

STATE OF BIHAR

v.

PASHUPATI SINGH & ANR. & VICE VERSA

September 24, 1973

[H. R. KHANNA AND A. ALAGRISWAMI, JJ.]

Criminal Law—Practice and procedure—Whether identification chart should contain a complete statement.

The two deceased, husband and wife, along with their daughter and servant were travelling by train. At a wayside station the two appellants and another co-accused, still absconding, got into the compartment armed with deadly weapons. The husband and wife were robbed and in the scuffle that followed both were fatally injured. After the arrest of the accused they were identified by the daughter and the servant of the deceased. The accused were convicted by the trial court for the offences under sections 394 and 302 I.P.C.

The High Court, holding *inter alia*, that in the test identification chart there was no specific mention about the assault by the first accused on one of the deceased, acquitted both the accused of the offence under s. 302 I.P.C.

Dismissing the appeal of the appellants with respect to the offence under s. 394 and allowing the appeal by the State with respect to the offence under s. 302.

HELD : The use made by the judges of the High Court of the test identification chart was faulty. The test identification chart would not and could not be expected to contain a complete statement. The two accused were identified by the two eye-witnesses and they both spoke of the attack on one of the deceased by the second accused. It could not, however, be said that the first accused did not cause injuries to anybody or that nobody caused any injury to the other deceased. The High Court also did not find that the first accused did not cause any injury to either of the deceased. [745E]

If it was difficult to say which injury was caused by which of the accused, the natural inference would be that all the three accused caused one injury each on each of the deceased. As the injury caused by the weapons in the hands of the two accused were such as were enough to cause death, the two accused were equally guilty of murder. The fact that they could not have started with the intention of committing murder but only to commit robbery was not relevant. The injuries were sufficient in the ordinary course of nature to cause death and, therefore, the accused would be guilty of murder. [745 G-H]

Considering the fact that there had been a long interval between the date of the offence and dismissal of the appeal and the mental agony undergone by the accused, the ends of justice would be met if sentence of life imprisonment was awarded. [746B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 53 and 54 of 1970.

Appeals by special leave from the judgment and order dated the 15th October, 1969 of the Patna High Court in Criminal Appeals Nos. 150, 152 and 167 of 1969.

U. S. Prasad, S.K. Sinha, B. B. Sinha and D. P. Mukerjee, for the appellant (in appeal 53/70) and respondent (in appeal 54/70).

U. P. Singh, for the respondent (in appeal 53/70) and appellants (in appeal 54/70).

A The Judgment of the Court was delivered by

ALAGIRISWAMI, J. The two appellants in CrI. A. N. 54 of 1970 were tried before the Additional Sessions Judge of Bhagalpur for offences under ss. 302 and 394 of the Indian Penal Code and convicted by him for both the offences. On a reference made by the Additional Sessions Judge for confirmation of the death sentence awarded to them and two appeals filed by them, the High Court of Patna upheld their conviction under s. 394 but acquitted them of the offence under section 302. The accused as well as the State of Bihar have appealed to this Court, the former in respect of their conviction under s. 394 and the State against their acquittal in respect of the offence under s. 302. The facts giving rise to these appeals are as follows :

C Ram Prasad Mandal, a resident of Bhagalpur, his wife Rukmini and their daughter Pushpa Devi were returning from Vellore, where the daughter under-went treatment. They were travelling from Calcutta to Bhagalpur by the Howrah Danapur Fast Passenger on 6-4-1965. They were accompanied by their servant Mohan Lal (P.W.1). At Pirpainty railway station appellant Pashupati Singh entered their compartment and when the train reached Ghogha railway station appellant Sutali Rai and another accused, now absconding, got into that compartment. The two appellants had *Gupti* in their hands. After some time the absconding accused took out a *Chura* and asked Ram Prasad Mandal to give him whatever he had. Appellant Pashupati Singh stood near Mohan Lal and Sutali Rai near Rukmini Devi. Ram Prasad Mandal offered whatever he had but tried to catch the hand of the absconding accused. Thereupon all the three accused attacked Ram Prasad Mandal who fell down. Rukmini Devi asked them not to assault and took out her *churies* from one hand and handed over to one of the accused. Her necklace was snatched by one of the three accused and when she tried to pull the alarm chain all the three assaulted her with the weapons in their hands and she also fell down. Mohan Lal who tried to intervene was assaulted with a *Gupti* by Pashupati Singh and relieved of his wrist watch and rupees fifty or sixty, which he had. Pushpa Devi handed over her ornaments. F The miscreants thereafter pulled the chain and got out of the train. When the train stopped, Fireman Abdul Aziz (P.W.8) came to the compartment and found Pushpa crying and Ram Prasad Mandal and Rukmini Devi lying injured. The Guard (P.W.10) also came there. At the next railway station Sabour the Assistant Station Master (P.W.5) advised them to go to Bhagalpur as there would be delay in getting medical aid at Sabour. He also informed Bhagalpur railway station. G The train reached Bhagalpur at about 1.15 A.M. on 7-4-1965. P.W.10 handed over a written memo, Ext.2, to the Officer-in-charge Railway Police, on the basis of which the first information report was drawn up by P.W.12 at about 1.45 A.M. By this time Ram Prasad Mandal was dead and Rukmini Devi was in a serious condition. All of them were sent to the hospital where Rukmini Devi died at 6 A.M. H The appellant Sutali Rai surrendered on the 10th of May, 1965 while Pashupati Singh was arrested on the 11th of May, 1965. In the test identification parade held on the 24th of May, 1965 Mohan Lal and

Pushpa Devi identified both of them. In due course a charge sheet was laid against both of them with the result already mentioned.

