

CASE NO.:
Appeal (crl.) 1107 of 2007

PETITIONER:
Subhash

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 21/08/2007

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1107 OF 2007
(Arising out of SLP(Crl.) No. 3992 of 2006)

B.SUDERSHAN REDDY, J.

Leave granted.

2. This appeal by special leave is directed against the judgment of the Punjab & Haryana High Court confirming the conviction of the appellant under Section 392 read with Section 397 IPC and the sentence of rigorous imprisonment for a period of 7 years and under section 302 read with Section 34 IPC, imprisonment for life and a fine of Rs. 10,000/-, in default of payment of fine to undergo further two years rigorous imprisonment. Both the sentences were directed to run concurrently. The appellant was charged with the offences for having robbed tractor and caused the death of Raghbir Singh-deceased.

3. The prosecution story, briefly stated, is that on 9.10.1991 Raghbir Singh(deceased) along with Mane Ram (PW-8) after collecting 'Barma' (an instrument for drawing out water) from Nand Lal (PW-5) resident of village Kailana left for their village- Mandi at about 12 noon on a Swaraj make tractor. On the way when they reached at village Pugthala they purchased half bottle of liquor from a liquor vend. Raghbir Singh (deceased) purchased a nip of liquor separately and carried it with him. Subhash (appellant-accused) along with son of Basu Sardar and Jai Kumar met Raghbir Singh (deceased) and Mane Rame (PW -8) near the village Chamrara. Son of Basu Sardar took the nip of liquor from Raghbir Singh (deceased) and consumed the same. Thereafter all accused persons went to the house of son of Basu Sardar and again consumed illicit liquor. After consuming illicit liquor they came back at the place where they had met Mane Ram (PW-8) and Raghbir Singh (deceased). An altercation took place among son of Basu Sardar, Subash (appellant-accused) and Jai Kumar wherein the son of Basu Sardar inflicted injury upon the head of Subhash (appellant-accused) and fled away. Subhash (appellant-accused) was brought to the village Pugthala in order to get his wound dressed up from a doctor on the tractor of Amar Singh being driven by Joginder Singh (accused). Thereafter Joginder (accused) took the tractor towards village Bajana on the bank of canal. When they reached near the bridge of canal in the village Kasandi

Joginder accused stopped the tractor on which the accused persons started robbing of money from the pocket of Raghbir Singh (deceased). It was about 8.00 P.M. Enraged by the intervention of Mane Ram (PW-8) all the accused persons caught hold of Mane Ram and pressed his neck and threw him into the canal. Thereafter accused persons caught hold of Raghbir Singh (deceased) by his legs and also threw him into the same canal. Raghbir Singh (deceased) tried to catch hold of the grass grown on the bank of the canal. Jai Kumar (accused) and Joginder Singh (accused) gave leg blows on the face of Raghbir Singh and again thrown into the water and he did not come out of the canal. Mane Ram (PW-8) knew swimming and came out of the canal after having covered a distance of three acres and narrated the incident to Jai Singh a resident of village Kasandi. Thereafter, Mane Ram (PW-8) along with Jai Singh searched for Raghbir Singh (deceased) and the tractor belonging to Amar Singh (PW- 6) but they could not find them. Then Mane Ram (PW-8) and Jai Singh went to village Mandi. It was about mid-night. They narrated the occurrence to father of Raghbir Singh (deceased). They went to the city police station, Gohana. Police party along with Mane Ram (PW-8) and Jai Singh reached at the place of occurrence at about 10.00 A.M on 10.10.1991 and recorded the statement of Mane Ram (PW-8). Based on the statement of Mane Ram (PW-8) the Police Station Gohana issued first information report and registered a P.S. Case No. 259 on 10.10.1991 under Section 392 read with Section 397 and 302 read with Section 34 IPC against the appellant.

4. After completion of the investigation, the police filed charge sheet under Section 392 read with 397 IPC and under Section 302 read with 34 IPC against all the accused including the appellant. The prosecution in all examined 11 witnesses (PW-1 to PW-11) and got marked various documents in evidence. The statement of the accused appellant under Section 313 Cr.P.C. was recorded in which he took the stand that he was innocent and falsely implicated of the charge leveled against him

5. The learned Sessions Judge upon appreciation of evidence available on record found the appellant guilty of the offence punishable under Section 392 read with 397 and 302 read with 34 IPC and the same was affirmed by the High Court.

6. Hence this appeal by special leave.

7. We have heard Shri D.P. Singh, learned counsel appearing on behalf of the appellant-accused and Shri Sandeep Sharma, learned counsel appearing for the State.

8. In order to consider as to whether the prosecution established the charge against the appellant for the offence punishable under Section 392 read with 397 and 302 read with 34 IPC beyond reasonable doubt it is just and necessary to appreciate the evidence available on record.

9. In the facts and circumstances of the case, it is not necessary to consider in detail the statements of all the prosecution witnesses except PW-8. In our view, the prosecution case entirely rests on the testimony of Mane Ram (PW-8) who is an independent and impartial witness. He deposed that the accused persons threw him and Raghbir

Singh (deceased) into the canal after robbing money and the tractor. The relevant portion of his testimony is as under:

"The accused started robbing of money from the pocket of Raghbir (deceased). On my intervention, all the accused caught hold of me and pressed by neck and threw me in canal. It was about 8 P.M. After throwing me in the canal, the accused caught hold of Raghbir deceased by the legs and also threw him in the canal. Raghbir deceased tried to catch hold of the grass grown on the bank of the canal. Thereafter, accused Joginder and Jai kumar gave leg blows on the face of Raghbir deceased. Thereafter Raghbir was again thrown in the water and did not come out whereas I kept on swimming with the flow of water and came out of the canal after having covered a distance of about three acres. After having out of the water I went to V. Kasandi. I had not seen the tractor on the bank of the canal."

