Darya Singh and Others

Vs

State of Punjab

Criminal Appeal No. 27 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

25.04.1963

JUDGMENT

GAJENDRAGADKAR J. –

The three appellants, Darya Singh, Rasala and Pehlada, along with their brother Ratti Ram were tried by the learned Sessions Judge, Patiala, under section 302 read with s. 34 of the Indian Penal Code for having committed the murder of Inder Singh in the village of Petwar in the early hours of the morning of June 2, 1960. The learned Sessions Judge acquitted Ratti Ram, because he held that the case against him had not been proved beyond a reasonable doubt. He, however, convicted the three appellants and sentenced them to imprisonment for life. This order of conviction and sentence was challenged by the appellants by preferring an appeal before the Punjab High Court. The High Court agreed with the conclusion of the learned trial Judge and dismissed the appeal. The acquittal of Ratti Ram was challenged by the State but the State's appeal was dismissed and Ratti Ram's acquittal was confirmed. The appellants have come to this Court by special leave and on their behalf, Mr. Bhasin has contended that the High Court was in error in confirming the order of conviction and sentence passed against the 3 appellants by the trial Judge.

The facts leading to the prosecution of the appellants lie within a very narrow compass. It appears that on June 2, 1960, before sun-rise the victim Inder Singh was returning towards his house after relieving himself of the call of nature. When he came near the Baithak of Krishan Lal Jat, he was suddenly attacked by the three appellants. Darya Singh had a lathi and Rasala and Pehlada had a gandasa each. The prosecution had alleged that Ratti Ram had also joined in that act. All the assailants inflicted serious injuries on Inder Singh as a result of which he died. While he was being assaulted, Inder Singh raised an alarm in consequence of which his brother Dalip Singh, his wife Dharam Devi and his son Shamsher Singh rushed to the scene of the offence. They, however, had not the courage to go to the rescue of the victim, because they were afraid that they would themselves be assaulted. At the time of the assault, Darya Singh fired shots in the air to frighten people. After the assailants left the scence of the offence, Dalip Singh, Dharam Devi and Shamsher Singh went near the victim, but found that he was dead. First Information Report about this occurrence was then sent and that set the investigation into motion, as a result of which the three appellants and their brother Ratti Ram were arrested and put up for trial for offence under section 302/34 I.P.C.

The case of the prosecution rests on the evidence of three eye-witnesses, Dalip Sing (P.W. 2), Shamsher Singh (P.W. 3) who is a student of the Engineering College, Ludhiana, and Dharam Devi (P.W. 4). These three witnesses gave a consistent account of the attack on Inder Singh which they witnessed in front of their house and stated how each one of the three appellants took part in the

assault. Hira Singh (P.W. 5) who is Lambardar of the village, reached the scene of the offence, after the victim had been murdered. When he reached the scene of the offence, he was told by Shamsher Singh about the assault and was also given the names of the assailants. The learned trial Judge believed the three eye-witnesses, but was not inclined to act upon the evidence of Hira Singh. The High Court has believed the three eye-witnesses as well as the evidence of Hira Singh. The High Court thought that the failure of Dalip Singh to refer to the arrival of Hira Singh in the first information report did not introduce any infirmity in the evidence of Hira Singh himself, and it has observed that Hira Singh's presence on the scene soon after the occurrence is established by the fact that he has signed the inquest report which was prepared by the Assistant Sub-Inspector Gurbux Singh on reaching the scene of the offence at about 9 A.M. In considering the evidence of these witnesses, the High Court took into account the fact that some inconsistencies were brought to its notice, but it held that they did not constitute any serious infirmity in the evidence at all. It is true that the prosecution had also relied upon the evidence of certain recoveries made by the investigating officer, but neither the Sessions Judge nor the High Court has attached any importance to the said recoveries or the disclosure statements preceding them. Since the High Court took the view that the oral evidence adduced by the prosecution established the guilt of the appellants beyond a reasonable doubt, it has confirmed their conviction under s. 302/34 and the sentence of life imprisonment imposed on them by the trial Court.

