SUPREME COURT OF INDIA

Gudu Ram

Vs.

State of H.P.

Crl.A.No.862 of 2008

(Swatanter Kumar and Madan B. Lokur JJ.)

04.12.2012

JUDGMENT

MADAN B. LOKUR, J.

1. The question before us is whether, despite the sole eyewitness to the incident turning hostile, could the Trial Court and the High Court legitimately hold that the appellant committed the murder of Dalip Singh. In our opinion, despite the sole eyewitness turning hostile, it can and should be held on the facts of this case that though the appellant did commit a crime, it was not of murder but culpable homicide not amounting to murder.

The facts:

2. PW-2 Sheetal Singh was an employee of the Himachal Pradesh Transport Corporation, posted in a workshop of the Corporation at Taradevi in Himachal Pradesh. He was living in a rented accommodation and for the last about one year, his brother PW-1 Jai Pal Singh and the deceased Dalip Singh (his cousin brother) were living with him. The appellant (a cousin of Sheetal Singh's wife) joined them in the rented accommodation about a week prior to the alleged murder of Dalip Singh by the appellant.

3. On the intervening night of 12th and 13th November, 2003 Sheetal Singh was at work. Around 8 p.m., the appellant, Dalip Singh and Jai Pal Singh planned to cook some meat and consume some whisky brought by the appellant.

4. During the consumption of drinks and dinner, a minor brawl took place between the appellant and Dalip Singh as a result of Dalip Singh's refusal to consume more whisky. At that time, Jai Pal Singh intervened and some sort of a truce was worked out.

5. Later, Jai Pal Singh went to urinate and upon his return, he found the appellant and Dalip Singh involved in a scuffle. To prevent the scuffle from escalating, Jai Pal Singh asked Dalip Singh to accompany him to Sheetal Singh's place of work so that Dalip Singh could spend the night over there away from the appellant.

6. According to the prosecution, when Jai Pal Singh and Dalip Singh had walked about 50-60 yards, the appellant appeared from behind and hit Jai Pal Singh on the head with a thapi and pushed him into the bushes. (A thapi is a wooden object shaped like a cricket bat used for beating clothes while washing). Thereafter, the appellant hit Dalip Singh with the thapi and pushed him also into the bushes.

7. Jai Pal Singh did not sustain any serious injury and so he got up and went to inform Sheetal Singh about the incident.

8. Thereafter, Sheetal Singh accompanied by Jai Pal Singh went to the rented accommodation of Sheetal Singh since Jai Pal Singh had told him that a quarrel had taken place in the rented accommodation between Dalip Singh and the appellant. When they did not find either the appellant or Dalip Singh in the rented accommodation, they went to search for them and at that time, upon hearing some cries, they came upon Dalip Singh lying in the bushes. The appellant was apparently not traceable.

9. Both Jai Pal Singh and Sheetal Singh brought Dalip Singh back to the rented accommodation. Thereafter an ambulance was called and Dalip Singh was taken to the hospital where he succumbed to his injuries.

10. The appellant was charged with having committed the murder of Dalip Singh. He pleaded not guilty and claimed trial. In all, the prosecution examined 17 witnesses and also produced several documents and articles during the trial.

Decision of the Trial Judge:

11. The Trial Judge analyzed the statements of the witnesses and the documents on record and concluded that the appellant had murdered Dalip Singh. It was held that

the appellant's presence in the rented accommodation along with Jai Pal Singh and Dalip Singh on the intervening night of 12th and 13th November, 2003 was not in dispute. It was also held that Dalip Singh died an unnatural death.

12. It was argued before the Trial Judge that the sole eye witness, Jai Pal Singh had stated in his cross examination that he had not actually seen the appellant beat Dalip Singh or push him into the bushes. This witness was then cross-examined by the Public Prosecutor on the ground that he was suppressing the truth. However, the Trial Judge relied on the evidence of Jai Pal Singh and held that he had positively deposed that the appellant had attacked Dalip Singh. Even though Jai Pal Singh may not have actually seen the attack, but it was clear that the appellant had hit and pushed Dalip Singh in the bushes after the attack on Jai Pal Singh.

