Raghubir Singh vs State Of U.P. on 11 August, 1971

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Author: I.D. Dua

Bench: I.D. Dua, J.M. Shelat, S.C. Roy

JUDGMENT

I.D. Dua, J.

1. Raghubir Singh, appellant in this appeal by special leave, was one of the three persons jointly tried by the Sessions Judge, Etah (U.P.) and convicted for the offence of murder of one Brijendra Singh alleged to have been committed on November 15, 1968. He was sentenced to death Under Section 302, IPC whereas his two co-accused were sentenced to imprisonment for life Under Section 302 read with Section 34, IPC. On appeals by the three convicts the High Court acquitted Tejpal and Kundansingh who are first cousins Conviction and sentence of the present appellant who is the real brother of Tejpal was confirmed and his appeal dismissed. In this Court the challenge is directed against his conviction and sentence and Shri Nuruddin Ahmed appellant's learned Counsel has addressed elaborate arguments in support of his challenge.

2. According to the prosecution story about 8 or 9 years before the alleged murder in question a burglary had taken place at the appellant's house and he had suspected Brijendra Pal Singh deceased, as a culprit. Indeed, the appellant and his brother even resorted to some violence against the deceased. They were all residents of village Nagwai. After a lapse of about 5 years Brijendra Pal Singh successfully contested the elections to the office of Pradhan of the village against the appellant. The deceased celebrated his victory by taking out a procession which perhaps gave to the appellant a feeling of humiliation. After his success at this election the deceased proceeded to file a case for the appellant's ejectment from a well and succeeded in securing an order in his favour. He also filed a number of applications Under Section 115(c) of the U.P. Zamindari Abolition of Land Revenue Act against some close relations of the appellant. Tejpal and the deceased are also stated to have secured a sale deed of a piece of land on December 26, 1967 from Jhalloo who had originally mortgaged the same in favour of Mulayam, a cousin of the appellant. As the appellant himself wanted to buy that land he did not like its purchase by the deceased On June 29, 1968 when the deceased and his brother attempted to take possession of the said land with the help of a lawyer-commissioner (Girish Chandra Sharma P.W. 9) the accused and their relations obstructed this attempt and the commissioner had to lodge a report with the police. During the ejectment proceedings the deceased had also been asked by the accused persons in the present case to drop those proceedings lest it may have the effect of awakening the "sleeping lions". This warning went

unheeded. This background, according to the prosecution story, reveals that the appellant and his co-accused bore a deep grudge against the deceased and this led to extremely strained relations between the two groups.

3. On July 1, 1968 Jhalloo was murdered. The deceased and his brother and some other inhabitants of the village were arrested in this connection Tejpal and Kundan singh were cited as witnesses for the prosecution in that case. A few days before the present occurrence the deceased and his co-accused were admitted to bail. The deceased after his release on bail started residing with his father Gitamsingh (P.W. 2) at Jalesar where the latter had a cloth shop. On November 14, 1968 the deceased and his father had come from Jalesar to their village to attend a death ceremony. The following day, i.e., November 15, 1968 the deceased left on a bicycle early in the morning for village Burhaich to see one Ram Prakash in connection with the purchase of an electric motor. That village being only about 5 1/2 miles away, he was not excepted to take long to return to village Nagwai. While coming back on the bicycle all alone he was passing by the arhar field of one Ram Chandra when suddenly the three accused persons emerged from a place where they were apparently waiting for him in a bush. Kundansingh and Tejpal were alleged to be armed with spears whereas Raghubirsingh, appellant, had a country made pistol with him the appellant fired a pistol shot at the deceased from behind from a close range. The deceased immediately fell down with his bicycle falling over his body. The accused then ran away in the direction of their house about 150 paces away carrying their arms with them. The occurrence is said to have been witnessed by Zaminpali (P.W. 3), Ghamandi singh (P.W. 4)and Mulayamsingh(P.W. 5). In addition to them two or three other persons are also alleged to have witnessed the occurrence. Khayaliram (P.W. 6)is alleged to have seen the accused running away from the scene of occurrence.These witnesses reached the spot and fond the deceased already dead. Mulayamsingh went to the house of the deceased and narrated the entire occurrence to Gitam Singh, the father, who proceeded to the place of occurrence and fund his son lying dead on the passage adjoining the boundary of Ram Chandra's arhar field. He returned home and prepared a report which was carried to the police, station jalesar, about 5 1/2 miles away from the scene of occurrence. This report was handed over to Bhagwan Singh. Constable (P.W. 10), who, on the basis of this information recorded the first information report and registered a case against the accused persons.

