SUPREME COURT OF INDIA

Prithi

Vs.

State of Haryana

(R.M.Lodha and A.K.Patnaik JJ.)

Crl.A.No.1835 of 2009

27.07.2010

JUDGEMENT

R.M.Lodha, J.

1. This criminal appeal by special leave arises in the following way. On October 3, 1990 at about 9.30 a.m., a certain Bhoop Singh, resident of Badopal, owner of the vehicle (Jeep) bearing registration no. DNC-9324 asked his driver--Hari Singh (PW-6) to bring Ami Lal from his Dhani situate in the village Bhodia Bishnoian. PW-6 reached there and waited for about an hour. Ami Lal and his brother Chhotu Ram (PW-9) then accompanied PW-6 in the Jeep. One Sant Lal, who was present at Ami Lal's Dhani also sat in the Jeep as he also wanted to go to Badopal. Ami Lal sat in the front seat near PW- 6. PW-9 and Sant Lal occupied the rear seat. On their return, while PW-6 was driving the jeep towards village Bhana, he saw one white gypsy belonging to Jee Ram (A-4) ambushed near the cremation ground. PW-6 stopped his vehicle. Immediately thereafter A-4, Prithi (A-5)-- appellant herein, Ram Singh @ Guria (A-1), Ram Singh @ Ram Dhan (A-2) and Mahabir Singh (A-3) armed with guns and rifles came out of the bushes. A-4 fired a shot which hit the tyre of the jeep. A-1, A-2, A-3, A-4 and A-5 then rushed towards the Jeep. A-4 fired shot at Ami Lal while A-1 fired shot that hit Sant Lal. All the occupants of the jeep, viz., PW-6, PW-9, Ami Lal and Sant Lal jumped out of the jeep. A-5 fired a shot at PW-6 but that hit the jeep. PW-6, PW- 9 and Sant Lal ran away in different directions. Ami Lal was overpowered by the attacking party by firing shots at him. A-5 2 fired another shot at PW-6 which hit him on the back of his left shoulder. The attacking party took away Ami Lal (already dead by that time) in their vehicle (gypsy). PW-6 after running for some time reached village Chhinder where one Prithi Singh, son of Ram Pratap Bishnoi took him to Civil Hospital and got him admitted and then on the intimation sent by the doctor, police reached the Civil Hospital, recorded statement of PW-6 and FIR was got registered at police station, Adampur for the murder of Ami Lal and other offences. The police after completion of investigation submitted challan against A-1, A-2, A-3 and A-4. The name of the appellant was put in column no.

2. However, the Additional Sessions Judge vide his order dated August 27, 1993 summoned A-5 and framed charges against all the five accused persons under Section 302 read with Section 149, Section 307 read with Sections 149, 148 and 201 of the Indian Penal Code (for short `IPC'). The prosecution examined as many as 14 witnesses. The trial court (Additional Sessions Judge, Hisar) vide his judgment dated March 20, 1993 convicted the accused persons (A-1, A-2, A-3, A-4 and A- 5) for the offences punishable under Section 302 read with Section 149, Section 307 read with Sections 149, 148 and 201 IPC and sentenced them to undergo life imprisonment and different period of rigorous imprisonment.

> "2. A-1 to A-5 preferred criminal appeal before the High Court of Punjab and Haryana challenging their conviction and the sentence. The High Court vide its judgment dated September 12, 2008 dismissed the appeal and maintained their conviction and sentence."

3. A-1, A-2 and A-4 filed special leave petition [SLP(Crl.) No. 236 of 2009] against the impugned judgment which came to be dismissed by this Court on January 23, 2009.

> "Insofar as A-3 is concerned, he filed a separate special leave petition in which leave was granted. His appeal was dealt with by us separately as he was juvenile on the date of the incident and disposed of on June 25, 2010."

