

CASE NO.:
Appeal (crl.) 1248 of 2001

PETITIONER:
Ravinder Parkash & Anr.

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 04/10/2002

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

The appellants have preferred this appeal against the judgment and conviction imposed by the Additional Sessions Judge, Rohtak in his judgment dated 6.11.1995 made in Sessions Case No.93/93 as confirmed by the judgment of the High Court of Punjab & Haryana at Chandigarh made in Crl. Appeal No.590-DB/95 dated 18.1.2001.

Briefly stated the prosecution case against the appellants is :

The deceased Chander Has and the appellants were related. They had some inter-se dispute in regard to some property, therefore, the prosecution has alleged that the appellants on 14.4.1993 took away the deceased from his house in the presence of his wife Birmati examined before the trial court as PW-2. Ever since then the said Chander Has was not seen alive. It is stated that on 17.4.1993 said PW-2 along with a relative of Chander Has, namely, Dharambir Singh PW-8 went to the Police Station at Sampla and submitted a written application to the SHO in regard to missing of the said Chander Has. It is the further case of the prosecution that though the SHO of the said Station by name Chand Mohammad, ASI recorded a complaint and registered the same in the daily diary of the Station did not take up any investigation as the said complaint did not make out any cognizable offence. On 18.4.1993 another police officer of the said Station by name Gian Singh PW-9 on seeing the said complaint of Pws.2 and 8 took up investigation and in that process he went near the village called Khalawar where he was met by one Attar Singh, ex-Sarpanch of the village who told him that a dead body of a young man had been found under some Kikar trees at a nearby place. On getting this information the said investigating officer (PW-9) proceeded to the said place along with two relatives of Chander Has by name Raghbir (PW-3) and Jai Bhagwan (PW-4). On reaching the said place they saw a dead body which was in a highly decomposed state. The same was identified by Pws.3 and 4 as that of their relative Chander Has. The prosecution then alleges that on the body being identified and completing the inquest at the place where the body was found the same was sent for post mortem examination. It is relevant to note here that at the time of the inquest of the dead body, no external injuries were noticed. Thereafter PW-9 recorded the statements of Pws.3 and 4 at the spot where the body was found and recorded the statement of PW-2 at her house as also

of one Kehar Singh (PW-5) who according to prosecution has seen the deceased in the company of the appellants in the bazaar when he was walking there on the evening of 14.4.1993. The prosecution then states on getting the said information PW-4 searched for accused persons and was unable to arrest them immediately. From the material on record, it seems that appellant No.1 was arrested on 19.4.1993 whereas appellant No.2 who was then serving in the Army, was found in Sikkim at the place where he was posted. He was arrested from there on 14.6.1993. In the meanwhile, the investigating agency on a statement allegedly made by appellant No.1 recovered a sharp-edged weapon 'Gaiti' as also a motorcycle which the prosecution alleges was used by the appellants in taking away the deceased.

On receipt of the post mortem report from the doctor (PW-7), who had opined that the deceased had died a homicidal death, having suffered stab injuries which could have been caused by a weapon like Gaiti recovered from appellant No.1, the appellants were charged for the murder of Chander Has and were tried as stated above.

The defence of the appellant before the Sessions Court was one of complete denial.

The Sessions Court on a consideration of the evidence produced by the prosecution came to the conclusion that the prosecution has established from the evidence of PW-2 and PW-5 that the appellants had taken away the deceased from his house on 14.4.1993 and thereafter he was never seen alive. It also accepted the prosecution case that on 17.4.1993 PWs.2 and 8 had gone to the Police Station at Sampla and had given a written application to the officer then in-charge of the Police Station who had recorded a complaint in the daily diary of the Police Station as to the disappearance of deceased Chander Has. The Sessions Court also accepted the evidence of PWs. 2,4 and 5 who according to it had identified the dead body as that of Chander Has and relying on the medical evidence came to the conclusion that the Chander Has died a homicidal death. The court also accepted the motive suggested by the prosecution and thereafter relying on the recovery of the Gaiti and the motorcycle, as also the false defence allegedly set up by the appellants in the trial, came to the conclusion that the prosecution has established its case, even though based on circumstantial evidences beyond all reasonable doubts, hence, found the appellants guilty of the offence charged and sentenced them to imprisonment for life under Section 302 read with Section 34 and also imposed a fine of Rs.5,000 in default of which the appellants were further sentenced to RI for one year.

