

STATE OF U. P.

V

HARI PRASAD &amp; OTHERS

December 6, 1973

[M. H. BEG AND Y.V. CHANDRACHUD, JJ.]

*Penal Code—Murder—Motive for murder.*

There were disputes over land between the complainant and the party of the accused, all of whom were connected *inter se*. The deceased was a traditional priest, both of the complainant as well as of the accused. All the accused were on friendly terms with the deceased. On the day of the occurrence the deceased priest and his mother were staying with the complainant as his guests. The complainant and some members of his family were sleeping on one side of the terrace of his house, the priest and few others were sleeping on another side, while the complainant's servant and some others were sleeping yet on another portion of the terrace of the same house. While one group of five accused committed the murder of the servant of the complainant, the second group of five murdered the priest and caused injury to his mother. The witnesses claimed that they identified the accused in the light of the lantern which was alleged to be hanging by a pole four or five feet high.

The Sessions Judge held that the 10 accused formed unlawful assembly for the purposes of committing the murder of the complainant but by mistake committed the murder of the priest and the servant. Five of the accused belonging to the village were sentenced to death while the others were sentenced to imprisonment for life. The High Court acquitted all the accused.

Dismissing the appeal of the State to this Court

HELD : (1) The High Court was right in the view that the occurrence took place under darkness and that in the absence of any light none of the prosecution witnesses could have identified the culprits and that the existence of the lantern was open to grave doubt. If the lantern was burning just near the place where the priest was sleeping it is difficult to hold that the murder was committed through an error mistaking him to be the complainant. The accused had no motive to assault the priest and cause injury to his mother which tended to show that they had not participated in his murder. [593F; 592B and D]

(2) If the various eye witnesses were able to identify the accused in the light of the lantern the accused could have been able to identify the victim. [592E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 215 of 1970.

Appeal by special leave from the judgment and order dated the 12th May, 1970 of the Allahabad High Court Lucknow Bench at Lucknow in Criminal Appeal Nos. 35 and 36 of 1970.

*O. P. Rana*, for the appellant.

*A. K. Gupta*, for the respondents.

The Judgment of the Court was delivered by

CHANDRACHUD, J.—As criminal cases go, this is an interesting case in the sense that it offers for solution a riddle of many facets. And since many answers reasonably come to mind, the accused would appear to be entitled to the benefit of that perplexity. The monsoon night of August 27, 1968 was dark, so dark indeed that the Sessions Court which sentenced five of the accused to death and the remaining five to

A life imprisonment made a finding that "it is an admitted case that without light it was not possible to identify the assailants". Witnesses usually place torches in the hands of dacoits and though the motive of the crime in this case was not burglary, a faint attempt was made by some of the witnesses to show that, on occasions, a few of the accused had flashed their torches at strategic stages. But that part of the case is clearly unworthy of belief. And so, the main question in this appeal is whether a lantern was burning at the scene of offence, lantern hanging by a pole four or five feet high. Witnesses claim that they identified the accused in the light of that lantern.

The case is riddled with these mysteries : Why did the accused murder Vishwanath Panda, their traditional family priest with whom they were on friendly terms and who, with his mother Birja, had come on the 27th evening to stay with the complainant Kanahaiya Bux Singh as a guest? The answer made by the prosecution is that it is a sorry case of mistaken identity; the accused wanted to murder the complainant but mistook Vishwanath for him, both being of the same colour, size and age. Why did the accused assault Birja whose husband first, and after his death her son was their priest? The explanation offered is that the accused wanted to terrorise her lest she raised an alarm. If the common intention of the accused was to commit the murder of Kanahaiya Bux Singh why did they allow him to escape under their very noses? They were ten strong. It is suggested that on seeing the assault on Vishwanath, Kanahaiya Bux Singh escaped into the nearby Chhappar, along with his brother Kishan Pal Singh and his sister Chandrawali. They covered themselves with old clothes lying in the Chhappar, but kept an opening for the eyes so as to be able to see the incident from the beginning to the fall of the curtain. Why was the complainant's servant Ram Gopal murdered? No explanation is forthcoming. And if the complainant and his family were the real target, how could the complainant's brother Bhagwan Bux Singh, his mother Ram Dulari and her sister Raja Munni escape with no more than simple, superficial injuries? This is not to say that even if the witnesses are truthful, the prosecution must fail for the reason that the motive of the crime is difficult to find. For the matter of that, it is never incumbent on the prosecution to prove the motive for the crime. And often times, a motive is indicated to heighten the probability that the offence was committed by the person who was impelled by that motive. But, if the crime is alleged to have been committed for a particular motive, it is relevant to inquire whether the pattern of the crime fits in with the alleged motive. If the motive, here, was directed against Kanahaiya Bux Singh and his family, how strange it is that Kanahaiya Bux Singh his sister Chandrawali and his brother Kishan Pal Singh should have been allowed to escape unscathed when they were within the easy reach of the accused; and how strange again that Bhagwan Bux, Ram Dulari and Raja Munni should escape as if through a passing household scramble. The accused, according to the prosecution, pooled their strength to murder a foe—Kanahaiya Bux Singh—but murdered through mistake a friend—Vishwanath Panda—and for no apparent reason, an innocent servant, Ram Gopal.

