

Before Jasbir Singh & Rameshwar Singh Malik, J.J.

BANWARI LAL AND OTHERS—Appellants

versus

STATE OF HARYANA—Respondents

CRA No.579-DB of 2006

November 5, 2012

Indian Penal Code, 1860 - S.302, 201 - Code of Criminal Procedure, 1973 - S.307 - 'Approver' 'Circumstantial evidence' - Appellant tried for murder - One accused sought pardon u/s 307 Cr.P.C. - Appellants convicted by trial court - Appeal filed - Held, inordinate delay creates serious doubt - Last seen evidence not proved - Approver's evidence is weak type of evidence - Cannot be relied upon without corroboration - Chain of events not completed - Appellants acquitted.

Held, that when the husband of the complainant did not return home during that night and next day as well, she would have certainly reported the matter either to her Jeth or to the police or any other relative including her parents. The story put forth by the complainant as well as her statement does not inspire confidence because she was not expected to keep silent for so long before registration of the FIR on 11.2.2001 which came to be registered only after recovery of the dead body of her husband. The inordinate and long delay in lodging the FIR remained unexplained which creates serious doubts in the case of the prosecution.

(Para 16)

Further held, that secondly, the last seen evidence put into service by the prosecution has not been proved. Vijay Singh (brother of the deceased) did not say anything regarding the last seen evidence either before the police when his statement was recorded or before the court when he appeared as PW1.

(Para 17)

Further held, that the approver's evidence is a weak type of evidence. Because of this reason, the approver is under the legal obligation

to pass the test of reliability as well as corroboration on the material particulars. The approver is bound to prove his credibility in the court beyond shadow of reasonable doubt. Until and unless an approver is found to be trustworthy and his statement is corroborated, it would not be safe to convict the accused on the basis of the evidence of the approver.

(Para 20)

Further held, that it is also the settled proposition of law that whenever any case is based on circumstantial evidence, a heavier burden lies on the prosecution to prove its case by completing the chain of events, so as to sustain the conviction of the accused on the basis of circumstantial evidence. In the present case, as noted above, the prosecution has failed to prove its case either regarding motive or last seen, besides recovery and inordinate long delay also. The chain of events has also not been completed.

(Para 23)

Vinod Ghai, Senior Advocate with Ravinder Singh, Advocate,
P.R.Yadav, Advocate.

Kshitij Sharma, Assistant A.G, Haryana.

RAMESHWAR SINGH MALIK J.

(1) The present appeal is directed against the judgment dated 13.7.2006 whereby the appellants were convicted for the offences punishable under Section 302/201 read with Section 34 of the Indian Penal Code ('IPC' for short), and they were accordingly sentenced to undergo rigorous imprisonment for life.

(2) Facts first. The criminal law was set into motion by Smt. Guddo alias Krishna wife of Sumer Singh-deceased, by getting her statement (Ex. PL) recorded before the police. Inderpal SI/SHO along with Jaipal Singh SI, Chander Bhan Head Constable No. 40, Meer Singh UGC, Rajender Singh UGC and Surender Singh Constable, was present in village Mandi in a government jeep bearing registration No. HIR-35-1377 driven by Satish Kumar, Constable, in connection with patrolling duty, on 11.2.2001 at about 5:00 p.m. Smt. Guddo @ Krishna, who was accompanied by her Jeth (elder brother of her husband) namely Vijay Singh, resident of village Mandi, came and got her statement (Ex. PL) recorded. The complainant stated that

she was resident of the above said village and was a household lady. On 4.2.2001, she along with her husband Sumer Singh, was present at her house. At about 6:00 p.m., Lala alias Vijay Singh son of Ranjit Singh, Sethi alias Laxman son of Leela Ram and Poet alias Satnarain son of Inder Singh, Caste Ahir, resident of village Mandi, who were well known to the complainant, came to their house and asked her husband-Sumer Singh to come out of the house. Her husband told her to prepare meal and he would return after some time. She prepared meal but her husband did not return up to 11/12'o clock. After waiting, she went to sleep but her husband did not come back even on the next morning. On 5.2.2001, at about 11:00 a.m., accused Poet alias Satnarain met her and she asked him about her husband, who left in the evening but did not return home. Accused Poet alias Satnarain told her that her husband-Sumer Singh had gone to Gujarat and would return within two or four days. However, her husband did not return till the date when she got her statement recorded. She further stated that today i.e., on 11.2.2001, a dead body in a naked position was found in a well of Bir Singh son of Deen Dayal. Having received that information, she along with her Jeth Vijay Singh and Jethani Rajesh Devi reached at the well of Bir Singh. She, her Jeth and Jethani saw the dead body, which after taking out from the well, had been placed there. The dead body was identified by her, her Jeth and Jethani as that of her husband Sumer Singh, as little finger of the left hand of her husband was having four phalanx (knuckles). Symbol of OM was engraved (as tattoo) on the right hand of her husband. Thread was tied on thumbs of feet of her husband. She, on careful examination of the dead body, identified it as her husband's body. She was having full doubt that her husband was murdered by Vijay Singh, Laxman and Satnarain and his dead body was thrown in the well of Bir Singh. The motive behind the murder was that a case for molesting a girl was lodged against Jitender son of her Jeth Bhawani Singh, by Banwari (brother of accused Vijay Singh). She sought legal action against the accused. After recording the above said statement of Guddo alias Krishna by Inderpal SI/SHO, police station Sadar Narnaul, it was read over to her. She heard it and after accepting the same to be correct, put her signatures in Hindi in token of its correctness. From the statement, a case for commission of offence punishable under Sections 302, 201, 34 IPC was found to be made out. Accordingly, a writing was sent through Constable Surinder Singh 306 to the police station and it was directed that after registration of the case, number of the FIR be informed. Special report be sent to the Senior officers

