Supreme Court of India
Chhutanni vs The State Of Uttar Pradesh on 3 November, 1955
Equivalent citations: AIR 1956 SC 407, 1956 CriLJ 797
Author: Sinha
Bench: Bhagwati, V Ayyar, Sinha
JUDGMENT Sinha, J.

1. The appellant Chhutanni has been condemned to death in two separate trials for the murder respectively of his wife, Gunga and his cousin, Chhanga. Gunga was aged about 40 years according to the medical evidence and about 50 years according to the defence, which seems to be nearer the truth as she was the mother of three daughters who are all married, the second daughter having been married to Gokaran Pasi and having a child aged about five years.

Gokaran is also said to have joined his father-in-law, the appellant, in murdering both Gunga and Chhanga. The deceased Chhanga was aged, according to the prosecution, about 28 years, and according to the defence, about 20 years. It appears that the appellant Chhutanni having no son of his own, inducted Chhanga into the family more as a member than as an employee, though his father would make it out that he was in the appellant's service.

Between Chhanga and Gunga an illicit intimacy appears to have developed with the result that some months before the date of the occurrence, i.e., 17-1-1954, Gunga left her husband's protection and house and went away with her paramour Chhanga. The old man finding himself without a household assistant prevailed upon his wife and Chhanga to come back to his home on the promise, it is said, of leaving his property by will to both of them and of sharing his wife with Chhanga.

In pursuance of the promise he executed a will bearing date November 3, 1953, bequeathing his property to both of them. He is even said to have shared his wife's bed on alternate nights with Chhanga. At about 7 o'clock in the morning of 18-1-1954 Chhanga's father, Mansukhi, lodged a first information report at police station Biswan, district Sitapur, which was recorded in his own words. That information sets out in a nutshell the whole prosecution case and may therefore be reproduced as follows :

"I live in village Dhaukalganj. My son Chhanga was in the service of Chhutanni Pasi of the village, son of Maiku for the last three years. Chhanga contracted illicit intimacy with the wife of Chhutanni. Three months ago he abducted her away. A fortnight after the abduction Chhutanni brought back his wife and my son after beating and said to Chhanga, 'you live in my house as master. My wife shall cook food and both of us shall eat. She would live one night with me and one night with you in your house (turn by turn). I shall have all my property bequeathed in your favour and in favour of my wife'.

Chhutanni executed a will: in favour of both in the Panchayat of Dhaukalganj. Whatever Chhutanni had said the same was being acted upon. Yesterday one pahar after nightfall Chhutanni took Chhanga from my house saying that they would bring wood from Murkatta.

My son Vishwanath had gone to look to his Bambiha field in the same direction. He heard Chhanga shouting 'Run, Chhutanni and Gokaran, etc. are killing me.' My son Vishwanath ran up to him raising alarm. Lalji Sonar, Razzaq Pathan and Chhunni Kalwar of the village who had gone to see their fields ran up and raised alarm and saw Chhutanni, his son-in-law Gokaran and his brother-in-law Kalika assaulting Chhanga after felling him down and running away. Chhutanni was holding a gandasa.

Seeing that Chhanga's neck was cut and bleeding and that he was unable to speak Vishwanath sent for me through Lalji Sonar. Then I and my son Chiranju along with Lalji Sonar went to Murkatta and saw Chhanga cut by the neck and dead. The cap of Chhutanni was found lying at the same place which I have brought. I file the same. When I brought the corpse of Chhanga to the door of Chhutanni, Ram Narain Brahman, Bhagwan Din Brahman, Duiney Pasi and other persons of the village met me at the door of Chhutanni and told me 'Chhutanni and Gokaran ran away after cutting Manjhli wife of Chhutanni. On the alarm being raised we and others came up and saw (the occurrence) and on our arrival and reprimanding Chhutanni etc., ran away by jumping over the wall (danrwaz)'.

One gandasa and one scythe smeared with blood were lying near the corpse. I, along with the chaukidar have come to lodge a report after leaving the corpse of Chhanga in the charge of Chiranju and that of the wife of Chhutanni in the charge of Chheddu Bisardar.

