State of Uttar Pradesh

Vs

Chet Ram and Others

Criminal Appeal No. 516 of 1978

(S. Natarajan, A. M. Ahmadi JJ)

28.03.1989

JUDGMENT

NATARAJAN, J. -

1. Respondents Chet Ram, Buddhi and Puttu, sons of Girdhari were convicted by the Sessions Judges of Shahjahanpur under Sections 394 and 302 read with Section 34 IPC and sentenced to 4 years' RI and life imprisonment respectively but the High Court allowed the appeal preferred by them and set aside their convictions and sentences and hence this appeal by special leave by the State of Uttar Pradesh.

2. Deceased Kishori was the widow of Ram Bharose, a step-brother of the respondents' father Girdhari. The land belonging to Girdhari and Ram Bharose were originally under joint cultivation but after consolidation proceedings were taken by Kishori, the land was demarcated and separate chaks were prepared. Kishori insisted upon and was doing separate cultivation of her land and this was resented by the respondents. Kishori was cultivating the land separately with the help of PW 3 Maiku on "Batai" basis. The respondents had cast covetous eyes on the land of Kishori since she did not have any issues of her own. Irked by Kishori's refusal to allow them to cultivate the land, the respondents are alleged to have done her to death on the night of May 12/13, 1970.

3. Kishori and the respondents were living in adjoining houses separated only by a single wall. Kishori was living alone in her house. On the night in question at about midnight PW 3, whose house is only about 40 or 50 paces away from Kishori's house heard her cries from inside, PW 3 scaled over the wall with the help of a lathi and gained entrance to the house. A lantern was burning in the house and by the light shed by it he saw the respondents attacking her. Respondent Chet Ram was holding her legs pressed to the cot while respondents Buddhi and Puttu were attacking her with a knife and sooja respectively. PW 3 ran to the from door and unbolted it and thereupon PW 5 Ram Bilas and one Behari, who had also been aroused by the alarm of Kishori came inside the house and raised alarm. At once the respondents snatched a hansli and jantar worn by Kishori and ran away to their house by jumping over the partition wall between Kishori's and their house. A few minutes later, PW 8 Salikram, the village Sabhapati also came to Kishori's house and Kishori told him that she had been attacked by the respondents.

4. As it was night time and the police station was about 5 miles away, the witnesses were afraid to take Kishori to the police station immediately. At about daybreak time PW 3 brought a bullock cart and took Kishori to the police station at Banda. On reaching the police station at about 7 a.m. Kishori gave a statement Ex. Ka-3 to PW 6, Head Constable Kunwar Bahadur. Simultaneously, while PW 6 was recording Ex. Ka-3 statement, PW 10 Puran Singh Rawat SI of Police recorded her

statement under Section 161 (3) CrPC. A case under Sections 307 and 394 IPC was registered against the respondents and Kishori was sent to the dispensary at Pawayan along with PW 7 Constable Sita Ram. When PW 7 and Kishori reached the bus stand at Banda Kishori breathed her last and hence PW 7 brought her dead body to the police station. Thereafter the case against the respondents was altered to one under Sections 394 and 302 IPC.

5. PW 10 held inquest over Kishori's dead body and sent it for autopsy and thereafter he visited the scene of occurrence and seized therefrom the blood-stained rope and frame of the cot and a lantern kept in the house. Search was made for the respondents but all of them were absconding. PW 10 noticed a jua (yoke) (Ex. II) placed on the wall of the respondents' house so as to serve as a foot-rest for scaling over the wall and PW 10 seized it also under a recovery memo. Respondents Chet Ram and Buddhi surrendered in court on May 15, 1970 and respondent Puttu surrendered in court on May 27, 1970. PWs 3, 5, 8 and others were examined during the investigation of the case. The autopsy on Kishori's dead body revealed that she had sustained 16 injuries of which 13 were punctured wounds and 3 were incised wounds. Dr. Manesh Chandra, who had performed the autopsy gave his opinion that Kishori's death was on account of shock and haemorrhage resulting from the injuries sustained by her.

