

SUPREME COURT OF INDIA

Ram Chander & Ors.

Vs.

State of Haryana

Crl.A.No.658-659 of 2010

(A.K.Sikri and Abhay Manohar Sapre,JJ.,)

02.01.2017

JUDGMENT

Abhay Manohar Sapre,J.,

1. These appeals are filed against the common final judgment and order dated 12.08.2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal Nos. 448-DB and 395-DB of 1998 whereby the Division Bench of the High Court dismissed the appeals filed by the appellants herein and upheld the judgments/orders of conviction and sentence rendered by the Trial Court.

2. The case of the prosecution is as under: One Hari Singh (since dead) was married to Messo (deceased). Out of this wedlock, the couple was blessed with three daughters, namely, Dholi alias Krishna, Sumitra and Raj Bala. Raj Bala was aged around 15 years and the youngest amongst the three daughters. Both Dholi and Sumitra were married at a place (village) called Kagdana whereas Rajbala was unmarried.

3. Hari Singh has two brothers, namely, Sohan Lal (accused - since dead) and Bhoop Singh. Sohan Lal has four sons, namely, Ram Chander, Ranbir alias Randhir, Ram Kumar and Om Parkash (accused- appellants herein). Messo has one sister Guddi (PW- 9) who is married to Bhoop Singh.

4. Messo and Raj Bala (mother and daughter) were living in one house at village Arnianwali. Guddi was their next-door neighbour. Messo was in search of a boy for Raj Bala and had selected one boy from a place called Manak Dewan for which talks had been going on for the last one month or so from the date of incident. The engagement ceremony was accordingly fixed for 22.09.1996 at Arnianwali. Dholi alias Krishna (married daughter of Messo) had, therefore, come to her mother's place at Arnianwali on 19.09.1996 to help her mother and sister-Raj Bala for the ceremony.

5. On 20.09.1996, around 3 p.m. Sohan Lal along with his four sons, namely, Ranbir, Ram Chander, Ram Kumar and Om Parkash, came to the house of Messo and told her to desist from settling the marriage of Raj Bala with a boy from Manak Dewan. Sohan Lal said that they could settle it according to their own choice. Sohan Lal, who was not happy with the marriage proposal, expressed his total unhappiness and did not want the marriage proposal to fructify. He then threatened Messo that in case she did not agree to his proposal then both (Messo and Raj Bala) would not see the sun the next day. After giving this threat, Sohan Lal along with his sons (appellants herein) left the place. Dholi and Guddi were present along with Messo and Raj Bala when Sohan Lal and his four sons had come.

6. Messo fearing with the threat of Sohan Lal asked her daughter Dholi to go immediately to her brother, Ram Sarup at village Dhigtania which was around 20 KM away from her house and inform him about happening of such incident with her. Dholi, accordingly, went there and narrated the incident to Ram Sarup-her maternal uncle. She then stayed overnight with Ram Sarup.

7. On 21.09.1996, in the early hours, when Dholi and Ram Sarup accompanied by one Om Prakash-Sarpanch of Village Dhigtania reached to the house of Messo, they found both, Messo and Raj Bala, missing from the house. They, therefore, went to the house of Guddi (PW-9), who was living next to the house of Messo. They noted that Guddi was weeping and was in the state of shock.

8. When they inquired from her about the whereabouts of Messo and Raj Bala, Guddi told them that Sohan Lal and his four sons had come in the night and murdered Messo and Raj Bala, burnt their bodies in house and carried the remains of the dead bodies and ashes in a cart driven by the tractor from her house to an unknown place.

9. This led to the registration of FIR bearing No.197 (Ex-PA-1) dated 21.09.1996 by Dholi at Police Station Nathusari Chopta naming Sohan Lal and his four sons (appellants herein) as accused persons for committing the murder of her mother-Messo and sister-Raj Bala. The police authorities then started investigation, visited the spot, recorded the statements of the witnesses, prepared the spot map, recovered several articles from the spot and arrested the accused persons. On being interrogated, the accused made disclosure statements about the manner in which ashes/bones of both the deceased were disposed of in a nearby Canal known as-Sheranwali Canal and also disclosed the place where the weapons used in commission of the offence and tractor with cart were kept. On such disclosure being made, the police made recoveries of the articles at the instance of the accused.

10. After completion of the investigation, the case was committed to the Court of Sessions and the accused persons were charged for commission of the offences punishable under Sections 148, 302 read with Section 149 and 201 of the Indian Penal Code,1860 (for short 'IPC').

