Sunder Singh vs State Of Uttar Pradesh on 3 November, 1955

Equivalent citations: AIR1956SC411, 1956CRILJ801, AIR 1956 SUPREME COURT 411

JUDGMENT

Sinha, J.

1. This is another appeal which comes before this Court on "leave" granted by the High Court of Judicature at Allahabad which does not fulfil the requirements of Article 134(1)(c) of the Constitution. Only the other day this Court in the case of Baladin Lodhi v. State of Uttar Pradesh, had occasion to draw the attention of that Court to the observations made in the reported case of Nar Singh v. State of Uttar Pradesh .

It was observed by this Court that the grant of a certificate under Article 134(1)(c) is not a matter of course but that the power has to be exercised after considering what difficult questions of law or principle were involved in the case which should require the further consideration of this Court. If the case as decided by the High Court oh the face of it did not involve any such questions, then apparently there was no justification for the High Court to certify that the case is a fit one for appeal to this Court.

It was further observed that the word "certifies" in Sub-article (1) (c) is a strong word which requires the High Court to look closely into the case to see if any special considerations arise. If a case does not involve any question of law, then however difficult the question of fact may be, that would not justify the grant of a certificate under Article 134(1) (c) of the Constitution, because if the High Court has any doubt about the facts of a criminal case, the benefit of that doubt must go to the accused.

If, on the other hand, the High Court has no doubt about the guilt of the accused and confirms the order of conviction passed by the trial Court, ordinarily there could be no ground for entertaining an application for a certificate that the case was a fit one for a further appeal to this Court. Where the High Court has reversed an order of acquittal of an accused person and sentenced him to death or where it has withdrawn for trial before itself any case from any Court subordinate to it and has convicted an accused person and sentenced him to death, those cases would be covered by the provisions respectively of Article 134(1)(a) and 134(1)(b) of the Constitution.

Therefore, ordinarily in a case which does not involve a substantial question of law or principle in an affirming judgment, the High Court would not be justified in granting a certificate under Sub-article (c) of Article 134(1) of the Constitution.

2. As will presently appear, the present case does not at all involve any question of law, far less any

such question of unusual difficulty or importance. The conviction by the Courts below is based entirely on circumstantial evidence.

The only question before the High Court was whether the circumstances disclosed in the evidence do or do not unmistakably point to the conclusion that the accused was the guilty person. If the High Court had any doubt about the guilt of the accused or had any difficulty in accepting the evidence, its clear duty was to acquit. If, on the other hand, the High Court found, as it did find in the case in hand, that the evidence pointing to the guilt of the accused was clear, cogent and reliable, it had to dismiss the appeal.

No further question of doubt or difficulty could arise thereafter. In our opinion, therefore, the High Court's order which is the last sentence in the judgment appealed from in these terms: "Leave to appeal to the Supreme Court has been asked for and is allowed" was erroneous. In the result, we must hold that the certificate, if it can be called one, granted by "the High Court does not fulfil the requirements of Article 134(1)(c) of the Constitution.

3. But that conclusion does not necessarily mean the end of the appeal. We have to consider whether in the circumstances of this case this Court could have thought fit to grant special leave in terms of Article 136 (1) of the Constitution. We therefore proceed to examine the case from that point of view.

4. The facts of this case are simple. The accused Sunder Singh, was one of the several police constables attached to the D.I.G. of Police, Central Range, U.P. He was functioning as his orderly peon and used to drive his car. He along with a number of police constables used to stay in the out-houses with six rooms, attached to the official quarters of the D.I.G. of Police. The appellant, Het' Ram (P.W. 1), Sadhu Ram (P.W. 6), and Ram Lal, constables used to live in some of the rooms of the out-houses.

The appellant and Ram Lal apparently were on friendly terms. The appellant used to go to the room occupied by Ram Lal and his wife. The other constables were not living with their families. The prosecution case is that on the night between the 2nd and 3rd February 1954 at about 10 P.M. the appellant and Ram Lal aforesaid together left the bungalow of the D.I.G. on a cycle. Ramlal pedalled on the carrier. They proceeded towards the La Martiniere Ground, which is adjacent to the West of the D.I.G.'s bungalow with pucca roads on the north and west.

