Hate Singh Bhagat Singh vs State Of Madhya Bharat on 2 November, 1951

Equivalent citations: AIR1953SC468, AIR 1953 SUPREME COURT 468

JUDGMENT

Bose, J.

1. Two brothers Hate Singh and Bheru Singh were convicted of the murder of one Shiv Singh and sentenced to death. The Madhya Bharat High Court confirmed the convictions and upheld the sentences. Both appealed to this Court. Bheru Singh's appeal was dismissed 'in limine' because he admitted the shooting from the start and took all the blame on himself. He adhered to these admissions throughout the trial and also in the appeal to the High Court. There is also the testimony of two eye-witnesses against him which in view of his admissions cannot but be believed so far as he is concerned. But there appeared to be an element of doubt in the other case, so Hate Singh's appeal was admitted for hearing and that is the appeal we are now dealing with. Hate Singh has denied complicity in the crime all through.

2. Put very shortly the prosecution case is that there was a sudden quarrel between the deceased Shiv Singh and the accused Bheru Singh because Shiv Singh hit Hate Singh's young brother-in-law aged 12. There was some abuse & Bheru Singh fired at Shiv Singh with a gun and hit him. Shiv Singh, though wounded, rushed at Bheru Singh with a lathi. The appellant Hate Singh, who also had a gun, thereupon intervened and fired at Shiv Singh and hit him. The result was that Shiv Singh dropped dead.

3. The medical evidence discloses that Shiv Singh had three gunshot wounds in his body, all in front: two on the chest and one in the stomach. All three wounds were on the left side of the front of the body. One of the shots penetrated the heart; the second was 2 1/2 inches from the left nipple and tore the spleen; the third, was on the left side of the umbilicus. Dr. Shukla, P. W. 16, tells us that any one of the three injuries would have proved fatal in itself. He also tells us that all three wounds could be caused by a single discharge from a gun.

4. Unfortunately, none of the shots or the bullets have been recovered. If they had been recovered we would the more easily have been able to determine whether they were fired from one gun or two. One of the guns used was a breech-loading double barrel gun with hammer action. The other two were old fashioned muzzle loaders. Presumably, the type of shot used in the more modern weapon would have been different from the crude pellets or slugs one would expect in a muzzle loader. Of these three guns we need only consider Arts. D and E as no one has suggested that the third, Art. G, has anything to do with this case.

5. Now the same eye-witnesses who implicate Bheru Singh also implicate Hate Singh and they have both been believed. Ordinarily, therefore, there would have been no room for interference in this Court. But there are special reasons in this case why we feel the testimony of these wit nesses cannot be accepted at their face value as against Hate Singh. We will first set out certain facts which are either admitted or are, in our opinion, established beyond doubt.

6. In the first place, Bheru Singh has admitted his guilt from the start and has taken all the blame on himself. Hate Singh on the other hand has denied throughout that he took any part in the shooting. Their story has been consistent from the outset and has not varied or changed in material particulars at any stage. Nor, if Jugar Singh, P. W. 14, is to be believed, was this a mere afterthought. It was the story they gave that very day a few hours after the murder, long before the police came on the scene and long be fore they were apprehended. It is true they had plenty of time to think out such a defence and it is true the witness is a nephew. But the learned Sessions Judge has believed him as against Bheru Singh and has thrown no doubt upon his word.

We can therefore take it to be a fact that the accused did tell him that story that very evening and that so far as the witness is concerned he is not inventing what he was told. Of course, that does not exclude the possibility that the accused had at some stage before this agreed among themselves to take this line so that the one might be hanged and the other go free but the fact remains that they took up this attitude from the start and that the story is no after thought. That to our minds is a most, impressive feature which is not lightly to be brushed aside.

7. Next we have the fact that Hate Singh has throughout admitted his presence at the scene of crime at the time it took place. He could easily have denied it. He has also admitted that he was carrying a gun. That also he could have denied. If the idea of the two brothers was to set up a false story so that one alone should suffer and the other go free, they could hardly have chosen a more dangerous version. On the face of it therefore their stories have about them a ring of truth.

8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P. C. are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused, person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box. They have to be received in evidence and treated as evidence and be duly considered at the trial (Sections 287 and 342).

This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him. Nay more. Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false. We feel that this fundamental approach has been ignored in this

case.

9. The next fact on which everyone is agreed is that two shots were fired. As all the witnesses say this and as Bheru Singh admits he fired two shots and as Hate Singh admitted before the Committing Magistrate that he heard the sound of two shots, we think it can be accepted that there were two shots. But the question is whether Bheru Singh fired both as he said or whether he fired one and Hate Singh fired one.