6. The respondents denied their complicity in the offences complained of and examined DW 1 Ram Bharose to state that respondent Puttu was not in the village at all and had gone to his maternal grandfather's house elsewhere and that the villagers came to know of the attack on Kishori only in the morning and because of that she could be taken to the police station only after daybreak.

7. While PW 3 deposed that he had actually seen the attack on Kishori by the respondents, PW 5 deposed that he had only seen the respondents running away from the house of Kishori after the attack was over. Since he failed to state that he had also seen the respondents attacking Kishori, he was declared a hostile witness and cross-examined by the Public Prosecutor. PW 8 deposed that Kishori told him that her nephews had attacked her. The Sessions Judge, placing reliance on the testimony of PWs 3 and 8 and the first information report Ex. Ka-3 given by Kishori herself and several other relevant factors found the respondents guilty under both the charges and convicted them accordingly. The High Court, however, had taken the view that PW 3 was an interested witness, inasmuch as he stood to gain if the respondents, who were rival claimants to the cultivation of the land, were convicted and hence his evidence was not safe of acceptance. The oral dving declaration of Kishori to PW 8 and her recorded statement Ex. Ka-3 were also viewed with suspicion by the High Court because of the nature of the injuries sustained by Kishori and because of an answer furnished by the hostile witness PW 5 to the respondents that Kishori was lying unconscious when he saw her in the house. The High Court has also disbelieved the prosecution case regarding the removal of the hansli and jantar of Kishori by the respondents inasmuch as the murder was not committed for gain but for getting the land of Kishori.

8. Mr. Prithvi Raj, learned senior counsel appearing for the State of Uttar Pradesh urged before us that the prosecution evidence conclusively proved the guilt of the respondents and the Sessions Judge had considered every aspect of the matter and rendered a very lucid and reasoned judgment but unfortunately the High Court has set aside the judgment of the Sessions Judge on mere conjectures and surmises and by adopting a line of reasoning manifestly unwarranted by the evidence on record. He, therefore, urged that the judgment of the High Court, being wholly unreasonable has resulted in serious miscarriage of justice and, therefore the appeal should be allowed and the convictions and sentences awarded to the respondents by the Sessions Judge should be restored. Arguing to the contrary Mr. R. K. Garg, senior counsel appearing for the respondents,

contended with equal force that the High Court had not committed any error in its appreciation of the evidence or in the exercise of its appellate powers and as such, the judgment under appeal needs no interference by this Court. It was further submitted that even if the view taken by the High Court is less commendable for acceptance than the view taken by the Sessions Judge, it will not be a ground in law for this Court to exercise its powers under Article 136 of the Constitution and set aside the acquittal of the respondents especially after a lapse of so many years after the judgment of acquittal was rendered by the High Court.

9. We have been taken through the evidence and the judgments of the Sessions Judge and the High Court by the learned counsel and we have given our careful consideration to their arguments. After bestowal of thought over the entire matter, we find that the judgment of the High Court suffers from serious errors and the errors have cumulative in the High Court taking an unreasonable view and setting aside the conviction of the respondents. We will now give our reasons for our disapproval of judgment of the High Court.

