

PETITIONER:
SMT. CHHANNO & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 24/04/1996

BENCH:
G.B. PATTANAIK (J)
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G.B. PATTANAIK (J)
RAY, G.N. (J)

CITATION:
JT 1996 (4) 719 1996 SCALE (4)8

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, J.

These three appeals arise out of one and the same Sessions Trial being Sessions Trial No. 26 of 1984 where in appellant - Jai Bhagwan stood charged under Section 302 I.P.C. and the two other appellants were charged under Sections 302/34 I.P.C., alternatively under Sections 302/114 I.P.C. All of them were also charged under Section 460 I.P.C. The learned Additional Sessions Judge acquitted accused - appellant Maman but convicted appellant Jai Bhagwan under Section 302 I.P.C. as well as under Section 460 I.P.C. for having intentionally caused the murder of deceased Sanjay. He also convicted accused - appellant Chhanno under Sections 302/109 I.P.C. While Jai Bhagwan was given death sentence for conviction under Section 302 I.P.C. and was further sentenced to undergo imprisonment for ten years under Section 460 I.P.C. Chhanno was sentenced to imprisonment for life for her conviction under Sections 302/109 I.P.C. Against her conviction and sentence Chhanno preferred an appeal which was registered as Criminal Appeal No. 203-DB of 1985. Jai Bhagwan also preferred an appeal against his conviction and sentence which was registered as Criminal Appeal No. 233-DB of 1985 and against the death sentence, the reference to the High Court was registered as Murder Reference No. 3 of 1985. Against the acquittal of Maman, State also preferred an appeal which was registered as Criminal Appeal No. 255-DBA of 1985. All these appeals were heard by the Division Bench of the Punjab and Haryana High Court. While Justice K.S. Tiwana not only affirmed the acquittal of Maman but also acquitted two other accused appellants who had been convicted by the learned Additional Sessions Judge. Mr. Justice B.S. Yadav disagreed from the conclusions of Mr. Justice Tiwana and confirmed the conviction of Jai Bhagwan under Section 302 I.P.C. but altered the sentence from death to imprisonment for life. The conviction and sentence under Section 360 I.P.C. was,

however, maintained. The conviction and sentence of accused Chhanno passed by the learned Additional Sessions Judge was maintained. The order of acquittal of accused Maman was set aside and he was convicted under Sections 302/114 I.P.C. and was sentenced to imprisonment for life and he was further convicted under Section 460 I.P.C. and sentenced to imprisonment for 10 years. In view of the difference of opinion between the two learned Judges the case was heard by the 3rd Judge, who by his Judgment dated 24th January, 1986 agreed with the conclusion of Justice B.S. Yadav and convicted accused Jai Bhagwan under Sections 302 as well as 460 I.P.C. and sentenced him to undergo imprisonment for life for conviction under Section 302 I.P.C. and imprisonment for 10 years under Section 460 I.P.C., sentences to run concurrently. He also maintained conviction and sentence of accused Chhanno passed by the learned Trial Judge. So far as the acquitted accused Maman is concerned he also set aside the order of acquittal and convicted him under Sections 302/109 I.P.C. and sentenced him to imprisonment for life. In view of the majority view of the High Court, the appellants thus being convicted and sentenced differently as stated above have preferred these appeals.

