

PETITIONER:
BALLU & ORS.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 10/10/1996

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

The subject matter of challenge in this appeal is the judgment dated January 16, 1988 rendered by the Designated Court, Rohtak disposing of two cases, being Sessions Case No. 280 of 1986 and Arms Act Case No. 281 of 1986. By the impugned judgment the Designated Court convicted the three appellants before us under Section 302 read with Section 34 IPC (two counts) and also convicted one of them, namely, Raj Kumar under Sections 25 and 27 of the Arms Act, 1959 read with Sections 6 of Terrorist and Disruptive Activities (Prevention) Act, 1985.

2 (a) According to the prosecution case on March 20, 1986 at or about 6.30 P.M. the three appellants waylaid Attar Chand and Jaggar, who were the Sarpanch and Panch respectively of village Nigana and with whom they had previous enmity, near a field which was at a distance of 3 Km. from the village abadi. Of the appellants Ballu was carrying a dau, Jagdish a saria (iron rod) and Raj Kumar a pistol. while Raj Kumar stood as if he was ready to shoot, the other two struck Attar Chand and Jaggar with their respective weapons resulting in their instantaneous death.

(b) In that night - at or about 8.30 P.M. - when Satram Dass (P.W.11), brother of Attar Chand, came back home and found that the latter had not returned home till then, he went in his search. He first went to the house of Jaggar and learnt that he had also not come back. He then, accompanied by one Natha Ram, went in their search and ultimately found their dead bodies lying in the field outside the village. He returned to his village and contacted Satram Dass Batra (P.W.9), a former M.L.A of Klnaur over telephone and told him what he had seen. On receipt of the information, Satram Dass Batra went to Kalanaur Police Station at 2.A.M. and lodged a report which reads as under :

"I am a resident of Kalanaur. I am an Ex. M.L.A. Today at 1.30 in the night, I received a telephone message from Satram Dass son of Vir Bhan Batra, resident of Nigana, to the effect that dead bodies of

Sarpanch Attar Chand son of Vir Bhan, caste Batra, and Jaggar son of Ramji Lal, caste Harijan Chamar, residents of Nigana, were lying at two places in the gram crop of Satram Dass near the johri of Dalip. the dead bodies had sharp edged weapon injuries on the faces and heads and both of them were lying in a pool of blood. Somebody had murdered them. I have come to inform the police. Action may be taken."

(c) On the basis of that report SI Mange Ram (P.W.16) registered a case and left for the spot. Reaching there at 3 A.M. he found the dead bodies of Attar Chand and Jaggar and after conducting inquest proceedings sent the bodies for post mortem examination. Near the bodies he found topa, sweater, parna, chaddar, a blood stained saria and one shoe which would fit the right foot. He seized those articles along with some blood stained earth found there. He also found some foot prints at the spot and prepared their moulds.

(d) It is the further prosecution case that on April 7, 1986 appellant Jagdish approached Karam Chand (P.W.10), Sarpanch of village Kherari, and made a confession regarding the two murders and requested him (Karam Chand) to take him to the police station. Karam Chand then took him to SI Mange Ram (P.W.16) who placed him under arrest. The pajama and kurta, he was then wearing were taken possession of by SI Mange Ram and kept them in a sealed parcel. He interrogated him and pursuant to his statement a watch and a shoe meant for the left foot, which were concealed in his wheat field, were recovered.

(e) Eight days later - on April 17, 1986 to be precise - the appellant Raj Kumar went to the house of Ainshilal (P.W.8), lambardar of village Kalanaur and made a similar confession before him implicating himself and the other two appellants in the above two murders and requested him to produce him before the police. While going to the police station they met SI Ravinder Kumar (P.W.17) at the bus stand and Ainshailal handed over Raj Kumar to him.

(f) While in his custody SI Ravinder Kumar (P.W.17) interrogated Raj Kumar on April 19, 1986 in the presence of Narender (P.W.12) and another witness. Raj Kumar disclosed that he had kept concealed a country made pistol of .12 bore and a live cartridge in a pit under a kikkar trees in his fields and pursuant to his disclosure statement a pistol (Ex. P.17) and a cartridge (Ex.P.18) were recovered from that place. S.I. Ravinder Kumar seized those articles and put them in a sealed parcel. After this recovery S.I. Ravinder Kumar sent a report to the police station (Ex.PLL) and, on its basis, a separate case under the Arms Act was registered against Raj Kumar.

(g) To continue with the prosecution story - on May 5, 1986, the appellant Ballu went to Satram Dass Batra (P.W.9) of village and confessed of his having committed the two murders along with the other two appellants and requested him (Sri Batra) to produce him before the police. He acceded to this request and took Ballu to Kalanaur police station where SI Ravinder Kumar (P.W.17) places him under arrest. On May 8, 1986 Ballu was interrogated at the police station by SI Ravinder Kumar in the presence of Krishan Lal (P.W.13) and he disclosed that he had kept a dau concealed in the hut of 'Sarkandas', situated in the vicinity of village Nigana.