I lodge a complaint against Chhutanni Pasi of the village, Gokaran Pasi of Tendwa and Kalika Pasi of Lachhmanpur for killing my son Chhanga. The report was read over to me. Whatever I got recorded the same was taken down. It is correct. I affix my thumb impression."

2. Though this first information report complains of the murder of the informant's son, it contains information about the murder of the appellant's wife also. The time of the occurrence is stated in that report as "one pahar after nightfall", which would be between 8 and 9 P.M. But as the information was lodged by an illiterate person belonging to the Pasi caste and as Chhanga was decoyed at about that time, the occurrence might have taken place shortly after that time.

The Sub-Inspector of Police arrived at the scene of occurrence 11 miles distant from the police station, at about 11 A.M. He sent the dead bodies for post-mortem examination, took charge of the bloodstained earth in the field of Chandra Bhal where Chhanga is said to have been murdered and seized the gandasa (Ex. II) and hasia (Ex. III) from the barotha (entrance hall) of Chhutanni's house. He also prepared site plans of the two scenes of occurrence.

After police investigation the three persons named in the first information report as the culprits were placed before the Magistrate holding the enquiry preliminary to their commitment before the Court of Session. Until the committal stage the case was treated as one, but the learned Sessions Judge on receipt of the commitment order decided that the cases should be tried separately.

Hence the charge of murder in respect of Chhanga formed the subject-matter of Sessions Trial No. 103 of 1954 held by the District and Sessions Judge of Sitapur, which we shall call the first trial, and

the charge of murder in respect of Gunga alias Manjhli formed the subject-matter of Sessions Trial No. 147 of 1954 which was held by the Temporary Civil and Sessions Judge of Sitapur, which we shall call the second trial. The judgment in the first trial is dated 14-10-1954 and that in the second is dated 18-12-1954.

3. The post-mortem examination of Chhanga deceased disclosed three incised wounds on the front side of the neck, and on the left and right sides of the lower jaw. On internal examination it was found that the middle ribs of both sides had been fractured and the heart was ruptured. According to the doctor, "Death was due to shock and haemorrhage, from the division of the main vessels of the neck in injury No. 1 by some sharp cutting weapon ..... Injuries Nos. 1 to 3 could be caused by the gandasa Ex. II just now shown to me. The ribs were fractured and could be caused if some one sits and presses on the chest."

The post-mortem examination of Gunga disclosed eight incised wounds, the most serious of which were on the front part of the neck dividing the trachea, the main vessels of the neck on both sides cutting the oesophagus, besides three other incised wounds in the region of the neck with the result that, according to the medical evidence, death was due to shock and haemorrhage from the division of the main vessels of the neck by some sharp edged cutting weapon. The doctor repeated that the incised wounds could be caused by a gandasa like Ex. II.

4. In the first trial Chhutanni, Kalika and Gokaran were the accused persons. Apart from the formal evidence, the case against the three accused rested on the direct testimony of three alleged eye-witnesses, namely, Vishwanath, brother of Chhanga deceased, Chhunni and Razzak (P. Ws. 5 to 7).

The evidence of these three eye-witnesses is to the effect that they were, on the night of the occurrence, guarding their gram and pea crops against the ravages of wild animals, like, neelgai. Their fields surround the field of Chandra Bhal in which the gram crop was standing at the time and where Chhanga was said to have been murdered. They claim to have reached the place at the nick of the time on hearing the shrieks of Chhanga that he was being done to death. They claim to have seen Chhutanni sitting on the chest of Chhanga and giving gandasa blows on the neck and the other two accused holding the victim down by the head and the feet.

The learned Sessions Judge relying upon their direct testimony, corroborated by the nature of the injuries found on the person of Chhanga, and the existence of strong motive to get him out of their way convicted the accused persons under Section 302/34, Indian Penal Code and sentenced Chhutanni to death and the other two to transportation for life.