and Illaqa Magistrate. He along with his co-employees and complainant along with her Jeth Vijay Singh, left for the place of occurrence at village Mandi. On the basis of the above said statement, formal FIR (Ex. PL/2) was recorded by MHC Om Parkash-PW4. Copy of FIR No. 39 dated 11.2.2001 was sent to SHO for investigation through the same Constable namely Surender Singh. Copies of the FIR and special report were sent through Constable Naresh Kumar PW-7 to the Illaqa Magistrate and senior officers.

(3) Investigation was carried out. Inderpal SI/SHO reached at the place of occurrence. He conducted the inquest proceedings. Statements of PWs Vijay Singh, Bhawani Singh, Narender and Ram Chander were recorded under Section 161 Cr.P.C. The dead body was sent to the General Hospital, Narnaul. An application for getting the post mortem examination on the dead body was entrusted to Constable Surender Singh. Thereafter, SI Inderpal came to Narnaul and recorded the statement of PW Bishnu Balmiki, who took out the dead body from the well. On 12.2.2001, SI Inderpal again went to village Mandi and recorded the statement of Constable Surender Singh. On 12.2.2001, Inspector Sishpal Singh visited village Mandi and verified the investigation conducted by Inderpal SI/SHO. Rough site plan was prepared by Inderpal SI in the presence of Inspector Sishpal. On 13.2.2001, Sishpal Inspector recorded the statement of Jarawali and Narender Sarpanch. On 15.2.2001, he arrested accused Laxman, Poet alia Satnarain and Vijay. On interrogation, all the three accused suffered their disclosure statements Ex. PQ, Ex. PR and Ex. PS. On 24.2.2001, accused Banwari was arrested. On interrogation, he also suffered a disclosure statement. Pursuant to their disclosure statements, all the accused identified the place of occurrence. Rough site plan of demarcated places were also prepared. On completion of the investigation, report under Section 173 Cr.P.C. was presented by Inderpal SI/SHO, before the learned court of competent jurisdiction. Relevant documents were supplied to the accused. Finding the offence under Section 302 IPC exclusively triable by the learned court of Sessions, the case was committed to the court of Sessions, for trial.

(4) Having found a prima facie case made out, charge was framed against the accused for commission of offences punishable under Sections 302, 201 read with Section 34 IPC. Accused pleaded not guilty and claimed trial.

(5) When the case was fixed for prosecution evidence, accused Poet alias Satnarain moved an application on 23.10.2002 under Section 307 Cr.P.C., seeking tender of pardon. Another application was moved on 5.12.2002 by accused Poet alias Satnarain, seeking cancellation of his bail on the ground that he was apprehending danger to his life at the hands of his three co-accused. His application was allowed and he was taken into custody. Vide order dated 24.5.2003, his application under Section 307 Cr.P.C. was allowed, whereas other applications of Lala alias Vijay, Sethi alias Laxman and Banwari were dismissed.

(6) With a view to prove its case, prosecution examined as many as 15 PWs, besides tendering relevant documents in evidence. On conclusion of the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C. The accused alleged false implication and claimed complete innocence. Opting to lead defence evidence, accused examined as many as 7 DWs.

(7) After hearing both the parties and going through record of the case, the learned trial court, vide its judgment of conviction dated 13.7.2006, convicted the accused namely Banwari Lal, Lala @ Vijay and Sethi @ Laxman, holding them guilty for the offences punishable under Section 302, 201 read with Section 34 IPC. Vide order of sentence dated 15.7.2006, all the three convicts were awarded the sentence, as under:-

| Offence | Sentence |
|----------------------------------|---|
| U/s 302 read with Section 34 IPC | Rigorous imprisonment for life with fine of Rs. 5000/- each. In default of payment of fine convicts shall further undergo R.I. for three months |
| U/s 201 read with Section 34 IPC | Rigorous imprisonment for three years with fine of Rs. 1000/- each. In default of payment of fine convict shall further undergo R.I. for one month. |

(8) However, all the sentences were ordered to run concurrently.

