

Chandrabhan Singh and ors. Vs. State

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Court : Allahabad

Decided On : Mar-20-1970

Reported in : 1971CriLJ94

Judge : M.H. Beg, J.

Appellant : Chandrabhan Singh and ors.

Respondent : State

Advocate for Pet/Ap. : Mr. B. M. Mulla

Judgement :

M.H. Beg, J.

1. The appellant, Chandra Bhan Singh, has been convicted Under Section 326, Penal Code and sentenced to ten years' ft. I. whereas the remaining appellants, Mulaim Singh, Bhumiraj Singh, and Jodh Singh were convicted Under Section 326 read with Section 34. Penal Code and also sentenced to ten years' R. I. by & Civil and Sessions Judge, Etah.

2. According to the prosecution case, Shaitan Singh, deceased, who had been residing in another village in the house of his married sister, had shifted to village Datauli, his home, a year before the occurrence on 23-2.1966 for which the appellants were prosecuted. It is alleged that, although Shaitan Singh had hia own

house in village Datauli, he had arranged to take his meals at the house of the appellant Mulaim Singh. It is said that he was able to do so because he had arranged to get Chandra Bhan Singh appellant, the son of the appellant Mulaim Singh, married. On 21st of February, 1966, Km. Vimla, the daughter of the appellant Mulaim Singh and sister of Chandra Bhan Singh, is said to have disappeared. Shaitan Singh was suspected of complicity in this affair. On 23rd of February, 1966, at about 10 A. M. apparently when the feelings of Mulaim Singh and Chandra Bhan Singh were worked up, these two accused, together with Bhumiraj Singh and Jodh Singh, who are said to be nephews of Mulaim Singh, are alleged to have caught hold of Shaitan Singh on the road at a place in front of the house of Mulaim Singh and to have carried him inside a courtyard of the house of Mulaim Singh and Chandra Bhan Singh where they chopped off all the fingers and thumbs of Shaitan Singh and also to have struck blows with a gadasa on the wrist of their victim.

In the meantime, Sugriv Singh, P. W. 1, Devi Singh, P.W. 2, and Diwari Lai, P.W. 3, who were sitting at the shop of Bhojraj, carpenter, nearby, are alleged to have reached there and to have succeeded in persuading the appellants to spare the life of Shaitan Singh. The injured was then carried to the house, and, after that, taken to police station Jaithra in a bullock cart, at a distance of about four miles from the place of occurrence where a first information report was lodged at 5.30 P. M. on 23.2.1966 by Shaitan Singh himself. The first information report sets out a summary of the occurrence and its reason, as stated above, and gives the names of the four accused as the assailants of Shaitan Singh and the names of Devi Singh, P.W. 2, Sugriv Singh, P.W. 1, and Dewari Lai, P.W. 3, three out of the four eye-witnesses mentioned there. It is stated in the first information report that witnesses had gone into the courtyard as the door of the house of Mulaim Singh was open. The victim was taken to hospital at Jaithra, and, thereafter, sent to the District Hospital at Etah where he died on 10th March. 1966.

3. The learned Civil and Sessions Judge, who had the advantage of seeing the witnesses depose, not only believed the three alleged eye-witnesses of the occurrence but also relied on the first information report lodged by Shaitan Singh as a dying declaration. The post-mortem report (Ex. Kha. 2) gives Asphyxia,

resulting from tetanus, as the cause of death. Dr. O. P. Batra, who had prepared the postmortem report, had also stated that tetanus could be caused by even a scratch and that there was no necessary connection between the tetanus, which caused the death of the victim, and the injuries sustained by him during the occurrence. According to the doctor, the injuries were not such as to make death probable from injuries only. The learned Civil and Sessions Judge had, however, given the finding that tetanus had developed on the body of Shaitan Singh as a result of the injuries caused by the appellants because no other injury was proved on the body of the deceased.

