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Court : Allahabad

Decided On : Sep-15-1924

Reported in : AIR1925All413; 85Ind.Cas.647

Appellant : Mohan Singh

Respondent : Emperor

Judgement :

1. This is a criminal appeal from a conviction under Section 302 of Indian Penal Code, sentencing the appellant to death. The case is also before us for confirmation.
2. The murder is said to have taken place on the 7th of February, 1916, but it is the prosecution case that the accused has been absconding all this time and hence the delay to bring him on his trial.
3. The case for the prosecution is that-there was enmity between the appellant Mohan Singh and the deceased Baldeo Singh; as well as between the deceased and one Bhagwant Singh. Bhup Singh was a distant relation of these people, and it is said that his wife or mistress had died shortly before the murder and there was a shradh ceremony going to be performed. Bhup Singh had; invited these men, and Mohan Singh and Bhagwan Singh had refused to join the-ceremony unless Baldeo also went there. Ultimately Baldeo consented to go to the ceremony. Mohan Singh, Bhagwan Singh and Baldeo Singh started together, accompanied

by Shib Singh, who was then a boy of 14 years. When they got near the village in question they met Bhup Singh and also one Purni barber and Jiawan, a washerman. It is said that in anticipation of the ceremony they had to get their heads shaved. While Baldeo Singh was being shaved Mohan Singh got up and struck lathi blows on his head which felled him to the ground. Bhagwan is also said to have given some lathi blows; and ultimately Mohan and Bhagwan both ran away. Baldeo Singh died very probably on the spot.

4. Bhagwan Singh was arrested and put on his trial and was convicted and sentenced to transportation for life, and his conviction and sentence were on appeal upheld by the High Court.

5. On the day in question a report was made at the Police Station by a man named Shibni, who is now dead, to the effect that he actually saw lathis being used, and that Mohan Singh, Bhagwan Singh and Gulab (who is a witness for the prosecution in the present case) were striking Baldeo Singh Thakur, with lathis and that Baldeo Singh was lying on the ground. This witness was accompanied by a chaukidar, named Dhan Singh, who is also now dead. It is also a fact that the head constable, who took down the report, is now dead. The Sub-Inspector, who investigated the original case, has now retired and the prosecution has not been able to find out where he now lives.

6. It is also unfortunate that some of the witnesses who were examined in the case against Bhagwan Singh are also dead—There are Shibni, Rajwa, Jiawan and Fariduddin who recorded the first information report.

7. It is necessary at the outset; to consider the admissibility of some pieces of evidence, which were brought on the record in this case.

8. As to the first information report, it may be noted that the general diary having been destroyed, was not formally proved in this case. Reliance on behalf of the prosecution was placed on the first information report, recorded by the head constable. Under paragraph 90 of Chapter IX of the Police Regulations the Officer in charge of a Police station is required to take down in triplicate in the check receipt book (first information report) any information relating to the commission of

an offence. One of these three records is the document which has been brought on the record in this case. It is clear to us that it will be very difficult to exclude it from the scope of Section 35 of the Evidence Act as being an official record made by a public servant in the discharge of his official duties. But this report would at the very best only prove that a certain person since dead had made that statement. The contents of the report may therefore be used as a corroborative piece of evidence, to show that the implication of the appellant in the murder is not an after-thought. It certainly will be relevant to establish that he was named at the very start. Beyond this it is difficult to rely on it, and the probative value of this document does not go further. It certainly cannot be used as a substantive, piece of evidence.

9. The next piece of document is the post mortem report made by the Civil Surgeon, who is also unfortunately now dead. This was done at the Hospital when the dead body of the deceased was taken there. The evidence of the witness Nawab Singh proves that he had accompanied the dead body to the hospital and it was the body of the deceased Baldeo Singh which was examined by the Civil Surgeon. Thus there can be no question as to its identity. This report would be admissible under Section 32(2) of the Evidence Act as being a statement made by a dead person in the ordinary course of business and in the discharge of his professional duty. As we shall show later, even in dependently of this report, there is plenty of evidence to show that the head of the deceased was smashed and he died in consequence of these injuries.

10. The statements of other alleged eyewitnesses made in the previous trial who are now dead cannot now be adduced in evidence against the appellant, who had no opportunity to examine them nor can the judgment delivered in that case be admissible in this case.

11. We may also note that it has not been proved satisfactorily that any proclamation under Section 88 of the Criminal Procedure Code had been issued against the appellant. The evidence in support of this consisted of the statement of Mahmud Husain, constable, who was examined only in the Magistrate's Court and not examined before the Sessions Judge.