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Pashupati Singh's defence was that he was innocent, that the two eye witnesses had opportunities to know him before the occurrence and that he had been shown to them before the identification parade. Sutali Rai also alleged that he had been shown to the identifying witnesses. We are satisfied that the conclusion arrived at by the courts below found. If as alleged by Pashupati Singh, PWs 1 and 2 and they had properly identified the assailants, is based on a proper appreciation of the evidence. We shall later deal with the question as to the offence of which the appellants were acquitted.

B

A number of suggestions, some of them even contradictory of each other, and none of them in any way seriously affecting the veracity of PWs 1 and 2, were put forward before the courts below as well as before this Court. We find them all devoid of substance just as the courts below found. If as alleged by Pashupati Singh, PWs 1 and 2 had known him earlier there was hardly any need to show him to them before the identification parade. What is more, PWs 1 and 2, if they had known Pashupati Singh earlier, would have informed the police that they knew one of the assailants and could identify him though they did not know his name. That was not the case here. There is no motive either for PW 1 or PW 2 falsely implicating the appellants. Nothing which can shake their credibility has been elicited in their cross-examination. Very vague and wild suggestions were made about the possibility of Ram Prasad Mandal having been murdered by his nephew Tarkeshwar Prasad; that there had been an attempt on the life of Ram Prasad Mandal's son and the same person might have been responsible for murdering Ram Prasad Mandal; that Ram Prasad might have killed him on that account. There is no substance in any one of these suggestions. It was also suggested that Mohan Lal was not in the compartment when the occurrence took place, as Tarkeshwar Prasad who is said to have sent money through him to Calcutta was not examined and nobody else spoke of his leaving for Calcutta. Some argument was even sought to be made on the basis of the presence of only two holdalls and of the impossibility of Pushpa Devi having sat on Mohan Lal's holdall. There can be no doubt that Mohan Lal was present in the compartment at the time of the occurrence. It was not even put to Pushpa Devi in her cross-examination that Mohan Lal was not present. Nor was such a suggestion put to Mohan Lal. We consider that the evidence clearly establishes that it was the two appellants and the absconding accused who were responsible for the robbery and the murders committed on the train.

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We do not think it necessary to refer at length to all the evidence in this case or all the points that were raised in the course of the arguments as we do not consider that they in any way weaken the findings of the courts below on the central point about the robbery and the murders and this Court does not normally re-appraise the evidence except in cases of gross miscarriage of justice.

H

A We now come to the appeal filed by the State of Bihar against the acquittal of the two appellants of the charge of murder. We are of opinion that the conclusion of the High Court on this point cannot be accepted. The learned Judges of the High Court referred to the injuries found on the two deceased and to the medical evidence that of

B the 3 injuries found on each of the two deceased one could have been caused by a dagger while the other two could have been caused by a *Gupti*. According to the prosecution evidence, the dagger injuries were given by the absconding accused while the two other injuries were given by the two appellants. The learned Judges thought that Pashupati Singh who was mounting guard on Mohan Lal

C would not have gone away from him and assaulted Ram Prasad Mandal and Rukmini Devi. They have also stated that in the test identification chart there is no mention about specific assault by Sutali Rai on Rukmini Devi. They considered that when the weapons were not produced and there was no description of the weapons given, it was difficult to hold that a particular injury was caused by the absconding

D accused while the other injuries were caused by the two appellants. They were of the opinion that it could not be inferred that the miscreants wanted to commit murder while committing robbery, and that there was no intention or common intention to commit murder. This was the reason which led them to hold that the appellants were not guilty of the offence of murder. We are of opinion that the use

E made by the learned Judges of the High Court of the test identification chart is faulty. The test identification chart does not and cannot be expected to contain a complete statement. It shows that P.W. 1 identified both the accused and he was robbed of his wrist watch and money. It also mentions that he also stated that Sutali Rai attacked Ram Prasad Mandal with *Gupti*. P.W. 2, Pushpa Devi,

F is said to have identified both the appellants and stated that she saw Pashupati Singh attack and rob Mohan Lal of his watch and that Sutali Rai attacked Ram Prasad Mandal with a *Gupti*. It will be seen that the mention here is only about Sutali Rai attacking Ram Prasad Mandal with *Gupti*. It cannot therefore be said nor do the learned

G Judges say, that Pashupati Singh did not cause injuries to anybody and nobody caused any injury to Rukmini Devi. We would have understood it if the learned Judges had stated that Pashupati Singh did not cause any injury to either of the deceased. They do not say so. We should also consider that if it was difficult to say which injury was caused by which of the accused, the natural inference would be

H that all the three accused caused one injury each on each of the deceased. As the injuries caused by the *Guptis* were such as were enough to cause death the two appellants are equally guilty of murder.

The fact that they could not have started out with the intention of committing murder but only with the intention of committing robbery is neither here nor there. If they have caused injuries which were sufficient in the ordinary course of nature to cause death there can be no doubt that they would be guilty of murder. We would, therefore, hold differing from the learned Judges of the High Court, that both the accused are guilty of the offence of murder. Considering the fact, however, that there has been a long interval between the date of the offence and now and the appellants having been under a sentence of death till they were acquitted by the High Court they would have undergone a period of mental agony, we would consider that the ends of justice would be met in the circumstances of this case if a sentence of life imprisonment is awarded to the two appellants. The appeal by the State is allowed to this extent and the appeal filed by the accused is dismissed.

P.B.R.

Cr. Appeal 53 of 1970 allowed.
Cr. Appeal 54 of 1970 dismissed.