4. Mr. Neeraj Kumar Jain, learned senior counsel for the appellant at the outset disputed the factum of death of Ami Lal. He submitted that admittedly the dead body of Ami Lal was not recovered nor any post-mortem was conducted. He referred to the application for bail filed by some of the accused persons 4 during the course of trial and submitted that one Ami Lal was arrested in Rajasthan and produced before the Judicial Magistrate in Jodhpur and while considering that application, the High Court granted time to the police to verify whether Ami Lal was alive or dead but the investigating agency failed to verify whether Ami Lal, who was produced before the Judicial Magistrate, Jodhpur, was the same person who is alleged to have been murdered or some other person. Dealing with the prosecution evidence, learned senior counsel submitted that the deposition of PW-6 ought to be accepted either as it is or should be rejected in toto. He submitted that since PW-6 was cross-examined by the accused, there was no question of their winning over PW-6. Learned senior counsel, thus, submitted that deposition of PW-6 should have been rejected in its entirety. As regards the evidence of PW-9, Mr. Neeraj Kumar Jain, learned senior counsel, vehemently contended that he was not present at the time and place of incident and he has been planted as eye-witness by the prosecution. He would submit that the narration of the occurrence by PW-9 appears to be improbable; he is highly interested witness being brother of the deceased and his evidence ought not to have been accepted by the trial court as well as High Court. Learned senior counsel submitted that the appellant has been falsely implicated due to enmity between Bhoop Singh and the deceased on one hand and A-4 (relative of the appellant) on the other hand. In any case, learned senior counsel submitted that from the prosecution evidence the presence of the appellant at the scene of occurrence remains highly doubtful.

5. On the other hand, Mr. Kamal Mohan Gupta, learned counsel for the State of Haryana stoutly defended the judgment of the High Court. He submitted that PW-9 has given graphic description of the incident; his presence is established by the prosecution evidence, particularly deposition of PW-6 and his evidence also gets corroborated from the fact that from the place of incident one single barrel of .12 bore gun and also large number of cartridges were recovered. Learned counsel would submit that merely because PW-9 remained at the spot till the police came and did not call for help nor informed the villagers does not show that he was not present. He submitted that different persons react differently in different situations.

> "Learned counsel relied upon a decision of this Court in *Marwadi Kishor Parmanand and another v. State of Gujarat*[1]. Insofar as evidence of PW-6 is concerned, learned counsel for the State submitted that he supported the prosecution case to the extent that he lodged the FIR; he was injured in the incident; he saw white gypsy at the place of incident and some persons lying in ambush fired shots as a result of which he sustained injuries and Ami Lal died. He did not name the assailants and to that extent he did not support prosecution case but that did not mean that his evidence was liable to be rejected in toto.
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> Responding to the contention of the learned senior counsel for the appellant that there was nothing in the prosecution evidence to establish the murder of Ami Lal, learned counsel for the State submitted that merely because the dead body of Ami Lal was not recovered, it cannot be said that Ami Lal was not murdered. He referred to the deposition of PW-9 who stated categorically that Ami Lal had died due to the injuries received by him from the shots fired by the accused and the accused had taken away the dead body of Ami Lal in their vehicle. In this regard, learned counsel relied upon a decision of this Court in *Sevaka Perumal and Anr. v. State of Tamil Nadu*[2]. Mr. Kamal Mohan Gupta strenuously urged that the trial court as well as the High Court have recorded concurrent findings regarding the presence of the appellant along with other accused at the place of incident and his participation and accepted the prosecution case as credible and there is no justification at all by this Court to reweigh and reassess the evidence and reach a fresh opinion as to the innocence or guilt of the accused. Learned counsel relied upon the decisions of this Court in *Pritam Singh v. The State*[3], *Naresh Mohanlal Jaiswal v. State of Maharashtra*[4], *Anwarul Haq v. State of U.P.*[5]

6. Since the question of factum of death of Ami Lal has been raised, we have to see what is the proof of death of Ami Lal. In other words, the question relates to the proof of `corpus delicti'. The expression `corpus delicti' has been subject of judicial comments from time to time. The term, `corpus delicti' generally means; when applied to any particular offence, the actual commission by some one of the particular offence charged (Words and Phrases, Vol. 9A, 2nd reprint, 1976, West Publishing Co.) In a murder case, `corpus delicti' consists of proof of the death of a person alleged to have been murdered and that such death has been caused by commission of crime by some one. It is sound principle in criminal jurisprudence

that one does not begin to inquire whether the prisoner is guilty of a crime until one has established that a crime has been committed.

