Supreme Court of India
Ram Pukar Thakur And Ors. vs The State Of Bihar on 29 November, 1973
Equivalent citations: AIR 1974 SC 284, 1974 CriLJ 335, (1974) 3 SCC 664, 1974 (6) UJ 119 SC
Author: Chandrachud
Bench: M Beg, Y Chandrachud
JUDGMENT Chandrachud, J.

1. This appeal by special leave is directed against a judgment of the High Court at Patna confirming the conviction of appellant 1 under Section 302, Penal Code, that of appellants 2 to 8 under Section 302 read with Section 149 and the sentence of life imprisonment imposed on each of them. Appellant 6 has also been convicted under Section 323 but no separate sentence has been passed for that offence.

2. At about 1 a.m. on the night between 12th and 13th May, 1966, an eighteen year old boy, Arjun, was done to death. He was sleeping in the court yard of his house and he and his brother Nakuldeo Thakur (P.W. 1) were occupying the same cot. Nakuldeo noticed that certain persons were standing near the cot and one of them gave a lead to the others to beat. Nakuldeo escaped with his torch and before he had run a few paces he heard Arjun saying "Ram Pukar Kaka, do not kill me". Ram Pukar is appellant 1 before us. It is alleged that thereafter Ram Pukar attacked Arjun with a spear and some of the other appellants attacked Nakuldeo himself with lathis.

3. Apart from Nakuldeo, two other brothers of the deceased Arjun, Rajendar (P.W. 6) and Dwapar (P.W. 7) also claimed to have witnessed the incident. The learned Sessions Judge rejected their claim that they were eye-witnesses and the High Court has endorsed that finding. Before undertaking the assessment of Nakuldeo's evidence the High Court observed "The position, therefore, is that P.W. 1 is the solitary witness of the murder.... The whole question for consideration, therefore, is whether the evidence of Nakuldeo (P.W. 1) is fit to be safely relied upon." According to the High Court the evidence of Rajendar, Dwapar and of Bachia (P.W. 11), the mother of Arjun could only be used to corroborate the evidence of Nakuldeo.

4. The case must therefore stand or fail by the evidence of Nakuldeo. A serious infirmity from which his evidence suffers is that admittedly several people from the neighbourhood met him at his house after the murder of his brother but he did not disclose the names of the assailants to any one whatsoever. The other members of his family also did not mention the names of the assailants to anyone of those persons. Nakuldeo is a man of 24 and at the material time he was employed at the Air Force Station, Agra. It is impossible to accept his claim that he was so over come by grief that he could not even mention the names of the assailants to anyone. The incident had taken place on a dark night and there was no light either in the courtyard or in the house with the help of which Arjun's assailants could be seen and identified. The significant failure on the part of Nakuldeo to disclose the names of the assailants is only consistent with the conclusion that he was unable to identify them.

5. Nakuldeo has said in his evidence that he was able to identify the assailants of his brother in the light of his torch which he flashed while his brother was being assaulted. It seems to us surprising

that though Nakuldeo claims to have submitted a statement in writing to the Sub-Inspector of Police at about 10 O'clock the next morning, he did not refer to the torchlight therein. The statement alleged to have been submitted by Nakuldeo was never disclosed at the trial by the prosecution but the High Court condoned that lapse by saying that the statement tendered by Nakuldeo was copied verbatim in the case diary. On a perusal of that diary the High Court found that the statement incorporated therein contained a reference to the torchlight flashed by Nakuldeo. If that be so, it is difficult to appreciate how the statement in the case diary could be said to be a verbatim reproduction of the statement submitted by Nakuldeo.

6. Nakuldeo had no compunction in saying in his examination-in-chief that one of the appellants, Bishwanath Pandey, had fired a gun shot at Dwapar which caused injuries to him. In cross-examination Nakuldeo stated that he did not remember whether he saw Bishwanath Pandey firing the gun shot at Dwapar. If Nakuldeo could involve one person falsely one has to find a strong reason for accepting his testimony implicating the others.

7. A chowkidar, Chandrama Ahir, had gone to Nakuldeo's house on the morning of the 13th. He gave a fardbeyan (Ex. 2) at the Bhual Chapra police station, in which he mentioned that Nakuldeo was gravely upset and that no inquiries could be made with him as he was weeping. As stated earlier, Nakuldeo was 24 years of age and assuming that Dwapar had left the village for calling the father and the uncle, there were other adult members of the family like Rajendar and Bachia who could have furnished the names of the assailants to the chowkidar. We are unable to agree with the High Court that the statement in the fardbeyan that Nakuldeo was overcome by grief furnishes an adequate explanation for the omission on his part & on the part of the other members of his family to disclose the names of the assailants. The High Court observes that there is nothing to show that any villager had made inquiries in regard to the names of the assailants. It is impossible to believe that none from the large crowd of villagers who had gone to Nakuldeo's house after the murder of Arjun had the ordinary courtesy or curiosity to inquire whether the assailants were known. Such is not the ordinary experience of human affairs.

8. There are serious infirmities in the evidence of Nakuldeo and if, as stated by the High Court, the success of the prosecution depends only on his evidence, the charges leveled against the appellants must fail. Even assuming that Nakuldeo flashed his torchlight, it is a very tall claim to accept that in a frightened state of mind he could identify as many as eight persons and furnish a description of their weapons.

9. We therefore set aside the order of conviction and sentence and direct that the appellants be set at liberty.