The learned Judge observed that, although no anti-tetanus injection was given to the deceased, so that his life could be saved, the resulting tetanus could not have supervened if no injuries had been inflicted upon the victim by the appellants. He held that, since the gandasa used in inflicting the injuries was said to be out of use, the rust near the edges of the gandasa had tetanus germs on it. The last mentioned finding was certainly based on pure conjecture as the actual gandasa alleged to have been used in causing the injuries on Shaitan Singh was not found so as to be produced at all as a piece of evidence at the trial.

4. learned Counsel for the appellants argued, not without force, that, on the facts of the case, the principle laid down in *Moti Singh v State of U. P.* : 1964 CriLJ727 was applicable, so that the first information report could not be used as a dying declaration. In that case, it was found that the alleged dying declaration was mainly relied upon by the High Court for convicting Moti Singh and Jagdamba Prasad, the appellants there. Their Lordships observed :-

It is clear from the above that the High Court mainly relied on the alleged dying declaration of Gaya Charan for determining that Moti Singh and Jagdamba Prasad, appellants, fired from the room and the platform and that if their names had not been mentioned in this statement of Gaya Charan, they too would have got the benefit of doubt just as Sheo Darshan Singh and Avadh Behari, got. There is no other factor for making a distinction between the cases of these two appellants and those two accused as all the prosecution witnesses had named all the accused as assailants of the victim party. It follows that, if this alleged dying

declaration of Gaya Charan be inadmissible in evidence as urged for the appellants, the appeals have to be allowed and the conviction of the appellants set aside.

As regards the admissibility of the alleged dying declaration, the Supreme Court observed :

Clause (1) of Section 32 of the Evidence Act makes a statement of a person who has died relevant only when that statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question. When Gaya Charan is not proved to have died as a result of the injuries received in the incident his statement cannot be said to be the statement as to the cause of his death or as to any of the circumstances of the transaction which resulted in the death. This is obvious and is not disputed for the respondent State.

In that case, it was found that, although Gaya Charan had received two gun shot wounds in the abdomen which were stated by the doctor to be dangerous to life, yet, Gaya Charan had left the hospital either because the injuries had healed up or were healing up and that he actually died on 1st of March, 1960, more than two Weeks after receiving the gun shot wounds on 9th February, 1960. In other words, the connection between the gun shot wounds and the injuries was held not to have been established.

5. In the case before me, although the question whether death was caused as a result of tetanus which could be traced to the injuries was in dispute, the finding of the learned Civil and Sessions Judge, that the tetanus could only be traced to injuries sustained by Shaitan Singh, appears to be conjectural. This conjecture is based upon two grounds, one of which can be said to be quite good and the other not sustainable. The good ground was that no other injury was found on the body of the deceased. The bad ground was that the learned Civil and Sessions Judge thought not only that tetanus germs must have been present on the gandasa used but held that they were actually there although the gandasa itself was not produced at all. As death occurred about a fortnight after the attack and no evidence was given about the exact interval of time between the injuries and the

development of tetanus, it is probable that tetanus supervened due to some additional factor not connected with the infliction of injuries. In these circumstances, the dying declaration, contained in the first information report, was not admissible Under Section 32(1) of the Act.

6. If a statement is admissible as a dying declaration, it may be, as held in *Kushal Rao v. State of Bombay* A.I.R. 1953 S C 22, enough to sustain the conviction because it is substantive evidence. Mr. B. M. Mulla, learned Counsel for the appellants, very fairly conceded that, although the first information report was not admissible in evidence Under Section 32(1) of the Act, it was, nevertheless, admissible Under Section 8 of the Evidence Act as evidence of subsequent conduct of a person against whom an offence had been committed. A question was then raised by the learned Counsel about the use which could be made of the F.I. E, which, according to learned Counsel, was admissible Under Section 8 of the Evidence Act.