7. Sir Matthew Hale (Lord Chief Justice of the Court of King's Bench) in `The History of the Pleas of the Crown', Vol. II at page 290 (1800 Edition) stated his opinion, `I would never convict any person of murder or manslaughter, unless the facts were proved to be done, or at least the body found dead'.

8. The aforesaid statement of Sir Matthew Hale has not been accepted in England, Ireland, New Zealand and other common law countries as it is. In England the legal position is stated in Halsbury's Laws of England, 2nd Edition 449 thus: where no body or part of a body has been found which is proved to be that of the person alleged to have been killed, an accused person should not be convicted of either murder or 9 manslaughter, unless there is evidence either of the killing or of the death of the person alleged to be killed.

9. A six-Judge Bench of Irish Court of Crown in the case of *Rex v. Patrick McNicholl*[6] speaking through Sir James Campbell, C.J., with regard to the statement of Sir Matthew Hale, said that it is not an inflexible legal maxim, but is a wise and necessary caution to be addressed by the presiding Judge to the jury. The Bench held that in a charge of murder, by proof of the corpus delicti is meant proof of the factum of murder, and that the accused committed the murder or took part in its commission. Such proof may be established by the confession of the accused without proof of the finding of the dead body.

10. In The *King v. Horry*[7], the New Zealand Court of Appeal explained the legal position that at the trial of a person charged with murder, the fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found.

11. Insofar as this Court is concerned, it has been laid down in Sevaka Perumal2 that it is not essential to establish corpus delicti; the fact of the death of the deceased must be established like any other fact. This Court said;

> ".....In a trial for murder it is not an absolute necessity or an essential ingredient to establish corpus delicti.
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> The fact of death of the deceased must be established like any other fact. Corpus delicti in some cases may not be possible to be traced or recovered. Take for instance that a murder was committed and the dead body was thrown into flowing tidal river or stream or burnt out. It is unlikely that the dead body may be recovered. If recovery of the dead body, therefore, is an absolute necessity to convict an accused, in many a case the accused would manage to see that the dead body is destroyed etc. and would afford a complete immunity to the guilty from being punished and would escape even when the offence of murder is proved.

What, therefore, is required to base a conviction for an offence of murder is that there should be reliable and acceptable evidence that the offence of murder, like any other factum of death was committed and it must be proved by direct or circumstantial evidence, although the dead body may not be traced."

12. Sometimes, there may not be any distinction between proof of the fact of the crime and the proof of the actor of it. The evidence of the corpus delicti and the guilt of the person charged of an offence, many a time is so inter- connected that one cannot be separated from the other. The same evidence often applies to both the fact of the crime and the individuality of the person who committed it. The question now is, whether the prosecution evidence establishes that Ami Lal was murdered and the commission of crime is made out against the appellant.

13. The key witness is PW-9. He has been presented by the prosecution as an eye-witness. He has given full account of the incident. This witness has been held credible by the trial court as well as High Court. The criticism to the deposition of this witness highlighted by the defence has been considered by the trial court elaborately and after finding no merit in such criticism, the trial court after thorough analysis summed up with meticulous care the evidence of PW-9 thus :

"26.....As discussed above statement made by Chotu Ram has withstood the test of lengthy cross- examination. There is nothing to dis-believe him.....

27. The fact that Chhotu Ram remained at the spot till 3.30 p.m. When the police came to the spot does not prove that he was not present at the spot.....So the conduct of Chhotu Ram of concealing himself in the crop and not leaving the place till the arrival of the police does not prove that he was not present at the spot and does not make his statement unbelievable. The mere fact that he did not call any one for help and did not visit his Dhani after the accused had left the place does not make his statement unbelievable.