The incident leading to this appeal took place at about 11.30 p.m. on August, 27, 1968 in the village of Kunwarpur, district Lucknow. Kunwarpur is a tiny village consisting of but ten houses. The complainant, Thakur Kanahaiya Bux Singh, lived with his family in one house, while three houses were in the occupation of five out of the ten accused: Badlu, Manohar, Chhotey Lal, Jagannath and Dhaniram. The remaining five belonged to neighbouring villages.

There were disputes between the complainant and one Bindra Abir over a plot of land, which led to proceedings under sections 107 and 117, Criminal Procedure Code. One of the accused, Manohar, is Bindra's son, two of them are Bindra's brothers, two are his cousins while three are his brothers-in-law. In one way or another, all the accused are connected *inter se*.

The complainant lived in a spacious house and had a fairly large family. On the 27th evening, Vishwanath Panda and his mother Birja arrived at the complainant's house on one of their routine visits to the 'ijimans'. Vishwanath's father was a family priest of the complainant and after his death, Vishwanath took up that mantle. Birja used to accompany Vishwanath on his visits to the patrons. It is of significant relevance that Vishwanath's father and thereafter he himself were also family priests of the accused belonging to Kunwarpur.

The terrace over the complainant's house is divided into separate portions which are described in these proceedings as so many roofs. On the night of the 27th the complainant, his brother Kishan Pal Singh and his sister Chandrawali were sleeping on the roof situated in the north-western corner of the house. Vishwanath Panda, his mother Birja, Ram Dulari the mother of the complainant, and her sister Raja Muni were sleeping on the roof situated in the north-east corner. On the south-west were sleeping Bhagwan Bux, a twelve-year old brother of the complainant and Ram Gopal, a servant.

The case of the prosecution is that at about 11.30 p. m. on August 27, the ten accused climbed to the roof of the complainant's house by placing a ladder on the south-eastern side. The accused divided themselves into two groups: five of them, namely Badlu, Manohar, Chhotey Lal, Putti Lal and Hira Lal went to the place where Vishwanath Panda, Birja, Ram Dulari and Raja Muni were sleeping. This group committed the murder of Vishwanath and caused injuries to the three ladies. The other group comprising Dhani Ram, Jagannath, Daya Shanker, Mohan Lal and Hari Prasad went to the place where Ram Gopal and Bhagwan Bux Singh were sleeping. This group committed the murder of Ram Gopal and caused injuries to Bhagwan Bux Singh, Kanahaiya Bux Singh, his brother Kishan Pal Singh and his sister Chandrawali who were sleeping on the north-western part of the roof escaped stealthily to a Chappar and concealed themselves behind the old clothes lying therein. It is alleged that a lantern was burning near the place where Vishwanath was sleeping and the accused were identified in the light of that lantern by Kanahaiya Bux

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**A** Singh, Chandrawali, Kishan Pal Singh, Birja, Raja Munni, Bhagwan Bux Singh and Ram Dulari. These, respectively, are prosecution witnesses 1 to 5, 7 and 8.

**B** Vishwanath received two formidable incised injuries on his head and a long linear cut on his chest. On the person of Ram Gopal were found 17 incised injuries, a linear cut and a contusion. Birja received 3 incised injuries, a lacerated wound and an abrasion. Almost all of these were skin-deep. Ram Dulari had three incised injuries on her person, one being muscle-deep and the other bone-deep. Raja Munni received a muscle-deep incised injury behind her right ear. Bhagwan Bux Singh had one incised injury on his person.

**C** The complainant lodged the First Information Report at the Itaunja police station through the son of a Chaukidar at about 9.15 a.m. on the 28th. The names of all the accused are mentioned therein together with the weapons wielded by them on the previous night.

**D** The learned Sessions Judge accepted the evidence of the eye-witnesses and held that all of the ten accused had formed an unlawful assembly with the common object of committing the murder of Kanahaiya Bux Singh and of causing hurt to the other members of his family, that they committed the murder of Vishwanath Panda, mistaking him for Kanahaiya Bux Singh and that they also committed the murder of Ram Gopal. The five accused belonging to Kunwarpur were sentenced by the learned Judge to death while the other five were sentenced to imprisonment for life. Varying sentences were also imposed on the accused for the comparatively minor offences. In appeals Nos. 35 and 36 of 1970 filed by the accused, the High Court of Allahabad (Lucknow Bench) has set aside the order of conviction and sentence and has acquitted all the accused. The State of Uttar Pradesh has filed this appeal by special leave against that judgment. One of the accused, Putti Lal, died during the pendency of this appeal.

**E** The judgment of the High Court is perhaps open to the charge that, unconventionally, it has taken into consideration the broad features of the case without discussing separately the evidence of each one of the eye-witnesses. The judgment would have been of greater assistance to us if the High Court had referred to the main points in the evidence of the important witnesses, but in view of the rather peculiar facts of the case we are not prepared to say that the method adopted by the High Court has caused failure of justice.

