

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 472 OF 2007

Sudhir

...Appellant

Versus

State of Haryana

...Respondent

WITH

CRIMINAL APPEAL NO. 666 OF 2007

JUDGEMENT

These two appeals, one by Sudhir (A-1) and the other by Jagdev (A-2), arise out of the judgment of the High Court of Punjab and Haryana at Chandigarh confirming the convictions and sentences passed up on them by the Sessions Judge, Bhiwani. The appellants were indicted for the murder of Prabhu Ram and for disappearance of the evidence in order to screen them from legal punishment. The Sessions Judge, Bhiwani convicted them for the offences under Sections 302 and 201 read with Section 34, IPC and sentenced them to undergo rigorous imprisonment for

life and other sentences. The High Court concurred with the view of the trial court.

2. We heard the counsel for the parties and at the conclusion of the arguments, we pronounced, 'Both appeals are allowed'. We indicate the reasons therefor.

3. Prabhu Ram (aged about 65 years) was unmarried and resided with his cousin Ram Chander (PW-4) in village Palri (P.S. Sadar, Dadri), although he occupied a separate room. He used to deal with the purchase and sale of goats. PW-4 has three sons, Satbir, Dhillu Ram and Madan. Satbir is employed as clerk in the Cooperative Bank, Mahendergarh. Prabhu Ram had given his landed property to the sons of PW-4. On January 9, 2001 at about 8.00 a.m., the dead body of Prabhu Ram was spotted by Sarpanch Rishi Pal (PW-3) lying in the pit near the firni (circular road of the village) in front of the house of Vidya Nand. PW-3 went to the house of PW-4 and informed him as to what he had seen. PW-4 then reached the spot and found Prabhu Ram's body lying in the pit. He did not go to the Police Station immediately but called his son Satbir from Mahendergarh. The first information report (F.I.R) in this regard was lodged by him at Police Station, Sadar Dadri, sometime at 2.30 p.m. He suspected that Prabhu Ram has been murdered by A-1 and A-2.

It was stated in the FIR that the previous night, i.e. on January 8, 2001, Prabhu Ram left the house at about 7.00 p.m. to collect payment of goats from Satbir son of Suraj Bhan. When Prabhu Ram reached near the house of Sher Singh, A-1 and A-2, who were coming from the opposite side pushed Prabhu Ram against the wall. Babu Lal (PW-5) who was also coming from Budhwana intervened. A-1 and A-2 were under the influence of liquor and they were saying that they would not spare him (Prabhu Ram). Due to intervention of PW-5, Prabhu Ram went towards the firni; A-1 and A-2 went towards the village pond and PW-5 went to his house.

4. At about 3.30 p.m. or so on January 9, 2001, Amar Singh (PW-14) started investigation and reached the spot. The photographs of the dead body were taken; inquest report was prepared; the place of incident was inspected and a rough site plan was prepared; the blood stained earth and the brickbats were taken into possession. The dead body was sent for post-mortem examination and statements of the witnesses viz., PW-5, Sube Singh (PW-6) and Suresh (PW-7) were recorded. A-1 and A-2 were arrested on January 12, 2001; their clothes were taken possession of and sent to Forensic Science Laboratory along with stained earth and the brickbats.

5. The Sessions Judge as well as High Court accepted the

prosecution case and rejected the plea of the accused.

6. The prosecution case mainly rests on the evidence of PW-6 and PW-7. But before we consider their evidence as well as evidence of PW-5, we think it is appropriate to have a look at the medical evidence. Dr. Ishwar Singh (PW-1) conducted the post-mortem of the dead body of Prabhu Ram on January 10, 2001 at 10.30 a.m. He found the following injuries on the person of the deceased:

1. A lacerated wound 4 cm x 2 cm into bone deep on left side of posterior aspect of parietal region. On further dissection, echymosis was present.
2. A lacerated wound 1.5cm x 1cm into bone deep on the right side of parietal region just above the right ear. On further dissection, underlying bone was fractured and there was subdural haematoma present under the bone.
3. A lacerated wound on the right eye brow size 1cm x 5cm. On dissection, echymosis was present.
4. A contusion around the right eye. On dissection echymosis was present.