5. In the second trial only two of the accused, viz., Chhutanni and Gokaran figured as the accused persons. The learned Temporary Civil and Sessions Judge of Sitapur found it proved on the testimony of the alleged three eye-witnesses, Ram Narain (P. W. 3), Bhagwan Din (P. W. 4) and Dhina (P. W. 7) that Chhutanni dealt gandasa blows while sitting on the chest of the deceased Gunga, while Gokaran pressed her down.

The learned Judge examined all the contentions raised on behalf of the accused persons challenging the direct testimony of those eye-witnesses and came to the conclusion that those witnesses were independent and reliable. Accordingly he convicted them both under Section 302/34, Indian Penal Code and sentenced Chhutanni to death and Gokaran to transportation for life.

6. Against these orders of convictions and sentences aforesaid in the first trial Criminal Appeal No. 759 of 1954 was preferred and was heard along with Capital Sentence Reference No. 43 of 1954 by the Luck-now Bench of the Allahabad High Court (Kidwai and Mulla JJ.) The learned Judges refused to act upon the testimony of the three eye-witnesses, Vishwanath, Chhunni and Razzak and relying upon the evidence of Lalji, one of the persons admitted by the prosecution to have witnessed the occurrence but who was examined as a defence witness, acquitted Kalika and Gokaran and directed the immediate release of Kalika. But they did not direct the release of Gokaran as his conviction and sentence in the second trial, as will presently appear, were maintained by the High Court also.

The learned Judges dismissed the appeal of Chhutanni and confirmed the death sentence passed upon him, relying mainly on circumstantial evidence.

The circumstances mainly relied upon by them as against Chhutanni were that he had decoyed Chhanga from his father's house that night on the pretext of going out for collecting some wood in the neighbourhood; that soon after that Chhanga was found dead; that homicidal injuries were found on the front part of his neck which were more or less of the same character as the injuries found on the dead body of Chhutanni's wife caused by the same kind of weapon and in the same manner at about the same time and that a bloodstained gandasa had been recovered which according to the doctor's evidence could have caused the injuries on the deceased. They also observed that so many coincidences in the modus operandi in respect of the two occurrences could not be said to be accidental.

This judgment was given on 6-4-1955. Just a day before, on 5-4-1955, they had heard the appeal from the orders of conviction and sentence passed by the trial Court in the second trial. It was Criminal Appeal No. 915 of 1954, which was heard along with Capital Sentence Reference No. 10 of 1955 by the same Bench.

The learned Judges agreed with the trial Judge in accepting the evidence of the three eye-witnesses aforesaid. They also agreed that there was sufficient motive for the appellants in that case to commit the crime. They found that illicit intimacy could spring up on account of there being sufficient proximity and opportunity and that there was nothing surprising that there was a liaison between Chhanga and the woman Gunga, who was about twenty years his senior. They repelled the contention of the appellant that the story of the illicit intimacy was unbelievable.

The fact that Chhanga was a young man, who though married for four or five years before his death, had not the company of his wife, lent additional support to the prosecution case that there was such an intimacy between the two persons who were almost simultaneously done to death. They also found that the admitted execution of the will by the appellant Chhutanni in favour of the two victims

and the agreement to share the woman were mere pretences to lull the victims into security. They also found that Gokaran, Chhutanni's son-in-law, would be naturally interested in getting rid of both those persons because so long as they were alive and the will in their favour stood, his wife and child would have no chance of succession to Chhutanni's property.

Thus in complete agreement with the findings of the trial Judge the High Court confirmed the convictions and the sentences passed upon the appellants as aforesaid and dismissed the appeal.

7. These appeals have been brought to this Court by special leave granted by the Vacation Judge on 18-7-1955. It is convenient first to dispose of the appeal directed against the orders of conviction and sentence in the second trial relating to the murder of Gunga because our orders in that appeal will naturally have a repercussion on the result of the first trial.

In both the trials Chhutanni has been sentenced to death for the two murders aforesaid. If his sentence of death were to be maintained as a result of the second trial, the appeal arising out of the first trial will be of no practical interest to the appellant because he is the only person convicted and sentenced to death as a result of the judgment of the High Court on appeal.

