

CASE NO.:
Appeal (crl.) 21 of 1994

PETITIONER:
THE STATE OF HARYANA

Vs.

RESPONDENT:
RAM SARUP

DATE OF JUDGMENT: 04/09/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:

J U D G M E N T

RAJENDRA BABU, J. :

On the night intervening the 19th and 20th July, 1984 Mohan Lal and Ram Kumar were murdered. On the allegation that Ram Sarup-respondent committed the said murders, he was tried under Section 302 IPC. The trial court, after considering the testimony of the witnesses who were examined in the case, held that the respondent was guilty of the offence with which he was charged and sentenced him to life imprisonment and fined him Rs. 1000/- and, in default of payment of fine, the respondent would suffer further rigorous imprisonment for two years. On appeal, the High Court set aside the order made by the trial court and acquitted the accused. Hence this appeal.

This Court by an order dated 15.4.1994 released the accused on bail on his furnishing Bail Bond in the sum of Rs. 10,000/- with two surities of the like amount to the satisfaction of the Chief Judicial Magistrate, Hissar.

The prosecution case unfolded in the trial court is that on 19.7.1984 at about 4 p.m., both the deceased Mohan Lal and Ram Kumar were playing cards at the Dera of Baba Asa Nath with Ram Sarup and Diwas Singh alias Dana; that Ram Singh, PW 3, brother of Mohan Lal deceased and Ram Kishen, PW 4, brother of Ram Kumar deceased were also present there watching the game; that some other persons were also playing the game of cards 'Chaupat'; that it appears, an altercation took place between Mohan Lal and Ram Kumar on one side and Ram Sarup on the other; that Mohan Lal was taken to his house by his brother Ram Singh; that Ram Kumar and Ram Sarup also left for their houses. Further, it was submitted that on the same day, the last rites ceremony of one Kundan Gujar also took place and about 70-80 persons had gathered; that Ram Singh and Ram Kishan participated in serving food to the guests and they took their food at 11 p.m. and continued to sit there smoking 'Huqa'; that PW 3, Ram Singh and PW4, Ram Kishan and the two deceased Mohan Lal and Ram Kumar left for their houses at about 1 or 1.30 a.m. [intervening night between 19.7.1984 and 20.7.1984]; that both the deceased were little ahead of Ram Singh and Ram Kishan, who were following them and as they reached near the Dera of Baba Asa Nath, the accused was found lying in his 'chabutra' and smoking a biri; that the accused shouted towards Mohan Lal as to why he was passing from there at that hour; that Ram Kumar was a little

behind at that time and Mohan Lal answered that it was a thoroughfare and anybody could come and go; that at this Ram Sarup picked up his gun, loaded it and fired at Mohan Lal hitting on the right side of his chest on the front side; that by that time Ram Kishan and Ram Singh had taken shelter near the wall of the Dera; that as Ram Kumar asked the accused as to why he had fired a shot and advanced towards him, the accused fired at him also hitting on the right chest; that the accused also fired towards Ram Singh and Ram Kishan, but they escaped as they were taking shelter near the wall of the Dera; that the shots had been fired towards them because both Ram Singh and Ram Kishan had shouted towards the accused as to why he had fired at their companions. Ram Kumar after receipt of the injury had fallen down on the charpai lying on the Chabutra of Ram Sarup and he got up from there after a few minutes and collapsed after covering 4/5 paces. The accused in the mean while after loading his gun had run away towards his fields. Both Mohan Lal and Ram Kumar were found dead. Brij Lal, Chowkidar and Sadhu Ram, Sarpanch came to the spot and were told of the incident. The two PW 3 and PW4 went to the village and remained throughout the night out of fear of the accused. On the next day PW3-Ram Singh lodged a report with the police at about 10.50 a.m. and also made a special statement to a Constable Ram Chander- PW 9 and the report reached the Magistrate at 1 p.m. on 20.7.1984 at Fatehabad. ASI Rajbir Singh prepared inquest reports regarding the dead bodies of Mohan Lal and Ram Kumar and conducted investigation after preparing a spot Panchnama. He also seized the charpai which was taken into possession. Dr. D.L. Bansal, PW 2, performed the post mortem examination on the dead body of Ram Kumar, while Dr. S.K. Dogra, PW 1, performed the post mortem examination on the dead body of Mohan Lal. They noted that the cause of death was the fire arm injuries sustained by each one of them and described the nature of the injuries. On 26.7.1984 the accused Ram Sarup was arrested from Bhuna and the gun, which was licensed, was also seized from him along with cartridges. The prosecution examined 10 witnesses in all. The accused claimed that he was innocent and stated that a false case had been made out against him by the Sarpanch.