PW-1 also made the following observations :

“Scalp, skull and vertebrae already described. Vertebrae was not opened. Membranes, brain and spinal cord were congested. Walls ribs and cartilages were healthy. Plourea was congested. Larynx and trachea; Fine froth was present and fine mud was also present. Right lung: oedematous and bulky. On dissection, blood stained frothy fluid came out. Left lung: Oedematous and bulky. On dissection, blood stained frothy fluid came out.

Pericardium, heart and large vessels were healthy. Left side of heart was empty. Right side was containing some blood. ABDOMEN : were healthy. Peritoneum was congested. Mouth, pharynx and oesophagus were congested and mud was present. Stomach and its contents distended. Fluid and mud was present. Small intestines and large intestines were distended and semi digested food was present in small intestines and faecal matter was present in large intestines. Liver was congested and healthy. Spleen was congested and healthy. Kidneys were congested and healthy. Bladder was empty. Organs of generation were healthy.”

According to PW-1, the cause of death was asphyxia due to drowning and the death took place about 18 to 48 hours before the post-mortem. In his cross-examination, he stated that none of the injuries was bleeding as these were either lacerated wounds or contusions. He also stated that if the aforesaid injuries were caused with brickbats then these brickbats may or may not have blood stains. PW-1 also stated that the deceased had no sign of intoxication; he might be semi-conscious when he breathed last.

7. The question presented before us is whether indictment of A-1 and A-2 for the murder of Prabhu Ram is established beyond reasonable doubt. The story set up by the prosecution is that on January 8, 2001, Prabhu Ram left his house at about 7.00 p.m., after taking meals, to collect payment from Satbir, son of Suraj Bhan. At about 7.30 p.m. while PW-5 was going to his house, he saw the accused A-1 and A-2 giving fist and slap blows to Prabhu Ram. This incident happened near the house of Sher Singh. PW-5 intervened; Prabhu Ram then went towards the firni

whereas A-1 and A-2 went towards the village pond. Although, PW-5 is related to Prabhu Ram, he did not inform PW-4 immediately about the beating given by A-1 and A-2 to Prabhu Ram. After all Prabhu Ram was an elderly person while A-1 and A-2 were young men and ordinarily such incident would not have been taken lightly by any relative of the victim. Then in his cross-examination, few material omissions have been brought out. In any case, his evidence does not help the prosecution much in so far as charge of murder is concerned.

8. Now we turn to the evidence of PW-6 and PW-7. PW-6 deposed that on January 8, 2001 at about 8.00 p.m. he was coming from village Jat-Bhurjat to village Palri. At that time, near the tubewell of Sanwat, son of Dhan Singh, he saw A-1 and A-2 beating Prabhu Ram with brickbats; Prabhu Ram fell down. He asked A-1 and A-2 to leave Prabhu Ram but A-1 and A-2 threatened him that he would meet the same fate if he opened his mouth. He has stated that Prabhu Ram was bleeding and A-1 and A-2 were under the influence of liquor. Little terrified, he went home. The next morning, i.e. on January 9, 2001, he went to work at his tubewell and in the evening when he came back, he was told by his family members that Prabhu Ram has been murdered. It was then that on the next day, i.e. January 10, 2001 he went to the residence of PW-3 where PW-4 and his son Satbir were already there. Apart from material

omissions that have been brought out in his cross-examination, on its face, serious doubt arises regarding his evidence. He is a chance witness. That he is related to Prabhu Ram and PW-4 is not in dispute. Had he seen A-1 and A-2 beating Prabhu Ram with brickbats and as a result thereof Prabhu Ram fell down and was bleeding, he would have gone to the house of PW-4 with whom Prabhu Ram used to live and told him about the incident. Not only that he did not inform PW-4 of the incident immediately but also he kept quiet for more than 24 hours. His explanation that in the morning on January 9, 2001, he went to work at his tubewell and when he returned back in the evening that he came to know that Prabhu Ram has been murdered, then he went to PW-4's house and told him about the incident hardly merits acceptance.