11. On 07.08.1997, Om Parkash-one of the accused escaped from police custody from Civil Hospital Sirsa. Proceedings under Sections 82 and 83 of the Criminal Procedure Code,1973 (for short 'the Code') were initiated against him. He was declared 'Proclaimed Offender' and proceedings under Section 299 of the Code were ordered to be taken up against him. The trial of other accused, however, proceeded on merits.

12. The prosecution, in support of his case, examined as many as 11 witnesses whereas the defence did not choose to lead any evidence. Proceedings under Section 313 of the Code were carried out. After completion of the trial, the Trial Court (Additional Sessions Judge, Sirsa), vide judgment dated 27.07.1998, convicted Sohan Lal, Ranbir @ Randhir, Ram Chander and Ram Kumar for the offences punishable under Sections 148, 302/149 and 201/149 IPC and sentenced them to undergo rigorous imprisonment for a period of one year each under Section 148 IPC. Ram Chander and Ranbir @ Randhir to undergo imprisonment for life under Section 302 IPC and to pay a fine of Rs.5000/- each, in default of payment, further to undergo rigorous imprisonment for a period of one year each. Sohan Lal and Ram Kumar were sentenced to imprisonment for life under Section 302/149 IPC and to pay a fine of Rs.5000/- each, in default of payment of fine, further to undergo rigorous imprisonment for a period of one year each. All the four accused were sentenced to undergo rigorous imprisonment for a period of two years each for the offences punishable under Section 201/149 IPC. All the sentences were ordered to run concurrently.

13. After arrest of Om Parkash on 22.02.1999, a separate trial was conducted against him and after its completion, the Trial Court, by a separate judgment dated 7/8.08.2000, convicted him for the offences punishable under Sections 148, 302/149 and 201/149 IPC and sentenced him to undergo rigorous imprisonment for one year under Section 148 IPC imprisonment for life and fine of Rs.5000/- with default clause under Section 302/149 IPC and rigorous imprisonment for two years under Section 201/149 IPC. All the substantive sentences were ordered to run concurrently.

14. Against the judgment of conviction and order of sentence dated 27.07.1998, Sohan Lal, Ram Chander, Ram Kumar and Ranbir @ Randhir filed Criminal Appeal No. 448-DB of 1998 before the High Court.

15. Against the judgment of conviction and order of sentence dated 7/8.9.2000, Om Parkash filed separate Criminal Appeal No. 395-DB of 2000 before the High Court.

16. The appeals were heard together. By impugned judgment dated 12.08.2008, the High Court dismissed both the appeals. During the pendency of the appeals before the High Court, Sohan Lal died, therefore, appeal against him stood abated.

17. Aggrieved by the said judgment, all the accused have filed these appeals by special leave before this Court questioning the legality and correctness of their conviction and sentence.

18. Heard Mr. Naresh Kaushik, learned counsel for the appellants (accused) and Mr. Sanjay Kumar Visen learned counsel for the respondent- State. We also perused the written submissions submitted by the learned counsel for the parties.

19. Learned counsel for the appellants (accused) while assailing the legality and correctness of the impugned order, reiterated the same submissions which were pressed in service though unsuccessfully by the appellants before the two courts below resulting in their conviction.

20. In substance, the submissions were that firstly, the appellants were falsely implicated in the incident inasmuch as none of the appellants were connected with the commission of the offence in question in any way so also their complicity in the commission of the offence could not be established by the prosecution for want of evidence against any of them.

21. The second submission was that neither the motive for commission of the offence and nor the presence of any of the appellants either jointly and individually was proved at the time of the commission of the offence by the prosecution and the evidence adduced by the prosecution is not sufficient to implicate the appellants for commission of the offence.

22. The third submission was that the two Courts below erred in placing reliance on the evidence of the so-called eye-witness-Guddi (PW-9) as according to the learned counsel, her testimony, if scanned properly would neither inspire confidence and nor will command creditability due to her close relationship with the deceased family.

23. The fourth submission was that apart from the evidence of Guddi (PW-9), no independent eye-witness to the incident was examined by the prosecution, therefore, it is not safe to rely on the uncorroborated testimony of Guddi (PW-9) for sustaining the appellants' conviction.

24. The fifth submission was that when the prosecution claimed that on the strength of disclosure statement of one accused, they recovered "Ashes and Bones" from the canal, this itself renders the case of the prosecution wholly unacceptable because ashes could never be recovered from canal.

25. The sixth submission was that it looked highly improbable that no villager could witness the incident except Guddi(PW-9). This, according to learned counsel, is sufficient to hold that the prosecution failed to establish the complicity of the appellants in commission of the crime.