The trial court adverted to the testimony of eye witnesses PW 3 and PW4 and found that it is reliable. As regards motive the trial court proceeded on the basis that if the evidence of eye witnesses PW 3 and PW4 was to be taken into consideration, the question as to whether there was any motive for committing the murders or not would become insignificant. The trial court noticed that altercation while playing cards was not an insignificant event and might provoke the accused depending upon how worked up he was to commit the murders. While the contention of the defence counsel was that the said quarrel was not sufficient to provoke the accused to commit the murders, on the other hand, the prosecution contended that this motive was sufficient enough and had been mentioned even in the First Information Report [FIR] recorded at the earliest stage of the proceedings; that there was no enmity between the accused and the deceased; that, therefore, the accused could not have been falsely implicated in a serious charge of murder. The learned Sessions Judge took caution to state, whether the incident of playing cards was sufficient to provoke the accused to commit the murders would depend on as to how sensitive he is, but, however, much would depend upon the evidence of the eye witnesses. The defence plea was that there was enmity between the two parties inasmuch Kesra, brother of the accused, had given evidence against Chhotu, which had resulted in his conviction. According to them, they were sleeping on the chabutra of Kesra along with one Manphul, when the two deceased had come and opened fire at them after raising lalkara that Kesra would be taught a lesson for giving evidence against their friend Chhotu. However, this stand of the defence was not accepted by the trial court.

The two eye witnesses PW3-Ram Singh, brother of Mohan Lal, and PW-4-Ram Kishan, brother of Ram Kumar, narrated the incident exactly in the manner in which the incident took place. The broad features of

their evidence are as set out while narrating the prosecution case. The trial court found their evidence to be trustworthy which was consistent with the medical evidence as well. The medical evidence disclosed that there was one injury on each of the deceased caused by a fire arm and four empties had been found at the place of occurrence and as per report of the Ballistic Expert, these had been fired from the S.B.B.L. gun belonging to the accused and not from any other fire arm, even of the same make and bore. There was no dispute that the single barrel gun from which these shots had been fired did belong to the accused.

The trial court dealt with the question of delay in lodging the FIR at the Police Station, Bhuna, which is about 25 kms. from village Kumhari where the occurrence took place. The incident took place at about 1.30 a.m. on the night intervening the 19th and 20th July, 1984 and the special report had reached the Magistrate at Fatahabad at 1 p.m. on 20.7.1984 which is about 25 kms. from Bhuna. Therefore, the learned Sessions Judge drew an inference that there was absolutely no delay and it had to be taken that the FIR had come into being at the time alleged at 10.50 a.m. Though it is true that the two eye witnesses PW3 and PW4 did not go at night to report the incident to the police, but it was justified since two of their relatives had been murdered in their presence and they had seen the accused with a loaded gun, they could not dare to proceed to the Police Station immediately. On the following morning on 20.7.1984 at about 7.15 a.m. PW3-Ram Singh left for the Police Station Bhuna and that hour could not be stated to be late in any way. The eye witnesses could not sleep after having seen the crime and were waiting for the sun to rise so that they could go and inform the police. The incident having taken place at 1.30 a.m. was not in serious challenge and the cross-examination did not proceed on that basis. But it had only been suggested that Mohan Lal and Ram Kumar had come to kill Kesra, Ram Kumar fired at Tokh Ram and Sohan Lal and Sohan Lal fired in self-defence. No suggestion had been given to Ram Kishan in this respect. The suggestion was made through the evidence of defence witness that the time of incident was 10 p.m., but no such plea was taken in the course of statement made under Section 313 Cr.P.C. On that basis, the trial court took the view that the delay attributed was not of much materiality.

Though some cloud was cast over the fact whether the two deceased and the eye witnesses participated in the last rites ceremony of Kundan Gujar, the trial court proceeded to hold that it was natural that the deceased and the witnesses being co-villagers had gone to attend the ceremony and there is no substance in the contention that they did not participate in the same. In that manner, the trial court found that the evidence of the two eye witnesses was natural and probable to reach the conclusion that the accused had committed the crime in question.

The defence case set up that the occurrence of the incident had not taken place in the manner suggested by the prosecution was dis-believed by the trial court, firstly on the basis that they had taken no steps to report the incident to the police at any stage of the matter and secondly, one Tokh Ram, who had been injured in the leg by the shot of the deceased, was not medically examined and his version that pellets were still in his leg and they pained him was not supported by any medical examination and, therefore, the trial court did not rely upon his evidence. In case, the death of the two victims as alleged by the defence counsel in the present case had occurred on account of shots fired by Sohan Lal with the gun belonging to Manphul, that fact would have been proved conveniently by producing the said gun before the police and making available the Ballistic Expert's evidence as to whether the shots were fired from this gun or not. On the contrary, the report of the Ballistic Expert has proved that the empties found at the place of occurrence had been fired from the S.B.B.L. gun belonging to the accused and that completely belies the case of the defence. On that basis, the trial court concluded that the respondent was guilty of the

crime for which he was charged.

