

Bir Singh

Vs

State of Haryana

Criminal Appeal No. 132 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

04.09.1992

JUDGEMENT

G. N. RAY, J.:-

1. This appeal arises out of the special leave to appeal against the Judgment and Order dated August 16, 1979 of the Punjab and Haryana High Court in Criminal Appeal No. 582 of 1979 affirming the order of conviction of the appellant under Sections 302, 394, 397 and 449, Indian Penal Code and sentencing him to life imprisonment and other imprisonments of various length as indicated therein together with fine. The accused / appellant, Bir Singh, has a brother named Hari Singh. Three daughters of Hari Singh are the wives of Shri Partap Singh and his two brothers, namely, Chater Singh and Mahabir all residents of village Nehala. The sister and daughter of Bir Singh have also been married in the said village Nehala. Three or four days prior to the murder of one Smt. Khazani, mother of Partap Singh, the accused / appellant had come to the village Nehala and such facts are not in dispute. The prosecution case is that in view of close relation of Bir Singh with Partap and his brothers and with some other villagers of Nehala, he had been often coming to the said village and staying there. On March 21, 1975 Partap and Dalip Singh were playing cards in the room of first floor of the house of Partap in the said village Nehala. They heard shrieks from the ground floor and leaving the cards, came out of the room and through the jali on the first floor they could see the accused throttling Smt. Khazani. The said Partap and Dalip Singh thereafter rushed downstairs. Bir Singh made good his escape. While running away from the house the accused, Bir Singh was also seen by a next door neighbour Bhale Ram. He was chased but could not be traced. On returning home, Partap went inside the room where the mother was lying dead and from the steel box lying there a gold ring and Rs. 2,000/- were found missing. Partap informed the Sarpanch, Phul Singh, about the incident and the report was lodged at the Police Station, Bhuna, on the same day at 5.50 p.m. The dead body was sent for post mortem and such post mortem had been held. The doctor noted a number of abrasions and other injuries on the person of the deceased and on dissection of the neck, cervical vertebra was found fractured and spinal cord lacerated, 4th, 5th and 6th ribs of the chest were also found fractured. According to the doctor the death was due to shock and asphyxia as a result of throttling and fracture of fifth cervical vertebra. The accused was arrested on March 23, 1979 and he was medically examined by Dr. Shanti Sarup Arora and abrasion and the contusion on his person were noted. The probable duration of the said injuries was said to be 48-72 hours. The accused was interrogated by the Police whereupon he made a disclosure which resulted in discovery of Rs. 2,000/- and a gold ring from his house. At the trial, the accused / appellant pleaded innocence and alleged that he had been falsely implicated by the Sarpanch, Phul Singh. The appellant alleged that the injuries on his person were caused by the Police. No witness, however,

was examined on behalf of the accused. Partap who, according to the prosecution, is one of the eye-witnesses, was examined at the trial and he gave evidence fully supporting the prosecution case as indicated in the F.I.R. The other witness, Dalip Singh, had admitted that he was playing cards with Partap at the relevant time but he stated that he had not seen Bir Singh throttling Smt. Khazani and making good his escape. The Sarpanch, Phul Singh had deposed to the effect that Partap came to him on the day of the incident at about 3.00 p.m. and told him that his mother had been murdered by Bir Singh by throttling. Phul Singh also deposed that he had accompanied Partap to the scene of crime where Dalip Singh and Sher Singh were present and the dead body was lying in the room of the ground floor and the box by the side of the dead body was found open. After checking up the said box, Partap disclosed that Rs. 2,000/- and a gold ring were missing. Bhale Ram, PW 6, is the next door neighbour of Partap. He had said that on the day of incident, he saw accused / appellants entering the house of Partap. After about half an hour, he again saw him coming out and running away. Shortly thereafter, Partap and Dalip Singh came out and Bhale Ram told them that he had seen Bir Singh running. Thereafter, all of them went in search of Bir Singh but he could not be traced. Considering the said evidences and also the fact that at the instance of the accused, the missing money amounting to Rs. 2,000/- and the gold ring were recovered, the learned Sessions Judge convicted the accused and sentenced him on various counts as indicated herein. The accused preferred an appeal to the High Court of Punjab and Haryana being Criminal Appeal No. 582 of 1979. The Division Bench of the High Court inter alia came to the finding that the evidence of the eye-witness, Partap, had been rightly accepted by the learned Sessions Judge because despite his close relation with the accused no animus could be attributed to Partap for falsely implicating the accused. The High Court was also of the view that testimony of Partap had received sufficient corroboration from the Sarpanch, Phul Singh, and also from Bhale Ram, PW 6, who was the next door neighbour of Partap. The High Court dismissed the Criminal Appeal and confirmed the conviction and sentences imposed on the appellants.