26. The seventh submission was that no expert opinion was obtained to find out as to whether bones recovered were human bones or animal bones?

27. It is basically these submissions, which were elaborated by the learned counsel for the appellants with reference to the evidence on record.

28. In reply, learned counsel for the respondent supported the impugned order and contended that since both the Courts below, on proper appreciation of evidence, have held that the appellants were involved in the commission of the offence in question and committed brutal murder of two innocent ladies, mother and daughter, and further both the Courts have given cogent reasons while rejecting their submissions and hence there arises no reason to interfere in the impugned order.

29. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeals.

30. At the outset, we may take note of one legal principle consistently reiterated by this Court since inception that it is not the function of this Court to re-assess evidence and an argument on a point of fact which did not prevail with the Courts below cannot avail the appellants in this Court (see observation of learned Judge - Saiyid Fazl Ali, J. while speaking for the Bench in the case of *Lachhman Singh and others vs State*¹

31. Here is a case where the Trial Court and the High Court, on appreciating the entire oral evidence, recorded categorical concurrent findings of fact against the appellants (accused) about their complicity in commission of crime in question which resulted in killing of mother and her unmarried daughter.

32. Both the Courts below held that firstly, it were the appellants who had come to the house of Messo (mother) and threatened her that she (Messo) should not pursue her daughter, Raj Bala's marriage with the boy from Manak Diwan, otherwise both will not see the sun the next day. Secondly, noticing that both did not pay any heed to the threat, the appellants came to Messo's house in the midnight with a pre-determined mind to eliminate Messo and Raj Bala. Thirdly, the appellants accomplished their plan by mercilessly killing Messo and Raj Bala with the use of gandasa when both were in fast asleep. Fourthly, the appellants first caught hold of Messo and chopped her head with Gandasa and then did the same to Raj Bala and then put them on a cot and put mattresses and wood sticks over their bodies and poured kerosene/diesel and set their bodies to fire. Fifthly, the appellants then removed the ashes and bones from the place of occurrence in a tractor and all this was witnessed by Guddi (PW-9) who was living as next door neighbour of the deceased. Sixthly, Guddi (PW-9) was a reliable eye-witness whose evidence did not suffer from any infirmities or/and inconsistencies. Seventhly, the ashes, human bones, plastic bags, Gandasa used in execution of the offence were recovered from the canal and house at the instance of the respective appellants on the strength of individual disclosure statements made during their interrogation. Eighthly, the defence did not adduce any evidence to demolish the case of the prosecution and nor statements of the accused made under Section 313 of the Code, in any manner, could demolish the case of the prosecution on any material points. Ninthly, the case set up by the prosecution was proved with the aid of evidence adduced by witnesses, namely, PW-1 to PW-11.

33. As observed supra, the aforementioned nine main findings of the Sessions Court were affirmed by the High Court after appreciating the oral evidence. These findings of fact being concurrent in nature are usually binding on this Court. This Court, being the last Court of appeal, does not re-visit and re-appreciate the entire oral evidence de novo in its jurisdiction under Article 136 of the Constitution unless there are strong and prima facie reasons to do so pointing out therein any apparent legal and jurisdictional error prejudicing any rights of the accused.

34. However, since this Court granted leave to file appeal to the appellants against the impugned order of the High Court and hence we considered it just and proper to have a re-look to the evidence of material witnesses with a view to find out whether the concurrent findings of the two Courts below are based on proper appreciation of evidence or any of these findings call for any interference.

35. As mentioned above, the only eye-witness to the incident in question is Guddi (PW-9). Both the Courts below found her testimony to be natural, credible and consistent.

36. Guddi (PW-9) is the real sister of the deceased Messo and she was living next to the house of Messo. She, in her evidence, narrated in detail her family tree and their inter se relations including her relation with the accused family.

37. She stated that Sohan Lal-one of the accused (since dead) was her husband's (Bhoop Singh' s) real elder brother and the accused are Sohan Lal and his sons. She stated that Sohan Lal and his sons (appellants) had come to Messo's house in the afternoon on the date of incident (incident had occurred in midnight the same day) and held out a threat to her and Raj Bala that marriage proposal of her daughter with the boy from Manak Diwan should not be materialized and if it is not cancelled then she and her daughter will not see the sun the next day. She stated that Sohan Lal gave this threat to Messo in her presence and in presence of Dholi (PW-8) who had come to Messo to extend help for engagement ceremony of Raj Bala.

