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Court : Allahabad

Decided On : Sep-07-1927

Reported in : AIR1928All25

Appellant : Karan Singh and ors.

Respondent : Emperor

Judgement :

1. Four men, Karan Singh, Bahadur, Mulaem Singh and. Puran have been convicted under Section 302 for the murder of Gajraj. Karan Singh and Bahadur have been sentenced to death. Mulaem Singh and Puran have been sentenced to transportation for life on the ground that they did not take a principal part in committing the murder. In View of the opinion that we have formed about this case, it is unnecessary to say more in regard to the question of sentence than this, that we cannot find the smallest justification for the Sessions Judge sentencing Mulaem Singh and Puran only to transportation for life if there is in fact truth in the story for the prosecution which the learned Judge has believed.

2. According to that story Mulaem and Puran held Gajraj while Bahadur and Karan forced the life out of him by placing their lathis on his neck. In view of this story, which the learned Judge accepted, it is inconceivable to us how he could justify a view that the two men did not take a principal part in the murder. The story for the prosecution is that Karan Singh hated Gajraj because Gajraj had been one of these responsible, though not tried, for kidnapping Karan Singh's wife about a year

before the present murder. Gajraj is also said to have had enmity with one of the other appellants, Bahadur, on account of their both having an intrigue with the same woman Mt. Bitauli. On the night of the 30th March Karan Singh is said to have persuaded Gajraj to accompany him with a view to beating Bahadur and to have taken Gajraj to his (Karan Singh's) house under this pretext, where the other three appellants were already concealed. Omitting some minor incidents which followed, the four appellants are then said to have murdered Gajraj by pressing a lathi on his neck, to have taken away the corpse and have hidden it in the jungle and to have subsequently, one, or the other of them, largely destroyed the corpse by burning it.

3. Gajraj had four brothers, Munshi, Mahadeo, Nawab and Piare. Mahadeo lived with Gajraj in the village Barehla where also Karan Singh, Mulaem and Puran lived. The fourth appellant, Bahadur, Jived in another village, but had been working in a bel in the village Barehla for several months. The other three brothers of Gajraj, Munshi, Nawab and Piare lived about two kos away from Barehla in the village Mundia Bais. Mahadeo is said to have been ill and, therefore, took no steps when he found that his brother did not return. How far this alleged illness is a real fact is at the least uncertain, because Mahadeo was himself well enough a few days later to go to the place where the body was eventually found. However, Mahadeo says that he sent his son to fetch his brother Piare, who also had been named in the report of the kidnapping case above mentioned. Piare says that he searched for his brother Gajraj in certain villages where Karan Singh said Gajraj might be, but failed to find him and, failing to find him three days later again questioned Karan Singh and as a result of his suspicions got Karan Singh arrested by the mukhia and others and took him to the police station. On the way to the police station they were told that the body of Gajraj had been found burnt in the jungle.

4. The Sub-Inspector came to the Village Barehla on the 3rd April and as a result of his investigation sent up the present four appellants for trial. The case for the Crown really rests on the evidence of Ram Kali, the wife of Karan Singh, who was the woman alleged to have been kidnapped in the case that had occurred a, year previously. She purports to give eye-witness testimony of the murder. The next

fact of importance is that this woman is said not to have been present in the village when the Sub-Inspector came, and was found a long way off on the 7th April in apparently some small jungle. The story for the Crown is that Karan Singh got her out of the way. The story for the defence is that she had never been in Karan Singh's house at all, since the kidnapping case, but had been under the protection of Piare and that the police with the assistance of Piare pretended to have found her in the jungle. Further, there is the evidence of Mt. Bitauli, who is said to have met Mt. Ram Kali at a fair at Gola on the 3rd April and to have been told by Mt. Ram Kali that she (Ram Kali) had seen the murder committed by the four appellants. The remaining portion of the evidence consists of evidence by the police and other witnesses that Karan Singh pointed out in the jungle where the shoes and lathi of the deceased were to be found, the heap of straw in which the body had first been concealed and the shop of the person from whom the kerosine oil had been purchased with which the body was later burned.