On appeal, the High Court re-examined the matter and doubted the evidence tendered by the two eye witnesses. The High Court doubted as to whether the last rites ceremony of Kundan Gujar could last till 11 p.m. when the food was served and thereafter whether the two deceased and others could have spent another 2/2 hours to leave for their houses at about 1.30 p.m. and also attached a lot of significance to the delay in lodging the FIR which was recorded after more than nine hours. The High Court was of the view that if the eye-witnesses had been really afraid of the accused they would have taken shelter during the night in their respective houses and would not have moved about freely in the village; that had the witnesses seen the occurrence of crime, they would have shouted from their house-tops that their brothers had been murdered by the respondent; that as PW3 and PW4 did not disclose till the FIR was recorded at 10.50 a.m. on 20.7.1984 that the respondent was the culprit it becomes doubtful as to whether the incident would have taken place in the manner as suggested by the prosecution. The High Court attached a lot of significance to the fact that after receiving bullet injuries Ram Kumar who was lying on the cot stood up and walked a few yards and then collapsed, which, according to the High Court, was unlikely. The distance between the cot and the place where the dead body of the Ram Kumar was lying was found to be 40 ft. and this fact had not been recorded in the FIR. Therefore, the High Court found that the evidence of Ram Singh, PW3 and Ram Kishan, PW4 becomes unreliable and acquitted the accused.

The most significant finding of the trial court is that the gun which had been used in the incident is the one belonging to the accused and that the shots had not been fired from any other fire arm. The fact that the single barrel gun from which the shots had been fired at the two deceased did belong to the accused could not be disputed. The evidence of PW5, the License Clerk, confirms this. A different theory which was sought to be set up by the defence by stating that death of the victims had occurred due to shots fired by Sohan Lal with the gun belonging to Manphul was dis-believed by the Sessions Judge for good reasons. However, that aspect was totally ignored by the High Court. If the gun shot injuries had been sustained by the two deceased from the licensed gun belonging to the accused, the circumstances in which the injuries were sustained by them ought to have been explained satisfactorily by the defence. Further, this aspect received good support from the evidence of the two eye witnesses.

It is not unnatural or improbable that in villages particularly in the month of July when there is hardly any agricultural operation going on to leisurely spend time even after last rites ceremony of Kundan Gujar. That aspect could not be dis-believed by the High Court. Nor was there any justification for the High Court to hold that there was delay in lodging the FIR because the incident took place at the end of night intervening the 19th and 20th July, 1984 and the eye witnesses who lodged the FIR had to go to the Police Station Bhuna by at least covering a distance of 25 kms. partly by foot and partly by travelling in a bus and further, waiting for a bus and reaching the appropriate police station to lodge the complaint does take time. More so, delay in lodging the complaint would assume significance in cases where the accused persons are being unnecessarily implicated while some others may have been responsible for the crime or to lug in those who were not present at the time of occurrence of the incident. There is criticism that the eye witnesses instead of staying in their houses had been moving about in the streets but as they were mentally disturbed if they did not stay inside their houses they did not act in any abnormal manner. There is nothing unusual in their not alarming everyone in the village at that odd hour. On 20.7.1984 fairly early in the morning at about 7.15 a.m. Ram Singh, PW 3, left for the Police Station Bhuna to lodge the complaint about the incident which is neither unnatural or improbable, as was rightly found

by the trial court. He reached the Police Station by about 10.30 a.m. and lodged the complaint. Much significance could not have been attached by the High Court to the fact that one of the deceased Ram Kumar having walked a few yards from the cot had not been mentioned in the FIR. Broad features of the case had been mentioned as to the manner in which the incident took place and who shot dead the two deceased. In fact, if there is some omission in a matter of detail that, by itself, may not be sufficient to rebut the prosecution case.

In that view of the matter, we do not think that the reasoning of the High Court can be accepted by us, particularly when material facts of the case had been totally ignored by it to which we have adverted to above. The fact that the gun from which shots had been fired at the deceased did belong to the accused was not adverted to by the High Court at all. We cannot but say that the conclusion of the High Court is perverse.

In the circumstances, we set aside the order made by the High Court and restore that of the trial court. The respondent shall serve out the remaining period of sentence as awarded by the trial court. His bail shall stand cancelled and he has to surrender before the Sessions Court forthwith. The appeal is allowed accordingly.