7. learned Counsel for the appellants relied on the well-established proposition that the first information report, as a statement of facts, cannot be used as substantive evidence. He pointed out that it could only be used either to contradict the maker of the first information report, in accordance with Section 145, or, to corroborate Under Section 157 of the Evidence Act, the statement in Court of the maker of the first information report only if and when the maker of it appears as a witness in Court. The contention was that the admissibility of previous statements by witnesses of fact is governed by the provisions of Sections 145 and 151 and that of statements of persons who cannot appear as witnesses are confined to the provisions of Sections 32 and 33 of the Evidence Act. It was urged that other statements of persons, who cannot be called as witnesses in Court, cannot be used unless they fall within the very exceptional classes mentioned in Explanations I and II (of Section 8 ?) of the Evidence Act. According to learned Counsel, the statements in the first information report fall neither under the two Explanations to S. 8 nor under any other provision of the Evidence Act.

If this argument is correct, no part of the First Information Report would be admissible, at all. The only evidence which could, in that case, be given Under

Section 8 of the Evidence Act, would be of the fact that the victim lodged a first information report or made a complaint after the occurrence. But, if this was all that could be proved, the meaning or relevance of this fact for the subject-matter of the prosecution could not be proved. The 'conduct' in reporting thus viewed in vacuo, would become meaningless. It could only be explained by statements which show how it is related to the offence alleged to have been committed. The admissibility of statements Under Section 8 of the Evidence Act is governed by their function. They must either explain or affect relevant conduct to be admissible at all. The use of a first information report as a piece of substantive evidence is one thing. Its use for the purposes of explanation or corroboration and contradiction is another.

I am unable to hold that the purpose of corroboration is confined to the provisions of Section 157 of the Evidence Act, which only relates to the corroboration of the testimony of witnesses who appear in the witness-box. Even statements in the first information report which explain the act of complaining so as to be admissible Under Section 8, Explanation I, may, in my opinion, be used for the purpose of corroboration of other evidence in the case. At any rate, no authority has been shown to me for contending that the fact that the victim had given out the nature and the time and place of the occurrence and the names of his assailants must be excluded, even for the limited purposes of explaining his conduct in making the complaint where the victim is unable to appear as a witness at the trial.

8. The extent of admissibility of statements is also regulated by the Evidence Act, as we find not only from Sections 145 and 157 but also from other provisions. Explanations I and II of Section 8 also show that the whole of a statement may not be admissible. Under Explanation I to Section 8 only that much of a statement is admissible as can be reasonably considered to be a part of conduct.' This explanation makes it clear that a statement to be admissible here as 'conduct of any person an offence against whom is the subject' of any proceeding' must not only accompany but explain acts other than statements'. Illustrations (j) and (k) only given examples of what could be included in and explain such conduct of making a complaint of an offence as an act apart from the statement itself. The statement should be reasonably capable of being construed as explaining the

relevant conduct of complaining about an offence or of becoming merge 1 with conduct, Only some parts of a first information report may be capable of doing that.

Other parts giving the background of the offence, past enmity or, names of alleged eyewitnesses, or, the statement of a reason why they could see the occurrence, as we find in the first information -report under consideration. would be excluded. But, the alleged time and place and nature of the offence, the names of the offenders, if any, mentioned in the first information report appear to be so much a 'part and parcel of the act of making the complaint about an offence, that they must be held to be admissible Under Section 8. Making a complaint about an offence could be described' as a 'verbal act.' It cannot be properly under, stood apart from the nature of the offence complained of, the name or names of the accused, and the time and place of the occur, rence.

9. There is also another angle to this ques-tion. The definition of 'fact' given in Section 3 of the Evidence Act, together wiith illustrations of it, show that a statement is a 'fact'. If the complainant victim had omitted names of any ' or all of the accused persons from the first information report or mentioned other names there altogether there is no doubt that the contention would have been put forward on behalf of the accused that tha statements in the first information report could, even if they were not admissible elsewhere, be admitted as a part of faota admissible Under Section 9 of the Evidence Act to 'support or rebut an inference suggested by a fact in isaue or a relevant fact, or, which establish the identity of anything or person whose identity ia relevant'. Again if any fact is 'not otherwise relevant', it may still fall within the purview of Section 11 of the Evidence Act either if it is 'inconsistent with any fact in issue or relevant fact', Of one which, in connection with other facts, makes 'the existence or non-existence of any fact in issue or relevant fact highly probable or improbable'.