28. Thus from the evidence discussed above it has duly been proved that the statement of Chhotu Ram it trust-worthy and from his statement it has duly been proved that the occurrence took place in the manner and at the place as stated by the prosecution."

14. Insofar as High Court is concerned, the Division Bench extensively considered the deposition of PW-9 in the following manner:

"We have carefully examined the evidence of Chhotu Ram PW9, one of the eye witnesses to the occurrence.

He has given a vivid account of the entire sequence of events and has fully supported the prosecution case.

The defence has not been able to make any dent in his deposition during cross-examination. He has clearly stated that on 3rd October, 1990, he along with Ami Lal, Sant Lal and Hari Singh were going from village Bhodia Bishnoian to village Badopal in a jeep bearing registration no. DNC-9324. When they were crossing the cremation ground near village Bhana, a white gypsy was seen standing near the cremation ground. Hari Singh stopped the jeep. Five accused i.e. Jee Ram, Ram Singh son of Sahi Ram, Ram Singh son of Ram Karan, Pirthi and Mahabir, emerged from the bushes.

Jee Ram was armed with a rifle whereas other accused were armed with guns. All the accused started firing on the jeep. A shot hit Ami Lal, who was sitting on the front seat. The occupants of the jeep started running in different direction to save their lives. Hari Singh and Sant Lal also received gun shot injuries. However, they were able to run away from the spot. He further stated that he concealed himself in the nearby crops and witnessed the entire occurrence from there. Even when all occupants of the Jeep, except Ami Lal, had run away, the accused came near the jeep and fired at Ami Lal from a close range. Thereafter, they lifted the dead- body of Ami Lal, put the same in the gypsy and sped away from the spot. The police came to the spot at about 3.00 P.M. On the basis of his information, a site- plan of the place of recovery was prepared and 47 empties were recovered, out of which 45 were empty cartridges of .12 bore, one missed cartridge of .12 bore and one empty cartridge of .315 bore. The Investigating Officer also took into possession the pellets and the jeep etc. This witness further stated that there was enmity between Ami Lal and the accused as Ami Lal had murdered Bhagi Ram, who was brother of Jee Ram accused. The accused, therefore, wanted to avenge the murder of Bhagi Ram.

Chhotu Ram was cross-examined by the defence but he withstood the same and the defence was not able to extract anything substantial from him during the cross-examination. Chhotu Ram's version tallies with the initial version given in the FIR and there is no reason to disbelieve the same. The factum of recovery of so many empty cartridges from the scene of occurrence, the injuries suffered by Hari Singh and Sant Lal, lend sufficient credence to the testimony of this witness. His version that he was hiding in the fields is quite believable as in such a case of firing by number of people, he would have no option but to hide himself for fear of his life."

15. It is, thus, seen that PW-9 has been accepted by the trial court as well as the High Court as a reliable witness.

"Once PW-9 is accepted, his evidence proves the fact of death of Ami Lal and also renders the commission of crime by the accused (including the appellant) certain. It is true that he is related witness inasmuch as he happens to be the brother of the deceased but that, in our view, would not render his evidence unworthy of credence. Nothing inherently improbable has been brought out which may justify rejection of

the testimony of PW-9. His conduct of having stayed behind the bushes for about 4/5 hours and not informing the police or villagers of the incident until the police arrived on scene at about 3.00 p.m. may look at the first blush little out of the ordinary but on a deeper scrutiny, does not appear to be unusual or exceptional. He was scared as he saw indiscriminate firing by the accused who were armed with guns and rifles; his brother was dead and removed by the assailants and the other two persons who were with him got firearm injuries. It may be that any other person in his place might have reacted differently but the conduct of PW-9 in any case does not seem to be improbable. Moreover, his presence at the time and place of incident is also established from the evidence of PW-6. In the FIR, it is recorded that PW-9 was with PW-6 in the Jeep. The evidence of PW-9 further gets corroborated by the recovery of a gun and empty as well as unused cartridges from the site."