10. Irrespective of who the assailants of Kishori were it is indisputable that her attack should have taken place at about midnight on the night of May 12/13, 1970. The High Court has rightly observed that "there is no controversy regarding the date, time and place of the occurrence" and the only question for consideration would be whether the injuries were caused by the respondents. While it is the prosecution case that the respondents had adequate motive to commit the murder, the High Court has given credence to the defence plea that Kishori had been attacked by robbers and PW 3 had taken advantage of the situation and falsely implicated the respondents in the case in order to ensure his cultivation of Kishori's land without hindrance by the respondents. The theory, besides being falsified by Kishori's own statement Ex. Ka-3 is also not probabilised, even to a slender degree, by an evidence or circumstances in the case. In Ex. Ka-3 Kishori had stated that she had sought for consolidation proceedings and got her holding of about 55 bighas of land demarcated and had begun to have separate cultivation on batai system but her nephew (respondents) wanted her to give the land to them and when she refused to do so, they became angry and threatened her with dire consequences and this had happened just two or three days before the occurrence. We will deal later with the question whether Kishori would have been able to make a statement, but suffice, for the moment to state that the respondents did have a strong motive to do away with Kishori. Then again it has to be noticed that except for Kishori's hansli and jantar, which the respondents are said to have taken away no other items of value were missing from the house. The High Court, however, has taken the view that besides the missing of the two ornaments, other valuable things too would have been lost as no valuable were found in the house and hence "it should lead to an inference that in all probability the victim was tortured and assaulted by some robbers". The High Court has further surmised that "she was known to be a wealthy woman and lived all alone in the house; she could have, therefore, been tortured by the robbers to disclose those valuables". It is not understandable on what basis the High Court came to such conclusions because no one has said, not even the respondents, that Kishori was having valuables in the house and those valuables were missing after the occurrence. Therefore, the theory that Kishori had been attacked by robbers and deprived of her jewels and valuables and that PW 3 had taken advantage of the situation and falsely implicated the respondents in the case in order to have the land for himself is purely a surmise devoid of any basis.

11. As regards the occurrence, the High Court has not drawn consistent inferences. In one portion of the judgment the High Court has stated that "there is no controversy regarding the date, time and place of the occurrence ", but in another portion of the judgment it has observed "that in all probability, the victim was found unconscious and seriously injured only in the early hours of the

morning and then the story was fabricated". When the High Court accepts that the occurrence should have taken place at midnight, it is inconceivable that Kishori would not have raised alarm when she was attacked but would have remained silent in spite of sustaining 16 injuries on her person. Her alarm would have naturally aroused the neighbours including the respondents but strangely they had not come to her rescue even though the presence of two of them in the village has been spoken to by DW 1. There is therefore nothing strange or unnatural in PWs 3, 5 and 8 hearing the alarm of Kishori and going to her house to see what the matter was.

12. Coming to the evidence of PW 3, he had reached the house first and he had entered the house by jumping over the wall and was able to see Buddhi and Puttu attacking Kishori with a knife and sooja respectively and Chet Ram keeping her legs pressed to the cot. He had unbolted the front door to enable PW 5 and one Behari who had come closely behind him to enter the house. By the light of the lantern, he had been able to see the occurrence in clear detail. Though his evidence has been consistent and cogent, the High Court has disbelieved him merely because he happened to be the tenant of Kishori. The evidence of PW 3, far from evoking any suspicion stands fully corroborated by PWS 5 and 8 and by Kishori's statement Ex. Ka-3. His conduct in taking Kishori to the police station in the morning also proves his concern for Kishori's life and his loyalty to her. There were therefore, no materials at all for the High Court to hold that PW 3 has masterminded the prosecution case and hence his evidence is unworthy of acceptance.

13. PW 5, in our opinion, has been wrongly declared a hostile witness to the prosecution. He has deposed that he too went to Kishori's house on hearing her alarm and that PW 3, who had gone ahead of him had scaled over the wall and entered the house and opened the front door and thereafter he and Behari went inside the house and noticed the three respondents fleeing from Kishori's house to their house by jumping over the partition wall. The only reason why PW 5 had been declared hostile was that he had failed to say that besides seeing the respondents running away, he had seen them also attacking Kishori. In the very nature of things PW 5 could not have seen the actual attack on Kishori or the removal of her jewels because he had entered the house only after PW 3 had gone inside and opened the front door. Naturally, by the time PW 5 went inside the house, the attack must have been over and as such, he would have been able to see only the respondents running away to their house. Except that he had not seen the actual attack on Kishori, PW 5's evidence is in line with the evidence of PW 3 in all aspects. In fact he has also stated that Buddhi and Puttu were carrying a knife and sooja respectively and that a lantern was burning in Kishori's house on that night. The High Court has unfortunately failed to advert to any of these matters and has been carried away only by his stray statement in cross-examination that Kishori was unconscious when he reached the house. The High Court has brushed aside his entire evidence, which fully corroborates PW 3, merely on the ground he had been declared a hostile witness. The High Court has failed to bear in mind that merely because a witness is declared hostile, his entire evidence does not get excluded or rendered unworthy of consideration.

