

Mahesh Chander

Vs

State of Delhi

Criminal Appeals Nos.432 and 628 of 1979

(S. R. Pandian, M. Fathima Beevi JJ)

03.04.1991

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. The above appeals by special leave under Art. 136 of the Constitution of India are directed against the correctness and legality of the judgment dated 4th May, 1979 of the High Court of Delhi in Criminal Appeal No. 323/76.

2. These two appellants were accused Nos. 2 and 1 respectively before the 8th Additional Sessions Judge and they took their trial in Sessions Case No. 38/75 on the charge that on 28-5-1975 at about 3.30 a.m. in Pitam Pura within the jurisdiction of Punjabi Bagh Police Station both appellants in furtherance of their common intention committed murder of Hanumant Singh, the deceased herein and thereby committed an offence punishable under S. 302 read with 34 IPC. The facts of the case briefly stated are as follows:

The deceased Hanumant Singh was the son of Harkishan Singh (PW-6). At the time of the marriage of the deceased with Smt. Santosh (PW-4), PW-6 presented about 30 tolas of gold ornaments worth about Rs. 10,000/- to PW-4. PW-4 on her first visit to the house of PW-6 brought all the ornaments and stayed there for 6 months. Then she went to her parents house wearing all those ornaments but left them with her father Dhani Ram and brother Mohinder Singh and all the ornaments were never returned by her father and brother. The deceased persistently asked his wife PW-4 to bring back the ornaments telling her that her father and brother had intended to grab the same. Though PW-4 went to her parents house many times to fetch the ornaments she was not successful. On 25-5-75 the deceased rebuked PW-4 and asked her to bring the ornaments from her parents, but PW-4 expressed her helplessness. So under the pressure of her husband, PW-4 went to her parents house on 25-5-75 at about 3.00 p. m. to get back the ornaments. As PW-4 had gone to her parents house, the deceased brought Km. Sunita (PW-11), the daughter of his brother Kartar Singh (PW-5) for household job and PW-11 stayed in the house of the deceased. On 27-5-75 at about 8.00 p.m. the appellant Mohinder Singh who is none other than the brother of PW-4 came to the house of deceased along with his friend appellant Mahesh Chander. The deceased and these two appellants took their bed in the outer court-yard. PW- 11 was sleeping in the verandah adjoining the outer court-yard.

3. At about 3.15 a.m. on the intervening night of 27/ 28-5-75 PW- 11 was woke-up and found the appellant Mahesh Chander sitting over the deceased and securing him firmly. While so, appellant

Mohinder Singh gave a blow with a wooden pestle (Moosal) on the head of the deceased resulting in bleeding injuries. The deceased shouted "MAR DIYA, MAR DIYA, BACHAO BACHAO" (Being killed, being killed, save me, save me). PW-11 questioned both the appellants as to what they were doing to which the appellants threatened PW-11 saying that she would also be killed if she uttered any word. So PW-11 became panicky and kept silent. Then appellant Mahesh Chander dragged the deceased inside the house while appellant Mohinder Singh kept on hitting the deceased with that pestle. At this point of time PW- 11 escaped from the scene house and went to the house of her father (PW-5) to inform him. On the way PW-11 met PW-3 at some distance but despite enquiry by PW-3, PW- 11 could not give any reply and she was dumb-stricken. PW-1, a neighbour of the deceased who had earlier seen the deceased and both the appellants lying on different cots in the front courtyard of the house of the deceased and who was sleeping on the terrace of his house heard the voice of the deceased "MAR DIYA, BACHAO BACHAO" by about 3.30 a.m. From the upstairs of his terrace he saw the appellant Mahesh dragging the deceased inside the house and appellant Mohinder Singh beating the deceased with the wooden pestle (Ex.P. 1). By that time, PW-3 came by the side of the house of the deceased. Both PWs 1 and 3 shouted at the appellants to which both the appellants threatened the witnesses if they tried to intervene. Then PW-1 and PW-3 stepped back. PW-1 ran to the house of PW-6 to inform him. In the meanwhile PW-5 on being informed by PW-11 came to the scene house along with PWs 1, 3 and 6. When they were at a distance of 8 to 10 paces, they saw the appellants running towards Shakurbasti. Thereafter all the four, namely, PWs 1, 3, 5 and 6 entered the house and found the deceased dead. PWs 1 and 6 went to the police station of Shakurbasty where PW-1 gave the report Ex. PW 1/B before PW-17, the Sub-Inspector of Police of Punjabi Bagh who was at the relevant time in charge of Shakurbasti Police Station also. PW- 17 after making his endorsement Ex. PW 17/ A, to the report, despatched the same for registration of a case to the concerned Punjabi Bagh Police Station where the F. I. R. Ex. PW 7/ A was registered by PW-7 (Head Constable). PW-17 accompanied by PWs 1 and 6, went to the scene place and recorded the statements of PWs 3, 5, 6 and 11. He summoned the crime team and got the place of occurrence photographed. He seized the blood-stained earth from 5 different spots under the recovery memo Ex. PW 2/ B-13. He also recovered some human hair Ex. P8 from the front Court yard and the blood-stained wooden moosal- Ex. PI from near the dead body. He prepared a rough site plan and held inquest over the dead body of the deceased. He sent the dead body for post-mortem examination. PW-2, the police Surgeon performed necropsy on the dead body of the deceased and noted as many as 9 injuries, of which injuries Nos. 1 to 3 were lacerated wounds, injuries Nos. 5, 7 and 9 were fractures and injury No. 6 was a contusion. Injury No. 4 was a bruise over the tip of right shoulder. The bones at various places were broken. On 29-5-75 PW-17 arrested both the appellants. An identification parade was arranged but the appellant Mahesh refused to participate in the parade. After completing the investigation PW-17 laid the chargesheet. The prosecution examined PWs 1, 3 and 11 as eye-witnesses to the occurrence. PWs 5 and 6 were examined to speak about the appellants running away from the scene after the commission of the crime. The other witnesses were formal witnesses and PW-17 was the investigating officer.

