

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1265 OF 2006

BABLI @ RAJWANTI

.....

APPELLANT

VERSUS

STATE OF HARYANA

.....

RESPONDENT

O R D E R

1. Six persons, Rohtas, his wife Phoolwati, Babli @ Rajwanti, Sadhu Ram, Pada @ Jai Singh and Har Krishan were tried for offences punishable under Section 302/149 IPC for having committed the murders of Om Prakash, his wife Satwanti, and their four children, Rekha, Ajit, Dharmender and Rakesh on the late evening of 20th June, 1996 in village Jhanswa Kalan, Police Station Sahlawas, District Rohtak, Haryana.

2.1 The trial court in its judgment dated 10th April, 1997, Sessions Judge, Rohtak, convicted Rohtas, Sadhu Ram, Pada @ Jai Singh and Har Krishan for the aforesaid offences and sentenced them to death whereas the other accused were sentenced to imprisonment for life. The

accused thereupon filed an appeal in the High Court of Punjab and Haryana whereas the matter was referred under Section 366 of the Code of Criminal Procedure by the Sessions Judge for the confirmation of the death sentence. The High Court vide the impugned judgment dismissed the appeal but also declined the murder reference thereby reducing the sentence on Sadhu Ram, Pada and Har Krishan to life as well. The present appeal has been filed at the instance of Babli @ Rajwanti alone as it appears that the other accused have accepted their conviction and sentence.

2.2 The case was initiated on the statement of P.W. 3 - Manju, the only surviving child of Om Prakash and Satwanti and the only one who witnessed the incident from outside the house as she was returning home after watching TV in the house of Ram Chander Brahman who lived just across the road. She, accompanied by Pradhan Suraj Bhan, went to police Station Sahlawas and lodged a report at about 11:45p.m. in which the names of the accused, the weapons that they were carrying and the injuries caused by them were given. On the completion of the investigation, the accused were brought to trial and convicted and sentenced as mentioned above. The trial court as well as the High Court have, perforce, relied almost exclusively on the

statement of P.W. 3 - Manju.

3. Mr. K.B. Sinha, the learned senior counsel for the appellant cognizant of the fact that the entire matter would hinge on Manju's statement has sought to challenge her credibility. He has first pointed out that the evidence of a child witness was always beset with problems as a child would often be swayed by his or her imagination and was also liable to tutoring and it was, therefore, incumbent on the court to be fully convinced about the reliability of such a witness before basing its decision only on this evidence. He has also submitted that there was no apparent motive for the appellant to have joined the others in the assault as she could not have been a beneficiary in the property dispute between the accused and the deceased groups who were very closely related to each other. He has finally submitted that in any case there was no evidence to show that the appellant shared the common object to commit murder with that of her co-accused as it was not clear as to the injuries that she had been caused to the deceased.

4. The learned counsel for the State has, however, supported the judgment of the trial court.

5. It is true, as contended by Mr. Sinha, that the

entire case would hinge on Manju's evidence as she is the only survivor of Om Prakash's family. In the FIR, she has given full details as to what she had seen from just outside her house as she was returning, after having gone to watch the TV at a neighbour's place. When Manju was brought into the witness box, the Sessions Judge put several questions to her to test her intelligence and her capacity to understand as to what she was talking about and after he had satisfied himself about her suitability as a witness that she was questioned by the parties. We find that the answers given by Manju were spontaneous, and natural, given in the vernacular of the area which greatly enhances her value as a good witness. Manju in the course of her examination in chief supported the facts in the FIR and when cross examined she met the cross examination forthrightly and with confidence. We see from her cross examination that except for one or two irrelevant answers which were not in any way material to the case, no fact could be elicited by the defence from her statement. It is true, as contended by Mr. Sinha, that the possibility of tutoring of a child is a possibility but it must also be accepted that the tutoring would ordinarily take place for the purposes of the questions to be asked in the examination in chief and it would be difficult to tutor a child with respect to the question

which might be asked in the cross examination.

6. Mr. Sinha has, however, cited Abbas Ali Shah v. Emperor AIR 1933 Lahore 667 and Nirmal Kaur v. State AIR 1992 SC 1131 in support of his submission with regard to the evaluation of the evidence of a child witness. These judgments merely reiterate the well settled position that as a child witness is prone to tutoring and a fanciful imagination the Court must be satisfied about the capacity of the child before relying on his or her evidence. In any case, it is for the trial court who has seen the demeanour of the child to ascertain as to whether the child was a reliable witness.

7. We have also examined Mr. Sinha's argument with regard to the lack of motive insofar as the appellant herein was concerned. We see from the genealogy that the appellant was the daughter of Hawa Singh and the sister of Sadhu Ram who was one of the accused and whose conviction has become final. It is also true that all the accused were the first cousins of Om Prakash and thus very closely related to each other. Undoubtedly appellant who is a married lady may not be a beneficiary out of the property dispute which had led to the murders but the fact that she had joined the others is proved from the statement of P.W. 3 - Manju,

more particularly, as she had caused specific injuries to some of the deceased. The factum of traditional family loyalties within a rustic family with an agricultural background cannot be ruled out.

8. Mr. Sinha has finally submitted that a case under Section 302 of the IPC was not made out against the appellant and at the worst it could be a case of culpable homicide not amounting to murder. We are unable to accept this contention. We see from the record that the appellant had caused as many as 6 or 7 injuries most of them on the head of the deceased with a rapri that she was carrying and in any case she had joined the other co-accused who between them had caused as many as 50 injuries to the six deceased in a particularly vicious and brutal manner.

9. For the reasons given above, we are not inclined to interfere in this matter. The appeal stands dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[A.K. PATNAIK]

**NEW DELHI
JANUARY 28, 2010.**