10. learned Counsel for the State tried to invoke the aid of even S. G of the Evidence Act and contended that statements of the victim, found in the first information under consideration, could be held to be parts of resgeatae covered by 8. 6 of the Evidence Act. But, this contention could not be accepted. Section 6 of

the Evidence Act may cover a statement made by a victim, giving out the name of his assailant. soon after the occurrence, but it could not be held to cover a first information report made several hours afterwards. Although 8 6 of the Evidence Act expressly mentions that a fact, though not in issue, may be proved as a part of the same transaction of which a fact in issue forms a part, whether it took place at the same time or place as a fact in issue or not, yet, in considering what a 'transaction' embraces, the proximity of time and place cannot be ignored entirely in all cases.

11. As I am of opinion that statements giving the nature of the offence, the names of the accused persons, and the time and place of the occurrence, showing what the complaint is about, or explaining it, are so blended with the conduct of the victim, in lodging a first information report of the offence under consideration, that they are parts of conduct', which can be proved Under Section 8 of the Evidence Act, it is not necessary to consider the admissibility of this much of the statements in the first information report under either 8. 9 or Section 11 of the Evidence Act. The other sections are, however, mentioned hereto show that provisions of our Evidence Act are comprehensive enough to prevent the exclusion from evidence of any statement which can justly reasonably, and properly help the ascertainment of truth. In Moti Singh's case : 1964 CriLJ727 (supra) no question of admissibility of any part of the statement, which had been wrongly admitted as a dying declaration, under any provision other than 8. 32 (1) of the Evidence Act had either arisen or was canvassed at all.

12. As I have held that the nature of the offence, the names of the accused, and the time and place of occurrence, mentioned in the first information report lodged by the deceased victim, are admissible only as pieces of explanatory or corroborative evidence and not as substantive evidence or evidence which could, taken by itself, be enough to sustain the conviction of the appellants, the most important question in this case is whether the statements of eye-witnesses, either with or without such corroboration as evidence admissible Under Section 8 of the Evidence Act here could provide, establish the prosecution case beyond reasonable doubt.

13. learned Counsel for the appellants submitted that the alleged eye-witnesses could not be present at all, as they allege, to hear the cries of Shaitan Singh or to see the appellants watching Shaitan Singh from the shop of Bhojraj. It was submitted that the statement of Bhojraj (D. W. 1) who appeared as a defence witness, knocked the bottom out of the prosecution case. As the statement of this witness, in examination-in-chief, is very short, it may be reproduced here. He said :

I have a carpenter's shop in Datauli. The accused Mulaim Singh's house is at a distance of twenty paces from my shop. No one ever caught hold of Shaitan Singh before me. It has never happened that before Sugriv Singh and Devi Singh and Diwari and Sakhtoo and myself anybody ever caught hold of Shaitan Singh.

14. This very brief statement of Bhojraj (D. W. 1) appears to me to be transparently dishonest. The site plan shows that his shop could not possibly be twenty paces from the entrance of Mulaim Singh's house. Sugriv Singh's statement that the distance is one hundred and ten paces appears to be correct. The defence witness seems to have deliberately tried to shorten the distance so as to make his testimony credible. Then, in cross-examination, he stated that the Investigating Officer never examined him. If this was so, the defence could have proved it by asking the Investigating Officer about it. Moreover, the witness clearly seems to have attempted to bolster his statement, in examination-in-chief, as to avoid any reference to the day of the incident or to what witnesses at his shop may have heard. He does not directly state that the witnesses were not at his shop on the day of the alleged occurrence at the relevant time. He seemed to be emphasizing that he himself saw nothing. The site plan shows that the witnesses, who must be sitting in front of the shop and who are said to have left as soon as they heard Shaitan Singh's cries and saw that he was caught by four men on the side of the road in front of Mulaim Singh's house and taken into it, could have seen what Bhojraj, who must have been working inside the shop, may not really have seen.