13. In addition, the Trial Judge also noted the disappearance of the appellant in the middle of the night from the place of occurrence and his being later located in his village. This gave room for suspicion with regard to the conduct of the appellant post the incident.

14. The Trial Judge noticed the statement of PW-7 Rajinder Singh to the effect that there was some land dispute between the family of Dalip Singh and Jai Pal Singh and that they were on inimical terms. However, he was of the view that the terms between them were not so strained as made out, otherwise there was no reason for Dalip Singh to stay in the rented accommodation along with Sheetal Singh and Jai Pal Singh for about a year. The Trial Judge also took note of the suspicion expressed by PW-7 Rajinder Singh that Jai Pal Singh may have caused the death of Dalip Singh but did not give much credence to this suspicion in view of the statement of Jai Pal Singh. The attempt to shift the blame onto Jai Pal Singh was, accordingly, discounted.

15. The Trial Judge also took into account the recovery, during interrogation, of a bloodstained pajama from the appellant's house. This pajama had human bloodstains as per the report of the forensic science laboratory. It was noted that though the bloodstains on the pajama were not matched with the blood group of Dalip Singh, the appellant had failed to explain the bloodstains.

16. The Trial Judge noted the injuries on Dalip Singh as given by PW-16 Dr. Uvi Tyagi, Registrar, Department of Forensic Medicine, I.G.M.C., Shimla. The injuries suffered by Dalip Singh were found to be ante mortem and were as follows:-

1. Two contusions on forehead 2 cm. above left eyebrow 2.5 cm. apart from each other each of size 1 cm. in dimension, bluish in colour.

2. A grazed abrasion over the root of the nose 2.5 cm. brownish in colour.

3. On opening the dressing (which was completely soaked in blood) surgically stitched wounds over the occipital region of the head. They were four in number.

17. The doctor was of the opinion that Dalip Singh died due to hemorrhagic shock as a result of the ante mortem head injuries. He was also of the opinion that the injuries could possibly have been caused by a wooden stick or thapi. The Trial Judge noted that Jai Pal Singh was also injured and, as per the medical opinion, a blunt wooden stick could have caused his injury.

18. The appellant admitted in his statement recorded under Section 313 of the Code of Criminal Procedure that he was residing with Sheetal Singh. He admitted his presence in the rented accommodation on the intervening night of 12th and 13th November, 2003 but denied having consumed any drinks. According to him, only Jai Pal Singh and Dalip Singh were drinking. He denied having had a brawl with Dalip Singh and denied any knowledge of the events which resulted in the death of Dalip Singh. In fact, he stated that he had left Taradevi for his village before the alleged incident took place. The appellant did not produce any witness in defence.

19. On the basis of the above material, the Trial Judge held that the appellant had murdered Dalip Singh and accordingly he was convicted for an offence punishable under Section 302 of the Indian Penal Code. Decision of the High Court:

20. Feeling aggrieved by the conviction and sentence passed by the Trial Judge, the appellant preferred an appeal to the High Court. By a judgment and order dated 31.10.2007 passed by the High Court of Himachal Pradesh in Criminal Appeal No.562 of 2004, the conviction of the appellant for an offence punishable under Section 302 of the Indian Penal Code was upheld. The High Court held that there was sufficient evidence to conclude that none other than the appellant caused the death of Dalip Singh. Evidence of a hostile witness:

21. The prime question that we are required to consider is the credibility of Jai Pal Singh since he was the only eyewitness to the crime and had turned hostile.