There is a culvert on the pucca road running east to west on the north of the La Martiniere Ground. The appellant returned alone by about 1 A.M. the same night. The next morning one Jagat Narain, a constable of the Armed Guard, noticed the dead body of a constable lying behind the residence of Shri Hukum Singh, Minister, near the La Martiniere Ground. He informed the D.I.G. of Police. Het Ram (P. W. 1) and other inmates of the servants quarters went and saw the dead body which they identified to be that of Ramlal. It had multiple incised wounds. Het Ram lodged the first information report at 7-40 A.M. on 3-2-1954, at Hazratganj thana in the city of Lucknow.

Sub-Inspector Ishtiaq Ahmad (P. W. 16) arrived at the spot and started investigation. After holding the inquest and sending the dead body for post-mortem examination, he noticed blood marks on the

shoes of the appellant who was with him during the investigation. He formally arrested him at about 3 P.M. and interrogated him. He took possession of his shoes in the presence of two rickshaw drivers whom he picked up on the road and prepared-the seizure list (Ex. P-8) of the shoes (Ex. VIII).

Thereafter accompanied by the appellant and the two witnesses aforesaid, he went to search the appellant's room which he found locked. The appellant opened the lock. Inside the room was a box which was also unlocked by the appellant with his key. From inside the box were recovered bloodstained khaki shirt and pants (Exs. IX and X). From there he was taken to the culvert aforesaid on the road on the north of the Ground at a distance of about 200 paces from the quarters.

From underneath the culvert a karauli (Ex. P-XI) (which is a small sword) was recovered as pointed out by the accused. These articles, namely, the bloodstained shoes, shirt, pants and the karauli were sent for examination and the report was that they were stained with human blood. The post-mortem examination was held by the Civil Surgeon of Lucknow, Dr. C.P. Tandon, who found as many as 32 incised and stab wounds, including one small abrasion which may have been caused by a fall.

The most serious of those wounds were on the back of the neck and back of the head which were homicidal and caused by "a sharp-edged sharp pointed weapon". A number of ribs were cut and so were the pleura, the larynx, the right lung, the pericardium (membrane of the heart), the large vessels on the left side of the neck, aorta and pulmonary artery and oesophagus. The stomach contained about 10 ounces of semi-digested food.

In the opinion of the doctor, death was due to "shock and haemorrhage from the extensive injuries" which "could be caused by the weapon Ex. XI shown to me". In cross-examination the doctor (P. W. 7) stated that "the wounds on the neck could also be caused by a sword. There was a very remote possibility of stab wound having been caused by a spear".

5. As pointed out by the Courts below, the deceased Ramlal was butchered to death in a brutal manner. From the medical evidence it is also clear that the murder took place a few hours after the deceased had taken his night meal some time during the night of 2nd-3rd February, 1954 as alleged by the prosecution and that the karauli (Ex. XI) most likely was the weapon used for causing the multiple stab and incised wounds found on the body of the deceased.

6. At the trial the prosecution adduced no direct evidence implicating the appellant. The case therefore depended entirely on circumstantial evidence which consisted of the following facts:

> (1) that the deceased and the appellant were last seen going together on a cycle at about 10 P.M. on the night of the 2nd February, 1954 towards the La Martiniere Ground where the dead body was discovered the next morning;
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> (2) that at about 1 A.M. on the 3rd February, 1954 the appellant came back alone;

(3) that the investigating Sub-Inspector seized the shoes worn by the appellant (Ex. VIII), which were found to be stained with human blood as reported by the Serologist;

(4) that on the search of the room occupied by the appellant from the box which was unlocked by him were recovered bloodstained khaki shirt and bloodstained pants (Exs. IX & X) which were also reported by the Serologist to be stained with human blood; and (5) the recovery of the karauli as pointed out by the accused from underneath the culvert on the pucca road to the north of the La Martiniere Ground.