38. She stated that Messo on hearing the threat asked Dholi-her daughter to go to her maternal uncle (Ram Sarup) - who was the resident of nearby village and bring him with her, if possible.

39. She stated that Dholi immediately left to the house of Ram Sarup and on reaching there she told him about the incident. Dholi stayed back overnight with Ram Sarup.

40. She then stated that during mid-night hours, she heard some noise in the house of Messo. She, therefore, woke up and came out to find out the cause of noise. She stated that between her house and the house of Messo, there is one common wall with sufficient space, which enables anyone to peep through easily in both the houses.

41. She stated that she came near to the joint wall and through space in the wall saw that Ram Chander (accused) and Randhir (accused) were holding Gandasas in their hands

whereas Sohan Lal (accused) and Om Prakash (accused) had caught hold of Messo's hand and legs and Ram Chander (accused) with his gandasa gave blow on Messo's neck, which completely severed Messo's neck from her body.

42. She stated that Ram Kumar (accused) then caught hold of Raj Bala who was on a separate cot and Ranbir (accused) with his gandasa gave blow on Raj Bala's throat due to which her neck was completely severed from her body. The accused persons then put both the bodies on one cot along with their severed heads and put mattresses on the dead bodies. Sohan Lal then put some wood sticks by the side of the cot and poured two tins of diesel/kerosene on the cot and set the cot ablaze with matchstick.

43. She stated that Ranbir (accused) then came to her (Guddi 's) house and took their tractor and camel cart to Messo's house. He dumped ashes, bones and other burnt material in the tractor and proceeded with the tractor to an unknown place. She stated that before leaving, Ram Chander plastered the place of occurrence with mud and cow-dung and cleaned the place. She stated that she told about this incident to Bhoop Singh but on hearing it, he ran away out of fear.

44. She stated that next morning when Ram Sarup, Dholi and Om Prakash-Sarpanch came, she narrated the entire incident to them, which eventually led to filing of FIR by Dholi immediately in the concerned nearby Police Station naming therein the appellants as the culprits of commission of the offence.

45. Dholi (PW-8) corroborated the evidence of Guddi (PW-9) on material points such as (1) all the accused visiting Messo's house and giving threat in her presence to Messo and Raj Bala, (2) Raj Bala's marriage proposal with a boy from Manik Dewan (3) She having left to her uncle's place at the request of her mother Messo to inform him about the incident (4) her family relations with the accused and with other family members and lastly, what Guddi (PW-9) told her about the entire incident and the manner in which it was accomplished by the accused on her reaching the house next day morning with Ram Sarup and Om Prakash.

46. Ram Sarup (PW-10) also corroborated the version of Guddi (PW-9) and Dholi (PW-8) on all material points. He stated that when he along with Dholi and Om Prakash went to Guddi, she was weeping and frightened. On being consoled, she narrated the entire incident (mentioned above) to them.

47. The evidence of the Investigating Officer Hardawari Lal (PW-11) and Kiran Kumar (PW-7) who was the Scientific Assistant (Forensic Science Laboratory) proved that the blood stains were found on the walls and earth and also fresh mud and cow-dung was found on the walls and when it was removed, blood stains were noticed on the bricks of the wall. Kiran Kumar (PW-7) also corroborated the existence of joint wall with sufficient space available in the common wall as stated by Guddi (PW- 9).

48. The evidence of Investigating Officer (PW-11) also proved the recoveries of articles on the basis of disclosure statements made by respective appellants (accused). The seized articles were proved and exhibited.

49. It is with this evidence, the question arises as to whether the two Courts below were justified in placing reliance on the evidence of Guddi (PW-9) for resting the appellant's conviction?

50. On scanning the aforementioned evidence, we are of the considered opinion that both the Courts below were justified in accepting the evidence of Guddi (PW-9) for resting the appellants' conviction upon it. We, while concurring with the reasoning and the conclusion of both the Courts below, give our reasons infra. In our view, the following facts are proved with the aid of evidence.