22. Jai Pal Singh stated in his examination in chief as follows: "When we were still going, Gudu also came from behind and gave me beatings with the help of a wooden stick and threw me aside in the bushes. Gudu then also gave beatings to Dalip Singh and threw him in the bushes. I alone went to Sheetal Singh and informed him about the occurrence. Sheetal Singh came with me to the scene of occurrence and on search, we found Dalip Singh lying in injured condition at the place where quarrel had taken place outside the house of Sheetal Singh. Dalip Singh had sustained injuries on his head, which was bleeding and, therefore, we took him to Snowdon Hospital in an ambulance, where he was declared as dead."

In his cross-examination, Jai Pal Singh stated as follows:

"After sustaining hurt at the place of occurrence, I have fallen down to the depth of about 5 feet. I did not see Gudu causing injuries to Dalip Singh, but I only noticed him when he threw Dalip Singh near me in the bushes. I could not see Gudu while throwing Dalip Singh in the bushes. When Dalip Singh fell down, his head had struck against the ground."

Later during his cross-examination, it is recorded as follows: "At this stage, the learned public prosecutor seeks permission to cross-examine the witness on the ground that the witness is suppressing the truth. Heard. Keeping in view the substantial variation in the statement of the witness recorded in the court and recorded under Section 161 Cr. P.C. with regard to the actual position of beatings. Learned Public Prosecutor is permitted to cross-examine the witness.

xxxxx Cross-examination xxxxx (by learned P.P.) "My statement was recorded by the police. I had not seen the accused Gudu giving beatings to Dalip Singh with any thing and I also did not see the accused Gudu throwing Dalip Singh in the bushes. (Confronted with portion A to A with police statement of the witness Ext. PB, wherein it is so recorded). I did not state this to the police. It is incorrect to suggest that I have deposed falsely today in collusion with the accused."

23. The law on the treatment of the evidence of a hostile witness is that the evidence of such a witness need not be completely rejected only because he has turned hostile. The Court must, however, be circumspect in accepting his testimony and, to the extent possible, look for its corroboration.

24. In Karuppanna Thevar v. State of T.N., (1976) 1 SCC 31 this Court held that the testimony of a hostile witness may not be rejected outright "but the court has at least to be aware that, prima facie a witness who makes different statements at different times has no regard for truth. The court should therefore be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence."

25. Similarly, in Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389 this Court held:

> "But the fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence."
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> (Incidentally this passage is incorrectly attributed to P.N. Bhagwati, J in Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233. It should be correctly attributed to P.K. Goswami, J).

26. These basic principles have been reiterated recently in Bhajju v. State of M.P., (2012) 4 SCC 327 and Ramesh Harijan v. State of U.P., (2012) 5 SCC 777. In Bhajju one of us (Swatanter Kumar, J) held for the Court: "The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law."

27. If we consider the totality of the evidence of Jai Pal Singh, it is clear that he categorically stated that the appellant attacked him with a wooden stick like a thapi and pushed him in the bushes. To this extent the evidence of Jai Pal Singh is quite clear and he did not recant from this. Then he goes on to say that though he noticed the appellant, he did not actually see him beat Dalip Singh or throw him in the bushes. But the fact is that Dalip Singh was beaten by someone and pushed into the bushes. There is nothing to suggest the presence of any third person. The presence of the appellant (and none other) at the scene of occurrence is not in doubt.

28. The medical evidence shows that injuries on Jai Pal Singh could have been caused by a blunt wooden stick such as a thapi. Again, to this extent, the evidence

of Jai Pal Singh is consistent. As per the medical evidence, the injuries on Dalip Singh could also have been caused by a similar wooden stick or thapi. Under these circumstances, the conclusion is inescapable that none other than the appellant attacked Jai Pal Singh and Dalip Singh and inflicted injuries on them with a thapi.

29. To this, we may add the conduct of the appellant, which leaves a lot to be desired.

30. The Trial Judge and the High Court found it suspicious (and so do we) that on the intervening night of 12th and 13th November, 2003 the appellant should leave Taradevi and go to his village at Rohru. According to the statement of the appellant under Section 313 of the Cr.P.C. he had left Taradevi before the incident took place. This may or may not be true, but it is certainly relevant for appreciating his conduct. In this context, it would be worthwhile to refer to Section 8 of the Evidence Act, 1872 which makes relevant the conduct of the appellant subsequent to the crime.