5. After very anxious consideration of the evidence for the Crown, two facts emerged. Firstly, there was no conceivable explanation on the record as it stood which would render it reasonable conduct on the part of Gajraj to allow himself to be taken away by the very man Karan Singh, whose wife he was alleged to have kidnapped on the pretext of beating Bahadur, his (Gajraj's) enemy. The Crown alleged that this man Bahadur, one of the present appellants, was the friend of Karan Singh and had been having his food in Karan Singh's house for a month past. This fact must have been perfectly well known to Gajraj and two questions required an answer. What should make Gajraj unsuspicious of the motives of Karan Singh in assisting him at all? Why, should Gajraj believe Karan Singh to be willing to assist Gajraj or any body else in beating a man who had been having his food in his (Karan Singh's) house for the past month and with whom he had, as far as the record shows, no enmity whatever? The record, however, discloses that practically all the persons concerned in this case, we do not of course mean without exception, but all the principal persons, are bad characters. That being so, it is highly improbable that we should find in the evidence a disclosure of the real feelings of the various persons towards each other, and it was just conceivable that Gajraj could be deceived into accompanying Karan Singh.

6. The second point that emerged was that there seemed no substantial reason to doubt that Mt. Ram Kali was at the time of the murder living with her husband Karan Singh and was, therefore, in a position to know something of the murder, if it took place as she said it did. That Karan Singh should endeavour to get her out of the way while having no real reason to suppose that she would give evidence against him, was not unnatural. It was also not unnatural that the husbands of other women relatives should refuse to have her in the house and that she might, therefore, have to live as best she could; her being kept even in the open air was not in any way impossible in view of the season of the year. The third fact we may also mention about which there can be no dispute, and that is that the evidence of the alleged production by Karan Singh of the shoes and lathi and evidence that he pointed out the shop where the oil had been bought and the place where the body had first been concealed, amounted in fact though not in words to giving evidence that Karan Singh had confessed. The Crown was entitled to lead such evidence, though they were not entitled to give evidence of a confession made to a police officer. But the conclusion to be drawn from such evidence was inevitable.

7. We feel it our duty here to note that nobody connected with the presentation of the case to the Court below, including the trial Judge, seems to have had the smallest conception of their duty to really examine the evidence and to secure that all available light on the case should be before the Court. The Prosecuting. Inspector in the Court below, the Government Pleader in the Sessions Court and the trial Judge do not any of them discharge their duty, if they are merely content with getting recorded and recording such evidence as the police may put before the Court. It is the duty of all of them to apply some intelligence, all the intelligence they can, to the problems that arise in the case and towards securing all possible evidence on material points. We find in this case no serious attention whatever directed to get on to the record any detailed evidence of the real relations between Karan Singh on the one hand and Gajraj and Mahadeo on the other. Nor do we find any attempt whatever to extract from Mt. Ram Kali any statement as to how she came to leave the house of her husband on or about the 3rd April. She alleges that she was taken away to a fair by her husband's brother, but she tells us nothing and was asked nothing of what occurred during the three days subsequent to the murder and prior to her departure. If there is any truth whatever in her story

she must have had conversation with her husband and with Mulaem as to whether she was to stay in the house or go, as to whether she was to hold her tongue about what she had seen and many other similar points. No attempt was made to extract from her any information as to her living in the jungle, who she was with, why she was content to stay there. It is no case of a simple ignorant woman unaccustomed to the world and to mooting and talking with men. She is avowedly a loose character and there is no suggestion of her being purdah to any body at all. Her evidence is limited to saying that she was concealed in order to keep her away from the Sub-Inspector. She was not asked whether this was with her consent or against her will. If it was with her consent, she was not asked how it came about that she so readily disclosed the whole transaction to Mt. Bitauli, the mistress of Gajraj, the murdered man. If it was against her will, she was not asked why she did not disclose it to numbers of other people or why she was willing to live, so far as the evidence goes, unguarded in some jungle. It is not the duty of either the Government pleader or the trial Judge to assume without giving any thought to it, that the stories told by the prosecution witnesses are necessarily true. It is their duty to apply some intelligence to examination of motives and relations between the parties and to insist upon their actions, where these actions are material, being disclosed.

8. We were inclined, however, to think that the evidence of Mt. Ram Kali was possibly true in the main. On the other hand, there was still the unsolved problem of how Karen Singh could have induced Gajraj to go away with him for the purpose alleged. Thirdly, there was the fact staring us in the face on the record that the Crown really intended the Court to believe that Karan Singh had confessed.