It appears that the murder of Inder Singh was an act of repraisal on the part of the appellants, because it is not denied that Dewan Singh, another brother of the appellants, had been killed in April, 1957, and Dhup Singh, the step-brother of Inder Singh had been found guilty of the said murder. The sentence of life imprisonment imposed on him by the Trial Court had been confirmed by the High Court on January 14, 1959, but on the recommendation made by the High Court, the said sentence had been commuted to five years by the State Government. There is evidence to show that Inder Singh moved the State Government of Punjab for the release of Dhup Singh on two months' parole, and this he did by an application on April 5, 1960. It appears that this application had been subsequently rejected by the State Government on July 15, 1960; but on June 2, 1960 when Inder Singh was assaulted, the said application was pending and the appellants were indignant that Inder Singh should have moved the State Government for the release of his step-brother Dhup Singh. That, according to the prosecution, is the motive for the commission of the offence. Both the Courts below have agreed that this motive must have led to the commission of the offence.

Mr. Bhasin contends that the High Court was in error in accepting the evidence of the three eye-witnesses, because the said evidence has been given by witnesses, who are near relatives of Inder Singh and who shared Inder Singh's enmity against the appellants. In such a case, the High Court could not have acted upon the said interested and hostile evidence without corroboration. Mr. Bhasin realised that if he were to contend that the High Court should not have accepted the said evidence on the merits, that would be a matter of appreciation of oral evidence and the conclusion of the High Court based on the appreciation of oral evidence cannot ordinarily be challenged in an appeal under Art. 136. He, therefore, put his case higher and contended that in law the evidence of interested and hostile witnesses cannot be accepted without corroboration, and he suggests that some of the decisions of this Court lend support to his argument.

There can be no doubt that in a murder case when evidence is given by near relatives of the victim and the murder is alleged to have been committed by the enemy of the family, criminal Courts must examine the evidence of the interested witnesses, like the relatives of the victim, very carefully. But a person may be interested in the victim, being his relation or otherwise, and may not necessarily be hostile to the accused. In that case, the fact that the witness was related to the victim or was his

friend, may not necessarily introduce any infirmity in his evidence. But where the witness is a close relation of the victim and is shown to share the victim's hostility to his assailant, that naturally makes it necessary for the criminal Court to examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it. In dealing with such evidence, Courts naturally begin with the enquiry as to whether the said witnesses were chance witnesses or whether they were really present on the scene of the offence. If the offence has taken place as in the present case, in front of the house of the victim, the fact that on hearing his shouts, his relations rushed out of the house cannot be ruled out as being improbable, and so, the presence of the three eye-witnesses cannot be properly characterised as unlikely. If the criminal Court is satisfied that the witness who is related to the victim was not a chance-witness, then his evidence has to be examined from the point of view of probabilities and the account given by him as to the assault has to be carefully scrutinised. In doing so, it may be relevant to remember that though the witness is hostile to the assailant, it is not likely that he would deliberately omit to name the real assailant and substitute in his place the name of enemy of the family out of malice. The desire to punish the victim would be so powerful in his mind that he would unhesitatingly name the real assailant and would not think of substituting in his place the enemy of the family though he was not concerned with the assault. It is not improbable that in giving evidence, such a witness may name the real assailant and may add other persons out of malice and enmity and that is a factor which has to be borne in mind in appreciating the evidence of interested witnesses. On principle, however, it is difficult to accept the plea that if a witness is shown to be a relative of the deceased and it is also shown that he shared the hostility of the victim towards the assailant, his evidence can never be accepted unless it is corroborated on material particulars. We do not think it would be possible to hold that such witnesses are no better than accomplices and that their evidence, as a matter of law, must receive corroboration before it is accepted. That is not to say that the evidence of such witnesses should be accepted light-heartedly without very close and careful examination, and so, we cannot accept Mr. Bhasin's argument that the High Court committed an error of law in accepting the evidence of the three eye-witnesses without corroboration.