14. Next we may consider the evidence of PW 8 the village Dalapathi. He had reached Kishori's house a few minutes later and had learnt from Kishori that she had been attacked by her nephews "Chetu, Puttu and Buddhi" and that they had taken away her hansli and jantar also. There is absolutely no reason why PW 8, a village Dalapathi should take sides in the case and depose falsely against the respondents. Even PW 5, who has been declared hostile, has stated that the Pradhan came to Kishori's house on that night. The High Court has rejected the evidence of PW 8 for the only reason that PW 5 had stated in cross-examination that Kishori was lying unconscious and as such she could not have told anything to PW 8. The High Court has not noticed the further statement of PW 5 that "when the Pradhan arrived at the house of Kishori, I went away to my

house". Therefore, the statement of PW 5 that he found Kishori lying unconscious eve assuming it to be truthful, would not meant that she could not have regained consciousness after PW 5 had left and thereafter told PW 8 as to who her assailants were.

15. The High Court has also commented adversely upon the fact that Kishori was not taken to the police station during the night itself but had been taken only after daybreak. In its assessment of the matter, the High Court has failed to notice several relevant factors. In the condition in which Kishori was, it would have required a cart to take her to the police station which is 5 miles away. At night time it would have been difficult to get a cart and bullocks readily. That apart PW 3 has stated that they were afraid to take Kishori to the police station in the dark hours of the night. The apprehension cannot be termed as ill-founded because the witnesses may have genuinely apprehended a further attack by the respondents on the way to the police station. Moreover PW 3, knowing the hostility of the respondents towards him would not have wanted to risk his life by taking Kishori to the station during night time. In contrast with the conduct of PW 3, the respondents, despite being Kishori's nephews and her immediate neighbours, had not done anything to take Kishori to the police station or the hospital. If they are innocent, as they claim to be, and had no quarrel with Kishori, they should have been the first to go to her house and taken her to the police station or the hospital. The High Court was therefore grievously wrong in constructing the delay in the taking of Kishori to the police station as meaning that the attack on Kishori should have gone unnoticed till the morning hours and therefore the evidence of PWs 3, 5 and 8 is not worthy of acceptance.

16. The most serious error committed by the High Court is its rejection of Ex. Ka-3 report of Kishori which constitutes her dying declaration, and is therefore entitled in law to very great weight. PW 6 who had recorded the statement has deposed that Kishori was fully conscious when she gave the statement and PW 10 the Sub-Inspector of Police has confirmed the same. It is no doubt true that the injuries sustained by Kishori on her abdomen had also resulted in her peritoneum, transverse colon and liver also getting punctured and portion of the omentum coming out but Dr. Mahesh Chandra who had conducted the autopsy would have been conscious and able to speak for several hours after the occurrence and would have lost her consciousness only just before her death. The evidence of Dr. Mahesh Chandra is fully supported by another doctor. At the request of the respondent's counsel, the High Court had summoned and examined Dr. V. N. Srivastava, Chief medical Officer and Medico Legal Expert for Allahabad as an expert witness to find out whether Kishori could have remained conscious and given a statement as found in Ex. Ka-3. Dr. Srivastava has also categorically stated as follows before the High Court :

In the instant case it is possible that even half an hour before her death Smt. Kishori could have given the statement as contained in the first information report .... It is possible for the deceased to have remained conscious for about 7 or 8 hours after receiving the injuries noted in the post-mortem examination report. None of the vital organs except the liver of the deceased were injured in this case. Since brain and heart were not injured directly the deceased could have remained conscious. No major artery of the deceased was cut and so there was no possibility of a sudden loss of blood. Well-built body will have more power to stand shock and haemorrhage as compared to thin built person. I have seen persons giving a coherent dying even just before death.