The prosecution case in nutshell is that Chhanno and her husband Maman were living as tenants in the house of one Manoharlal at Kharkhoda in the district of Sonapat. Dr. Radha Krishan, PW. 4 had his house nearby. On 7th of August, 1982 there was altercation amongst the ladies of the Moholla while taking water from the common water tap and at the instance of PW. 4 Chhanno was assaulted. Maman went to a lawyer and wanted to file a complaint against PW. 4. on the very day i.e. 7th of August, 1982. PW. 6 as well as two other persons made a complaint to the Station House Officer, Kharkhoda Police Station against Maman and Chhanno. All the parties were called by the police officer and the matter was compromised. Jai Bhagwan was a sepoy in the Central Secretariat Security Force, Ministry of Home Affairs, New Delhi. He had married Madhubala, PW. 1, daughter of Manoharlal who was the landlord of accused Maman and Chhanno. The further prosecution case is, Jai Bhagwan came to his father-in-law's house at Kharkhoda on 18th of August, 1982 at 9 P.M. and after taking his meals went to the tenanted portion of the house where Chhanno was staying and did not return till late night. On the next morning i.e. on 19th August, 1982 said Jai Bhagwan was called by Chhanno and he took his tea with her and stayed with her for about half an hour. Maman and Chhanno then went to Sonapat and returned back to Kharkhoda in the evening. Immediately on the return Chhanno called Jai Bhagwan. Madhubala after waiting for some time, when found her husband had not returned, went to outer door of Chhanno's house to find out what her husband is doing there. She then heard the conversation between Maman and Jai Bhagwan and Maman was asking Jai Bhagwan to kill Radha Krishan, PW. 4 as he has been harassing them. Chhanno also persuaded Jai Bhagwan to kill Radha Krishan. Some time thereafter Jai Bhagwan returned to his house and started sharpening a knife whereas his wife Madhubala persuaded him not to commit the murder. Jai Bhagwan did not listen to her and on the other hand threatened to kill her in case she disclosed this fact to anybody else. During the night while Radha Krishan, PW. 4 his wife and daughter slept on the first floor of the house, his son Sanjay was sleeping in the verandah on the ground floor. All of a sudden Radha Krishan heard the loud voice of his son Sanjay he therefore shouted and ran downstairs. While coming down he saw Jai Bhagwan

running away after extracting, the knife from the abdomen of Sanjay. When Radha Krishan shouted, Ami Chand, PW. 2 and Gian Chand PW. 3, woke up, who were sleeping in the lane, and found both Jai Bhagwan and Maman coming out of the house of Radha Krishan and running away. They also saw Chhanno, standing in the street. Madhubaila PW. 1 also saw her husband Jai Bhagwan and Maman coming out of Radha Krishan's house. PWs 2 and 3 chased the accused persons but could not overtake them. Radha Krishan, PW. 4 went to the police station at Kharkhoda and gave his report at 1 P.M. on 20th August, 1982 which was stated as F.I.R. The Inspector of Police, PW. 21 recorded the First Information Report and then started to the place of occurrence for investigation. He sent for finger-print experts and dog squad, prepared the inquest report on the dead body of Sanjay and sent it for post mortem examination. The finger-print expert found some finger-print impression on a lock and a small mirror. On completion of investigation charge sheet was filed and thereafter the accused persons were committed. They were tried by the learned Additional Sessions Judge as already stated. The defence plea is one of denial. The prosecution examined as many as 21 witnesses of whom PWs 1 to 4 are relevant witnesses in unfolding the different parts of the prosecution story. The Doctor, PW. 18 had conducted the post mortem examination on the dead body of Sanjay Kumar and had found 7 incised wounds on the different parts of deceased Sanjay Kumar. According to him the death was on account of injuries to vital organs like heart and lungs which was sufficient for death in the normal course of life and the injuries could be possible with a knife. The learned Additional Sessions Judge did not place any reliance on the evidence of PWs 1, 2 and 3 and came to hold that they had not chased anybody and have been falsely introduced into the picture. So far as statement of Madhubala PW 1, wife of accused Jai Bhagwan, the learned Additional Sessions Judge did not rely upon her statement relating to her seeing Jai Bhagwan and Maman entering into the house of Doctor Radha Krishan and at that time someone was standing outside the house. He, however, relied upon the evidence of PW 4 who saw Jai Bhagwan running away from the place of occurrence and further relied upon the conduct of Jai Bhagwan in making statement while in custody pursuant to which knife was recovered, which knife according to doctor could cause injury on the Sanjay. On a thorough discussion of the evidence on record ultimately the learned Additional Sessions Judge acquitted Maman but convicted Jai Bhagwan under Sections 302 and 460 I.P.C. and convicted Chhanno under sections 302/109 I.P.C. On appeal when the matter was first heard by the Division Bench, Justice Tiwana one of the learned Judges constituting the Division Bench disbelieved all the prosecution witnesses and confirmed the order of acquittal passed by the learned Additional Sessions Judge so far as accused Maman is concerned and set aside the conviction of two other accused appellants namely Jai Bhagwan and Chhanno. But Justice Yadav the other learned Judge of the Division Bench relied upon the evidence of PWs 1, 2, 3 and 4 and confirmed the conviction of accused Jai Bhagwan and set aside the order of acquittal of Maman and convicted him under sections 302/109 I.P.C. He also altered the conviction of accused Chhanno from 302/114 I.P.C. to one under 302/109 I.P.C.. When the matter went to the third Judge, he agreed with the findings and conclusions of Justice Yadav and convicted the appellants and hence the present appeals.