51. First, Guddi (PW-9) was next-door neighbour to the house of both the deceased where the incident took place. Second, she was closely related to the deceased family and the family of the accused. Third, she knew the accused persons and the family members of the deceased very well much prior to the date of incident being a part of the same families. Fourth, she was fully aware of the marriage issue of Raj Bala. Fifth, she was present at the time of threat given by Sohan Lal and his sons (accused) to Messo. Sixth, she was able to see the incident graphically due to sufficient space available in the common wall. Seventh, Scientific Assistant, Kiran Kumar (PW-7) on inspection of the place of occurrence proved that the common wall has space. He said "there was open space between this wall and the room". Eighth, it also corroborates with the evidence of Hardawari Lal (PW-11) and the spot map (EX-PU) of the place of incidence that the wall and the open space therein did exist; Ninth, Guddi's narration of entire incident is so graphic that it looks natural. It also shows how confidently she was able to narrate the role of every accused in commission of the offence. Tenth, the existence of blood stains on wall and earth coupled with fresh mud and cow dung put on the walls/earth duly proved by Hardawari Lal, Investigating Officer (PW-11) and Kiran Kumar (PW-7) corroborates Guddi's statement that "Ram Chander - one of the accused before leaving the place of occurrence cleaned the place with mud and cow-dung". Eleventh, it is not possible to give description of an incident in such graphic manner and that too by a middle aged illiterate housewife unless she had actually seen such incident and why should Guddi (PW-9) give evidence against the appellants and falsely implicate them when there is no evidence to prove their previous animosity; Twelfth, motive to eliminate the two deceased was proved by Guddi against the appellants and lastly, nothing could be brought out to shake her testimony in cross-examination.

52. The submission of learned counsel for the appellants that since Guddi (PW-9) was in close relation with the deceased persons, she should not be believed for want of evidence of any independent witness, deserves to be rejected in the light of the law laid down by this Court in *Dalbir Kaur and Ors. vs. State of Punjab*², and *Harbans Kaur and Anr. vs. State of Haryana*³, which lays down the following proposition:

“There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.”

53. In *NamdeoVs.State of Maharashtra*⁴, this Court further held:

“38 it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

54. We follow and apply this well settled principle of law for rejecting the submissions of learned counsel for the appellants.

55. In the light of aforementioned twelve reasons, we are of the view that Guddi (PW-9) was rightly held to be an eye-witness and the two Courts rightly relied upon her sworn testimony for sustaining the appellants conviction.

56. This takes us to the next argument of learned counsel for the appellants. It was urged that the alleged recovery of articles on the strength of disclosure statement of the accused and in particular the "ashes and the bones" from the canal is not possible. We do not agree.

57. In our view, there is no evidence to prove the fact as to whether the canal from where the recovery of ashes and bones was made had any water therein or not at the relevant time. We do not find that any question was put to any witness on this issue and secondly, no independent evidence was brought on record to prove as to whether the canal was full of water or had no water therein. In any event, one could not dispute that bones were recovered from the canal. In the absence of any evidence, which could otherwise be led in any form, this submission at this stage is, therefore, not acceptable.

58. This takes us to the next argument of learned counsel for the appellants. Learned Counsel urged that why the prosecution did not examine any independent witness from the village other than Guddi (PW-9).

59. We find no merit in this submission for more than one reason. First, no such argument was advanced before the two courts below. Second, the incident had taken place during midnight when all the villagers were fast asleep. Third, no evidence was adduced to prove that near the place of incident, there were many houses and lastly, had the injury been caused by the Gun Shot, it would have created some noise in the nearby locality and attract the

attention of the villagers. Such was, however, not the case because the weapon used in commission of the offence was ‘Gandasa’ .

60. In our considered opinion, the disclosure statements made by the accused during their interrogation on the basis of which the recoveries of articles were made such as - gandasa, bones, ashes, blood stained bricks and earth, tractor with cart, two plastic cans smelling diesel oil, which were duly proved by the Investigating Officer are sufficient to sustain the conviction when it is examined in the context of oral evidence. Merely because no expert opinion was obtained to prove as to whether bones recovered were human or animal bones, in our view, would not weaken the case of prosecution in the light of overwhelming evidence available on record to prove the complicity of the appellants.

61. It is the consistent view of this Court that minor discrepancies, even if noticed, would not affect the prosecution case, if there is a sufficient independent evidence to sustain the conviction. (See - *Vijay @ Chinee vs. State of Madhya Pradesh*⁴, Paras 23 & 23). In this case, the evidence adduced was found sufficient to sustain the conviction and we find no good ground to take a different view from the one taken by the two Courts below and concur with their findings and views by giving our own reasons mentioned supra.

62. In view of foregoing discussion, the appeals are found to be devoid of any merit. The appeals thus fail and are accordingly dismissed. In case if any of the appellants is on bail, his bail bond stands cancelled and he is directed to be taken into custody forthwith to undergo remaining period of sentence awarded to him by the Sessions Court.

Judgment Referred.

¹*AIR 1952 SC 0167*

²*(1976) 4 SCC 0158*

³*(2005) 9 SCC 0195*

⁴*(2007) 14SCC0150*

⁵*(2010) 8 SCC 0191*