4. At the trial, after the statements of the accused persons have been recorded, the Court examined Ram Prakash (C.W. 1) as a Court witness Under Section 540, Cr.P.C. It is this man whom the deceased had gone to meet at Burhaich on the fateful day. According to this witness Brijendra Pal, deceased, had met him at about quarter past seven in the morning on the day of his murder and had a talk with the witness in connection with the purchase of a private lorry. At about 8.15 the deceased left Burhaich village on a bicycle for his own village. In cross-examination by the State Counsel it was elicited that this witness is M.Sc., L.L.B. But cultivates his own land consisting of about 200 bighas. He also runs a private lorry. In cross-examination on behalf of the accused persons nothing was elicited to throw suspicion on his testimony and indeed on this part of the case nothing was said at the bar. The trial Court, believing the prosecution version, convicted all the three accused persons sentencing the appellant Under Section 302, I.P.C. and TejPal and Kundan Singh Under Section 302 read with Section 34, I.P.C. imposing on the appellant sentence of death and on the others the sentence of imprisonment for life. The murder was held to be pre-planned, coldblooded, motivated

by a deep sense of revenge. The victim being unarmed, Raghubir Singh was considered to deserve the extreme penalty. TejPal and Kundan Singh, though armed with spears had merely tried to block the passage in order to stop the bicycle of the victim and did nothing more, the fatal shot having been fired only by Raghubir Singh. This accounts for the lesser penalty having been imposed on chem.

5. The High Court, dealing with the two appeals filed by the three convicts and the murder reference, came to the conclusion that none of the witnesses for the prosecution could be considered as independent and non-partisan, The existence of strong motive for the commission of the crime as accepted by the trial Court, was also taken by the High Court to have been established. Ram Prakash (C.W. 1) was considered to be an independent person on whose testimony full reliance could be placed. From his evidence it also appeared that the passage by which the deceased was coming on his bicycle back from village Burhaich to village Nagwai was wide enough for a man to ride on a bicycle. The medical testimony was also held to corroborate the prosecution story with regard to the time of the incident. The testimony of the three eye-witnesses was considered by the High Court to contain a substantially true account of the occurrence. While upholding the conviction and sentence of the appellant the High Court, however, felt that there being no spear injury on the body of the deceased the presence of Kundan Singh and TejPal who are alleged to have been armed with spears created an element of doubt with respect to their presence as companies of Raghubir Singh. The injuries on the body of the deceased, according to the High Court, suggested that he was compelled to get down from his bicycle as a result of the gun shot wounds and, therefore, the story, that TejPal and Kundan Singh having obstructed the progress of the deceased on his bicycle, he got down and was then shot at was an exaggeration on the part of the witnesses who were, as admitted on all hands, inimical towards the accused persons. Though the Court was inclined to believe that Raghubir Singh was not all alone and there was at least one companion with him, there being an element of doubt as to who was with him, the High Court gave benefit of doubt both to Kundan Singh and TejPal and acquitted them.

6. In this Court Shri Nuruddin Ahmed learned Counsel for the appellant has vehemently contended that the presence of the other two accused persons having been held to be doubtful it was wrong on the part of the High Court to have convicted the appellant Raghubir Singh on the testimony of those very witnesses who have not been considered sufficiently trustworthy in regard to the guilt of the other two accused persons to sustain their conviction. According to the appellant's submission no one actually witnessed the occurrence, as the actual assailant had, in all probability, suddenly emerged from the arhar field and after firing the fatal shot disappeared in the same field in which the standing arhar crop was high and thick enough to provide him effective hiding shelter. He has emphasised that in all likelihood the assailant, if seen would have been chased by the alleged eye-witnesses and the other villagers who, according to the prosecution had arrived at the shot soon after the occurrence. The time and place of the murder has, however, not been challenged by the learned Counsel. Stress has further been laid on the submission that there is no corroboration of the evidence of the interested witnesses against the present appellant with the result that it would be highly unsafe to convict him on such evidence. The Counsel has added that there is no reliable testimony of absconding on the part of the appellant. In view of these infirmities his couvictton, according to Shri Nuruddin Ahmad is bad and deserves to be quashed. As a last resort the sentence