Mr. Sushil Kumar, learned Senior Counsel appearing for

the appellants namely Chhanno and Maman contended that in the F.I.R. the names of two appellants had not been mentioned. The evidence of Madhubala, wife of accused Jai Bhagwan to the effect that she heard so called conspiracy between Maman, Chhanno and Jai Bhagwan had rightly been discarded by the Trial Judge and the High Court committed error in relying upon the same. He further contended that the evidence of PWs 2 and 3 could not have been accepted in view of inherent inconsistencies in their version and at any rate even if the same is accepted no conviction can be based on the same since they merely saw Chhanno and Maman running away on the street. Lastly, he contended that even if the evidence of Madhubala, PW 1 is accepted, but the so called abetment alleged to have been made by Chhanno and Maman is to kill the Dr. Radha Krishan, PW4 and not his son and therefore in the matter of killing the son there had been no abetment. We find sufficient force in the aforesaid contentions of Mr. Sushil Kumar. The learned counsel appearing for the State on the other hand contended that there would be no reason for Madhubala the wife of Jai Bhagwan to depose against her own husband and the said evidence of PW 1 if read with the evidence of PWs 2 and 3 it must be held that the prosecution case against all the accused has been proved beyond reasonable doubt. The question, therefore, arises for consideration is as to whether the evidence of PWs 1, 2, 3 and 4 can be believed so far as appellants Chhanno and Maman are concerned and even if believed can it be said that they committed the offence of abetment of murder of Sanjay?

As has been stated earlier in the F.I.R. lodged by PW 4, there has been no mention of Maman and Chhanno. Though it was stated that PWs 2 and 3 came to the spot of occurrence immediately and saw Jai Bhagwan running in the electric light, if PWs 2 and 3 would have also seen Chhanno and Maman running on the street they would have definitely mentioned the same to PW 4 at the spot of occurrence immediately on hearing the shout of PW 4. PW 2 no doubt in his evidence in chief had stated to have seen Maman coming out of the house of Dr. Radha Krishan and Chhanno was standing near the water tap. But in his cross-examination he candidly admitted that even though he reached the house of PW 4 after hearing the noise he did not enter the house nor did he know what happen inside the house. He further stated that it was a dark night being new moon day. He also stated that police have recorded his statement twice. No explanation has been offered as to why his statement was recorded twice. In his cross-examination he stated, by the time he reached Radha Krishan's house police was already there but he did not know what the police was doing. It is difficult to rely on the statement of PW 2 and even if it is relied upon his statement would indicate that he saw accused Maman and Chhanno on the road at the time of occurrence. PW 3 who is the other prosecution witness is also not reliable inasmuch as even though he was a witness in an earlier criminal case against Maman and Chhanno but he denied the same. Like PW 2, he stated in his statement in chief that he saw Maman coming out of the house of Radha Krishan and Chhanno was standing outside. In his cross-examination he stated that his statement was recorded by the police at 7 A.M. It may be noted that according to PW 2 the Police was present by the time he reached the house of Radha Krishan and the police recorded his statement. whereas according to PW 3 his statement was recorded at 7 A.M. The Investigating Officer, PW 21 on the other hand stated that when he reached the place of occurrence though many people were present but the