The High Court on appeal, in our opinion, in a very brief discussion of the evidence concurred with the finding of the trial court. In this process it noted that the last seen evidence of PWs.2 and 5 inspires full confidence and the same is fully supported by Daily Entry No.7 at Sampla Police Station dated 17.4.1993. It also came to the conclusion that the motive put forth by the prosecution stood fully established. According to the High Court, the appellants in the guise of settling their dispute had taken away the deceased on 14.4.1993. The High Court also held that the defence taken by the appellants cannot be relied upon and on this basis dismissed the appeal.

In this appeal Mr. U U Lalit, learned counsel appearing for the appellants, contended before us that both the courts below have very seriously erred in relying on the evidence of PWs.2 and 5 in regard to Chander Has accompanying the appellants on 14.4.1993. He also contended that the prosecution has utterly failed to establish that on 17.4.1993, PWs.2 and 8

had actually lodged a complaint in the Police Station at Sampla. He also contended that the alleged identification of the dead body made by PWs. 2, 4 and 5 cannot be accepted because of the discrepancies in the evidence of the said witnesses. He contended that, if these 3 pieces of evidence are to be eschewed from the prosecution case then assuming that there was a motive for the appellants to murder the deceased as also the recovery of a Gaiti as well as the motorcycle on the basis of the statements made by A-1 would not help the prosecution in obtaining a conviction. On the contrary Mr. J P Dhanda, learned counsel appearing for the State of Haryana, very vehemently supported the judgments of the courts below by contending that both the courts below have very carefully scrutinised the prosecution case and the Sessions Court for good reasons recorded by it has accepted the case of the prosecution to base a conviction which on being carefully considered by the High Court has been sustained, therefore, there is no reason why this Court should interfere in this appeal.

In the background of the attack made by Shri Lalit on the prosecution evidence, if we examine the evidence of PW-2 we find that in all probability this witness could not have been an eye-witness who has actually seen the appellants taking away the deceased on 14.4.1993. One of the major reasons for doubting PW-2 on this aspect of her evidence is that she has failed to report the missing of her husband within a reasonable time. It has come in evidence that the deceased was not in the habit of staying away from his house for a long time, PW-2 knew that there was dispute pending between the deceased and the appellants and that there were court proceedings between them, still even when the deceased did not come back home on the night of 14.4.1993. She did not take steps to approach the Police till after the dead body was found on 18.4.1993 nearly four days thereafter. Of course, prosecution had stated that she along with PW-8 had lodged a complaint in the morning of 17.4.1993 about which we will discuss separately. In this background, we find it difficult that a rural Indian house wife would keep quiet for nearly four days and would not take any steps to lodge a complaint as to the missing of her husband if actually she had seen the appellants taking away her husband four days earlier. Her explanation that she was comforted by her relatives, that her husband would come back cannot be believed. It is not that she did not have any adult support in her effort to search for her husband or to approach the police, which she had from many sources like PWs. 3, 4 and 8 who are her relatives, as also her son, still non lodging of the timely complaint is one of the grounds which makes us cautious in appreciating her evidence. Then we notice that it is the prosecution case that PW-2 along with the relative PW-8 Dharambir went to the police station at Sampla and gave a written complaint which was recorded separately in the Station Diary. Both the courts below have accepted this version of the prosecution case. However, PW-2 in her evidence has not uttered a single word about the same. On the contrary PW-2 in clear terms in her evidence stated that it is only after the finding of the dead body she went to the Police Station and told the fact to the police. Thus it is seen that PW-2 has not supported the prosecution case that she lodged a complaint on 17.4.1993 about her missing husband. Then again we notice contradictions in her evidence as to her approaching the police on 18.4.1993. Though she states that after identifying the dead body she went to the Police Station on 18.4.1993. PW-9 the Investigating Officer says that PW-2 never came to the Police Station on 18.4.1993, on the contrary it is he who went to her house and recorded her statement. Why then PW-2 is making this

