

PART - II

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 641 of 2007

SURENDRA

..... APPELLANT

VERSUS

STATE OF RAJASTHAN

..... RESPONDENT

**WITH
CRIMINAL APPEAL NO. 947 OF 2011
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 7324 OF 2010**

O R D E R

1. These appeals by way of special leave arises out of the following facts:

1.1 Mukesh P.W., son of the deceased Tara Chand and Phoola Devi returned home at 7:30p.m. on 24th December, 2000 and found that his parents were lying dead in the verandah of the house. An FIR was, accordingly, lodged against unknown persons but on investigation the police found out that four persons had been involved in the murders, they being Juglal, the brother of the deceased Tara Chand, Satpal, Son in Law of Juglal,

Surendra the appellant before us, and Rajesh, son of Surja Ram. The trial court, by its judgment dated 11th January, 2002, acquitted Juglal and Rajesh but convicted Satpal and Surendra under Section 302 on two counts and sentenced them to imprisonment for life under Section 302/34 of the Indian Penal Code along with fine. The trial court observed that there were no eye witnesses to the murders and that the prosecution story depended for proof exclusively on circumstantial evidence. Five circumstances in all were, accordingly, determined; they being: (i) death of Tara Chand and Phoola Devi was homicidal; (ii) motive for the commission of the murder; (iii) that the two appellants had been seen near the place of occurrence at about the time when the murders had been committed; (iv) recovery of incriminating articles at the instance of the appellants; and (v) false explanation with regard to the alibi claimed by them.

1.2 The trial court found that the death of Tara Chand and Phoola Devi was admittedly homicidal. It was further found that the motive for the incident was also proved in the light of the evidence of PW 10 Mukesh who stated that his father and uncle Juglal, though real brothers, had very strained relations over trivial

matters and that their disputes had also gone to court and that just a few days before the incident an unpleasant scene had been created at the time of the fixing of the electricity connection in the house of Juglal and an exchange of heated words had followed inter se the parties. The trial court, accordingly, relying on the evidence of Mukesh and three other persons Hari Singh, Goverdhan and Dharam Pal who were involved with the parties held that the motive for the murder had also been proved on record. The trial court then went to the last seen aspect that the appellants had been seen near the place of incident. The trial court relied on the evidence of PW - 10 Mukesh, PW - 4 Ram Chand and PW - 14, Bharat Singh who stated that they had seen the appellants along with the acquitted accused near the place of incident and that they had been identified by them. Mukesh P.W. and Ram Chand further stated that they had identified Satpal in the torch light and that he was the one primarily responsible for the murders. The trial court also found that the fourth circumstance with regard to the recoveries had been proved as the blood found on the recovered articles and the murdered weapons matched the blood group of the deceased Phoola Devi and Tara Chand. It was also found that the alibi tendered by the

appellants could not be accepted and as a false explanation had been tendered this again was a circumstance against them.

1.3 The matter was thereafter taken in appeal. The High Court has affirmed the judgment of the trial court. Two appeals have been filed against the judgment of the High Court, one by Surendra being Criminal Appeal No. 641 of 2007 and the other by Satpal being SLP(CrI) No. 7324 of 2010. We grant leave in the above Special Leave Petition.

2. We have heard the learned Amicus Curiae for the appellants in both the appeals. We find that the death of the deceased was undoubtedly homicidal and the evidence of motive has also been proved on record. We have, however, serious doubt with regard to the last seen evidence and the recoveries of the incriminating articles at the instance of the appellants. In the background that the complainant party and the accused were very closely related the question of last seen would have been an extremely relevant circumstance. In this connection, we have gone through the evidence of P.W. 4 Ram Chand and it makes rather interesting reading. In the course of his examination in chief he

deposed that he had seen three persons in the light of a torch at the time when he was returning home but he could recognise only one i.e. Satpal (appellant in Criminal Appeal No.947 of 2011). In the cross examination, he admitted that he had met his cousin Mukesh PW and the Police Inspector at about 9 or 10:00a.m. the next morning but he did not tell either of them at that stage that he had seen three persons coming out of the house of Tara Chand and Phoola Devi and that one of them was Satpal. He also deposed that he had not told anybody in the village about the identity of the three persons. He admitted that he had told Mukesh with regard to the involvement of Satpal on the next day but even then Mukesh did not take him to the Police and it was after many days that one Hari Singh had done so and that he had made a statement to police thereafter.

3. We also find that statement of PW 14 is equally uncertain. He was also closely related to the accused and the deceased and had tried to show that he was a witness to the motive. In his examination in chief he stated that he had seen all four accused sitting together outside the house of the deceased plotting out the murders but he has confronted with his statement

under Section 161 of the Cr.P.C. where he had not given the names of the assailants. We also find that in the face of this very uncertain evidence it would have been incumbent on the prosecution to have put the appellants before an identification parade. This was not done and it is the admitted case that both the appellants were identified by the witnesses in Court for the first time during the course of the trial. Moreover, Surendra, appellant was a resident of a village 70 kms away from the place of incident. We are, therefore, of the opinion that the last seen inspires no confidence.

4. We now come to the recoveries of the alleged murder weapons. The appellants were arrested on the 11th of January, 2001 and the recoveries were made 2/3 days thereafter but the articles were sent to the laboratory on the 19th of March, 2001. Even otherwise, we are of the opinion that as the evidence of last seen itself is unacceptable the recoveries by themselves would not make any difference. Moreover even if a false plea had been taken by the accused that by itself will not be enough to maintain their conviction and as the prosecution story itself suffers from glaring infirmities the infirmities in the prosecution case

cannot be filled up by a false plea of alibi. We are conscious of the fact that this is a case of double murder but in the absence of any cogent evidence, we are unable to sustain the conviction. We, accordingly, allow both the appeals and set aside the orders of the trial court as well as the High Court and direct the acquittal of the appellants.

5. The fee of the learned Amicus is fixed at ₹7,000/- in each case.

6. We are told that Satpal is in custody. He shall be released forthwith if not required in connection with any other case. Bail bonds of Surendra stand discharged.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
APRIL 13, 2011.

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O R D E R

Leave granted in SLP (CrI) No. 7324 of 2010.
We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed these appeals. The appellant Satpal who is stated to be in custody shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order shall be separately placed on record.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

**NEW DELHI
APRIL 13, 2011.**

