

CASE NO.:
Appeal (crl.) 974-975 of 1998

PETITIONER:
Jagdish Narain

RESPONDENT:
Krishna & Ors.

DATE OF JUDGMENT: 04/10/2005

BENCH:
H.K. SEMA & G.P.MATHUR

JUDGMENT:
J U D G M E N T

H.K.SEMA, J

Accused Shri Krishna, Lakhan Lal, Ram Shanker and Kailash Nath were put to trial before the IV.Addl. Distt. & Sessions Judge, Kanpur, for the murder of the deceased-Radhey Shyam. The Trial Court convicted accused Shri Krishna under Section 302 IPC and Lakhan Lal, Ram Shanker and Kailash Nath were convicted under Section 302 with the aid of Section 34 IPC and were sentenced to rigorous imprisonment for life. Aggrieved thereby two appeals were preferred before the High Court. Criminal Appeal No. 1123 of 1980 was preferred by Lakhan Lal & ors. Criminal Appeal No.1126 of 1980 was preferred by accused Shri Krishna. Both the appeals were heard together by the High Court of Allahabad and by the impugned judgment and order the appeals were allowed and the accused were acquitted of all the charges against them. Hence these appeals by special leave. Briefly stated the facts are as follows:-

The complainant-party and the accused are inter-related. Kalicharan had five sons (1) Satya Narain (2) Ram Gopal @ Moora, (3) Chhanu Lal (the informant) (4) Munnulal and (5) Shri Krishna(Accused No.4). The deceased-Radhey Shyam was the son of Chhanu Lal. A-1 Lakhan Lal, A-2 Ram Shanker are sons of Munnulal. A-3 Kailash Nath is the son of A-4 Shri Krishna. The motive of the murder appears to be that the field belonging to Kalicharan was cultivated by the accused and no share was given to Chhanulal and his son Radhey Shyam(deceased). The deceased-Radhey Shyam appears to have forcibly cultivated the portion of land, culminated to his murder.

The prosecution story in brief is that on 22.7.1979 at about 2 P.M. P.W.1-Chhanu Lal (the informant) stated that on the fateful day both he and his deceased son were present at the plot when he was taking grass out of his paddy plot in which the plants for transplantation had been grown. His son Radhey Shyam at that time was sleeping under the Chhekur tree after taking his meal. At about 2 P.M. four accused came there. Accused Lakhan Lal, Ram Shanker and Kailash Nath pressed Radhey Shyam on the ground and accused Shri Krishna cut the neck of Radhey Shyam by a gadasa. Radhey Shyam made a shriek by which the complainant was attracted and saw the occurrence. The complainant raised an alarm, which attracted PW.3-Desh Raj and PW.5-Smt.Jai Shri Devi wife of the deceased, who came with water. After seeing the arrival of the witnesses the accused fled away. After the accused left the place the informant and other went to near Radhey Shyam and he was found dead with his neck cut. A written report was lodged at the police station Sheroajpur on 22.7.1979 itself at 6.30 p.m. The place of occurrence was at a distance of six miles from the police station.

The prosecution examined three eyewitnesses, P.W.1-Chhanu Lal(the informant), PW.3-Desh Raj is an independent witness and P.W.5-Smt. Jai Shri Devi, who was declared hostile. The Trial Court after considering the eyewitnesses and documents on record came to the conclusion that the

prosecution had established its case beyond all reasonable doubts and recorded conviction as aforesaid.

Learned counsel for the appellant contended that the Trial Court findings do not suffer from any infirmity and the High Court should not have interfered with the findings recorded by the Trial Court. According to him, the High Court's reversal of conviction is solely based on perverse finding.

Per contra learned counsel for the respondents supported the acquittal recorded by the High Court. As according to him, there were discrepancies and contradictions in the evidence of eyewitnesses and accused were entitled to acquittal. He further contended that P.W.5-wife of the deceased has turned hostile and no reliance can be placed on her testimony. According to him, the High Court was justified in recording acquittal and the same should not be disturbed. We will straightaway deal with the findings of the High Court, which in our opinion, are contrary to the evidence on record and perverse.

P.W.1 has stated in-chief as under:-

"Chhunnu Lal P.W.1 stated in para 4 that at the time of occurrence, he was taking grass out of his paddy plot in which the plants for transplantation had been grown. His son Radhey Shyam at that time was sleeping under the Chhekur tree after taking his meal. At about 2.00 p.m. four accused came there. Accused Lakhan Lal, Rama Shankar and Kailash Nath pressed Radhey Shyam at that very place and accused Sri Krishna cut the neck of Radhey Shyam by a Gandasa. Radhey Shyam made a shriek, at which this witness was attracted and saw the occurrence. The witness also raised alarm which attracted Ram Saran, Desh Raj, Thakur Din and the wife of the deceased, who had come with water. The witness further stated that after arrival of the witnesses the accused went away. Thereafter this witness and others came to Radhey Shyam."

