration with the appellant, murdered Dwarka on the night between the 4th and 5th of January, 1967.
3. On January 4, 1967 at about 6-30 p.m., Ramchander P.W. 2, Sheodass, P.W. 3, Govind and others were sitting by the side of Alown (fire place) to warm themselves in front of the house of Ramchander at a distance of about 50 paces from the entrance to the house of the deceased. Ramsarup and the appellant came there, They stayed at the fireplace for a few minutes and then went to the entrance of Dwarka's house and called Dwarka opened the door, and Ramsarup and the appellant (who was a stranger to the witnesses) went into the house.
4. On the following morning, one Mithulal, P.W. 4, went to the house of the deceased for purchasing gram. On going inside, he found Dwarka lying dead with injuries. Mithu came out and informed P.W. Ramchander and Karan about what he had seen. Karan further communicated that information to Bhagwandeem, P. W. 10, a cousin and neighbour of the deceased. Bhagwandeem then went inside the house of the deceased and saw the scene,. P.Ws. 2, 3, 4 and 5 were present near the dead-body of Dwarka. These persons apprised Bhagwandeem about what they had seen the preceding evening. Bhagwandeem then scribed a report and thereafter delivered it in Police Station Nigohi, 7 miles away, at 11.00 a.m.
5. After registering the case, Sub-Inspector K.C. Bhandari P.W. 11, reached the scene of occurrence. He found the bloodstained Gandasa, Ext.1, lying near the dead-body. He noticed finger prints on its wooden handle. He, therefore, put this Gandasa in a box which was made into a parcel and sealed with his own seal in the presence of Gajadar, P.W. 5 and prepared and recorded the statements of

the witnesses.

6. The Sub-Inspector arrested Mahmood appellant on 24-3-1965 at 8.15 a.m. Mahmood was directed to conceal his face and he did likewise. Mahmood was taken to the Police Station. At 12 10 P.M on the same date he was taken out of the police lock-up and sent in the custody of constable to the District Jail, Shahjahanpur, 20 miles away by bus. A test identification was held on 5.4.1967 before a Magistrate at which P.Ws. 2 and 3 identified the appellant. On 15-4-1967, at the request of the Investigating Officer, Proficient Mohd. Sarvar Hussain took the specimen finger impression of the appellant. These impressions alongwith the sealed parcel containing the blood-stained Gandasa, were sent to the CID Scientific Laboratory, Lucknow, on 21-4-1967, through Constable Munish Dikshit, P.W. 18. Inspector Dario Singh (P.W.15) of the Laboratory examined these impressions. In his opinion the finger impressions found on the handle of the Gandasa, Ex. 1 tallied with the specimen finger impressions of the appellant.

7. At the trial the prosecution examined P.Ws. Ramchander and Sheodass to show how on the preceding evening they had seen Ramsarup and the appellant going into the house of the deceased. The trial court disbelieved the evidence of these witnesses, but found that the presence of the finger prints of the appellant on the handle of the Gandasa, Ex P-1. was a circumstance which by itself was sufficient to show that the murder had been committed by the appellant and convicted him. Mahmood appealed to the High Court. The High Court affirmed the findings of the trial court and dismissed his appeal.

8. Thus the conviction rests on the solitary circumstance viz, that the finger-prints of the appellant were found on the handle of the Gandasa, P-1, which was found lying near the dead body at the scene of occurrence.

9. It is well settled that in a case dependent wholly on circumstantial evidence, the Court before recording a conviction on the basis therefore must be firmly satisfied -

(a) that the circumstances from which the inference of guilt is to be drawn, have fully established by unimpeachable evidence beyond a shadow of doubt;

(b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused; and

(c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

After hearing the learned Counsel on both sides, we are of opinion that in the instant case these conditions have not been satisfied.