**F** The fate of the entire case depends on the question whether a lantern was burning near the place where Vishwanath Panda was sleeping. It is in the light of that lantern that the several witnesses are alleged to have identified the respondent. Having considered the evidence of the various witnesses we are of the view that the High Court was right in coming to the conclusion that the existence of the lantern is open to grave doubt.

**G** The respondent had no motive whatsoever for committing the murder of Vishwanath or for causing injuries to his mother Birja.

Vishwanath's father, and after his death Vishwanath himself, was the priest of the group of accused who committed his murder. It is said that Vishwanath was murdered through an error as the accused who assaulted him mistook him for the complainant, Kanahaiya Bux Singh. If the lantern was burning just near the place where Vishwanath was sleeping, it is difficult to appreciate how such a mistake could have been committed. It is urged that Vishwanath and the complainant were of the same age and complexion and since Vishwanath's face was away from the lantern, the accused must have mistaken him for the complainant. Assuming for the sake of argument that such a mistake was initially committed, there is no reason why the five accused should continue to assault Vishwanath after they had discovered their mistake. Birja has stated in her evidence that she woke up immediately after the first blow was given to Vishwanath and she asked the accused imploringly as to why they were beating their own Panda. Birja says that thereafter the five accused not only continued to assault Vishwanath but they also assaulted her, knocking out her teeth in the process. This, in our opinion, clearly shows that Vishwanath was not assaulted through an error or an oversight. The accused evidently had no motive to assault him which tends to show that they had not participated in the murder of Vishwanath.

We also find it difficult to believe that though a lantern was burning just near the place where Vishwanath was sleeping, the accused were unable to identify him. They knew Vishwanath intimately and it is highly unlikely that they would commit a mistake of such a grave nature. Indeed, if the various eye-witnesses were able to identify the accused in the light of the lantern, the accused should have been able to identify Vishwanath.

The case of the prosecution is that the real target of the accused was the complainant Kanahaiya Bux Singh. If that be so it seems to us surprising that though he was sleeping on one of the roofs, none of the accused should have made any effort to follow him into Chappar or to trace him in any other part of the house after Vishwanath and Ram Gopal were done to death. Kanahaiya Bux Singh his brother Kishan Pal Singh and his sister Chandrawali have told a story which strikes us as highly imaginative. All the three claim that they walked into the Chappar, covered themselves with old clothes, kept their eyes uncovered and saw the entire incident through small slits. If at all the complainant and the other two persons were sleeping on the roof they must have run away to a safe distance. But the greater probability is that this group was sleeping on the ground floor of the house and not on the roof at all. Kanahaiya Bux Singh's wife, his daughter and Chandrawali's children were admittedly sleeping on the ground floor. That eliminates the possibility that the incident was witnessed by Kanahaiya Bux Singh, Chandrawali and Kishan Pal Singh.

Learned counsel for the State has placed great reliance on evidence of Vishwanath's mother Birja. He contends that Birja is an independent witness, that she has no motive for implicating the

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A accused falsely and that her evidence in regard to the identification must be accepted as true. Birja undoubtedly is an independent witness but if there was no lantern on the roof, she could not have possibly identified the accused. The judgement of the learned Sessions Judge contains a statement that it was an admitted position that if there was no lantern burning, it was not possible to identify the assailants.

B It seems that on the next morning, the large crowd of neighbours which gathered at the scene of offence ventured into the usual speculative guesses and Birja, having lost her son, readily believed that what was guessed was true. That explains why Birja persuaded herself to say that Kanahaiya Bux Singh, Chandrawali and Kishan Pal Singh were sleeping on the roof though, as indicated above, the greater probability is that they were sleeping on the ground floor.

C It is important in this connection that the First Information Report contains a statement that Birju Pasi, Ganeshi Pasi and several others had responded to the alarm raised by the members of the complainant's family. In the Sessions Court the complainant stated that immediately after the occurrence, Birju and Ganeshi came to his house and that he had narrated to them what had happened. None of these persons has been examined by the prosecution and no reason was shown as to why they were not examined.

D Learned counsel for the State argued that it was open to us to examine the evidence apart from the question whether Vishwanath was assaulted through mistaken identity. We are unable to accept this argument. The very foundation of the prosecution case is that the accused had a motive to commit the murder of the complainant, that they mistook Vishwanath for the complainant and that Vishwanath was murdered as a result of this unfortunate mistake. It is not open to the prosecution to ask the court to discard the very substratum of their case and to construct a new theory founded on a hypothesis presented for the first time before us.

E We are therefore in agreement with the view taken by the High Court that the occurrence took place under cover of darkness and that in the absence of any light, none of the prosecution witnesses could have identified the culprits. We therefore confirm the order of acquittal under which the accused have been given the benefit of doubt and dismiss this appeal. The bail bonds shall be cancelled and if any of the accused are in jail they shall be set at liberty.

P.B.R.

Appeal dismissed.