17. The initial registration of the case under Section 307 IPC and its alteration to an offence under Section 302 IPC after Kishori's death is an additional factor to accept the prosecution case that Kishori had remained alive and conscious till she reached the bus stand at Banda. There was thus overwhelming evidence in the case to prove that Kishori was fully conscious and mentally alert

when she gave the statement Ex. Ka-3, but the High Court has for no reason refused to accept the evidence edn act on Ex. Ka-3 statement. The High Court has not realised that by refusing to act on Kishori's statement Ex. Ka-3 it was not only rejecting the evidence of PWs 3, 5 and 8 as well as the police officers PWs 6. 7 and 10 but also the evidence of the doctor viz. Dr. Mahesh Chandra and Dr. Srivastava. The High Court has also viewed Ex. Ka-3 with suspicion because of the detailed narration therein by Kishori of the motive for the occurrence and the manner in which the assailants had attacked her and as to how the witnesses had gained entry into the house. When the doctors say that Kishori could have retained her consciousness and been able to make statement, there is no reason why the statement should be disbelieved merely because it contains the details of the motive for the attack and the manner in which the escaped the High Court's attention in that in Ex. Ka-3 Kishori has clearly stated that she was attacked with knife and sooja by Buddhi and Puttu respectively and that Chet Ram had caught hold of her legs and attacked her with his fists. The medical evidence corroborates her statement in full measure. She has sustained punctured wounds which could be caused by a sooja and incised injuries which could be caused by knife. All the injuries except injury No. 13 on the right thigh were on the face and upper portion of the body and the arms and that would show that her legs must have been kept pressed when she was attacked. The description of the weapons as sooja and knife, even before the autopsy was done could not have been invented from imagination by anyone and introduced in Ex. Ka-3. The entire edifice of suspicion raised by the High Court has its foundation on the stray answer of PW 5 in cross-examination that when he was at Kishori; s house, he found her lying unconscious. As already stated, even if his statement was truthful one, Kishori could have overcome her momentary loss of consciousness and regained her consciousness within a few minutes and thereafter told PW 8 at her house and later PW 6 at the police station as to who her assailants were and how the occurrence had taken place. Once it is held that Kishori would have been fully conscious when she made the statement under Ex. Ka-3 then it merits acceptance as her dying declaration and to be accorded a high degree of value. A dying declaration, it is needless to say, does not require any corroboration as in the case of an accomplice or a confession vide Khushal Rao v. State of Bombay (1958 SCR 552 : AIR 1958 SC 22 : 1958 (Cri) LJ 106). Mr. Garg referred to the decisions in Padman Meher v. State of Orissa (1980 Supp SCC 434 : 1981 SCC (Cri) 362) and Darshan Singh v. Punjab ((1983) 2 SCC 441 : 1983 SCC (Cri) 523 : AIR 1983 SC 554 : (1983) 2 SCR 605) to contend that since Kishori and sustained 16 external injuries and several internal injuries as well, she could not have made the statement Ex. Ka-3 and hence the statement cannot be believed and acted upon as dying declaration. There is no merit in the contention because the observations of this Court in the two cases mentioned above were rendered under circumstances vastly different. In the former case, the doctor had ruled out the possibility of the victim being conscious and making a statement while in the latter, it was noticed that the vital organs had been smashed. Such is not the case here and on the contrary the medical evidence fully supports the prosecution case.

18. Much has been made by the High Court about the lantern seized from Kishori's house not having a wick and chimney when it was produced in court. It is obvious that the chimney should have room of the court. No other inference is possible because all the three witnesses who went into the house viz. PWs 3, 5 and 8 have spoken about seeing the lantern burning in the house of Kishori on that night. PWs 8 and 10 have spoken about the recovery of the lantern together with its chimney and wick and PW 6 has stated when he sent the lantern to the court, the chimney and wick were intact. In the face of such evidence, the High Court was clearly in error in disbelieving the prosecution case about the lantern being kept burning in Kishori's house on the night of the occurrence. Apart from what the witnesses say, it is also natural for Kishori to have kept a lantern burning since she was staying alone in the house.

