Janak Singh vs The State Of U.P. on 5 May, 1972

Equivalent citations: AIR1972SC1853, 1972CRILJ1177, (1973)3SCC50, 1973(5)UJ105(SC), AIR 1972 SUPREME COURT 1853, 1973 3 SCC 50, 1973 MADLJ(CRI) 594, 1973 SCC(CRI) 128, 1973 2 SCJ 435

Bench: H.R. Khanna, J.M. Shelat

JUDGMENT

Shelat, J.

1. This appeal, by special leave, is directed against the order of conviction and sentence of death passed against the appellant by the Sessions Judge, Fatehpur under Section 302 of the Penal Code and confirmed by the High Court, Allahabad. The relevant facts leading to the trial of the appellant on the said charge of murder are as follows :-

2. One Chandra Bhushan, a resident of village Muraon, District Fatehpur died several years ago leaving behind him his widow, the deceased Phoolmati, four daughters, all of whom were married during his life time and about 125 bighas of land under his cultivation. The appellant was married to one of the said four daughters, Mst. Dhanpat some twenty years before the incident in question. The youngest of these daughters, wit. Lakshmipati lost her husband within five or six months of her marriage, and then started living with her mother, the deceased Phoolmati. With a view to provide for her daughter, Mst. Phoolmati transferred seventy bighas of the said lands in the name of wit. Lakshmipati. That was about sixteen or seventeen years before the incident. Some two or three years before the incident consolidation proceedings commenced in Muraon. That furnished an excuse to the appellant to come over to Muraon for looking after the interests of Mst. Phoolmati. The appellant thereafter began to manage the lands of Mst. Phoolmati. Having gained her confidence after sometime, he got entered in the revenue records the name of son, Raj Narain as a co-tenant of Mst. Phoolmati. Raj Narain, however, died within a short time thereafter and the appellant wanted in his stead his own name to be entered in the said revenue records. This was objected to by Mst. Phoolmati. Litigation ensued over this dispute between Mst. Phoolmati and the appellant before the Consolidation authorities and the relations between the two became strained, The appellant ceased living with Mst. Phoolmati and shifted to a room in an adjacent temple built by Mst. Phoolmati.

3. According to the prosecution evidence, the appellant was anxious to marry wit. Lakshmipati. The deceased opposed his proposal and got Laksmipati married to one Sukhraj. The evidence of wit. Lakshmipati was that at about 8 a.m. on the day in question, that is, August 2, 1969, the appellant came to Mst. Phoolmati and demanded a share in the said lands from her. On her refusal the appellant got enraged and left her threatening that he Would not allow her lands being ploughed.

4. A little later that morning, the deceased was cleansing a lota at the well situated between her house and the said temple. At that time wit. Lakshmipati was drawing water from that well not far away from her mother. Two other persons, Nanga Pandit and wit. Ram Bishal, were scraping grass on the room of Mst. Phoolmati's house, which would be right opposite to the well. At that time the appellant came with his cycle and parked it in the passage near the well. He then went back to his room for a while and came again to where Mst. Phoolmati was squatting cleansing the said lota at the well. Descending the steps leading to the well, the appellant fired a countrymade pistol from behind Mst. Phoolmati. The shot hit her in the back and she tumbled down crying that Janak, the appellant, had shot her.

5. The incident was witnessed not only by wit. Lakshmipati, who was nearby, but also by wit. Raja Singh, who, according to his usual practice, had gone to the temple that morning and has just emerged out of it. He tried to catch hold of the appellant, but the appellant threatened him with the pistol he had in his hand. The appellant then left on his cycle towards the south. Mst. Phoolmati died almost instantaneously. The alarm raised by her when she was shot and by wits. Raja Singh and Lakshmipati brought some of the neighbours at the spot. It appears that by the time they arrived, the incident was over and the appellant had left on his cycle.

6. Raja Singh lodged the first information report soon thereafter at the nearest police station. Pursuant to the report the police arrived at about 5 p.m. and started investigation during the course of which they collected the blood-stained earth amongst other things from near the well. They also sent the dead body of Mst. Phoolmati to Dr. Ghosh at the District Hospital, Fatehpur for postmortem examination.

7. Dr. Ghosh's evidence revealed that there were in all eight injuries on the deceased Phoolmati. Six were gun-shot injuries, & two were abrasions. Out of six gun-shot injuries, three were entry and the rest were exit wounds. The two abrasions were consistent with the version of the eye-witnesses that as a result of the impact of the pistol-shot the deceased had fallen down from the squatting position she was in at the time when she was fired at from behind. The three entry wounds were (1) on the left back three inches below the inferior angle of scapula, (2) on the left thigh lower part, and (3) on the inner aspect and upper 1/3rd of the left leg. Death was due to shock and haemorrhage as a result of the gunshot injuries.