12. Excluding the evidence which is inadmissible, we find, however, that there is plenty of evidence to bring home to the accused the guilt with which he is charged.

13. As to the actual motive which may have led him to join with Bhagwan Singh in the crime, the evidence of Nawab Singh is very clear. It appears that Mohan Singh and Baldeo Singh were on very bad terms. One Bhajan, Brahman who had been an absconding offender was sheltered by Mohan Singh, Baldeo had him arrested at Mohan Singh's chaupal and had given information to the police about it. This was some five months before the murder. Bhajan was ultimately sentenced to imprisonment.

14. The second incident is that there was a dacoity at a village some six miles from the village of these persons, and Baldeo Singh gave information which led to the arrest of Mohan Singh and others. The witness Nawab Singh has stated that when arrested Mohan Singh said openly that Baldeo had given that information and he would have revenge on him. Nawab Singh also stated that Baldeo gave evidence against Mohan Singh. Then again there was a quarrel between Mohan Singh and Baldeo Singh as regards some wall between their houses which Baldeo wanted to repair but Mohan Singh would not let him. It is also stated that Mohan Singh had admitted that he gave information that Baldeo Singh and another person had stolen the bricks for building the wall in dispute from a Railway bridge, on which Baldeo was prosecuted for theft but was ultimately acquitted. This was some 7 or 8 months before the murder. Lastly there was some dispute as regards the occupancy tenancy left by one Mt. Ramuda. Mohan Singh was anxious that Baldeo Singh should not take it and he declared openly that if Baldeo did receive it he would not long survive it. It is therefore apparent that there must have been more than one reason why the accused might have committed the assault on the deceased.

15. We may at the outset say that we find it difficult not to reject the evidence of Gulab altogether. If the first information report is legally acceptable, then it may be used to shake the credibility of the witness Gulab Singh in this way, that he was also one of the persons on whom suspicion had fallen as being one of the three assailants. If this be so, then his statement cannot be safely accepted.

16. As against the evidence of Nainsukh which is to the effect that he saw from a distance Mohan Singh running away with a lathi in his hand, and that when he went to the spot from where he had heard the noise, he found that deceased lying on the ground unconscious, it is alleged that in the first information report Gulab was actually named as one of the assailants, whereas according to the evidence of Nainsukh as given now, he and Gulab were at the field of Gulab together.

17. Even rejecting the evidence of Gulab and Nainsukh there still remains the statement of the lad Shib Singh and the barber Purni. It is strongly urged on behalf of the appellant that Shib Singh has not told the whole truth and that his evidence shows that there has been an attempt on his part to shield Gulab Singh and minimise the complicity of Bhagwan inasmuch as he had said that Bhagwan hit him after Baldeo had died - and he also said that Gulab was not there at all. Whether this contention is well-founded or not we have no doubt in our mind that the story told by Shib Singh is substantially true. There is no doubt that he was in the company of these persons on the day in question, and therefore must have been an eye witness to what happened. His evidence is further corroborated by the barber Purni, who has also stated that he saw Mohan Singh who struck the first blow on the head of the deceased. What actual part Bhagwan Singh took it is not now necessary for us to say; but there can be no doubt that Mohan Singh struck the first blow, and this blow fell on the head. The evidence of Shib Singh is that the deceased began to bleed from the nose and mouth and collapsed on the ground and died, and his head, was smashed to pieces. This is corroborated by the medical report which we have already held to be admissible.

18. Having regard to this evidence we have no doubt in our mind that the accused was guilty of the offence of murder. From the nature of injuries inflicted, even if there had been no intention of causing the death of the deceased, which we are far from saying that it was not, the accused must have known that the injuries were imminently dangerous and likely to cause death.

19. The only other matter which remains for consideration is the question of sentence. We have already mentioned that the other assailant Bhagwan was transported for life and that sentence was confirmed by the High Court on appeal

the present accused attacked the deceased in the presence of a number of persons, and it is unfortunate that those persons, did not come to the rescue of the deceased in time so as to save him from receiving the fatal injuries. The accused has been absent from the village for a long time and according to the Sub Inspector, even though search was made for him he was not found. His trial therefore has come on after several years. Having regard to the special circumstances of the case we are of opinion that it would serve the ends of justice if we impose a sentence of transportation for life on the appellant. We may add that we do not think that this would in anyway be putting a premium on absconding.

20. We accordingly uphold the conviction of the appellant but allow the appeal to this extent, that we set aside the sentence of death passed on him and direct that in lieu thereof he be transported for life.

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