of death is said to be too harsh and uncalled for on the facts and circumstances of the present case.

7. Before proceeding to deal with the merits it may be pointed out that though Art 136 is worded in very wide language, the power of interference under this Article is discretionary and according to the established practice, normally, when the High Court believes the evidence given by the eye-witnesses, its appraisal is accepted by this Court and it does not proceed to examine the evidence afresh for itself unless justice has failed for reason of some misapprehension or mistake in reading the evidence or disregard of material evidence or there is substantial error or law or procedure or some question of principle of general importance is involved which requires appraisal and discussion of the evidence It is thus only in exceptional cases that this Court takes upon itself to examine the evidence to satisfy itself that there is no failure of justice.

8. The argument that. Tej Pal and Kundan Singh have not been convicted on the evidence of these very witnesses on whose evidence Raghubir Singh has been convicted and that tor this reason alone Raghubir Singh should be acquitted runs against the rule which has long since been accepted without demur that in cases where there is enmity between two factions then there is a tendency on the part of the aggrieved victim to give an exaggerated version and to rope in even innocent members of the opposite faction in a criminal case and that, therefore, the Court has in all such cases to sift the evidence with care and convict only those persons against whom the prosecution witnesses can be safely relied upon without raising any element of doubt. Unless the case against the accused who have been given the benefit of doubt & the present appellant who has been convicted can be considered to be completely identical without additional incriminating features, the argument founded solely on the basis of acquittal of TejPal and Kundan Singh would be misconceived. On the present record there are a number of distinguishing features which have been noticed by the High Court and which in our opinion rightly fixed the present appellant's guilt beyond any reasonable doubt, the acquittal of his two co-accused on the basis of doubt notwihstanding. It may in this connection be pointed out that enmity may tempt a witness to rope in more persons belonging to the opposite faction, but it seldom if ever serves as an inducement to completely exclude the real guilty party. This argument is, therefore, reppelled.

9. The submission that in all probability no one saw the assailant fire at the deceased because of the arhar crop has not been substantiated on the evidence and was not even seriously pressed in the Courts below. In the trial Court it was the time of and not place of the occurrence which was seriously challenged, it being suggested that the deceased had been killed by someone in the early hours of the morning when no one was present near about and therefore neither the assault nor the assailant was seen by any one. The case against the accused persons was a pure concoction resulting from feelings of enmity. This suggestion was negatived on an exhaustive discussion of the evidence and it was firmly held that the deceased had in all probability been murdered at about 9.30 a.m. in broad daylight and not in the early hours of the morning as suggested by the defence. The High Court agreed with this conclusion on independent consideration of the evidence Medical evidence, it may be pointed out, was held by both the Courts to corroborate the prosecution version as to the time of the occurrence. In this Court, it may be recalled, the time and the place of the occurrence have no been questioned by Shri Nuruddin Ahmad. The present case being one of murder in which the appellant has been sentenced to death we, however, allowed the appellant's learned Counsel to