P.W.2-Dr.P.C. Chaurasia, Medical Officer, conducted the postmortem examination on 24.7.1979 at 2 P.M. and found the following injuries:

"Incised wound 17 cm X 2.5 cm bone deep in front of neck in its middle part over thyroid cartilage. Margins of wound were sharp cut tailing on left side of the neck, Muscle tissue, Tracheas, Oesophagus were cut through and through. Carotid artery and Jugular veins on both sides of the neck were found cut under the injury. Fourth cervical vertebra was found cut partially underneath."

The High Court after noticing the statement of P.W.1 and medical evidence as referred to above recorded its findings as under:-

"If the statement of the informant as mentioned in para 17 is accepted, then it appears that the deceased Radhey Shyam had shrieked while he was being pressed by these three appellants, which means that he had woken up by then and then he had made a cry. In such situation, it was expected of the deceased Radhey Shyam to save himself from the clutches of the accused persons. But this has nowhere mentioned in the prosecution case. It is alleged that Shri Krishna gave a gandasa blow which cut this neck. In his post mortem report, the doctor has also mentioned only one injury of 17 cm x 2.5 cm bone deep in front of the neck in its middle part over thyroid cartilage; margins of wound were sharp cut, tailing on left side of the neck. Muscle tissue, trachea, Oesophagus

were cut, carotid artery and Jugular veins on both sides of the neck were found cut under the injury. Fourth cervical vertebra was found cut partially underneath. All this goes to show that gandasas had hit in the middle portion of the neck.

If prior to the gandasas blow the deceased had woken up, then it would not be natural to receive such injuries in the middle portion of the neck. It is also not natural that the killer, instead of hitting straightaway, would first press the body of the deceased so that he could wake up from his sleep and make protest to save himself or escape unhurt. In such a situation, it would be difficult to hit the person. Thus the manner in which the informant has narrated the incident is not very natural."

(emphasis supplied)

In our view, the finding recorded by the High Court, is not only contrary to the evidence of P.W.1 and medical evidence but also farfetched and imaginary. It is nobody's case that the deceased Radhey Shyam woke up before a gandasas cut was given on his neck. It is the specific case of P.W.1 that accused Lakhan Lal, Ram Shanker and Kailash Nath pressed Radhey Shyam on the ground and the accused Shri Krishna cut the neck of the deceased-Radhey Shyam by a gandasas. The statement of P.W.1 is well corroborated in material particular with the evidence of P.W.2-Dr.P.C. Chaurasia.

The other contention raised before the High Court was that in the FIR P.W.1 stated that at about noon the deceased-Radhey Shyam had taken his food and slept under the Chhekur tree, while in the witness box P.W.1 stated that at about 11 A.M. Radhey Shyam had taken his meal. It was also raised before the High Court that the occurrence at noon time has been changed as 11 A.M. to suit the doctor's evidence because the doctor found semi-digested material in the stomach. It was also raised that the statement of P.W.1 was highly unnatural on the ground that he would not touch the body of his son after his murder. All these minor discrepancies occurring in the statement of P.W.1 were considered by the Trial Court and rejected by recording sound reasons for rejecting the same in paragraphs 19, 20, 21, 22, 23 as under:-

"19. Chhannu Lal P.W.1 stated in para 4 that at that time of occurrence he was taking grass out of his paddy plot in which the plants for transplantation had been grown. His son Radhey Shyam at that time was sleeping under the Chhekur tree after taking his meal. At about 2 P.M. four accused came there. Accused Lakhan Lal, Ram Shanker and Kailash Nath pressed Radhey Shyam at that very place and accused Sri Krishna cut the neck of Radhey Shyam by a Gandasa. Radhey Shyam made a shriek at which the witness was attracted and saw the occurrence. The witness also raised alarm which attracted Ram Saran, Desh Raj, Thakur Din and the wife of the deceased who had come with water. The witnesses the accused went away. Thereafter this witness and others came to Radhey Shyam, who had died instantaneously.

20. The learned counsel for the defence challenged the statement of P.W.1 firstly on the ground that he could not go for removing the grass from the paddy plot. In this connection some circumstances were brought to my notice. Firstly it was stated that Chhannu Lal never cultivated any plot himself and his land is cultivated by others, vide his admission in para 12. Hence it was argued that there was not any question of his growing paddy seedling or transplantation. In para 12 P.W.1

stated that about 5-6 years back Radhey Shaym was implicated in case. Even prior to that this witness used to give his land on batai to others but after that he himself cultivated on batai. According to him two years back he had purchased a buffalo and thereafter started cultivation himself. He further admitted that when some land was given on batai he had nothing to do with growing of crop. Even from these admission it cannot be said that the witness never personally did cultivation, rather he has specifically stated that about 2 years back he had purchased. He had buffalo and did cultivation himself. Hence there is possibility of his having grown paddy seedling for transplantation.

21. In this very connection it was argued that it was improbable that he would take out grass from the paddy plot of 2-3 Biswas for two days and even the work would be left for the third day. There is nothing unnatural in it. It has not gone in the evidence that for two full days work of taking out of the grass from paddy lot was done. If it was being done for a few hours daily it is quite possible that even on the third day some work was left, so that P.W.1 and his son had gone there to complete it.