He further disclosed that he had also kept a ring wrapped in old rags in an 'alla' of his residential house. Ballu then led the police party to the places mentioned by him and brought out the above two articles which came to be duly seized under panchanama.

(h) The moulds prepared from the footprints seen at the spot, the blood stained earth and shoe seized therefrom, the specimen moulds of the appellants and the shoe and the dau recovered pursuant to the statements of appellant Jagdish and Ballu respectively were sent to the Forensic Science Laboratory (F.S.L.) by the Investigating Officer for examination by the Ballistic Expert. On receipt of the reports of such examination and after completion of investigation S.I. Ravinder Kumar submitted two chargesheets; one against the three appellants for committing the murders of Attar Chand and Jaggar on March 20, 1986 in furtherance of their common intention and another against the appellant Raj Kumar for having been found in unlawful possession of a pistol and a cartridge on April 19, 1986.

3. The appellants abjured their guilt and contended that they had been falsely implicated in the case owing to enmity. The appellant Raj Kumar's further contention was that he did not make any statement to the police and as such the question of recovery of pistol and cartridge at his instance did not arise.

4. Coming first to the charge relating to the two murders, we get from the evidence of SI Mange Ram (P.W.16), who held inquest upon the dead bodies of Attar Chand and Jaggar, that there were a number of injured on their persons. Dr. D.K. Sharma (P.W.1), who held autopsy, testified that there were three stab wounds and one lacerated wound and four incised wounds and one penetration wound on the persons of Attar Chand and Jaggar respectively. Besides, he found that a number of underlying bones were fractures of both of them. He opined that the injuries were ante-mortem and sufficient to cause death in the ordinary course of nature. The uncontroverted evidence of these two witnesses establishes that both Attar Chand and Jaggar met with homicidal death.

5. The crucial question that now falls for our determination is whether the prosecution had been able to conclusively prove that the three appellants were responsible for their such death. To prove this part of its case the prosecution relied on the ocular evidence of Hari Chand (P.W.5) and Prabhati (P.W.7) as also circumstantial evidence. Before advertng to the circumstantial evidence it will be pertinent to look into and evaluate the evidence of the above two eye-witnesses.

6. Hari Chand (P.W. 5), a resident of Nigana, testified that on March 20, 1986 he had purchased standing crops of green grams from one Birju of village Nigana for 3400/- and to remove those crops from the field he took a truck and some laborers there. After the crops were reaped and loaded in the truck, he despatched it to Delhi. Thereafter he went to see the standing crops of Satram Dass (P.W. 11), brother of Attar Chand. On the way when he had reached the villa of Krishna Lal he saw five persons standing there and they were Attar Chand and Jaggar (the two deceased) and Raj Kumar, Jagdish and Ballu (the three appellants). Raj Kumar was holding a pistol in his hand as if he was ready to shoot, while Jagdish and Ballu were armed with a sariya and dau respectively. He then saw Jagdish and Ballu striking Attar Chand with their respective weapons as a consequence whereof he fell down. Meanwhile, when Jaggar came running, Raj Kumar

caught hold of him and the other two appellants dealt with him in a similar fashion. On seeing the assault when he (P.W. 5) raised an alarm, Prabhati (P.W. 7) came to the spot and also saw the occurrence. Seeing them Raj Kumar told his companions that as people were coming from the village they should run away. The three appellants then left the place after threatening them that if they disclosed the incident to anyone or gave evidence against them they would also meet the fate of Attar Chand and Jaggar. Ten both of them ran away towards their village. P.W. 5 lastly stated that he made a statement before the police in March 21, 1986. In cross-examination he stated that he had left for Delhi in the truck in which he had loaded the grams and that he did not talk about the incident to anybody. He also detailed the route of the truck to Delhi.

7. The other eye-witness Prabhati (P.W. 7), who is also a resident of Nigana, deposed that while in search of his missing buffalo he had reached the land of Parshottam in the evening he saw the three appellants surrounding Attar Chand and Jaggar. Jagdish was carrying a saria, Ballu a dau and Raj Kumar was holding a pistol in his hand as if ready to shoot. Then he detailed the manner in which the above two persons met with their death at the hands of the three appellants, which fits in with the sequence of assault testified by P.W. 5. He went on to say that before running away from the spot the appellants gave out that in case they testified against them they would meet the same fate. On hearing this he and Hari Chand hurried back to the village.

