

CASE NO.:
Appeal (crl.) 247 of 1991

PETITIONER:
SOHAN AND ANR.

RESPONDENT:
STATE OF HARYANA AND ANR.

DATE OF JUDGMENT: 02/03/2001

BENCH:
U.C. BANERJEE & SHIVARAJ V. PATIL

JUDGMENT:
JUDGMENT

2001 (2) SCR 309

The Judgment of the Court was delivered by

SHIVARAJ V. PAUL, J. These appeals are directed against the judgment and order of the High Court of Punjab & Haryana made in Criminal Appeal No. 454-DB of 1985.

These appellants were accused nos. 1 to 6 before the Sessions Court. A-1 is the father of A-2. A-3 is the father of A-4 to A-6. A-1 and A-3 are brothers by birth.

The prosecution case as unfolded by PW-7 at the trial is that on 11.2.1985 the deceased Daya Nand and PW-7 Hoshier Singh had started from their village in order to reach Bhiwani to attend court hearing in the appeal. When they were at the outskirts of the village, the six accused emerged from behind stones. Randhir (A-2) and Kartar (A-5) were armed with pharsis and rest of them with lathis. They surrounded the deceased and PW-7 saying "In Ko Aaj Yahin zamin dai do aur khata kar do". Looking to the danger, the deceased and PW-7 ran into the nearby house of Nanak, the door of which was open. The accused chased them. PW-7 ran ahead deeper into the house and reached a point where there is a Neem tree and which is at higher level. He looked back and saw Daya Nand had scaled a dauli (a small wall). He was overtaken by Randhir who had also jumped over the dauli. Randhir gave a pharsi blow on Daya Nand. At that stage, accused Partap reached there and he also gave three lathi blows to Daya Nand in the back. Sohan, Ramanand and Rajinder also arrived there and each of them gave one lathi blow to Daya Nand. Sumer, son of Nanak, the owner of the house having come out of the house also saw this occurrence. After dealing with Daya Nand, the accused proceeded to chase PW-7 but he ran away to his house. After reaching home, he narrated, as to what happened, to his brother Dani Ram and cousin Tara Chand who were sitting at the entrance of the house and brought them to the spot of occurrence. They found Daya Nand lying unconscious and the accused had run away. They took Daya Nand to his house. From there, they brought him to Primary Health Centre at Gopi at about 8.00 or 8.15 A.M.

According to PW-1, Dr. Dilbagh Singh, Incharge of the Gopi Primary Health Centre, Daya Nand was brought to hospital at 8.30 A.M. His condition was serious as he was having multiple injuries; after giving emergency treatment, referred him to General Hospital, Bhiwani giving a ruqa to Police Station, Badhra. PW-2, Dr. R.N. Swami, attended Daya Nand at General Hospital, Bhiwani. He sent ruqa at 10.10 A.M. to the Incharge, Police Post, General Hospital, Bhiwani and proceeded with medical examination. He found 12 injuries on Daya Nand. In response to the ruqa sent by PW-2, Sub-Inspector, Udey Chand (PW-9), Incharge, Police Post, General Hospital, Bhiwani reached the emergency ward at 10.20 A.M. to find out if Daya Nand was in a fit condition to make statement. The doctor gave opinion that Daya

Nand was unfit to make a statement. PW-9 has stated that a man who was present by the side of Daya Nand told him that PW-7 had gone to bring medicine. PW-9, Udey Chand could meet PW-7 at about 12.15 P.M. and recorded his statement as per Ex. PK/1 which constituted F.I.R. in the case. With his endorsement PK/2, PW-9 gave ruqa Ex. P.C. along with his application made to the doctor and copy of M.L.R. with a direction to carry to the Police Station Badhra for the registration of the case. Daya Nand died at 12.10 A.M. on 12.2.1985. PW-2, Dr. Gupta intimated this fact to the Incharge, Police Post of the Hospital, Bhiwani. The dead body was subjected to post-mortem examination by Dr. R.G. Jindal (PW-4). The accused Randhir surrendered to the court on 14.2.1985. The remaining accused were also arrested on 15.2.1985. Thereafter recoveries were made at the instance of the accused as per the details given in the judgment of the Sessions Judge in paragraphs 20-27.