31. Similarly, the recovery of a bloodstained pajama from the appellant's house adds to the circumstances that call for an explanation from the appellant. However, no explanation has been forthcoming on either issue.

32. No doubt, proof cannot be substituted by robust suspicion. But if all the facts and circumstances point to only one conclusion, it is difficult to ignore them and even in a case of circumstantial evidence, it is possible to secure a conviction. The present case is much stronger since there is an eyewitness to the incident and both the Trial Court and the High Court accepted the version of events given by Jai Pal Singh. In such circumstances, we should not normally interfere with the conclusion expressed concurrently by the Trial Court and the High Court. We have recently expressed this view in Ramachandran v. State of Kerala 2012 (10) SCALE 592 and it need not be repeated. Interference is, however, permissible in exceptional circumstances – but we do not find the circumstances of this case to be exceptional.

33. We are, therefore, prepared to agree with the Trial Court and the High Court that Jai Pal Singh was a credible witness and that his testimony to the extent that it implicates the appellant should be accepted.

34. We are in agreement with the Trial Judge that the insinuation that Jai Pal Singh committed the crime was too nebulous. The family dispute between Jai Pal Singh

and Dalip Singh was obviously not particularly serious since Dalip Singh had ventured to stay with Jai Pal Singh and his brother Sheetal Singh in the same rented accommodation for about one year. In any event, this was not even the case set up by the appellant in his statement under Section 313 of the Cr.P.C.

Intention to kill:

35. The next question to be considered is whether the appellant had the intention to kill Dalip Singh. Here we have some difficulty in accepting the understanding of the events as narrated by the Trial Court and the High Court.

36. It is true that the appellant caused multiple injuries on Dalip Singh, but it is difficult to infer from this that the appellant intended to kill him. His intention seems to have been to injure Jai Pal Singh and to severely injure Dalip Singh and after beating them up with a thapi, he pushed them into the bushes and walked away. It cannot be imagined that his intention was to injure Jai Pal Singh but kill Dalip Singh – he would be leaving behind Jai Pal Singh as an eyewitness.

37. It seems to us that the conduct of Jai Pal Singh also points to the intentions of the appellant. Jai Pal Singh did not expect the assault on Dalip Singh to be fatal, otherwise he would have tended to the needs of the victim rather than have gone to call Sheetal Singh. That the delay in attending to Dalip Singh may have eventually led to his death is another matter altogether, but the attack was not so severe (in the estimation of Jai Pal Singh) as to have imminently caused the death of Dalip Singh.

38. Even though the situation is pregnant with hypotheses, it is quite clear that the appellant had no intention to kill Dalip Singh and even the rejection of the hypotheses cannot lead to the conclusion that the appellant intended to kill Dalip Singh.

39. However, the nature and number of injuries and their location (the skull) as well as the "weapon" used (a small wooden cricket bat) lead us to conclude that to a reasonable person, an attack of the nature launched by the appellant on Dalip Singh could cause his death. While it may be difficult to delve into the mind of the attacker to decode his intentions, knowledge of the consequences of his actions can certainly be attributed to him.

40. Accordingly, we are of the opinion that the appellant had knowledge that his actions are likely to cause the death of Dalip Singh. He would, therefore, be guilty

of culpable homicide not amounting to murder and liable to be sentenced under the second part of Section 304 of the IPC.

Conclusion :

41. Under the circumstances, we partly allow this appeal and set aside the conviction of the appellant for the murder of Dalip Singh but convict him of an offence punishable under the second part of Section 304 of the IPC.

42. We have been informed that the appellant has already undergone over eight years of actual imprisonment and almost eleven years including remissions earned. Under the circumstances, we sentence him to imprisonment for the period already undergone.

43. The appeal is disposed of on the above terms.