8. During the post-mortem examination, Dr. Ghosh extracted two pellets from injury No. (1), and three pellets from injury No. (5), in all five pellets. Since there were no signs of blackening or tattooing, the doctor was of the opinion that the firing must have been done from a distance of more than four feet at least. Dr. Ghosh was of the further opinion that all the three entry wounds were caused by a single shot fired from behind the victim, and that if the victim was in squatting posture, as described by wits. Lakshmipati and Raja Singh, while cleansing the lota, it was possible that such a shot could cause injuries in her back, thigh and the left leg by some of the pellets coming out of the cartridge, particularly as in the position described by the witnesses her left leg and thigh would be in perpendicular position with her chest. Dr. Ghosh categorically stated that injury No. 5, that is, on the victim's left thigh, could not have been caused by a separate second shot. The evidence on record clearly established that the death of Mst. Phoolmati was homicidal and caused by firing from a pistol

from behind her.

9. The prosecution relied upon the evidence as to motive, the evidence of the eye-witnesses, Raja Singh (P.W. 1), Mst. Lakshmipati (P.W. 2) and Ram Bishal (P.W. 4), the Medical evidence, and lastly, the evidence of the investigating officer that human blood was found at the well where, according to the prosecution, the deceased was shot at from behind while she was sitting in a crouched position cleansing the lota. As against this evidence, the appellant denied his presence and said that it was due to strained relations between him and the witnesses that the latter had given false evidence against him at the instance of Sukhraj. Regarding the evidence as to motive, he maintained that it was at the instance of the deceased and her relations that he came to stay with her for managing her lands and that it was the deceased herself who got his son's name mutated as a co-tenant with her. He denied that after his son's death he tried to have his own name as his son's heir mutated in the revenue records. He, however, admitted that the deceased Phoolmati had filed an application against his name being recorded in those records. He denied that he had expressed any desire to marry Lakshmipati or that he was enraged because the deceased had Lakshmipati married to Sukhraj, or that he had gone that morning to the deceased and demanded a share in her lands, or that he became angry with the deceased giving him a flat refusal. Finally, he asserted that the deceased was shot at while she was in her house and not at the well, and that he had been falsely implicated in the case at the instance of Sukhraj and others who were ill disposed towards him.

10. Both the Trial Court and the High Court accepted as true and reliable the eye-witness account given by Raja Singh and Lakshmipati, holding that in the circumstances of the case they were the most probable and natural witnesses. The evidence of the third witness, Ram Bishal, who was put forward by the prosecution as another eye-witness, was found by both the courts as unacceptable. Both the courts also accepted the prosecution case as to motive, the well being the place where the deceased was fired at and the evidence of the eye-witnesses fortified by the opinion of Dr. Ghosh that only one shot had been fired and that single shot was capable of causing all the six gun-shot injuries. The Trial Court as also the High Court rejected the case put forward by the appellant that the deceased was killed in her house or that he had been falsely implicated by the witnesses at the instance of Sukhraj.

11. There being thus a concurrent unanimity as to the appraisal of the evidence both by the Trial Court and the High Court, there was no question of a fresh assessment of that evidence by us in view of the well established practice of this Court not to do so, except on certain exceptional grounds, none of which counsel for the appellant could establish or even attempted to establish.

12. Mr. Dixit, however, sought to raise three points in support of the appeal. The first was that there was evidence on record that in the matter of the dispute over lands between the appellant and the deceased a panchayat had been called which had settled the matter by acceding to the appellant's claim over a part of the said lands, and that therefore, there was no question of his having any motive to take her life. This was sought to be established by the evidence of Madari Singh (D.W. 4), the sarpanch, not of Muraon, but of another village nearby, namely, Kalian Mohdpur. His evidence, however, was so incredible that it was not surprising that it was discarded by both the Trial Court and the High Court, and in our view quite rightly. The second point raised by counsel was in support

of the appellant's defence that the incident of shooting took place not near the well but inside the deceased's house, and that therefore, the witnesses' account of having seen it at the well was false. The argument was that it was in evidence that S.I. Prem Pal Singh (P.W. 9) arrived at the village at about 5 p.m. and the other police officer, Raj Bahadur Agrwal (PW 10) at 6 p.m. on the day of the incident. Yet, Agrawal went at about 10 p.m. at the well and collected from there blood stained earth from near the well, one pellet and five wads as late as 10 p.m. Counsel urged that such a delay of five hours in recovering these articles rendered that part of the investigation suspicious and evidence regarding that investigation ought not to have been accepted. In our view, there is scarce merit in this contention, firstly, because the police officers after their arrival appear to have busy with making the inquest report, sending the dead body to the hospital for post-mortem examination and interrogating the persons likely to be witnesses. Secondly, they could not have anticipated at that stage that the appellant's defence would be that the shooting took place not at or near the well but in the deceased's house, so as to prompt them to investigate that point first by looking for the blood or the pellet or the wads near the well. Indeed, it was no body's case and no suggestion was in fact put to any of the witnesses or to the police officers that there were any apparent signs in the house to indicate that the deceased was shot at in the house. The defence contention that it was there that the deceased was fired appears to have been raised at the trial in order only to dispute the eye-witnesses' account that the deceased was fired at the well when she was cleansing the lota and was sitting at that time in a crouched posture. That version was supported in a fair measure by the Doctor's evidence that two of the eight injuries noted by him were abrasions, which could well have been caused by her tumbling down at the impact of the shot hitting in her back. The two abrasions thus fit in with the case of the eye-witness that the victim was fired at when she was cleansing the lota at the well.