10. There are some suspicious circumstances in this case which cast a grave doubt as to the genuineness of this lone piece of evidence. Firstly, no less a person than the complainant. Bhagwandeed P.W. 1, admitted in cross-examination that when he first saw the gandasa Ext. 1, lying

near the deadbody at the scene of occurrence its wooden handle was dirty but on 29-1-1968. (when this weapon was shown to the witness in court the wooden part of its handle was clean and the rest dirty. The inference is that somebody might have cleaned the wooden-handle and thereafter got the finger prints of the appellant on it. Cleaning would be necessary to obtain distinct and decipherable finger-impressions. Secondly, the investigation in this case was not as fair and cautious as it should have been. The version of the appellant was that he had been arrested by the police on the 23rd March, 1967 at about 5 or 5.30 p.m. from a bus and was then kept in the lock-up of Police Station for the night and on the following day at about noon, the sub-Inspector bandaged the appellant's eyes, applied some fluid on his fingers, then made hold some object and forcibly obtained his finger-prints on it. Then on 26-4-1967, that is, long before the start of the proceedings in the court of the Committing Magistrate, the appellant sent two petitions through the Jailor addressed to the District Magistrate and Superintendent of Police, Saharanpur, complaining how his finger-prints were forcibly taken by the Police on some round object.

11. Constable Hardwari Lal, P.W. 9, falsified the version of the Investigating Officer, PW 11, and confirmed that of the accused about the date of the latter's arrest. In cross-examination, PW 9 admitted that Mahmood accused was arrested on 23-3-1967 and thereafter was kept in the Police Station till 12.10 noon of 24-3-1967, when the witness took him out of the Police Station for escorting him to the District Jail, Shahjahanpur.

12. Further, at the test identification parade held, The purpose of mentioning all this is that the Investigating Officer in the mistaken zeal for the success of his case was prone to resort to "padding" and suppression of distortion of facts. It is in this background of suspicion that this price of circumstantial evidence collected by him had to be evaluated.

13. Further, the investigator did not take all the necessary precaution which could be taken to eliminate the possibility of fabrication of this evidence, or to dispel suspicion as to its genuineness. Admittedly, he sealed the box with his own seal which thereafter remained with him throughout. He did not take the signatures of the witnesses on the parcel containing the gandas. He did not after sealing the parcel entrust his seal to the Sarpanch or any other respectable of the village. According to the prosecution the finger-prints found on the gandas could possibly be blood-prints and that the blade of the gandas was all smeared with human blood. But this gandas was never sent to the Chemical Examiner or the Serologist. No explanation of the same is forthcoming. This being the case, the contention of Mr. R K. Garg at the bar, that the gandas, Ex. 1, or smear of the alleged blood on it was not sent to the Chemical Examiner for fear of the fabrication being detected and exposed, cannot be rejected outright.

14. Furthermore, the specimen finger-prints of the appellant were not taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. This is another suspicious feature of the conduct of investigation. It has not been explained why this Magistrate was kept out of the picture.

15. It is to be noted further that the same Constable (Muneshwar Dixit; P.W. 18) collected the specimen finger-prints, presumably from the Investigation Officer, and the parcel containing the

gandasa Ex. 1 from the Sadar Malkhana on the 21st April and delivered it to the Scientific Section, Lucknow on the 22nd April. There was thus a possibility of the Investigating Officer, having an access to the parcel containing the gandasa on the 21st April. Such a possibility has not been positively excluded by the prosecution.

16. Secondly, even if it is assumed that the handle of this gandasa bore the finger-prints of the appellants, then also it would not inexorably and unmistakably lead to the conclusion that the appellant, and none else was the murderer of Dwarka, unless it was firmly proved further that the fatal injury to the deceased was caused with this weapon. Definite proof of this link was lacking in this case. The missing link could be best supplied by showing that there was blood on this gandasa, and that blood was of human origin. But this was not done.

17. Lastly, it may be observed that Inspector Daryao Singh, P.W. 15, has not given any reasons in support of his opinion. Nor has it been shown that he has acquired special skill, knowledge and experience in the science of identification of finger-prints. It would be highly unsafe to convict one of a capital charge without any independent corroboration, solely on the bald and dogmatic opinion of such a person, even if such opinion is assumed to be admissible under Section 45, Evidence Act.

18. In the light of the above discussion, we are of the view that the solitary piece of circumstantial evidence on which the prosecution have staked their case, is too shaky, suspicious and fragile to furnish a sound foundation for conviction.

19. These, then, are the reasons which we now give in support of our order dated 22-9-1975 whereby we accepted this appeal, set aside the conviction of the appellant and acquitted him.