4. The appellants when examined under S.313 of the Code of Criminal Procedure, denied their complicity with the offence in question though admitted the relationship. The appellant Mahesh Chander explained his refusal to take part in the identification parade stating that he did so as his face was never muffled and that the PWs saw him in the police station. The appellants examined DWs 1 to 6 on their side to prove the strained relationship between the parties and the arrest of the appellants in the office of the Electricity Board, Gurgaon. The learned trial Judge, accepting the case of the prosecution convicted both the appellants under S. 302 read with S. 34, I.P.C. and sentenced them to undergo imprisonment for life.

5. Feeling aggrieved by the judgment of the trial Court both the appellants preferred Criminal Appeal No. 323 / 76 before the High Court which for the reasons assigned, affirmed the judgment of the trial Court and dismissed the appeal as being devoid of merits. Hence these two appeals.

6. Mr. A. N. Mulla, the learned senior counsel appearing on behalf of the appellants after taking us very meticulously through the judgment of the trial as well as the High Court, the depositions of the witnesses and other relevant records contended inter alia submitting that despite the prolonged deliberation, neither the name of appellant Mahesh Chander nor the presence of Km. Sunita (PW-11) at the scene was made mention of in the First Information Report; that the First Information Report was registered at about 8.15 a. m. on 28-5-75 after a delay of 5 hours from the time of the occurrence in spite of the fact that the police station is only at a distance of 3 kilometers from the scene and that PW-5 who is none other than the brother of the deceased and an Advocate by profession did not mention the fact of his daughter (PW-11) informing him about the murder of the deceased to any one. According to the learned counsel it is highly surprising that Mrs. Kartar Singh (w/o PW-5) though was informed by her daughter Sunita (PW-11) about the participation of both the appellants in the murder by mentioning their names, she did not inform this information to her husband before PWs 1 and 6 left for the police station and that the present story of the prosecution is nothing but a fabricated one in order to project PW-11 as an eye-witness and that if really PW-11 had slept on the verandah of the house of the deceased and witnessed the occurrence she would have immediately mentioned the incident to PW-3 whom she met on the way to her house. Though PW-11 claims to have told the incident to her father (PW-5) she had not mentioned the name of Mahesh Chander whose name she claims to have known even earlier to this occurrence and whose name she mentioned to her mother. It is further submitted that the evidence of PW-11 is nothing but a tissue of falsehood and her evidence is demonstrably proved to be unworthy of credence for more than one reason that being that PW-11 who was by then aged about 13 would not have slept alone in the house of the deceased. Secondly if she had been an eye-witness to the occurrence, she would have immediately come forward with a statement that she saw both the appellants by mentioning their names. Thirdly PW-5, the father of PW-11 who had filed a criminal case against the deceased for offences under Ss. 307 and 324, I.P.C. which case was pending during the relevant time should not have allowed his daughter to go to the house of his enemy, the deceased.