8. Though, apparently there is no reason to disbelieve the above two witnesses, more so when they corroborate each other on material particulars, closer look into their evidence makes it abundantly clear that they could not have been present at the time of the alleged occurrence. As noticed earlier, it is the categorical statement of P.W. 5 that only after the truck loaded with the crops left the field, that he proceeded towards the field of Satram Dass and saw the incident. If this testimony of P.W. 5 is read in the context of the answer elicited in his cross-examination that he left for Delhi in the truck in which the grains were loaded he could not have gone towards the field of Satram Dass and, for that matter, seen the incident. When P.W. 5's presence at the spot when the incident took place cannot be believed, the evidence of P.W. 7, who according to P.W. 5, reached the spot on an alarm raised by him (P.W. 5) cannot be also believed, more so when he (P.W. 7) stated that both of them proceeded towards the village together after the incident. The sequence of events relating to their purported arrival at the spot therefor belies their claim of their having seen the incident. This apart, the explanation offered by them that owing to threat meted out by the appellants they could not dare to disclose the incident to the villagers is difficult to accept. Admittedly, both the deceased also hailed from their village Nigana. Therefore, it was expected of P.W. 5 and 7, if they had really seen the incident, that they would disclose to Satram Dass, when he was frantically searching for his brother and Jaggar, at least the fact they were murdered and their dead bodies were lying in the field - if not the names of the murderers for fear of the appellants.

9. Now that we have found that the direct evidence relating to the murders is wholly untrustworthy we may advert to the circumstantial evidence led by the prosecution to prove its case. As noticed earlier, according to the prosecution case each of the three appellants made extra-judicial confession implicating himself and the other two.

To prove the confession the prosecution examined Ainshilal (P.W.8), Satram Dass Batra (P.W.9) and Karam Chand (P.W.10). From their evidence we get that on April 7, 1986 Jagdish made his confession before Karam Chand (P.W. 10); on April 17, 1986 Raj Kumar before Ainshilal (P.W. 8; and on May 5, 1986 Ballu before Satram Dass Batra (P.W.9). Each of these three witnesses stated that after making the confession the concerned appellant requested him to produce him before the police. The story of the three appellants making confessions, which are on identical terms, before three different persons, who live in villages far off from the villages of the respective appellants at periodical intervals appear to is to be artificial and unnatural. If really their conscience impelled them to make a clean breast of their guilt the appellants themselves could have surrendered before the police instead of taking a circuitous route of first approaching the above three witnesses for the same purpose, more so when there is nothing on record to show that they were persons of their confidence. We are therefore of the opinion that the extrajudicial confessions purportedly made by the three appellants which needless to say were retracted, do not bear any scrutiny.

10. Against Jagdish the prosecution led evidence to prove that (i) pursuant to the statement made by him to the police, a shoe which fitted his left foot, and a watch which belonged to Attar Chand were recovered from his wheat field; (ii) the shoe, which was found at the spot was of the same pair; and (iii) the moulds prepared from the foot print found at the spot fitted in with the mould of his foot. To prove that above circumstances the prosecution relied upon the evidence of S.I. Mange Ram (P.W. 16), who initially investigated the case and Karam Chand (P.W. 10) in whose presence the statement was made by Jagdish and the aforesaid articles were subsequently recovered, and the reports of Forensic Science laboratory. In our considered view the oral evidence adduced by the prosecution is proof of the above circumstances is clearly fabricated. If we are to believe the evidence of P.Ws. 10 and 16 in this regard, it would mean that either Jagdish ran away from the spot wearing only one shoe or carried the same which was of no value, to his fields which was at a distance of 1.1/2 kilometers and kept it concealed there for implicating himself. It will be preposterous to draw any of such conclusions. Then again, it being the positive evidence of Satram Dass Batra (P.W.9), who claimed to have been at the spot since 2.30 or 3.00 A.M. of that fateful night till 3 P.M. on the next day, that thousands of people had collected at the spot before the arrival of the police, the claim of the Investigation Officer that foot prints of Jagdish and a shoe belonging to him were found there is patently false. As regards the alleged recovery of the watch of Attar Chand it may be mentioned that none of the two eye-witnesses testified that any of the appellant snatched away his watch. While on this point we cannot also lose sight of the fact that according to the prosecution case motive for the murder was previous enmity and not gain.

11. As against Ballu the circumstance alleged is that after he was taken into custody he made a statement before the Investigating Officer on May 8, 1986 and pursuant thereto a dau and ring belonging to Attar Chand were recovered. For the reasons given by us for disbelieving the story of the recovery of wrist watch of Attar Chand pursuant to the statement of Jagdish no reliance can be placed on the alleged recovery after 45 days of the incident did not contain any human blood, it does not in any way incriminate

Ballu.

12. As we have found that the prosecution had concocted evidence regarding the alleged recoveries and pursuant to the supported statements of Jagdish and Ballu, we do not think that we will be justified in placing any reliance to the alleged recovery of pistol and cartridge pursuant to the statement of Raj Kumar on April 19, 1986.

13. For the foregoing discussion we need not go into the question whether prosecution had succeeded in proving that the appellants had a motive to commit the murders for proof of motive only would not lead the prosecution anywhere. In the conviction and sentence recorded against the three appellants under Section 302/34 IPC are set aside and they are acquitted. The appellant Raj Kumar is also acquitted of the charge of unlawful possession of a pistol and a cartridge. Appellant Ballu and Raj Kumar, who are on bail, are discharged from their respective bail bonds. Appellant Jagdish, who is on jail, be released forthwith unless wanted in connection with any other case.