10. The learned counsel for the appellant urged before us that the prosecution fabricated the evidence to falsely implicate the appellant. The learned counsel for the appellant further contended that the presence of PW-8 at the scene of occurrence is highly doubtful. This theory which is now sought to be propounded is contrary to the very defence set up by the appellant in the sessions case as is evident from the cross examination of PW-8. It was suggested to PW-8 that he along with Raghbir (deceased) in a drunken condition was present at the Kasandi bridge (scene of occurrence) and they were unable to control themselves and Raghbir laid on the bank of the canal and accidentally fell into the water and drowned. This suggestion made to PW-8 that PW-8 along with Raghbir Singh (deceased) was very much present at the scene of occurrence completely negatives the submission now made by the appellant's counsel. There is nothing on record to doubt the presence of PW-8 at the scene of occurrence. Nothing has been suggested to PW-8 as to why he should have given false evidence against the appellant.

11. We also do not found any merit in the contention of the learned counsel for the appellant that the no specific overt act has such been attributed to the appellant and, therefore, he is entitled to acquittal of the offence alleged against him. PW-8, in clear and categorical terms in his evidence stated that Joginder Singh all of a sudden stopped the tractor when it had reached at the spot in between two canals near the bridge of canal in village Kasandi. That all the accused started robbing of money from the pocket of Raghbir (deceased) and when he intervened all the accused caught hold of him and pressed his neck and he was thrown into the canal. That after throwing PW-8 into the canal all the accused caught hold of Raghbir (deceased) by his legs and threw him into the canal. Raghbir (deceased) tried to catch hold of the grass grown on the bank of the canal but the accused gave blows on the face of Raghbir (deceased) and was again thrown into the water. Raghbir (deceased) did not come out from the water.

12. The evidence and material available on record further reveal circumstances to prove the guilt of the appellant: (1) The first circumstance is the recovery of the dead body of

Raghubir Singh (deceased) from the place of occurrence. (2) The sub-Inspector Man Singh (PW-11) recovered the Tractor No. HR-06-8501 from the possession of the accused persons which was the same tractor robbed by the accused. (3) The third circumstance is recovery of 'Barma' by sub-Inspector Man Singh (PW-11) from the possession of Joginder Singh (co-accused) in pursuance of his disclosure statement.

13. The learned counsel vehemently contended that there is no proper explanation forthcoming from the prosecution for the delay in lodging the first information report and the same casts a serious doubt on the case set up by the prosecution against the appellant. We are not impressed by the submission as the evidence available on record reveals the sequence of events leading to filing of first information report. The distance between the Kasandi bridge and Mandi is about 10-12 kms. It is in the evidence of PW-8 that after his coming out of the canal he went to village Kasandi and met Jai Singh and narrated the whole story to him; thereafter along with Jai Singh he returned to the scene of occurrence and searched for Raghubir (deceased) and the tractor but could not find them. Thereafter along with Jai Singh he went to Mandi on his tractor and narrated the story to the father of the deceased about the occurrence who reported the matter to the Sarpanch of the village. Thereafter he along with Jai Singh went to police post Israna who refused to lodge the report but informed the Gohana police. It is true that the distance between the Kasandi bridge and the police station Gohana is 5 kms. but PW-8 and his evidence had narrated the sequence of events which reveals the reasons for the delay, if any, in lodging the first information report at police station Gohana. There is nothing unnatural on the part of PW-8 in his first going to Kasandi village nearby to the scene of occurrence and informing Jai Singh about the incident and thereafter returning to Kasandi bridge along with Jai Singh. Having found the deceased-Raghubir Singh and the tractor were missing he along with Jai Singh went to Mandi village to inform the father of the deceased. One does not expect PW-8 to straight away first go to the nearest police station and lodge the first information report even without informing the near relatives of the deceased.

14. Be that as it may, it is not the case of the appellant that after occurrence of the incident some deliberations took place in order to falsely implicate the appellant in the case. No suggestion of any enmity between the appellant and PW-8 has been made. There is no reason to disbelieve the sequence of events narrated by PW-8. In such view of the matter mere delay in lodging the first information report, in the facts and circumstances of the case cannot be held to be fatal to the prosecution case.

15. For all the aforesaid reasons we hold that the prosecution has been able to establish the guilt of the appellant beyond all reasonable doubt for conviction under Section 392 read with 397 IPC for having robbed money and tractor. The sentence of rigorous imprisonment for a period of 7 years for each of the offence under Section 392 read with 397 IPC is accordingly upheld.

16. The question that falls for our consideration is whether

the facts and circumstances and the evidence available on record justify the conviction of the appellant under Section 302 read with 34 IPC for having caused death of Raghbir (deceased)? The evidence available on record does not suggest that there has been any intention of causing the death of Raghbir (deceased). The case falls under Part II of Section 304 IPC. The appellant committed the offence of culpable homicide not amounting to murder. The appellant is accordingly convicted under Part II of Section 304 IPC and sentenced to undergo rigorous imprisonment for 7 years. The sentences to run concurrently.

17. It is brought to our notice that the appellant has already served the sentence of 7= years rigorous imprisonment. Sentence already undergone is sufficient to meet the ends of justice. He is accordingly directed to be released forthwith, unless required in connection with any other case.

18. The appeal is accordingly allowed in part.