In support of the case, the prosecution examined 12 witnesses including PW-6 Amir Chand, Draftsman and PW-10 Deep Chand, the Headmaster of Government High School, Dalawas.

The learned Sessions Judge relying on the evidence of sole eyewitness PW-7 - Hoshiar Singh convicted all the accused for the offences under Sections 148 and 302 read with Section 149 of IPC.

It is unfortunate that the approach and appreciation adopted by the Sessions Court was manifestly erroneous and contrary to the well-settled principles of law. It may be said that the approach of the learned Sessions Judge has been one-sided. Lapses, omissions and contradictions in the prosecution case were either condoned or lightly brushed aside or were supported without any justification against the probabilities appearing in the case which is clearly demonstrated hereinbelow. It should be remembered that PW-7 - Hoshiar Singh is the cousin of the deceased Daya Nand. Admittedly, there was civil litigation between the accused on the one side and deceased Daya Nand and himself and others on the other side. The alleged motive for the commission of offence is the very civil litigation. The suit for permanent injunction in respect of land in dispute was filed on 11.3.1982 by accused Sohan in which temporary injunction order was granted against the deceased and PW-7 and others which was confirmed later after hearing both the parties. Thereafter the suit itself was decreed on 20.12.1983. The deceased Daya Nand and PW-7 had filed appeal against the decree in the Court of Addl. District Judge, Bhiwani on 23.1.1984. PW-7 had however admitted that accused Sohan was in exclusive possession of the said land. These facts are established by documents Ex. DA/1 to DA/10. PW-7 in the F.I.R. as well as before the court had claimed that civil suit with regard to the joint land was instituted by him and Daya Nand against other co-sharers Sohan and others and that the same was dismissed. This was incorrect and belied by Ex. DA/1 to DA/10. When it was pointed out that PW-7 was not trustworthy as he had made false statement against the records being himself party to the proceedings, the learned Sessions Judge in para 35 of the judgment, dealing with the same has stated thus :-

"The criticism is factually correct but it does not make any dent in the prosecution case. Hoshiar Singh is an illiterate witness and is not expected to know the background details of litigation. Suffice it to say that it is a common case of the parties that there was litigation over the land. In other words, there was bad blood between them and that is enough for our purpose."

According to the learned Sessions Judge, it was enough for the purpose of establishing motive of the accused to commit the crime but failed to objectively consider why it was not enough to disbelieve the evidence of PW-7 in view of the fact that he was both interested and partisan that too in the absence of any corroboration.

As to the contention that PW-7, Hoshiar Singh, was most unlikely to accompany the deceased to Bhiwani on the date of occurrence on the ground

that looking to Ex. DA/5 to DA/10, the order passed in the appeal, the presence of PW-7 was not there and in the appeal his presence was not required on 11.2.1985, the learned Sessions Judge observed that there was no bar for PW-7 from attending the court and that he was illiterate person and did not know what proceedings were to take place. That learned Sessions Judge added on his own "Even otherwise also, the parties do attend even on dates which are not for final hearing". On behalf of the accused, efforts were made to show that neither the deceased Daya Nand nor PW-7 Hoshiar Singh on the date of occurrence at the time mentioned were going from their village to Bhiwani, referring to various circumstances, one of the circumstance being neither any money nor any documents were recovered from the dead body of Daya Nand. The learned Sessions Judge has strongly observed thus :-

"It is not disputed that injured Daya Nand was first carried home. If he had any documents or money on his person, the same might have been removed by the members of his family. There was no point in sending a dying man to the Hospital with money or documents in his pocket. The wiser course would be to remove them."

The case of the accused that it was a blind murder, must have taken place at night time was brushed aside without any deeper consideration.

When it was found that there was conflict in the evidence of PWs 6 & 7, the learned Sessions Judge preferred to believe PW-7, a partisan, rather than the PW-6, the Draftsman, a Government servant. The learned Sessions Judge has dubbed him as a dishonest witness. If that be so, we fail to understand as to why the prosecution did not treat him as hostile.

When the contradiction in the evidence of PW-11 - Sub Inspector Krishan Lal was pointed out with reference to sending of ruqa of the doctor along with the M.L.R., the learned Sessions Judge has stated thus:-

"This discrepancy is there, but it is wholly immaterial. It appears that the memory of the S.I. was failing him on this point."