7-8. In continuation of his submission Mr. Mulla urged that no adverse inference can be drawn against the appellant Mahesh Chander on his refusal to take part in the identification parade since PW 5 has admitted that he had seen Mahesh Chander at the police station. According to the learned counsel PW-3 is a chance witness as he could not have come to the house of PW-1 at that odd hour for purchasing milk; that the evidence of PWs 1, 3, 5, 6 and 11 is highly tainted with the interestedness and that the evidence of PWs 5 and 6 that they saw the appellants running away from the house of the deceased is nothing but deliberate perjury.

9. Before We examine the above contentions with reference to the evidence adduced by the prosecution, we shall deal with the scope of interference of this Court in appeal arising from the concurrent findings of fact. In *State of Madras v. A. Vaidyanatha Iyer*, 1958 SCR 580 at p 588 : (AIR 1958 SC 61 at p 64) this Court has ruled thus: -

"In Art. 136 the use of the words "Supreme Court may in its direction grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India" shows that in criminal matters no distinction can be made as a matter of construction between a judgment of conviction or acquittal."

10. See also Himachal Pradesh Administration v. Shri Om Prakash, 1972 (1) SCC 249:(AIR 1972 SC 975) and Arunachalam v.P.S. R. Sadhanathan, (1979) 3 SCR 482 at p 487: (AIR 1979 SC 1284 at p 1286) and State of U. P. v. Pheru Singh, 1989 Supp (1) SCC 288 to which one of us (S. Ratnavel Pandian, J.) was a party.

11. A conspectus of the above decision clearly shows that the power under Art. 136 can be invoked in very exceptional circumstances when a question of law of general public importance arises or a decision shakes the conscience of the Court and the Court within its restrictions imposed by itself has the undoubted power to interfere even with the findings of fact making no distinction between judgment of acquittal and conviction, if the High Court, in arriving at those findings, has acted either perversely or otherwise improperly.

12. In the light of the above proposition of law, we shall now scrutinise the evidence and examine whether the concurrent findings of fact in the present case call for interference.

13. With regard to the place of occurrence and the cause of death of the deceased due to homicidal violence are not in dispute. The motive for the occurrence is spoken to by PWs 5 and 6. It is the evidence of PW-6, who is the father of the deceased that during the marriage of his deceased son with PW-4, he presented gold ornaments worth about Rs. 10,000/- and that when PW-4 had been to her parents house, her parents and her brother appellant Mohinder Singh had removed all the jewels from her and retained the jewels with them. Though the deceased was consistently stressing and pressurising his wife to get back those ornaments, PW-4's parents did not return them. Despite the fact that PW-4 had expressed her helplessness in the matter, the deceased on 25-5-75 sent PW-4 to her parents house, asking her either to get back the ornaments or not to return to her marital home. This serves as the motive for the appellants to put an end to the life of the deceased.

14. The deceased was alone in his house after his wife had left. In order to do the household job in his house he brought his brother's (PW-5's) daughter Sunita (PW-11) who, according to the prosecution stayed in the house of the deceased.

15. According to PW-11, she, by chance woke up by 3.15 a.m. and saw the appellant Mahesh Chander sitting over the deceased and securing him firmly while the appellant Mohinder Singh hitting the deceased with the wooden pestle (Moosal) Ex. P. 1. The deceased tried to riggle out of that situation and shouted "MAR DIYA MAR DIYA BACHAO BACHAO". When PW-11 questioned both the appellants, her life was threatened by the appellants. When the appellants took the deceased inside the house dragging him PW-11 escaped from the scene, came to her parents' house and informed her father PW-5 about the entire incident. On the way she claims to have met PW-3, but she did not tell PW-3 about the incident despite the enquiry by PW-3.

16. PW-1 claims to have got up from his bed on hearing the distressed cry of the deceased and seen the appellant Mahesh Chander dragging the deceased towards the inner verandah and the appellant Mohinder Singh beating the deceased with the wooden pestle (Moosal). He witnessed the same standing on his terrace where he was sleeping. According to him he met PW 3 and that both of them questioned the appellants to which the appellants replied that they would also be murdered if they interfered and that thereafter they reiterated. PW-1 further states that when he went to the house of PW-6 to inform this incident, PW-5 came there from his house and then they all (i.e. PWs 1, 3, 5 and 6) rushed to the house of the deceased where they saw both the appellants running towards Shakurbasti. PW-5 states that he on being informed about this incident by his daughter went to the scene house along with PWs 1, 3 and 6 and found his brother lying dead in the inner room of the

house. PWs 5 and 6 speak of having seen both the appellants running from the scene and that at that time appellant Mahesh Chander was having a lathi in his hand.

17. According to all the witnesses there was an electric light fitted in the house of the deceased and there was also moon light.