19. Some other relevant materials have also escaped the notice of the High Court. PW 10 had noticed jua (yoke) placed in the partition wall of the respondent's house so as to serve as a foot-rest for the respondents to scale over the wall and jump into Kishori's house. The respondents have not denied the fixation of the jua (yoke) to the wall of their house or offered any explanation for the same. The second factor requiring mention is that the respondents were not to be seen in their house after the occurrence had taken place. Through the evidence of DW 1 they have tried to contend that Puttu had gone to his grandfather's house, but Chet Ram and Buddhi were present in the village and they had seen Kishori in the morning but had run away thereafter because of PW 3 telling the villagers that the blame should be laid on the respondents for the attack on Kishori. If the respondents had not absconded and if they were innocent, they should have been the first to enter Kishori's house on hearing her alarm and then taken steps to take her to the police station or to the hospital. On the other hand, they were not to be seen and it was left to PW 3 to take Kishori to the police station. The conduct of the respondents subsequent to the occurrence would only reveal that they were the assailants of Kishori and they had made good their escape after attacking her on the night in question.

20. One other factor which has created doubts in the mind of the High Court about the guilt of the respondents is the removal of the hansli and jantar of Kishori by them after they had attacked her. The High Court has taken the view that if the respondents were the assailants of Kishori, they would have attacked her only to get her land for themselves and not for robbing her of her jewels and therefore the story of robbery does not fit in with the motive put forward for the occurrence. The High Court has failed to see that even though the motive for the occurrence was to secure the land of Kishori, the respondents would have removed her jewels in order to avert suspicion on themselves and make it appear that it was a case of murder for gain.

21. Thus we find that the entire premises on which the High Court has based its judgment for setting aside the well reasoned judgment of the Sessions Judge are totally in disregard of the clinching evidence in the case. The conclusions of the High Court have been drawn on assumptions and surmises without any foundation in evidence for them. The prosecution evidence, we find is of an unimpeachable nature and affords no scope for two views being taken, and one of them being more plausible than the other. As an abstract proposition of argument it may be stated that every case affords potential for two views being taken but it has to be realised that the alternative view must have some content of plausibility in it and without the same, the said view cannot be countenanced in law as plausible alternative.

22. Mr. Garg lastly urged before us that since we are dealing with an appeal against acquittal, we should act with utmost circumspection in the exercise of our powers under Article 136 of the Constitution for setting aside the judgment of the High Court. We are well aware of the need for exercising care and restraint in the exercise of our powers under Article 136 in the matter of setting aside a judgment of acquittal but where the ends of justice require the exercise of such powers, this Court will be failing in its duty if it does not do so. In this context we may appositely refer to the following enunciation in Arunachalam v. P. S. R. Sadhanantham ((1979) 2 SCC 297, 300 : 1979 SCC (Cri) 454 : 1979 Cri LJ 875 : (1979) 3 SCR 482, 487) : (SCC p. 300, para 4)

In dealing with an appeal against acquittal, the court will, naturally, keep in mind the presumption of innocence in favour of the accused, reinforced, as may be, by the judgment of acquittal. But, also, the court will not abjure its duty to prevent violent miscarriage of justice by hesitating to interfere where interference is imperative. Where the acquittal is based or irrelevant ground, or where the High Court allows itself to be deflected by red hearings drawn across the track, or where the

evidence accepted by trial court is rejected by the High Court after perfunctory consideration, or where the baneful approach of the High Court has resulted in vital and crucial evidence being ignored, or for any such adequate reason, this Court may feel obliged to step in to secure the interests of justice, to appease the judicial conscience, as it were.

23. This case, in our opinion, is eminently one such where the interests of justice call for for our intervention. We accordingly allow the appeal, set aside the judgment of the High Court as it has caused serious miscarriage of justice and restore the conviction awarded to the respondents by the Sessions Judge under Section 394 and Section 302 read with Section 34 IPC and the sentence awarded therefor. The respondents shall surrender themselves to custody failing which they will be arrested and placed in custody to serve the sentence.

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