Similarly when it was contended that there was delay in the F.I.R., the learned Sessions Judge has stated that Daya Nand was in a serious condition; everybody including PW-7 were interested to save life of the deceased although the Sub Inspector of Police went to hospital at 10.20 AM, he could not meet PW-7 till 12.20. It is stated that PW-7 had gone to buy medicines and as such he was not available. The presence of PW-7 in the hospital was not spoken to by the doctor on duty and even his name was not mentioned as a person accompanying the deceased to the hospital. With all this, the learned Sessions Judge says that the delay in F.I.R. is never vital per se when the evidence otherwise inspires confidence. It is strange as to how such evidence of PW-7 alone without any corroboration could be said to inspire confidence.

Again when contradiction in the statement of ASI Kaura Ram was shown with regard to leaving police station for starting investigation, the learned Sessions Judge has stated thus:-

"Surely, the statement of A.S.I. Kaura Ram does not tally with the record. But for whatever reason this lacuna may be, it does not go to the root of the matter even if we exclude the presence of Kaura Ram from the scene on 11.2.1985, the prosecution case will remain unaffected."

The learned Sessions Judge did not appreciate the evidence objectively. He failed to see that all the male members 3of the two families of the accused were involved because of enmity on account of land dispute. The evidence of PW-7, the sole eye-witness without any corroboration ought to have been scrutinized with great caution who has given the graphic details as to the injuries caused by each accused when he himself was frightened and was running away.

The trial court partly believed the recovery of weapons and clothes but the High Court totally disbelieved the recovery. This was also strong circumstance against the prosecution.

Reacting to the submission that non-examination of another eye-witness Sumer the learned Sessions Judge has stated thus :-

"But Sumer was given up as having been won over by the accused. And the phenomenon of such winning over is not unknown to the courts. In any event, Sumer's non-examination does not wash away the remaining evidence."

This approach of the learned Sessions Judge is unusual and strange. The learned Sessions Judge failed to objectively assess and analyse the evidence and circumstances consistent with crystalised judicial view and that it was unsafe to act on the sole evidence of PW-7 in the circumstances.

An accused is presumed to be innocent until he is found guilty. The burden of proof, that he is guilty, is on the prosecution and that the prosecution has to establish its case beyond all reasonable doubts. In other words, the innocence of an accused can be dispelled by the prosecution only on establishing his guilt beyond all reasonable doubts on the basis of evidence. In this case, if only the Sessions Judge had reminded himself of the above-mentioned basic or fundamental principles of criminal jurisprudence, direction of his approach and course of his appreciation of evidence would have been different and thereby perversity in appreciation of evidence could have been avoided.

It is equally unfortunate that the High court did not seriously and objectively re-appreciate the evidence placed on record as the first appellate court, but has simply appended its seal of approval to the judgment of the Sessions court. When it was pointed out that PW-7 was not a truthful witness inasmuch as he gave false statement with regard to the very litigation between the parties, the High Court observed that whatever may be the situation that a case was fixed in the appeal on 11.2.1985 and to attend the proceedings in the appellate court, someone had to go to the court. We fail to understand as to how someone had to essentially go to attend the court in appeal. The High Court proceeded to say that PW-7 had no reason to falsely implicate the accused 4 to 6 unless they were there. The observation of the High Court is that :-

"The manner in which Daya Nand deceased and Hoshiar Singh PW-7 were chased also shows that the accused were sufficient in number. The number and type of injuries on the dead body of Daya Nand deceased also suggests that the number of assailants was quite big. These circumstances lend assurance to the truthful nature of this version."

We are unable to understand as to how chasing deceased Daya Nand and PW-7 showed that the accused were sufficient in numbers and similarly how the number and types of injuries on the deceased suggested that the number of assailants was quite big. If this is accepted, the number of accused could be more than six. Commenting on the non-examination of another eye-witness Sumer, the High Court has stated thus :-

"As the land dispute between Daya Nand and his collateral on the one side and Sohan Lal accused on the other had resulted into this incident, Sumer, his father and other people in the village may not have liked siding with anybody. These days it is commonly seen that in such disputes, people normally abstain themselves from involving into the affairs of others by taking stand in favour or against any of the parties."