incorrect statement? From her evidence, we notice that this would not be the only doubtful statement she made in regard to her role in the investigation. She in her evidence states that when she was in the bazaar on 18.4.1993 she was told by some people that an unclaimed dead body was lying by the side of the village pond at village Khalawar and it was suggested to her that she should go there and identify the dead body as it could be that of her husband. In her evidence before the Court she did not mention who told her this fact in the bazaar. Then she states that after hearing this news she went to house and gave this information to other members of the family and in the company of PWs. 3 and 4 she went to the place where the dead body was lying and identified the said dead body as that of her husband. She specifically states that Police came there later and that she had identified the dead body earlier. During the course of examination she further elaborated this aspect of her evidence by stating that "After identifying the dead body I went to the police station and told the Police about the fact." This piece of her evidence runs counter to the evidence of PW-9, as noted already. The above evidence of PW-9 the Investigating Officer as to the absence of PW-2 at the place where the dead body was found is also supported by the evidence of PWs. 3 and 4, who also did not state anything about the presence of PW-2 at the time and place where the dead body was found. As a matter of fact, PW-3 Raghubir who is the uncle of the deceased specifically states that PW-2 was not called to the place where the dead body was found. From the above evidence, it is clear that PW-2 for reasons better known to her has chosen to give a palpably untrue version as to her going to the place where the dead body was found and identifying the same, then going to the police station and informing the same. Added to this we notice that there is a suggestion made to this witness by the defence, which of course, is denied by PW-2, that on 14.4.1993 she was not at home since she was attending to a very close friend of her husband who had undergone an eye operation in a nearby eye camp, therefore, she could not have seen, the going away of her husband with the appellants. From the above discussion of the evidence of PW-2, we find that PW-2 has not come out with the true version of the case and the courts below have not examined these discrepancies, improvements and improbabilities in her evidence while accepting the same.

The only other witness who says that he has seen the appellants going in the company of the deceased on 14.4.1993 is PW-5 Kehar Singh. This witness in his evidence has stated that about three months before he gave evidence in the court, he saw the deceased Chander Has going along with the accused Ravinder and Bijender on a motorcycle when he was passing through the bazaar. He further states thereafter the deceased did not come back home. In the cross examination he admits that he has a weak eye sight for the last many years that he was about 75 years old. He also states that when he saw the deceased being taken away by the appellants, he was alone. He did not tell anybody about this fact, even though missing of Chander Has was the talk of the town. He admits that he had given evidence against these appellants and in favour of Chander Has in a civil litigation. If this witness had actually seen the deceased going with the appellants on 14.3.1993 and thereafter when he had come to know that Chander Has was missing since then, in the normal course, one would have expected this witness to inform the relatives of Chander Has about the same, his failure to do so in spite of the fact that he was in the know of the fact that the relationship between the appellants and Chander Has was not cordial makes his evidence suspicious, hence, it is not safe to rely upon him, without any corroboration. Having disbelieved the evidence of PW-2, we

find no other corroboration in support of the evidence of PW-5. Then again a mystery surrounds the fact how the police came to know about PW-5 seeing the deceased going with the appellants. PW-9 states that only on 18.4.1993 he had recorded the statement of PW-5 before that PW-5 had not told anybody about he having seen the deceased going with the appellants on 14.4.1993. However, we notice in the complaint made in the Police Station on 17.4.1993 there is the name of PW-5 as having seen the deceased going with the appellants. The prosecution has not explained how PWs 2 and 8 came to know on 17.4.1993 itself about PW-5 having seen the deceased in the company of the appellants, when PW-5 himself specifically states that he had not told this to anybody except to the police which is on 18.4.1993. In this background we find it difficult to accept the evidence of this witness also.

It is the prosecution case that in regard to missing of Chander Has PWs 2 and 8 came to the Police Station at Sampla on 17.4.1993 at about 8 a.m. in the morning and lodged a missing person's complaint. The defence has very strongly questioned this part of the prosecution case. In spite of the same the prosecution has failed to examine ASI Chand Mohammad who according to it had recorded the statements of PWs 2 and 8 and also entered the complaint in the daily register of the station. In our opinion, this entry has not been proved beyond reasonable doubt. PW-2 has not stated anything about this fact in her evidence. PW-8 who is the other person who accompanied PW-2 to the Police Station on 17.4.1993 has not supported the prosecution case and he was treated as hostile and cross-examined. In this background, the non examination of ASI Chand Mohammad creates considerable doubt as to the prosecution case. Therefore, we find it difficult to accept the prosecution case as to the complaint of 17.4.1993 which cannot be believed.

This will take us to the next question involved in this appeal that is in regard to identification of the dead body. For this purpose, the prosecution has relied upon the evidence of PWs 3 and 4 according to the prosecution case, these witnesses were taken on 18.4.1993 by the investigating officer PW-9 to the place where a dead body was lying and after seeing the dead body, these witnesses alleged to have identified the same as that of their relative Chander Has.