10. The medical evidence does not disprove the defence version. The doctor says one shot could have caused all three wounds. If one, then of course two could equally have caused three wounds but those two shots could have been fired by one person. The 'post mortem' does not prove the contrary. The unfortunate omission to recover the shot or slugs in the body has deprived us of evidence which might have been of great value on this point.

11. Next, we think the seizure of the guns is established beyond dispute. Art. D is a double barrel breech-loading gun with a hammer action which Bheru Singh says he used. That was found bidden on Hate Singh's premises. It was buried in the ground six inches deep near Hate Singh's front door. Art. E is an old fashioned single barrel muzzle loading gun. This was not hidden but was lying quite openly in full view resting against a wall in Hate Singh's house. Both guns were recovered at the instance of Hate Singh.

12. Now there is a vital piece of evidence regarding the state of these guns which has been slurred over. It will be remembered that the de fence version was that Bheru Singh had the double barrel gun and that he fired two shots from it. Hate Singh did not use his gun which, according to the defence, was the old fashioned single barrel muzzle loader. Therefore, in the absence of any reloading the double barrel gun would, have both barrels barren of live rounds and would be found in an unloaded condition. The muzzle loader, unless it was already empty, would still be loaded. Now it has been accepted through out that Art. E, the muzzle loader, was found loaded. The question is about Art. D.

13.The seizure memo, Ex. P-8, states that the double barrel gun had one barrel loaded and one barrel empty and that the single barrel muzzle loader was loaded. This was questioned by the accused and one of the witnesses to the seizure Vajeram (P. W. 13) was cross-examined on the point He admitted in his cross-examination that only one gun was found loaded but could not remember which. The other witness Ramsingh, P. W. 12, said Art. E was found loaded but said nothing about the state of the other gun.

These witnesses were examined on 25-1-1950. The Sub-Inspector Thakre (P. W. 17) was examined after this on 30-5-1950 and so had ample time to look into this matter, but he does not contradict Vajeram and does not say that he is wrong. He omits to tell us anything about the state of the guns when found. As Vajeram's statement accords with the defence version in a very material and important particular, and as he is not contradicted by the very person who ought to have been the first to contradict him if what he said was inaccurate or untrue, particularly after the matter had been pointedly and openly challenged in the cross-examination of the earlier witnesses, there is no

reason why Vajeram's statement should have been brushed aside.

13A. The learned Sessions Judge deals with this as follows. He says:

> "Vajeram (P. W. 13) who is a witness to the 'panchnama' (P-6) says that he does not remember which of the two guns recovered was loaded. It may well be presumed that one barrel of the double barrel gun was probably leaded at the time of the seizure. This latter presumption appears to be more probable in view of the statements of eye-witnesses."

14. This is an unsatisfactory way of treating evidence in a case where the facts which the prosecution themselves do not controvert in the witness box are found to accord with the accused's story. But it is far worse when the Sessions Judge leads the accused to believe that their version on this point is true and then turns round in the judgment and puts the evidence just the other way round. This is the question put to Hate Singh:

> "Ramsingh..... and Vajeram depose that out of the two guns (Arts. D & E) which were re covered from your house 'one' was loaded. Ramsingh.....further says that the gun which was loaded is 'Art. E'. What have you to say about it?"

His answer was:

> "I do not know whether the gun was loaded or not."

The other accused Bheru Singh was asked the same question and his answer was: "Yes. 'one' gun (Art. E) was loaded. It was already lying loaded inside the house. It was lying loaded from before the occurrence."

There is not a word to suggest in either examination that. Art. D was also found loaded in one ban-el. The High Court do not touch this point at all.

15. There is another point, a minor one, regarding this discovery which, though not a very vital point, does help to tip the scales in the appellant's favour. It will be observed that only 'one' gun was found buried, the gun which Bheru Singh admits he used. The other was lying in the open. This does tend to suggest that only the incriminating weapon was hidden. If the investigation had been more thorough an examination of the barrels would also have been made and we would then have been in a position to know whether both barrels were fouled in Art. D or only one, and whether the barrel of Art. E was at all fouled.

16. These, in our opinion, are the salient features of the case which must be accepted as established beyond dispute. They all accord with the defence story. We have therefore to examine the evidence of the prosecution with more than usual care.

17. Deoji, P. W. 1, is the first eye-witness. He says he was present when the quarrel started and was near enough to take the deceased Shiv Singh by the hand and to try and dissuade him from continuing the quarrel. He was therefore close enough to observe which accused carried which gun and, to begin with, he tells us that Hate Singh had the single barrel gun and Bheru Singh the one with a double barrel. Up to this point his story accords with the defence version.