The catching of Shaitan Singh and taking him inside the house would remove him at once from the field of vision from Bhojraj's shop. This must have happened quite rapidly. It is true that Bhojraj also stated, under cross examination, that he had

seen Shaintan SiDgb lying injured in front of big house one morn, ing, but he deposed that Shaitan Singh's fingers were said to have been broken by lathies which could not be true as this suggestion is falsified by medical evidence. There could be no doubt whatsoever that this witness, on whose testimony the whole defence case hung, was absolutely unreliable. He probably did not, as a person with his shop in the vicinity of the house of Mulaim Singh and Chandrabhan Singh, want to displease des-perate persons of violent disposition.

15. The argument that others living in the immediate neighbourhood were not produced although they must have been ;there or must have heard the cries of Shaitan Singh overlooks that the incident, resulting in the chopping off of all the fingers and the thumbs of Shaitan Singh, who must no doubt be howling, did not take very long. A few gandas blows, said to be four or five in number, were alleged f' to have done the damage. Moreover, at the time of the occurrence at 10 a. m, most menfolk are at their fields in rural areas and women are busy cooking. In addition, women and children often run away and hide inside their houses when such an event takes place instead of coming out of their houses. Furthermore, -the chopping off took place inside a court yard which only Sugriv, the uncle of Shaitan Singh and others with him, who had heard Shaitan Singh cry out and seen him caught, could dare to enter with a purpose although uninvited,

16. It is also pointed out that the conduct of Sugriv Singh, the uncle of Shaitan Singh, was unnatural in not shouting for help or trying to aave. Witnesses were evidently frightened, as Devi Singh (P.W. 2) deposed, so that they did not do more than to rebuke and to ask the accused whether they were going to kill Shaitan Singh, waeroupon the accused left Shaitan Singh to be removed by Sugriv and others with him. There seems nothing unnatural in all this. Tho incident did not seem to be long drawn out. The witnesses were residents of the village living within a radius of two hundred and fifty paces from the place of occurrence as their cross, examination shows. No sufficient reaBon is diaolosed for rejecting their version that they were present at the shop of Bhojraj, (D. W. 1)at the time of occurrence, so that they could rush to the spot and see it. Devi Singh (P.W. 2), stated that he was at the carpenter's shop to get some pegs made. Divari Lai (P.W. 3), cross examined on the point, stated that he had gone there to get the

wheels of. his bullock-cart made. Sugriv Singh(P.W. 1) said that he was there to get the frame of his door-made. Each witness gave a good enough reason for his presence there.

17. Attempts to prove enmities due to former litigation between prosecution witnesses or their relations and the accused or their relations also did not bring forth any such ground as could impel any witness to give false evidence against any of the accused persons on such a grave charge, It came out that Mulaim Singh had obtained a decree for a sum of Rs. 236 from the Nyaya Panchayat against the brother of Divari Lai (P.W. 3) about which this prosecution witness professed having learned only in the course of his cross-examination. The trial Court also held that a doubtful copy of an ex-parte decree of the Nyaya Panchayat of village Madsua (Kha 7), another village, in favour of Mulaim Singh and against Devi Singh, (P.W. 2) said to have been obtained on 25-2-1966, two days after the occurrence, seemed to be a piece of fabrication indulged in to discredit this witness. As regards Sugriv Singh (P.W. 1), the uncle of Shaitm Singh, the cross examination of Devi Singh (P.W. 2) shows that the accused suggested that there was actually a dispute between him and Shaifcan Singh over some land. Devi Singh (P.W. 2), after denying any litigation with one Gobind Singh, frankly admitted that this was an incorrect statement when he was confronted with a conflicting statement made by him in the committing Magistrate's Court. But, the relevance of any litigation of his with Gobind Singh was very doubtful as Gobind Singh was not an accused.

18. It was not proved that the three eyewitnesses had any common link or any direct cause of enmity or hostility against any particular accused person. Sugriv Singh (P.W. 1) was no doubt the uncle of the deceased, but, as observed by their Lordships of the Supreme Court, in *Dalip Singh v. State of Punjab* : [1954]1SCR145 ,

Ordinarily a close relative would be the last person to screen the real culprit and implicate an innocent person, and hence the mere fact of relationship far from being a foundation for criticism of the evidence is often a sure guarantee of truth.