statement of PW 3 had not been recorded then and PW 3 met him only on the next day. In the aforesaid premises we are of the considered opinion that no reliance can be placed on the testimony of PW 3. It may also be noted that even if his statement is accepted it proves only the fact that he saw Maman and Chhanno at about the time of occurrence and nothing further. Now coming to the evidence of PW 1, Madhubala. she stated in her cross-examination that even though her grand father was there in the house but she never disclosed about her seeing of Chhanno and Maman. She admitted in her cross-examination that she did not say before the police that Maman has directed her husband to kill Radha Krishan. She had even stated before the police that her husband had threatened her not to make noise and that she had not stated Sanjay, son of doctor being killed. About her statement in chief that she could hear the discussion between Maman and Jai Bhagwan and the plan to kill the doctor, it is difficult to believe. Coming to PW 4, he had not implicated Maman and Chhanno anywhere in his evidence and he has implicated only Jai Bhagwan to whom he saw running away from the house. This being the evidence, we have no hesitation to come to the conclusion that the prosecution has utterly failed to establish the charge of abetment of murder against the appellants Chhanno and Maman and therefore conviction and sentence cannot be sustained. It may be further stated that even Madhubala never stated that there was any plan, if such plan is to be believed, to kill Sanjay but on the other hand the so called inducement was to kill Doctor. PW 4. If that be so, but actually when Sanjay was killed how can the charge of abetment of murder of Sanjay can be held to have been established? We do not think it necessary to further delve into the matter in view of our conclusion that the evidence of PWs 1, 2 and 3 cannot be relied upon to bring home the charge against Maman and Chhanno. Accordingly we set aside the conviction and sentence of accused Maman and Chhanno.

But so far as accused Jai Bhagwan is concerned the same stand on a different footing. PW 4 in the F.I.R. had stated that soon after he came down stairs he saw accused Jai Bhagwan leaving his house with a knife in his hand. In his evidence in court he has no doubt made an exaggeration by stating that he saw accused Jai Bhagwan Pulling out the knife from abdomen of Sanjay and running. But the said exaggeration and embellishment has to be discarded and the substantive part of his evidence that he saw accused Jai Bhagwan running away from the house with a knife in his hand has to be accepted. The evidence of PW 1, Madhubala implicating her husband cannot be doubted inasmuch as no reasons have been given as to why the wife would falsely depose against her husband. Her evidence indicates that Jai Bhagwan had some illicit relationship with Chhanno and it may be to please Chhanno, Jai Bhagwan went to the house of PW 4 and committed the ghastly act. Jai Bhagwan also while in custody made a statement in pursuance of which the knife, Exhibit P-1 was recovered. The Doctor, PW 18 opined that the injury on the deceased could be inflicted with the said knife. The knife in question was sent for serological test and was found having human blood. The cloths of Jai Bhagwan had been seized and sent for chemical examination and the report of the Chemical Examiner indicates that there was numerous medium and small blood stains. though he has not been able to say whether it was human blood or not.

Over and above the aforesaid incriminating materials the report of the finger print expert indicates that Jai Bhagwan's finger-print was found on the mirror and the lock

of PW-4's house. Jai Bhagwan no doubt took a plea of alibi that he was sleeping in his father-in-law's house but this is falsified by the evidence of his wife Madhubala. PW 1. In the aforesaid premises the conclusion is irresistible that the charges against appellant Jai Bhagwan have been proved by the prosecution beyond reasonable doubt and the same cannot be interfered with.

In the ultimate analysis. therefore, the conviction of appellants Chhanno and Maman are set aside and they are acquitted of the charge levelled against them, their bail bonds stand discharged. Criminal Appeal Nos. 499 of 1986 and 247 of 1986 are accordingly allowed. The conviction of appellant Jai Bhagwan and sentence passed thereunder is affirmed. Accordingly Criminal Appeal No. 39 of 1987 is dismissed. His bail is cancelled, he should surrender forthwith for serving the sentence.

JUDIS