7. All these incriminating circumstances have been brought out in the evidence of P. Ws. 1, 6, 10 and 15, members of the constabulary belonging to the personal staff of the D.I.G. of Police, Central Range, and the investigating Sub-Inspector (P. W. 16).

The Courts had therefore no doubt that the evidence consisting as it did of his fellow constables and armed guards who had no sort of enmity against the accused, was reliable. They also found that the accused had a motive for murdering the deceased person inasmuch as according to the evidence there was a liaison between him and the wife of the deceased.

The learned Judges of the High Court have also pointed out that the nature of the most serious injuries, namely, those on the back part of the neck were such as could have been caused by a person sitting behind when the cycle was being pedalled by the deceased. After those serious injuries had been caused to the deceased he could easily have been overpowered and done to death by the other multiple injuries actually found on the dead body.

The Courts below therefore agreed in convicting the appellant of the murder of the deceased and imposing upon him the extreme penalty of the law in the absence of any extenuating circumstances.

8. In this Court the learned counsel for the appellant has argued in the first instance that the seizure of the bloodstained shoes by the Sub-Inspector (P. W. 16) was not free from doubt as the witnesses who are said to have witnessed the seizure, Md. Irshad (P. W. 12) and Abdul Habib (P. W. 14) were not "respectable inhabitants, of the locality in which the place to be searched is situate" as required by Section 103, Criminal P. C. On the face of it, section 103 would not apply to the seizure of the shoes which were being worn by the accused at the time he was with the investigating police officer. The section applies when a search is to be made of a place. It does not apply to the search of a person. In this case the Sub-Inspector saw, the accused putting on the pair of shoes and he seized them. There is no question of search either of a place or of a person.

Hence it was not necessary strictly in accordance with the provisions of Section 103 of the Code that there should have been two independent search witnesses. But the Sub-Inspector out of abundant caution asked those two rickshaw wallahs to be present as they were the persons most easily available.

The Sub-Inspector in spite of his efforts could not get any person from the Minister's quarters to be present at the projected search and most of the occupants of the servants quarters of the D.I.G. of Police were police constables or members of the armed guard. The Sub-Inspector naturally thought that the search witnesses should be persons other than constables or members of the arm ed guard.

9. In respect of the search of the room occupied by the appellant and the recovery of the bloodstained shirt and bloodstained pants aforesaid it was necessary to have at least two search witnesses as required by section 103. Assuming that the two rickshaw-wallahs who actually witnessed the search as found by the Courts below were not respectable inhabitants of the locality, that circumstance would not invalidate the search.

It would only affect the weight of the evidence in support of the search and the recovery. Hence at the highest the irregularity in the search and the recovery in so far as the terms of Section 103 had not been fully complied with would not affect the legality of the proceedings. It only affected the weight of evidence which is a matter for Courts of fact and this Court would not ordinarily go behind the findings of fact concurrently arrived at by the Courts below.

It was also contended that the malkhana register and the seizure list were not all written in the same ink, but some portions were in different ink and that therefore they were not above suspicion. But these are again matters for Courts of fact. The Courts below have not omitted to consider those special features of the case and have come to the conclusion that those were not circumstances which affected the veracity of the witnesses examined in support of the prosecution case.

10. The learned counsel for the appellant also sought to attack the findings of the Courts below on the question of motive by pointing out that on the evidence of the prosecution witnesses themselves it appeared that there was intimate friendship between the deceased and the appellant previous to the date of the occurrence.

The Courts below have considered that aspect of the case. It has been pointed out that the accused may have had an eye on the handsome wife of the deceased and that he had already developed a liaison with her. It cannot be said that those circumstances were not sufficient motive for the dastardly crime.

That is again a matter for Courts of fact. The learned counsel for the appellant has failed to make out any illegality or serious irregularity in procedure which can be said to have occasioned a failure of justice. No reasons have been adduced for interference with the concurrent findings of fact arrived at by the Courts below. The appeal must therefore be dismissed.