18. It is brought in the evidence that PW-1 is related to the deceased as a third degree collateral. As we have pointed out earlier, PWs 5 and 6 are the younger brother and father of the deceased respectively. PW- 11 is the daughter of PW-5. Thus PWs 5, 6 and 11 are shown to be the members of the same family and PW-1 closely related to them. PW-3 and PW-6 have married from the same village, namely, Asoda.

19. The prosecution through the evidence of PWs 1 and 11 attempts to prove that both the appellants were in the house of the deceased on the night of 27-5-75 and took their beds in the front court-yard of the said house. While PW-11 has deposed that she woke up by chance at 3.15 a.m., it is the evidence of PW-1 that he got up only on hearing the cry of the deceased.

20. We shall first of all scrutinise the evidence of PW- 11, the sole eye-witness to the entire occurrence. As rightly pointed out by Mr. Mulla, PW-5 who is proved to have been enigmatically disposed of towards the deceased could not have allowed his 13 years old daughter to take the household job in the house of the deceased and to sleep there during night hours. Further when the house of PW-5 is situated within a short distance from the house of the deceased, we are unable to comprehend as to why this adolescent girl had chosen to sleep in the house of the deceased. PW-11 claims to have known the names of both the appellants even earlier to this incident. She did not inform about this incident much less the names of the appellants to PW-3 while she was rushing towards her house from the scene spot in spite of the fact that she was asked by PW-3 as to what was the matter. In her house she narrated the entire incident to PW-5 stating that Mohinder Singh and some one were beating the deceased, but she did not mention the name of the appellant Mahesh Chander. However, she claims to have told the names of both the appellants to her mother, brothers, sisters and some neighbours. The relevant portion of her evidence reads thus:

"My mother met me after my father ran towards the house of Hanumant Singh. I told my mother, that Mohinder Singh and Mahesh Chander had beaten my uncle Hanumant Singh. I told only that Mohinder Singh and Mahesh Chander had beaten Hanumant Singh, but I did not ask her to go and tell my father accordingly. My brothers and sisters were also present at our house besides my mother."

Then she states she gave the names of Mohinder Singh and Mahesh Chander to the police in her statement. In yet another portion of her evidence she states:

"Before my going to make any statement before the police, our neighbours came to our house. I told those neighbours also that, Mohinder Singh and Mahesh had beaten Hanumant Singh. Our neighbours came to our house about 1/1-1/2 hour after my father ran towards the house of Hanumant Singh. "

21. The evidence of PW-11 unambiguously makes it clear that she revealed the names of both the appellants to her mother, inmates of her house and neighbours even much earlier to the lodging of the report at the police station. The houses of PWs 1, 3, 5, 6 and the deceased are all situated in the same locality. Admittedly PWs 1 and 6 left for the police station by 5.00 or 5.30 a.m. It is very

surprising that in spite of the fact that PW-11 informed every one the names of the appellants except her father the name of appellant Mahesh Chander is not mentioned in the F.I.R. which was registered by 8.15 a.m. on 28-5-75. The explanation now offered by the prosecution through PWs 5 and 11 that PW-11 did mention the name of appellant Mahesh Chander to her father is neither conceivable nor believable. The only irresistible inference is that PW-5 (PW-11?) could not have been present at the scene house and witnessed the occurrence.

22. PW-5 who is an Advocate by profession and brother of the deceased could not have kept silent without ascertaining or at least asking the names of both the perpetrators of the crimes from his daughter. Even assuming that his daughter did not mention the name of appellant Mahesh Chander, the wife of PW-5 who rushed to the scene house on being informed by her daughter should have told the names of both the appellants to her husband and father-in-law (PWs 5 and 6). Further it is quite understandable as to why PW-5 kept himself back instead of going to the police station but only sent PW-1 and his father, PW-6. Though PWs 1, 3, 5 and 6 state that they saw the appellant Mohinder Singh and one another running from the scene of occurrence they all in a chorus assert that they did not know the name of the other culprit. It is quite amazing that none of the PWs except PW-11 knew the name of Mahesh Chander. The case .of the prosecution that the appellants who had been questioned by PWs 1 and 3 about their vicious attack, perpetrated on the deceased, continued to be in the scene house till PWs 1 and 3 along with PWs 5 and 6 returned back is not plausible and persuasive. Further the conduct of these witnesses in not chasing and attempting to apprehend the appellants or at the worst not raising a hue and cry so that the neighbours and other villagers might have got collected and apprehended the appellants especially when one of the appellants was unarmed and another one was armed only with a stick, creates a hallow of suspicion in the veracity of the prosecution case and leads to an inference that the culprits whoever they might have been might not have stayed back till the arrival of the witnesses but might have left the scene earlier. In this connection reference may be made to the evidence of PW-3 who has stated that it took 1-1/2 hours for PWs 5 and 6 to come to the scene.