2. Mr. Francis, learned counsel appearing for the appellants, has submitted that although Partap had deposed to the effect that he had seen the act of throttling by the accused from the jali of first floor the deposition of the said witness should be discarded in view of the fact that the other eye-witness, namely, Dalip Singh has not corroborated the case of such throttling. Dalip has deposed to the effect that he was playing cards with Partap but he has not seen the act of throttling and / or the accused running away after committing murder. The learned counsel has contended that there was no reason for Dalip to conceal the truth if he had seen the commission of a ghastly murder of an innocent lady. The learned counsel has also submitted that the alleged recovery of a sum of Rs. 2,000/- and a gold ring should not weigh with the Court in view of the fact that it is very easy to plant such things and allege recovery of the same by the Police. The learned counsel has also contended that large number of abrasions found on the person of the deceased clearly indicate that there had been struggle for quite some time. If the case of the prosecution is accepted as correct, then there was no chance for the accused to escape after committing the ghastly murder because immediately on hearing the shrieks of the deceased, Partap and Dalip came out of the room where they had been playing cards and they had seen the act of crime being committed from the jali of the first floor. In the aforesaid circumstances, it is reasonably expected that the said Partap and Dalip Singh should have apprehended the accused before he could escape with the booty after murdering the deceased. The learned counsel has contended that the alleged murder had taken place at noon at about 2.30 p.m. If, according to the prosecution, the accused was chased immediately after the murder by Partap, Dalip Singh and Bhale Ram, it is reasonably expected that other villagers would have joined and apprehended the accused and it was not at all possible for him to flee away from village unnoticed by other villagers. The learned counsel has, therefore, contended that the case as sought to be made

out by the prosecution should not be believed and the accused is entitled to get the benefit of doubt. He has submitted that unfortunately, the learned Sessions Judge and also the High Court failed to appreciate the evidence in the proper perspective and on surmise and conjectures had convicted the appellant and sentenced him for imprisonment on various counts. The learned counsel has, therefore, contended that it is a fit case here and order of acquittal should be passed by this Court.

3. The learned counsel appearing for the State has, however, submitted that to throttle the deceased did not take much time and it is quite possible for the accused / appellant to escape with booty before Partap and Dalip Singh could negotiate the stairs and come down from the first floor. He has contended that Partap is a close relation of the accused being married to his brother's daughter. Normally, it is not expected that he should falsely implicate such a close relation with an offence of murder. No evidence has been adduced to justify any possible animus on the part of the said eye-witness, Partap. The evidence of Partap also got corroboration from two other witnesses, namely, the Sarpanch, Phul Singh and the close neighbour, Bhale Ram. The Division Bench of the High Court in dismissing the Criminal Appeal of the appellant has come to the finding that the evidence adduced by the eye-witness, Partap and also by the Sarpanch, Phul Singh and Bhale Ram are quite convincing and the said witnesses have not been shaken by the cross-examination. The learned counsel has, therefore, submitted that no interference is called for against the conviction and sentence of the accused / appellant and the appeal should be dismissed.

4. Considering the facts and circumstances of the case, it appears to us that in the instant case, the evidence of the eye-witness Partap is quite convincing and there is no reason to disbelieve him. The act of throttling was seen from the first floor and it is quite possible for the accused after commission of the offence to flee away before being apprehended because some time must have been taken to negotiate the flights and to come downstairs. Bhale Ram is a next door neighbour of Partap. He is a disinterested witness without any animus to implicate an innocent man in a charge of murder more so when the accused is a close relation of a number of co-villagers of Bhale Ram. He has deposed to the effect that he had seen the accused entering the house some time before the incident and he had also seen him running away from the said place shortly before Partap came out in search of the accused. The said deposition, in our view fully corroborates the testimony of Partap. That apart, the booty namely the gold ring and Rs. 2,000 /- were recovered from the house of accused and the allegation of planting the said things at the house of accused is just a wild allegation. The goldsmith Badri Prasad (PW 8) has identified the gold ring wherein he inscribed the name. There is no reason to disbelieve him only because his account books were not produced.

5. In the aforesaid circumstances, we do not find any reason to interfere with the conviction and the sentences imposed on the accused / appellant and this appeal, therefore, fails and is dismissed. The appellant has been released on bail by this Court during the pendency of this appeal. The Bail bond is cancelled and the appellant is directed to surrender and serve out the sentence.

Appeal dismissed.

</html