16. As regards the evidence of PW-6, it was vehemently contended by the learned senior counsel for the appellant that his evidence should be either accepted as it is or rejected in its entirety. PW-6 has deposed that he lodged the FIR; he was injured in the incident; he saw white gypsy at the place of the incident and that some persons came out of ambush and fired shots as a result of which he sustained injuries and Ami Lal died. It is true that he did not name the assailants. The fact that an incident occurred in which he sustained injuries and Ami Lal died is amply established by his evidence as well. That PW-6 sustained injuries is also established from the evidence of Dr. Ajay Kumar (PW-1) who medically examined him immediately after the incident. Merely because he did not name the assailants, his evidence cannot be thrown over-board in its entirety.

17. Section 154 of the Evidence Act, 1872 enables the court in its discretion to permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party. Some High Courts had earlier taken the view that when a witness is cross-examined by the party calling him, his evidence cannot be believed in part and disbelieved in part, but must be excluded altogether.

"However this view has not found acceptance in later decisions.

As a matter of fact, the decisions of this Court are to the contrary. In *Khujji @ Surendra Tiwari v. State of Madhya Pradesh*[8], a 3-Judge Bench of this Court relying upon earlier decisions of this Court in *Bhagwan Singh v. State of Haryana*[9], *Sri Rabindra Kumar Dey v. State of Orissa*[10] *and Syad Akbar v. State of Karnataka*[11] reiterated the legal position that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on careful scrutiny thereof.

18. In *Koli Lakhmanbhai Chanabhai v. State of Gujarat*[12], this Court again reiterated that testimony of a hostile witness is useful to the extent to which it supports the prosecution

case. It is worth noticing that in Bhagwan Singh9 this Court held that when a witness is declared hostile and cross-examined with the permission of the court, his evidence remains admissible and there is no legal bar to have a conviction upon his testimony, if corroborated by other reliable evidence.

19. The submission of the learned senior counsel for the appellant that the testimony of PW-6 should be either accepted as it is or rejected in its entirety, thus, cannot be accepted in view of settled legal position as noticed above.

20. We have already noticed evidence of PW-9. He has been held trustworthy by the trial court as well as the High Court. There is no reason, much less justifiable one, for us to take a different view. He is real brother of Ami Lal. The direct evidence of PW-9 leaves no manner of doubt that Ami Lal is dead and the members of the unlawful assembly (including the appellant) armed with deadly weapons are responsible for his death. In this view of the matter, the submission of the learned senior counsel that one Ami Lal was arrested in Rajasthan and produced before the Judicial Magistrate in Jodhpur and that police failed to verify, despite the direction of the High Court, as to whether that Ami Lal was the same person who is alleged to have been murdered or some other person and, therefore, factum of death of Ami Lal is not established has no merit at all and is noted to be rejected.

21. In the case of *Anant Chintaman Lagu v. The State of Bombay*[13], M. Hidayatullah, J. (as His Lordship then was) stated:

> "Ordinarily, it is not the practice of this Court to re- examine the findings of fact reached by the High Court particularly in a case where there is concurrence of opinion between the two Courts below. ...."

22. In an appeal under Article 136 of the Constitution, this Court does not enter into detailed examination and re- appraisal of the evidence, particularly when there is concurrence of opinion between the two courts below. We, however, carefully examined the evidence of PW-9 and the other evidence available on record and we are satisfied that no error has been committed by the High Court in affirming the conviction of the appellant for the offences punishable under Section 302 read with Section 149, Section 307 read with Sections 149, 148 and 201 IPC.

23. The appeal has no merit and is dismissed accordingly.

[1]*(1994) 4 SCC 549*
[2]*(1991) 3 SCC 471*
[3]*(1950) SCR 453*
[4]*(1996) 11 SCC 547*
[5]*(2005) 10 SCC 581*
[6]*1917 (2) I.R. 557*
[7]*1952 NZLR 111*
[8]*(1991) 3 SCC 627*

[9]*(1976) 1 SCC 389*
[10]*(1976) 4 SCC 233*
[11]*(1980) 1 SCC 30*
[12]*(1999) 8 SCC 624*
[13]*(1960) 2 SCR 460*