9. In view of the unsatisfactory way in which the case has been tried, we considered it desirable to look into the diary. It is unnecessary to state again, one of us has frequently already stated, the principles which must guide a Court in using the diary. Looking into the diary then we find that Karan Singh is recorded as having made a confession to the Sub-Inspector of Police on the 4th April after the Superintendent of Police had left, while Karan Singh was still refusing to disclose anything. In many particulars that confession details the same story as that which

is put before as now for the prosecution, but in one very grave particular it is wholly discrepant. Karan Singh says in that confession that the murder was committed under his supervision, but with the aid of four men, Bahadur and Puran, two of the present appellants, and with the assistance of Bachu and Bhajnu and does not mention Mulaem. Now it is conceivable that in confessing to the police Karan Singh might have excluded the name of his brother Mulaem. But there is no possible explanation which occurs to our minds of why he should have put in two other men Bachu and Bhajnu falsely.

10. The serious question raised by the discovery of this confession is, apart from the legal aspects of it, which of the two statements contains the truth? Supposing that either of them does, Karan Singh's statement or Mt. Ram Kali's, it is manifest that the two are hopelessly contradictory as to the actual murder, and yet both statements are made by persons who wore eye-witnesses. If Karan Singh's confession represents the truth, then Mt. Ram Kali's evidence, that of the principal witness for the prosecution, is wholly false.

11. Now we have referred above to the legal aspects of this confession. It is manifest that it cannot be used against Karan Singh or any of the appellants. It was a confession made to the police. How then should it have been used in the Court below? The diary cannot be used for anything other than to assist the presiding Judge in the enquiry or trial or for the purpose of enabling the defence under certain circumstances to contradict the witnesses for the Crown. It is the duty of the Judge to bring on record by evidence any material facts that may come to his knowledge and it is for that purpose that he can and should use the diary. Here it is clear that his suspicious ought to have been aroused by the evidence given in Court as to the production of shoes, etc. by Karan Singh that Karan Singh might be supposed to have confessed. If he had looked at the diary to see whether there was anything which would indicate the absence of material facts, he would have come across, as we did, that confession; he would have seen that Karan Singh had told a story there which, if it was true, would shatter the evidence of Mt. Ram Kali. He could not use that confession against the accused, but what he could have done and should have done would have been to question the investigating Inspector somewhat as follows: Did you in fact have two parsons

mentioned to you by Karan Singh as having taken part in the murder, who are not mentioned in any way at all by Mt. Ram Kali who purports to have seen the murder? The Sub-Inspector would have had to admit that he had. The defence could then have used this evidence to rebut the testimony of Mt. Ram Kali and it would further have thrown doubts on the evidence that Karan Singh produced the shoes, etc. A Court is not allowed to use confession of a person to the police against the accused, but there is no reason whatever why it should not get on the record facts in connexion with that confession of which, if the defence were aware of them, the accused would be entitled to the benefit.

12. It would be useless for us now to call the Sub-Inspector to give formal evidence to these discrepant statements in the alleged confession. It is manifest that once these facts have come to light it is impossible to place reliance on the evidence of Mt. Ram Kali. It may be true, it may be false, but it is clear that somehow or other the name of Mulaem has become substituted for the names of two other men who were originally the objects of suspicion and rightly so. We do not mean of course by the words 'rightly so' that Bachu and Bhajnu were guilty or that there is the smallest reason for believing them to be guilty, but suspicion must have been strongly directed against them at the outset, unless there was something improper in the way this confession was obtained from Karan Singh. No explanation whatever is offered as to how it now comes about that such an important part of Karan Singh's statement is alleged by the Crown to be false and how a new figure Mulaem is inserted in the list of guilty persons. We are of course unable to say whether the case is or is not in fact a true one, but in view of the facts that we have set forth above, it is manifest that no reliance whatever can be placed on the main evidence for the Crown, including the alleged production by Karan Singh of articles belonging to the deceased and other things he is said to have disclosed. A brutal murder has undoubtedly been committed and it is, in our view, owing to the manner in which the case was investigated and tried that the guilty persons have escaped, whether they be the present appellants or others. We have no alternative but to set aside the convictions and sentences and direct the appellants to be released.

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