Slight variations in the accounts of various parts of the occurrence, as to when the attack on Shaitan Singh commenced or what witnesses did during the course of it, pointed out in this case also appear to me to be only of a kind which indicate that the witnesses were not tutored.

19. Two circumstances, to which considerable importance was attached by learned Counsel for the appellants, were: firstly, that no blood was found at the house of Mulaim Singh; and, secondly, that blood was admitted by the prosecution witnesses to have fallen at the house of Shaitan Singh. The first circumstance is adequately explained by the considerable negligence of the police in starting investigation, sixteen days after the occurrence. In spite of the brutal nature of the attack on Shaitan Singh. The second is explained by the fact that, according to the prosecution witnesses, Shaitan Singh was first taken to and placed at his own house until a bullock Cart could be arranged. The suggestion made on behalf of the appellants, that the deceased must have been attacked during the night at his own house, is supported by nothing better than the statements of Bhojraj (D. W. 1) under cross examination. I have held that the evidence of Bhojraj to be quite unreliable for reasons already given.

20. The statements of the three eye-witnesses are strongly corroborated by two pieces of evidence. Firstly, there is medical evidence showing that the incised wounds on fingers, thumbs, and wrists, fit in with the alleged use of a gandasa by Chandrabhan, and other injuries with alleged use of the wooden part of the 'phaura' or spade said to have been used for an attack by Mulaim Singh. The other two accused, Bhumiraj Singh and Jodh Singh, are said to have held Shaitan Singh down. Secondly, the statements of Shaitan Singh in the first information report, already held to be admissible Under Section 8 of the Evidence Act, corroborate the prosecution version. Whatever possible doubts could arise about the credibility of the eye-witnesses are dispelled by these two kinds of corroborative evidence.

21. An attempt was made to distinguish the cases of Jodh Singh and Bhumiraj Singh, for whom Mr. G. P. Tandon, arguing separately, said all that could properly be said for them. It was submitted that these two appellants, although alleged to

be related to Mulaim Singh, were not proved to be so related. The statements of the prosecution witnesses on cross-examination, showing indefiniteness of knowledge about kinship and admissions of difference in the 'gotras' of these two accused persons, who are brothers, and Mulaim Singh, made their relationship with the other two accused improbable. Nevertheless, they are shown to have helped Mulaim Singh and Chandrabhan. Alleged reasons for this false implication are not established. As held by a Division Bench of this Court, in *Tahsildar Singh v. State* A.I.R. 1938 All 214, the presumption is that witnesses deposing on oaths solemnly taken are witnesses of truth. Unless that presumption is displaced by some sufficiently good counter, balancing reason, their evidence cannot be discarded against some of the accused. Moreover, the nature of the crime was such that it could not be reasonably said to be committed unless there were at least two persons holding down the victim in addition to the two causing the injuries. There seem to me to be no grounds for disbelieving this part of the prosecution case.

22. Lastly, it was urged that the sentences are excessive. It is urged that the accused were Rajputs by caste amongst whom the elopement of a daughter would be certain to cause great humiliation and disgrace and wound their feelings deeply. It is evident that their mental balance was disturbed by suspicion against Shaitan Singh so that the father and son attacked him in what is certainly a very cruel and brutal fashion. Death from bleeding or other contributory cause is not so uncommon a result of such injuries as to be outside the range of a possibility which should have been present to the minds of the assailants. However, they have been convicted only Under Section 326, Penal Code and 326/34, Penal Code.

23. Taking all the facts and circumstances into account, while affirming the convictions of each of the four appellants, I reduce the sentence of Chandrabhan Singh, who used the Gandasa, from ten to seven years' B. I, of Mulaim Singh to five years' R. L, and, of Bhumiraj Singh and Jodh Singh to four years' R. I. subject to these modifications this appeal is dismissed. Appellants Mulaim Singh and Bhumiraj Singh and Jodh Singh are on bail. They will be taken into custody forthwith to serve the remaining periods of their sentences.

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