22. Thirdly it was argued that the work of taking out the grass for seedling cannot be done by khurpi. On this very point also P.W.1 has been cross examined. He stated that if the seedling is very thick, the grass cannot be taken out by khurpi otherwise it can be done by khurpi. On this point his statement in para 15 may be seen. In view of this positive statement in para 15 may be seen. In view of the positive statement it cannot be, said that khurpi is not used in the aforesaid work.

23. It was thereafter argued that no khurpi or weeded grass was found at the spot, by the Investigating officer which can only go to show the story narrated by P.W.1 is incorrect. I am not impressed by this argument. The Investigating Officer did not say that he tried to find out khurpi and weeded grass but did not find. He (P.W.6) stated that he did not remember if he saw khurpi or weeded grass at the spot or not. These things were not so much important that the Investigating Officer should have tried to find them out unless and until some body disclosed about the same to him. The absence of khurpi or weeded grass cannot affect the story of prosecution. Hence I am not prepared to disbelieve the evidence of P.W.1 that he was present at his plot at the time of occurrence. It therefore means this witness could see the occurrence as stated by him."

The High Court, however, by the impugned judgment rejected the well reasoned findings recorded by the Trial Court by cryptic observations as under:-

"Thus the findings of the Learned Additional Sessions Judge that all these infirmities and contradictions are not important and it does not adversely affect the prosecution case is not reasonable. The reasons given by the Learned Additional Sessions Judge are not in conformity with the human nature. From the evidence of the informant, the cultivation of land by him is not clear. The occurrence has been alleged to have taken place seven months ago and the informant, in para 12 of his evidence, has stated

"Today also my fields are being cultivated by bataidars." This statement has been recorded on 20.3.80, which also covers the date 22.7.79. Thus the statement of the informant as made in para 12 is quite opposite that on 22.7.79, i.e, the date of occurrence, he had himself cultivated his land. If he had not himself cultivated his land, there was no need for him to remove grass from his field. Thus the nature of this incident itself appears to be quite doubtful."

The High Court also found fault with the prosecution case that incident had happened on 22.7.1979 but the postmortem examination was held only on 24.7.79 at 11 A.M. after 48 hours. According to the High Court, no explanation was offered by the prosecution. This finding is also belied by the record. There is an affidavit filed by the constable that the dead body was handed over to him on 22.7.1979 at 10.30 P.M. and the dead body reached Kanpur in the morning on 23.7.1979. As there was no doctor available to conduct the postmortem, the body was kept in mortuary and the postmortem was conducted on 24.7.1979. In our view, this is a good reason to have rejected the contention that the postmortem was conducted at a belated stage. Be that as it may, these facts have nowhere shaken otherwise reliable eyewitnesses of the prosecution with regard to factum of the incident. This was one of the grounds considered by the High Court while acquitting the accused.

Regarding the evidence of P.W.3-Desh Raj, the Trial Court recorded in paragraph 28 as under:-

"The statement of Desh Raj P.W.3 was also challenged on the ground that he stated at page 4 that P.W.1 continue to raise alarm for about half an hour. It shows that the witness had no ideas of time. He is an illiterate person and simply because he deposed that when he reached the spot P.W.1 stopped raising alarm, which he did for half an hour, his evidence cannot be discarded. In the materials particulars I do not find any contradiction in the evidence of P.W.1 and P.W.3. In any case for purpose of corroboration to the statement of P.W.1 the statement of Desh Raj P.W.3 is sufficient."

We entirely agree with the reasoning recorded by the Trial Court.

P.W.5-Smt. Jai Shri Devi, wife of the deceased turned hostile. It is on record that she is having five children and now residing with her parents along with her children. Considering this fact the Trial Court held in paragraph 16 as under:-

"Smt. Jai Shri Devi is a young lady of 25 years. She admitted to have 5 small children from her deceased husband. She further admitted that after this murder she has been living at her father's place with her children. She denied the suggestion of the prosecution that the accused threatened her of dire consequences if she deposed against them but in the above circumstances I feel that this suggestion of the prosecution is not without force. The fact that this young lady having 5 small children is living with her father, in another village is the clear indication of the fact that she did not find it safe to live in the house of her father-in-law. Hence the defence cannot get any advantage, of admission, of Smt. Jai Shri Devi, who definitely tried to conceal the truth probably because of fear of the accused."

In normal Hindu family it is unthinkable that the daughter-in-law would desert the in-law's house with 5 of her minor children after the death of her husband and would live with her parents, unless driven by the compelling circumstances to do so.

In our view, the reasoning recorded by the Trial Court is quite justified in the facts and circumstances of the case and the High Court has erred in rejecting the said finding.

For the reasons aforesaid, the appeals are allowed. The acquittal recorded by the High Court is set-aside. The conviction recorded by the Trial Court is restored. The respondents are on bail. Their bail bonds and sureties are cancelled and they are directed to be taken back into custody forthwith to serve out the remaining part of sentence. Compliance report should be sent to this Court within one month.

JUDIS