refer to the evidence on the record to show if there was any material on which his submission could be reasonably and rationally founded. He was unable to convince us and did not put forth any substantial argument except the broad assertion that according to Gitam Singh (P.W. 3) the arhar crop was thick and high. As against this we have on record the evidence of eye-witnesses and the witnesses who arrived at the spot soon after and who were believed by both the Courts below that the assailant came out of the field and from the edge of the passage fired a fatal shot at the deceased from behind. The witnesses were not strangers to the appellant and it is futile to contend that they could not identify him when the murder was committed in broad day-light. It is also noteworthy that the small arhar field has on its sides a vacant field and a wheat field and the assailant could not possibly avoid being seen by these witnesses. Reference was made by Shri Nuruddin Ahmad to the site plant and an attempt was made to discredit the oral testimony by reference to the medical evidence. But this attempt was soon dropped. Medical evidence as held by the two Courts below supports the prosecution version with respect to the pistol shot wound and also with respect to the time of the occurrence. The first information report (Ex. Ka-4) was lodged within a reasonable time after the occurrence and in that report the appellant's name figures as the person who had fired at the deceased at about 9.30 in the morning. True, that the first information report also contains the names of Tej Pal and Kundan Singh, But that would not justify exclusion of this report from being used as corroborating the substantive evidence of the informant Gitam Singh (P.W. 2) as given in Court, so far as the present appellant is concerned. The first information report was written out by him on the basis of the information conveyed to him by Mulayam Singh (PW. 5), Zimi Pal (P.W. 3), Ghamandi Singh (P.W. 4) and Khiali Ram (P.W. 6). We may point out that we are not concerned with the question whether or not TejPal and Kundan Singh were rightly given the benefit of doubt because there is no State appeal against their acquittal. It is, however, worth noting that even the High Court did not consider it unlikely that one of the two co-accused persons was in the company of the present appellant and stopped the deceased when the appellant fired the fatal shot.

10. As against the argument that some witnesses mentioned in the first information report were not examined, it is enough to repeat, what has often been ruled that the prosecution is not bound to produce all the witnesses said to have seen the occurrence. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. The appellant's Counsel has not shown how the prosecution story is rendered less trustworthy as a result of the non-production of the witnesses mentioned by him No material and important witness was deliberately kept back by the prosecution. Incidentally we may point out that the accused too have not considered it proper to produce those persons as witnesses for controverting the prosecution version. In this connection general reluctance of an average villager to appear as a witness and get himself involved in cases of rival village factions when spirits on both sides are running high has to be borne in mind.

11. Shri Nuruddin Ahmad has also contended that the appellant had not absconded and the High Court was wrong in taking that into consideration. In our opinion, the act of absconding, even if proved, is normally considered a some what weak link in the chain of circumstances utilised for establishing the guilt of an accused person. If the evidence of eye-witnesses is held trustworthy then the act of absconding even if established would serve only to further fortify the satisfaction of the Court with respect to the guilt of the accused concerned, for, even an innocent person may well try

to keep out of the way it he learns of his false implication in a serious crime reported to the police. In the present case, however, we also find that the circumstance of absconding was not put to the appellant in his examination so as to enable him to offer explanation. But on the existing material on the record, in our view, even without considering the act of absconding, the evidence seems to be strong and convincing enough to establish the guilt of the accused beyond reasonable doubt.

12. The argument that since the eye-witnesses did not chase the assailant they should be held not to be present at the spot does not require serious notice. In our opinion, it would have been sheer madness on the part of the witnesses who appear to have been unarmed to have chased the appellant armed with a pistol who had just shot at and killed the deceased on account of enmity.

13. In the final result we find that the evidence of the eye-witnesses so far as the present appellant is concerned is amply corroborated by the medical evidence which clearly distinguishes his case from that of his two companions who were given benefit of doubt by the High Court The nature and condition of the wound and the contents of the stomach as found by the medical witnesses furnish the requisite corroboration which coupled with the testimony of eyewitnesses exclude every element of reasonable doubt. We accordingly hold that the appellant has been rightly convicted of the offence of murder.

14. This takes us to the question of sentence. It may in this connection be pointed out that after the amendment of Section 367(5), Cr.P.C. by Act 26 of 1955 the discretion of the Court in deciding whether to impose the sentence of death or of imprisonment for life has become wider. The High Court, when considering the question of sentence while disposing of the murder reference and the appeal, does not seem to have paid proper attention to this aspect. In view of the peculiar facts and circumstances of this case we consider that the sentence of imprisonment for life would seem to meet the ends of justice and we accordingly reduce the sentence. The appeal thus succeeds in part.