It now remains to consider Mr. Bhasin's contention that some of the decisions of this Court support the proposition that as a matter of law, corroboration must be available before interested evidence of the relatives of the victim can be accepted. The first decision on which Mr. Bhasin has relied is the case of Rameshwar v. The State of Rajasthan ([1952] S.C.R. 377.). In that case, the accused was charged with having committed an offence under s. 376 I.P.C. and the point which was raised for the decision of this Court was in regard to the appreciation of the evidence of a prosecutrix in a sex offence. In that connection, this Court held that though a woman who has been raped is not an accomplice, her evidence has been treated by the Courts on somewhat similar lines, and the rule which requires corroboration of such evidence save in exceptional circumstances, has now hardened into law. It is obvious that this decision can have no application to the facts in the present case. It is well settled that in cases of rape, prudence requires that evidence given by the prosecutrix should be corroborated, though even in these cases, it would be open to a Court of law to act upon the evidence of the prosecutrix if her evidence appears to the Court to the completely satisfactory and there are attending circumstances which make it safe for the Court to act upon that evidence without corroboration. But cases of rape cannot, in the context, be compared to cases of murder, and so, no assistance can be legitimately drawn by Mr. Bhasin from this decision in contending that in a murder case, if a relative of the victim gives evidence, his evidence cannot, in law, be acted upon unless it is corroborated.

The next decision to which Mr. Bhasin has referred is the decision of this Court in Lachman Singh v. The State ([1952] S.C.R. 839, 844.). It appears that in that case, the High Court had taken the

view that "in all the circumstances it would be proper not to rely upon the oral evidence implicating particular accused unless there is some circumstantial evidence to support it", and the High Court proceeded to examine the evidence from this point of view, and upheld the conviction of three persons who had come to this Court in appeal under Art. 136. The contention of the appellants that their conviction was not justified, however, failed and their appeal was dismissed. Mr. Bhasin suggests that in dealing with the evidence, this Court had impliedly approved of the approach adopted by the High Court in appreciating the evidence of interested testimony in a murder trial. It cannot be disputed that if the evidence given by interested witnesses in a murder trial seems to suffer from some infirmities, the Court would be justified in looking for some corroboration before accepting the said evidence. Cases may arise where such interested evidence may be shown to have implicated some persons without any justification, or cases may arise where the evidence given by eye-witnesses, who are interested, conflicts in material particulars, or may appear to be improbable; in all these cases, the Court would naturally be justified in refusing to act upon such evidence without corroboration. That is a precaution which is invariably adopted by criminal Courts in dealing with all direct evidence, and so, the fact that in the circumstances of any particular case, the High Court required some corroboration before acting upon direct evidence and this Court approved of the said approach, does not lend support to the general proposition of law for which Mr. Bhasin contends that in all cases where interested witnesses give evidence in a murder trial, their evidence cannot be accepted as a matter of law without corroborations.

In Karnail Singh v. The State of Punjab ([1954] S.C.R. 904.), the High Court from whose decision an appeal was brought to this Court, had adopted a similar approach. Having regard to the circumstances of the case, the High Court had taken the view that the evidence given by the sole witness Karnail Singh could not be safely acted upon unless there was some corroboration, and in dealing with this approach, this Court took the precaution of repeating what it had already stated in the case of Lachman Singh ([1952] S.C.R. 839, 844.), that the corroboration that is required in such cases is not what would be necessary to support the evidence of an approver, but what would be sufficient to lend assurance to the evidence before them, and satisfy them that the particular persons were really concerned in the murder of the deceased.

The same view has been expressed by this Court in the case of Vaikuntam Chandrappa v. The State of Andhra Pradesh (A.I.R. 1960, S.C. 1340.). Therefore, the broad and unqualified proposition for which Mr. Bhasin contends is not supported by any of the decisions on which he relied. We have no doubt that the rule of caution which requires corroboration to evidence of interested witnesses cannot be treated as an inflexible principle which can be mechinically applied to all cases, because in that event if a murder is committed in the house of the victim, it would be difficult to convict the assailant, for in such a case all the witnesses would be relatives of the victim. That is why in appreciating evidence of this kind, Courts have, no doubt, to be careful, but they cannot be bound by any inflexible rule like the one suggested by Mr. Bhasin.