9. Insofar as PW-7 is concerned, he deposed that on January 8, 2001 at about 10.00 to 10.30 p.m. when he reached near the house of Vidya Nand, he saw A-1 and A-2 carrying Prabhu Ram. He did not know whether Prabhu Ram was dead or alive. Prabhu Ram was bleeding and A-1 and A-2 threw the dead body in the pit which fed water. According to him, he was on his scooter and the lights were on. He stopped and asked A-1 and A-2 why they were throwing Prabhu Ram in the pit but he was threatened by them to keep quiet otherwise he would meet the same fate. PW-7 stated that he got scared and went home. In the morning on

January 9, 2001, he went to his shop at Mahendergarh and when he returned in the evening at about 8.00 or 9.00 p.m., he came to know from his wife that Prabhu Ram has been murdered. On the next morning, i.e., January 10, 2001 he went to the house of PW-3 where he found PW-4, his son Satbir and PW-6 and there he disclosed what he witnessed on the night of January 8, 2001. Had he seen the incident like this, he would have immediately gone to the house of PW-4 and told him about the incident. He would not have waited for more than 36 hours. Palri is a small village where everyone is familiar with everyone. He was riding his own two wheeler and it would have hardly taken any time in reaching the house of PW-4. Was it sheer coincidence that in the morning on January 10, 2001, first PW-4 and his son Satbir reached the house of Sarpanch (PW-3), then PW-6 reached that place followed by PW-7? We do not think so. They all gathered at the house of PW-3 to set up PW-6 and PW-7 as eyewitnesses. Incidentally, the names of PW-6 and PW-7 do not find mention at all in the F.I.R. On a consideration of the matter we find that PW-6 and PW-7 have been planted as eyewitnesses. Both of them stated that they saw Prabhu Ram bleeding. However, PW-1 (Dr. Ishwar Singh) has categorically stated that the deceased had four injuries and none of the injuries was bleeding. This also casts serious doubt whether brickbats at all could have blood stains. Moreover, F.I.R. was not lodged with promptness inasmuch as, although, PW-3 saw the dead body of Prabhu

Ram lying in the pit on January 9, 2001 at about 8.00 a.m. and he informed the same to PW-4 immediately but PW-4 went to the Police Station at about 2.30 p.m. The time between 8.00 a.m. to 2.30 p.m. seems to have been used for consultations and deliberations and for introducing a false story. The explanation by PW-4 that on coming to know the murder of Prabhu Ram, he phoned his son Satbir at Mahendergarh and it was only after he reached the village that he went to the police station and lodged the F.I.R. does not merit acceptance in view of the overall circumstances that have come on record. The conduct of PW-4 is also little unnatural. Prabhu Ram used to reside with him; he left the house after having meals at about 7.00 p.m. If he did not return home after some time, the least expected of PW-4 was to find his whereabouts. It was month of January and nights are extremely cold. But until PW-3 informed PW-4 in the morning at about 8.00 a.m. or so on the next day, he did not care to find out where Prabhu Ram was. PW-4 sought to give an explanation that Prabhu Ram would not return home in the night some time. To our mind, this explanation is not acceptable as he even did not lodge the FIR immediately after coming to know about the death of Prabhu Ram. The dead body was found lying in a pit near the house of Vidya Nand but Vidya Nand has not been examined by the prosecution at all; his statement was not recorded under Section 161 Cr.P.C. nor he was tendered in evidence before the Court. The enmity of PW-4 and his son

Satbir with A-1 is clearly established on record. On a close and severe scrutiny of the entire evidence let in by the prosecution, there appears to be likelihood of attempt to falsely implicate A-1 and A-2. The several factors noticed above cast serious doubts about the truth of the prosecution case.

10. The present case turns on its own facts and the evidence let in by the prosecution has to be seen in that light and it is not necessary to cite decisions of this Court but reference to two decisions of this Court may not be out of place. In the case of *Surinder Singh v. State of Punjab*¹, this Court observed as follows :

“3. PW 2 went back to his house and dozed off for some time and thereafter went and informed PW 3 at his house as to what had happened. PW 3 went to the New Market along with PW 2 and saw the dead body of Manjit Singh lying there. He advised PW 2 to inform the matter to one Jagan Nath and on PW 2 informing Jagan Nath he was asked by the latter to inform one Kartar Chand, Municipal Commissioner about the occurrence and accordingly PW 2 went and informed Kartar Chand. Thereafter it is said that Kartar Chand took PW 2 to the police station and PW 2 lodged the first information report.