In the absence of any explanation by the prosecution as to the non-examination of the Sumer, this sort of conjecture by the High Court was neither warranted nor sustainable. The High Court has made further guess

work by stating that:-

"There may be other reasons for Sumer to stay away from the witness box which may not be envisaged by us."

In regard to non-examination of Dani Ram, the brother of PW-7 and Tara Chand, the cousin of PW-7, the High Court has stated that their appearance or non-appearance could hardly improve matters in favour of the accused.

It was pointed out that when Daya Nand was taken to Bhiwani hospital, Tara Chand was with him at the time of his medical examination and if PW-7 was with the deceased at that time, his presence would have been recorded by the doctor. The doctor stated that Tara Chand was there. PW-7 himself had stated that Tara Chand had accompanied him when he took Daya Nand, the deceased, to the hospital. This was another reason why Tara Chand should have been examined. Non-mentioning the name of PW-7 as accompanying the deceased to the hospital also raises the doubt as to his presence in the hospital.

The High Court has disbelieved the recovery of the clothes and weapons of the offences. With all this, the High Court affirms the judgment of conviction of the Sessions Court acting on the evidence of PW-7 alone.

We may add that the prosecution case entirely rested on the sole evidence of PW-7, who was not only interested being the cousin of the deceased and was inimical too to the accused in view of the civil litigation referred to above. It was unsafe to act on his evidence without any corroboration. Although there were material witnesses available to corroborate, their non-examination or withholding their evidence was a serious lacuna in the prosecution case. Non-examination of another eye-witness, Sumer, whose name was mentioned in the FIR and who had witnessed the occurrence according to PW-7, was also fatal. PW-7 stated that he himself, his brother Dani Ram and his cousin Tara Chand went to the place of occurrence and lifted Daya Nand to his house and their clothes got bloodstained. The bloodstained clothes were neither produced nor seized. Failure to do so raises a serious doubt as to the version of PW-7. Dani Ram and Tara Chand were also not examined. PW-7 stated that immediately after the occurrence he ran towards his house; in front of his house Dani Ram and Tara Chand were sitting, he informed them and narrated about the incident and thereafter all three of them went to the place of occurrence and brought the deceased Daya Nand to his house. If only Dani Ram and Tara Chand were examined they would have corroborated the evidence of PW-7. This again shakes the prosecution case. The High Court disbelieved the recovery of both weapons and clothes. In all cases recovery by itself may not be material. But in this case in the absence of corroboration to the evidence of PW-7, the recovery aspect assumed importance. The civil litigation was started in 1982; the suit was decreed in favour of Sohan, accused no. 1 in 1993; the appeal filed by the deceased and PW-7 was pending on the date of occurrence; there was no immediate provocation or cause for committing the offence on 11.2.1985.

The credibility of PW-7 and truthfulness of his evidence in the circumstances needed to be scrutinized with great care and caution. His evidence does not inspire confidence for the reasons that (a) though he was a party to the civil suit as a defendant along with deceased Daya Nand, he falsely stated that it was deceased Daya Nand who filed the suit, when as a matter of fact it was the accused no. 1 Sohan, who had filed the suit, (b) He had made a wrong statement as to the possession of the disputed land but he was forced to admit the possession of accused Sohan in the cross-examination, (c) He stated, "When the Draftsman came to the spot I was not there". PW-6, the draftsman clearly stated in his evidence that he prepared the site plan Exh. PN on the pointing out of PW-7 and Sumer (not examined by the prosecution), (d) He stated, "We had picked up Daya Nand from the spot on our hands. Our clothes had got blood stained in this process". He further stated, "I had not shown my blood stained clothes to the police. I had changed my clothes before leaving for Bhiwani."

In the light of what is stated above, after deeper consideration, detailed examination of evidence and probabilities of the case, in the light of the arguments advanced by the learned counsel on either side, we have no hesitation in holding that the Sessions Court as well as the High Court have concurrently and manifestly erred in convicting and sentencing the accused. In a case like this it is our duty to interfere with the impugned judgment and order to do substantial justice.

Under these circumstances and in view of the discussion made above, we have no hesitation in holding that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. Hence we set aside the judgment and order of the Sessions Court as affirmed by the High Court. Accordingly, these appeals are allowed and the accused are acquitted and their bail bonds shall stand discharged.

JUDIS