23. The story of the prosecution that PW-4's brother-appellant Mohinder Singh who was said to have retained the jewels of PW-4 and refused to return them, and who, consequent upon his defiant attitude, was ill-disposed of towards the deceased came to the house of the deceased within two days of his sister being driven away and took his bed in the front court-yard of the deceased along with deceased and the other appellant Mahesh Chander is patently incredible and is too big a pill to be swallowed. Moreover the deceased who had sent away his wife (PW-4) from his house on 25-5-75 asking her either to get back the jewels or not to return to her marital home would not have allowed Mohinder Singh to come to his house and to enter a friendly talk with him and also would not have allowed him to sleep in his house by his side.

24. PW-1 as we have pointed out supra claims to have witnessed the attack on the deceased by the two appellants by standing on the terrace of his house and then after the arrival of PWs 5 and 6, he went with PW-6 to the police station and laid the report at Shakurbasti Police Station at about 5.00 or 5.30 a.m. This report was despatched by PW-17 to the concerned Punjabi Bagh police station by 6.45 a.m. and the case was registered in that station at about 8.15 a.m. A suggestion was made to PW- 17 that the report was obtained from PW-1 only at the scene place at a later point of time and thereafter the case was registered. PW 17 had, of course, denied that suggestion. But the admission of PW-1 in the cross-examination that the D, S. P. came to the place of occurrence at 8.00 or 8.30 a.m. on 29-5-75 and stayed there for about 5 or 10 minutes and that the Station House Officer (PW-17) came 10 minutes before the arrival of D.S.P. when examined along with the glaring admission of PW-3 that all the witnesses had a consultation before lodging the report, we are left with an

impression that there is some force in the defence suggestion.

25. PW-1 makes an embellishment in his evidence stating that the deceased was dragged by the appellant Mahesh Chander by holding the hair of the deceased. This new introduction is purposely made by PW-1 to support the recovery of a bunch of hair from the scene by PW-17. In his earlier statement he has not come forward with such a statement. Though we would not be giving any significance or importance for such an omission in the earlier document, we are constrained to point out the significant omission, since PW 1 has now come forward with such an exaggerated version in order to fall in line with the prosecution case that the deceased was dragged inside the house by his hair. A thorough scrutiny of the evidence of PW-1 does not inspire confidence in the minds of the Court and command acceptance.

26. An adverse inference has been drawn by the Courts below on the refusal of the appellant Mahesh Chander to participate in the identification parade. Mahesh has given an explanation stating that since his face was not muffled and he was shown to the witnesses at the police station he refused to participate in the identification parade. In support of this explanation it has been brought to our notice the following evidence of PW-5 admitting that he had seen Mahesh Chander at the police station:

"I gave the particulars of the co-accused of Mahinder Singh, aced. I joined again in the police investigation about 15 days after this occurrence. I had seen Mahesh Chander, aced. in handcuffs in the police station that day and I identified and told the police that I had seen him running along with (Mohinder Singh) outside the house of Hanumant Singh."

27. As we are not inclined to accept the case of the prosecution that the appellants were in the house of the deceased after perpetrating the heinous crime till the late arrival of PWs 5 and 6 along with PWs 1 and 3 no adverse inference could be drawn by such refusal of the appellant Mahesh Chander to take part in the identification parade.

28. Thus a meticulous examination of the entire evidence creates a serious doubt about the truthfulness and trustworthiness of the evidence of the eye-witnesses. The credibility of the evidence is completely shaken and the circumstances attending the case also debilitate the entire prosecution case. To what extent falsehood in the evidence has taken root and spread over the entire prosecution case is hard to fathom. The trial Court and the Appellate court without making a comprehensive and detailed analysis of the evidence in the proper perspective and by overlooking the manifest errors and glaring infirmities surrounding the case have rendered their conclusions that the appellants are guilty of the offence charged. In spite of our best efforts and great deal of pondering over the matter, we are quite unable to agree with the conclusions arrived at by both the Courts. Hence the irresistible and inescapable conclusion, in our considered opinion, is that the prosecution has failed to establish the guilt of the appellants beyond all reasonable doubts.

29. In the result, we set aside the conviction and the sentence as recorded by the High Court, allow both the appeals and acquit the appellants. The bail bonds are discharged.

Appeals allowed.

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