Mr. Bhasin further argued that the murder having taken place in a locality where a large number of citizens resided, it was the duty of the prosecution to have examined independent persons staying in the locality to support its case against the appellants and he suggested that if the prosecution failed to examine such witnesses, it was the duty of the Court to have exercised its powers under s. 540 of the Criminal Procedure Code and to call such witnesses to give evidence. Mr. Bhasin argues that under s. 172 of the Code, it is competent to a Criminal Court to send for the police diaries of a case under trial in such Court and if the Court had seen the police diaries, it would have easily found whether the statements of any independent eye-witnesses had been recorded or not. If it found that some statements of independent eye-witnesses had been recorded it should have called them in

exercise of its powers under s. 540 of the Code; since this has not been done, it has introduced an infirmity in the trial, and this Court should set aside the conviction of the appellants and send the case back with a direction that the Magistrate should exercise his powers under s. 540 as suggested by Mr. Bhasin. In our opinion, this argument is entirely misconceived. It is well settled that in a murder case, it is primarily for the prosecutor to decide which witnesses he should examine in order to unfold his story. It is obvious that a prosecutor must act fairly and honestly and must never adopt the device of keeping back from the Court eye-witnesses only because their evidence is likely to go against the prosecution case. The duty of the prosecutor is to assist the Court in reaching a proper conclusion in regard to the case which is brought before it for trial. It is no doubt open to the prosecutor not to examine witnesses who, in his opinion, have not witnessed the incident, but, normally he ought to examine all the eye-witnesses in support of his case. It may be that if a large number of persons have witnessed the incident, it would be open to the prosecutor to make a selection of those witnesses, but the selection must be made fairly and honestly and not with a view to suppress inconvenient witnesses from the witness-box. If at the trial it is shown that persons who had witnessed the incident have been deliberately kept back, the Court may draw an inference against the prosecution and may, in a proper case, regard the failure of the prosecutor to examine the said witnesses as constituting a serious infirmity in the proof of the prosecution case. In such a case, if the ends of justice require, the Court may even examine such witnesses by exercising its powers under s. 540; but to say that in every murder case, the Court must scrutinise the police diary and make a list of witnesses whom the prosecutor must examine, is virtually to suggest that the Court should itself take the role of a prosecutor. The powers of the Court under s. 540 can and ought to be exercised in the interests of justice whenever the Court feels that the interests of justice so require, but that does not justify Mr. Bhasin's contention that the failure of the Court to have exercised its powers under s. 540 has introduced a serious infirmity in the trial itself.

In this connection, it is necessary to bear in mind that there is nothing on the record to show that any person in the locality who actually witnessed the incident had been kept back. No such suggestion has been made to the investigating officer and no other evidence has been brought by the defence in support of such a plea. It is well-known that in villages where murders are committed as a result of factions existing in the village or in consequence of family feuds, independent villagers are generally reluctant to give evidence because they are afraid that giving evidence might invite the wrath of the assailants and might expose them to very serious risks. It is quite true that it is the duty of a citizen to assist the prosecution by giving evidence and helping the administration of criminal law to bring the offender to book, but it would be wholly unrealistic to suggest that if the prosecution is not able to bring independent witnesses to the Court because they are afraid to give evidence, that itself should be treated as an infirmity in the prosecution case so as to justify the defence contention that the evidence actually adduced should be disbelieved on that ground alone without examining its merits. In the present case, we see no justification for the assumption that any eye-witness has been kept back from the Court, and so, we feel no hesitation in rejecting the argument that the case should be sent back on the hypothetical ground that the scrutiny of the police diary may disclose the presence of an independent eye-witness such an argument is wholly misconceived and can be characterised as fantastic.

As we have already indicated, both the Courts below have examined the evidence given by the eye-witnesses and have believed the said evidence. The High Court has also believed the evidence of Hira Singh, the Lambardar. The story deposed to by these witnesses appears to be very probable and has been treated by the Courts below as consistent and cogent. In such circumstances, it is not open to the appellants to contend that this Court should reappreciate the said evidence and decide whether the view taken by the High Court is right or not. In our opinion, the conviction of the appellants

rests on the appreciation of oral evidence and no case has been made out for our interference under Art. 136 of the Constitution.

The result is, the appeal fails and is dismissed.

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