12. The conduct of PW 2 after the occurrence had taken place has certainly to be viewed with suspicion. If he had been a witness to the murderous attack on Manjit Singh, it would be natural to expect him to go and inform the parents and relations of Manjit Singh of the occurrence and also the police authorities. On the other hand what PW 2 had done was to go to his house and sleep for some time and then go and inform the matter to PW 3 and some others. The story of PW 2 that because of the

¹ 1989 Suppl. (2) SCC 21

threats of the appellant he did not go and inform anyone forthwith cannot be readily accepted. If he was so frightened at that time to go and tell others about the occurrence, it is not known how he was able to get over his fears a few hours later and go and inform PW 3 and others about what had happened.”

11. This Court in *Surinder Singh*,¹ thus, held the conduct of an eyewitness suspicious who after seeing the occurrence did not go to inform parents and relatives of the deceased but went to his own house and after some time informed other persons. His explanation that he did not inform anyone because of threats was found not acceptable.

12. In *Jaisingh and Ors. v. State of Karnataka*¹, this Court observed as follows :

“5. As already observed above, the entire prosecution story hinges on the evidence of PWs 30 and 33. A bare reading of their evidence however shows that it cannot be relied upon. Clearly the two were chance witnesses and have not been able to explain the circumstances which brought them to the place of incident at 6.30 a.m. PW 30 Kishore deposed that he had seen the incident along with PW 33 Dhanaji Tukaram Mane from a distance of about 50 feet while he was one kilometre away from Village Veeravade on Pakani-Veeravade road. Concededly all the accused, the deceased and the two eyewitnesses belonged to Village Veeravade and were thus co-villagers known to each other. The conduct of this witness is truly amazing. As per his evidence he reached Veeravade about half an hour after the incident but he did not inform anybody as to what had transpired till 18-1-1997 or 19-1-1997 when his statement under Section 161 CrPC was recorded by the police. He further stated in his cross-examination that he had gone to the police voluntarily and had not been summoned. The statement of PW 33 is

1 (2007) 10 SCC 788

even more unreliable. He admitted that he was the first cousin of the deceased and that after witnessing the murder had gone on to Village Akola to meet his sister and had returned to Village Veeravade after several days. He also admitted in his cross-examination that the house of the deceased was only 150 ft away from his house and that he had not informed anybody about the murder till the 19-1-1997 on which he was confronted with his statement under Section 161 CrPC wherein he had stated that he had returned to Village Veeravade on the day after the incident. We find it absolutely impossible to accept that this witness could have gone to Village Akola after having been a witness to the brutal murder of his cousin and had not even informed anyone from the family of the deceased living only 150 ft away about the incident till 19-1-1997.

6. It is true, as has been contended by Mr Hegde, that some allowance must be made for the fact that the incident had spilt over to two States or that the two witnesses had been so overtaken by fear on account of the two warring political groups in the village. We find, however that PW 30 gave no explanation as to why he had kept quiet for almost six days whereas PW 33 did, in a stray sentence, depose that he had been scared to talk to anyone about the murder. To our mind, this explanation is unacceptable as this witness had tried to hide the fact that he had returned to Village Veeravade from Village Akola the day after the incident, and being the first cousin of the deceased, and living only 100 ft away from the latter's house, still did not inform the family or anybody in the village about the murder for a period of six days. This bespeaks of absolutely unnatural conduct.

13. In our considered view the evidence of PW-6 and PW-7 suffers from inherent improbabilities and we do not find it safe to rest the conviction of A-1 and A-2 on their evidence. It is true that the findings of the two courts are concurrent but in view of unreliability of two eyewitnesses (PW-6 and PW-7), the whole prosecution case is rendered inherently impossible of belief.

14. In the result, both appeals are allowed and the judgment and order dated August 21, 2006 passed by the High Court of Punjab and Haryana affirming the judgment of Sessions Judge, Bhiwani dated September 5, 2003 is set aside. The appellants are acquitted of the offences under Sections 302 and 201 read with Section 34, IPC. They shall be released forthwith, if not required in any other case.

New Delhi,
September 28, 2010

..... J.
(Harjit Singh Bedi)

..... J.
(R.M. Lodha)

JUDGMENT