If we see the evidence of PW-3, he merely says that he identified the dead body without giving any specific reason for the same. From the medical evidence, it is clear that the dead body was in a highly decomposed state, therefore, it was incumbent on the part of this witness to state how he recognised the body, he has failed to give any cogent reason in this regard, hence, his evidence does not help the prosecution.

However PW-4 Jai Bhagwan another relative of Chander Has has gone further and states that he identified the dead body from the artificial jaw (dentures) which Chander Has had got fitted and from his ears and nose. Regarding dentures, he says that he saw them near the dead body. But PW-9, who conducted the inquest, has not supported this version of PW-4. PW-9 has specifically stated that he did not find any such dentures at the place where the dead body was found. So far as the identification of the dead body by this witness from the ears and nose is concerned, we see from the evidence of PW-7 the doctor who conducted the post mortem that the dead body had deteriorated so much that the ears, eye-balls, nose and lips had disfigured. Thus from a total reading of the evidence of the doctor, it is clear that it was not possible for anybody to have identified the dead body from the ears and nose of the deceased

because of the condition of decomposition. Therefore, what remains is only the clothes that was found on the dead body of the deceased. It is to be noted neither PW-2 nor PW-5 in their evidence has stated what clothes Chander Has was wearing when he went with the appellants. PW-4 has not given any reason for identifying the clothes of the deceased. PW-3 who is also a relative of Chander Has has not identified the clothes of Chander Has. Therefore, identification of the dead body by PW-4 by the clothes cannot be accepted. Here, we also notice even according to PW-9, the wife of Chander Has, viz. PW-2 had not identified the dead body. Therefore, we find it not safe to rely upon the evidence of PW-4 in regard to identification of the body. That apart it has come in evidence that in the complaint filed on 17.4.1993 before the Police Station it is mentioned that the height of the missing Chander Has was 5.7" while PW-7 the doctor who specifically measured the dead body has in unequivocal terms stated that the height or the length of the dead body was 5.10". This is also a material discrepancy that could be noticed in the identification of the dead body. From the discussion made herein above, we are of the opinion that the prosecution has failed to establish that the dead body found by the Police on 18.4.1993 was that of missing Chander Has.

Shri J.P.Dhanda, learned counsel for the State, after referring to the evidence of the prosecution, very vehemently contended that the prosecution has proved beyond reasonable doubt that the dead body was that of Chander Has and Chander Has was taken away by the appellants on 14.4.1993 and from the recovery made from the appellants, it is crystal clear that it is the appellants who committed the murder of the Chander Has. He further pointed out that this Court in an appeal ought not to interfere with the findings of fact concurrently arrived at by the courts below by re-appreciating the evidence on record. It is true normally this Court would not substitute its subjective opinion of the evidence with that of concurrent findings of the two courts below. However, having considered the findings of the courts below, we have noticed that the trial court, though by a lengthy judgment has found the appellants guilty, we have found that finding is not supported by the material on record. Therefore, we have considered the prosecution evidence independently and have disagreed with the same for reasons mentioned in this judgment. We have not done this by merely substituting our subjective satisfaction but we have done the same for reasons based on material on record. We have found that no reliance can be placed on the evidence of PWs.2,3 and 4 and the basis for the reasons given by us though available on record have not been considered by the trial court. So far as the High Court is concerned, we need not give any additional reasons for differing from the same because the impugned judgment of the High Court is only a summary of the judgment of the trial court.

For the reasons stated above, we find that the prosecution case, which is purely based on circumstantial evidence, has not been established beyond all reasonable doubts. Once we discard the evidence of the prosecution in regard to its theory of "last seen together", identification of the dead body, and filing of the complaint on 17.4.1993, the links in the chain of circumstances get broken, hence, the chain of circumstances will not be complete. Then assuming for the sake of argument that the prosecution has been able to establish the recovery of the weapon, which in any case had no blood stains on it, and the motorcycle, by themselves would not complete that chain so as to be consistent with no other hypothesis, except the guilt of the accused. Therefore, we find it unsafe to rely upon the

prosecution case.

For the reasons stated above, this appeal succeeds. We set aside the judgment and conviction imposed on the appellants by the courts below and direct that the appellants be released forthwith, if not required in any other case.

JUDIS