18. He continues that the parties moved off about 150 paces from him, still quarrelling, and that then Bheru Singh fired the first shot. Shiv Singh was hit and staggered backwards but re covered himself and rushed towards Bheru Singh with a stick. Thereupon, Hate Singh fired and killed the man. The explanatory notes to the Sketch Map, Ex. P. 2, show that Bheru Singh was 20 to 21 paces from the deceased when he fired and that Hate Singh was 14 or 15 paces distant when the second shot was fired. Hate Singh is said to have been standing behind Bheru Singh at the time. Therefore, Shiv Singh, after recovering from his first backward stagger, had time to traverse at least 6 paces before the second shot was fired. The significance of this will be apparent in a moment.

19. At this point the witness invented some thing and then became confused and, in our opinion, tried to cover up his slip by placing the double barrel gun in the hands of Hate Singh and the other gun in Bheru Singh's hands. The witness said that when Shiv Singh dropped down-

> "Both the accused then rushed to Shiv Singh and accused 1 (Hate Singh) struck Shiv Singh on his forehead with the butt-end of his gun..... I had noticed that the butt-end of the gun of accused 1 (Hate Singh) was broken."

20. The implication here is that Shiv Singh was hit over the head by Hate Singh and that the butt of his gun broke because two broken pieces of a butt were recovered from the spot. But this detail is false because there is no injury at all on the head. Moreover, the broken gun is the double barrel gun, Art. D. In order to cover up this lapse the witness said in cross- examination that Hate Singh had the double barrel gun, the one whose butt was subsequently broken.

21. It is to be observed that the prosecution case on this point in the Committal Court accords with the version which this witness first gave and which happens to be the defence version. Bheru Singh was asked-

> "Thereafter you hit Shiv Singh, who was lying down, on his abdomen with the butt of your gun as a result of which the butt was broken."

His answer was:

> "Yes, they are correct so far as they relate to me. I struck the dead body of Shiv Singh with the butt of gun....."

The Sessions Judge also seems to accept this because he asked Hate Singh.

> "Deoji Anjana has also deposed that you hit the forehead of Shiv Singh with the buttend of your gun and accused 2 (Bheru Singh) did so with the butt-end of his gun on his abdomen. 'The butt was broken by the hitting'."

A similar question was put to Bheru Singh.

22. Now this inaccuracy might have been dismissed as trivial had it not been for the fact that the other eye-witness Bhawanya, P. W. 5, does the same thing. He supports the first regarding the order of the firing and says Bheru Singh fired first and Hate Singh next but goes on to say in cross-examination that Art. E was fired first and Art. D next and that Art. D was the gun. Hate Singh usually carried. We do not think two wit nesses could have departed from the case set out in the Committal Court on the same point and. in the same way by accident.

23. The defence version regarding the guns is the more probable because Deoji, P. W. 1, admits that Bheru Singh put his gun down after hitting Shiv Singh on the stomach and then attacked him with an axe. If the butt-end broke it is understandable that he would do this. But it is unlikely that he would put down a weapon which was still potent in the middle of an attack.

24. We turn next to the seven witnesses who heard the two shots and saw the accused but who did not see the actual firing. Two of those, who substantiate the story of the accused, namely Babru P. W. 4 and Ramsingh P. W. 15, have been disbelieved though for no valid reason that we can see. As regards the other five, the curious thing about them is that not one of them saw the second shot being tired though at least four of them were within viewing distance and two actually saw Shiv Singh in the act of falling. That would be understandable if the two shots were fired in quick succession as they probably would have been from a double barrelled gun, but not if the eye-witnesses' version is true. It will be remembered that according to them Bheru Singh fired first. Shiv Singh staggered back and then rushed forward a distance which, according to the map, was 6 to 7 paces. Then only was the second shot fired. That would have taken an appreciable time, quite enough to enable persons in the near vicinity to raise their heads and look; and of course that would have been the normal reaction of any ordinary man on hearing a shot fired quite close to where he was standing or sitting. The fact therefore that no less than five had no time to do this lends strong support to the version of the accused and goes to show that the eye-witnesses' story is not true.

25. We have a further comment to make. Both the Sessions Judge and the High Court have attached importance to the fact that both accused absconded, but at no stage of the case have they been asked to explain this. We have stressed before the importance of putting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can. We regret to find that this rule is so often ignored.

26. We have examined the evidence at length in this case, not because it is our desire to depart from our usual practice of declining to re-assess, the evidence in an appeal here, but because there has been in this case a departure from the rule that when an accused person puts forward a reasonable defence which is likely to be true, and in addition is supported by two prosecution witnesses, then the burden on the other side becomes all the heavier because a reasonable and probable story likely

to be true when pitted against a weak and vacillating case is bound to raise reasonable doubts of which the accused must get the benefit. We are not satisfied that the prosecution evidence in this case removes the grave doubts which a close examination of the evidence tested in the light of the defence reveals.

27. The appeal is allowed. The conviction and sentence of the appellant Hate Singh are set aside. He will be restored to liberty.