13. The third contention was the one which Mr. Dixit elaborated. His proposition was that the medical testimony contradicted the eye-witnesses' version and that contradiction rendered their account unacceptable. According to Dr. Ghosh's evidence, none of the three entry wounds showed any blackening or tattooing. Obviously, therefore, the firing did not take place from a very close range but from some distance at least. No doubt, three eye-witness gave different distances ranging from two to six paces. But they could hardly be expected to have marked at the time the precise distance at which the person shooting the firearm was. They, therefore, gave an estimate of the distance at which he was from the victim. It is no wonder that the distances they deposed varied. Nothing can, therefore, turn on such variation.

14. But counsel pointed out that injury No. 1 showed six entry wounds in the left back, injury No. 5 four such entry wounds in the thigh and injury No. 7 in the left leg, one such entry wound. According to him, therefore, eleven pellets had actually hit various parts of the deceased's body, which fact must indicate the extend of dispersal of the shot. He suggested that considering the area of dispersal the shot could not be a single shot as deposed by witnesses, and secondly, that it could not nave been fired from a short distance also deposed by them. In particular, he relied on the observation by the Trial Court that a S.G. cartridge contains nine pellets only, and therefore, the fact that the three entry wounds were caused by eleven pellets clearly suggested that there must have been at least two shots fired and not one. He also emphasised that the area of dispersal from the victims back to her left leg also suggested that it could not have been one but two shots which could

have caused all the three entry wounds with eleven pellets having caused eleven injuries at three different places. In support of his theory, he relied on the find by the police (Ex. Ka 10) of five tiklis of cardboard and one flattened round shot at the well which according to him was again indicative of more than one shot having been fired at. It is clear that the entire argument was based on the assumption of a wide dispersal of the shot.

15. The facts of the case and the evidence on record, however, do not support the assumption. The three entry wounds, besides the account given by the eye-witnesses, clearly established that the deceased was shot in her back from behind. If she was sitting, as described by the eye-witnesses, in a crouched position, her back left thigh & her left leg would more or less be, as already stated, in a perpendicular line. It will be noticed that injuries (v) and (vi) are entry and exit injuries prima facie indicating that the pellets which entered into the victim's left thigh penetrated through and through. The same is the position with regard to injuries (vii) and (viii) on her left leg. Two alternatives thus suggest themselves. Either that the same pellets which went through her left back (entry wound No. (i)) and came out through the chest (exit wound No. (ii)) hit the thigh and coming out through and through also penetrated her left leg, both of which were in a line, or the three parts of her body were not in a straight line and different pellets dispersed from the shot penetrated the three limbs independently of each other.

16. In the case of the first alternative, there would be no question of a wide area of dispersal. In the case of the second alternative, also, the dispersal would not be in any wide area. The site plan produced by the prosecution also makes it clear that there could not have been much distance between the victim and her assailant, and therefore, there was not much scope for any large dispersal of the shot. Such a conclusion is in harmony with the Doctor's evidence, the places where the pellets entered into the victim's body and the evidence of the two eye-witnesses. It is true that in all at least eleven pellets entered into the victim's body at three places. The Trial Court observed that a S.G. cartridge would contain nine pellets. But as the High Court observed that was a personal observation made by the Court without any such evidence. There was no evidence to show that the cartridge in question was a S.G. cartridge. No argument can thus be founded on an assumption that the cartridge was a S.G. cartridge. The police found five tiklis but they could be cardboard tiklis in which the pellets must have been packed. Their seizure by the police at the spot could not solve the question whether one shot was fired or more. Likewise, in the absence of evidence as to what kind of pistol was used by the assailant, passages cited by counsel from works on firearms can hardly be of any relevance. The fact of the matter was that the eye-witnesses were emphatic that it was the appellant who fired at the deceased with a country made pistol, and that he fired once only. That evidence was backed by the opinion of Dr. Ghosh who equally emphatically opined that all the six gunshot injuries could be caused by a single shot. That evidence was acceptable to both the courts and nothing has been substantiated before us which justifiably impugn that evidence. Counsel could raise only conjectural alternative as against the eye-witnesses' account as to how the incident occurred. Such conjectural alternatives cannot be substituted in place of accepted evidence of those who actually saw the incident.

17. That being so, the argument on dispersal of the shot and the assumption based on it that the deceased was fired at more than once becomes difficult of acceptance.

18. In the result, the appeal fails and has to be rejected. Nothing has been shown to us which would justify our interference with the sentence imposed on the appellant after the Trial Court and the High Court had applied their mind on that question in the light of a deliberate act of the appellant.