8. The conviction of the appellant as a result of the second trial rests mainly on the testimony of the eye-witnesses, Ram Narain (P. W. 3), Bhagwan Din (P. W. 4), and Dhina (P. W. 7). From the sketch map prepared by the investigating police officer it appears that the houses of those three witnesses are situate in the neighbourhood of the house of the appellant Chhutanni.

The Courts below were therefore justified in treating them as competent witnesses who could have heard the shrieks of the woman who was being butchered inside the house. No such animosity as would lead those witnesses to depose falsely against the appellant had been brought out in their cross-examination. The Courts below having carefully examined and accepted that evidence directly incriminating the appellant, this Court on special leave will not ordinarily go behind their findings. The arguments which were advanced before the Courts below for rejecting the direct testimony of those witnesses were repeated before us and we do not think that any grounds have been made out for interference with the concurrent findings of the Courts below, assuming that we could do so on appeal by special leave.

Admittedly no question of law has been raised nor is there any suggestion that there had been a failure of justice by any defect in the procedure adopted, except suggesting that the appellant had been prejudiced by being tried in two separate proceedings. It was suggested that if all the accused had been tried at the same trial it may be that the High Court would have rejected the direct testimony of the three eye-witnesses even as it did in the case of the appellants in the other appeal. But clearly there is no substance in this contention.

In the first instance, the learned Sessions Judge out of abundant caution separated the trial in respect of the two murders to obviate any objections that might have been taken to a joint trial on the ground that the two murders had taken place at different places. It is not necessary for us to pronounce at this stage on the wisdom of the course adopted in holding two separate trials. There is

no illegality or irregularity in holding separate trials of the same accused persons even in cases where a single trial could have been permissible under the Code of Criminal Procedure.

The learned Sessions Judge chose the lesser of the two evils by directing two separate trials. Secondly, the same learned Judges heard both the appeals one after the other and naturally therefore, considered the case against the appellants in both the trials on its merits. The fact that they refused to act on the testimony of the three eye-witnesses in the first trial could not and did not have any effect on the testimony of the eyewitnesses examined in the second trial.

The two sets of witnesses were deposing to two different occurrences, though it may be that two of the accused were common to both the incidents which could be said to have been parts of the same transaction in the sense that the same motive operated and impelled the accused to perpetrate those crimes. Nothing has been said before us which could lead us to the conclusion that there has been any failure of justice in the second trial. This appeal must therefore stand dismissed.

9. Coming to the appeal relating to the first trial, only the appellant Chhutanni has been sentenced to death for the murder of his cousin Chhanga. If the case stood by itself, then it could have been plausibly argued that the circumstances on which the High Court relied for convicting him were not conclusive. But the High Court has pointed out so many similarities in the two occurrences resulting in the death of the two persons as to eliminate the theory of accidental coincidences.

The appellant had a very strong motive to get Chhanga out of his way, because he had disgraced him in the eyes of his villagers. It was the appellant who decoyed him on that winter night of 17-1-1954 on the pretext of going out to bring wood. Chhanga was found dead soon after his going out with the appellant. The appellant did not offer any explanation as to what happened to his companion whom he had taken out that night.

On the other hand, bloodstained weapon had been recovered from his house which according to the medical evidence, could have been used for causing the death. Thus viewing the facts and circumstances disclosed in the evidence against the appellant, it is reasonably clear that he was chiefly instrumental in causing the death of the deceased Chhanga, although it may be true that he could not have perhaps done it single handed. He might have had the assistance of one or two more persons keeping in view the fact that the deceased was a much younger man in the prime of his youth and could not have been easily overpowered by the appellant who was in his declining years.

It is not necessary for us to examine the case against those two accused who have been acquitted by the High Court and had been tried along with the appellant for the murder of Chhanga. But so far as the appellant is concerned, he seems to have acted in the way he did as a result of a premeditated plan to get rid of both his wife and her paramour.

10. For the aforesaid reasons both the appeals are dismissed.