(9) Feeling aggrieved against the impugned judgment of conviction and order of sentence, the appellants have approached this Court, by way of instant appeal. That is how, this Court is seized of the matter.

(10) Learned senior counsel for the appellants submits that firstly, there was an inordinate and unexplained delay in lodging the FIR. He further submits that Vijay Singh son of Kanwar Singh as well as Bhawani Singh son of Ramotar neither named Banwari Lal appellant No. 1 nor said anything regarding the last seen evidence. In this context, he also submits that till Doctor Dinesh Podar PW3 received the application Ex. PO/1, to conduct the post mortem on the dead body of Sumer Singh (deceased), on 12.2.2001 on 10:10 a.m. along with inquest papers, the alleged story of last seen was not there. Vijay Singh PW1 (brother of the deceased), does not say anything either about Banwari Lal or about the alleged last seen evidence even while appearing in the court.

(11) Learned senior counsel for the appellants next contended that pursuant to the alleged disclosure statements, no recovery of any kind, whatsoever, was effected from either of the appellants. PW15 Poet @ Satnarain, who turned to be an approver was neither reliable nor his statement was corroborated. There were very many major discrepancies and contradictions in the case of prosecution which go to the root of the case, creating serious doubt in the prosecution version, as the same was based on a concocted story. He concluded by submitting that since the learned trial court has misdirected itself, while committing a serious error of law in convicting the appellants without there being any cogent evidence against them, the impugned judgment was not sustainable in law.

(12) Per contra, learned counsel for the State submits that the prosecution has successfully brought home the guilt against the accused. There were no contradictions and discrepancies much less serious contradictions in the case of the prosecution. The chain of events has been duly completed and the learned trial court has rightly appreciated the evidence brought on record, while convicting the appellants assigning cogent reasons. He prays for dismissal of the appeal.

(13) Arguments of both the parties have been heard and the record has been carefully perused.

(14) After giving thoughtful consideration to the rival contentions raised on behalf of both the parties and keeping in view the peculiar fact situation of the present case, this Court is of the considered opinion that

prosecution has failed to prove its case beyond reasonable doubt. The impugned judgment of conviction is based on misreading of evidence and the same is liable to be set aside. The appeal deserves to be accepted. To say so, reasons are more than one, which are being recorded hereinafter.

(15) Firstly, it does not appeal to reason as to why the complainant kept conveniently silent for a long period between the alleged incident and registration of the case. No explanation is forthcoming. It is the own pleaded case of the prosecution, as admitted by PW2 Krishna Devi in her cross examination, that she was not on speaking terms with appellants due to enmity with her Jeth (elder brother of her husband). It is the further case of prosecution that Lala alias Vijay Singh, Sethi alias Laxman, came to her residence on 4.2.2001 at about 6 p.m. and took her husband along with them. While going with the appellants Vijay Singh and Laxman, her husband Sumer Singh-deceased told the complainant that she should prepare the meal and he would be returning home soon.

(16) When the husband of the complainant did not return home during that night and next day as well, she would have certainly reported the matter either to her Jeth or to the police or any other relative including her parents. The story put forth by the complainant as well as her statement do not inspire confidence because she was not expected to keep silent for so long before registration of the FIR on 11.2.2001 which came to be registered only after recovery of the dead body of her husband. The inordinate and long delay in lodging the FIR remained unexplained which creates serious doubts in the case of the prosecution.

(17) Secondly, the last seen evidence put into service by the prosecution has not not been proved. Vijay Singh (brother of the deceased) did not say anything regarding the last seen evidence either before the police when his statement was recorded or before the court when he appeared as PW1. Similarly, Bhawani Singh did not say even a word regarding last seen evidence when his statement was recorded by the police but he tried to make material improvements in his statement, while appearing before the court. Thus, the last seen evidence has also not been duly proved by the prosecution.

(18) It is equally pertinent to note that the complainant tried to implicate maximum number of accused. Accused Vikram was found innocent by the Investigating Agency itself. Even the application moved under Section 319 Cr.P.C. came to be dismissed by the learned trial court, vide order dated 13.8.2002. It shows that the complainant has unsuccessfully tried to falsely implicate maximum number of persons because of the enmity due to registration of earlier FIR No. 257/2000 dated 18.12.2000, referred to above. The prosecution witnesses have contradicted themselves on the time of recovery of dead body from the well. The discrepancies, in this regard, are so serious that the same cannot be reconciled and create serious doubt in the story of the prosecution.

(19) It is also worth mentioning that Vishnu Kumar, who allegedly took out the body of the deceased from the well, has not been produced in the witness box for the reasons best known to the prosecution. Rajesh Devi, who allegedly accompanied the complainant to the well of Bir Singh has also not been examined. These two material witnesses have not been examined despite having been cited as witness in the list of witnesses. It is not the case of the prosecution that they were not available. Thus, no explanation has come forth, in this regard as well.

(20) Poet @ Satnarain was another accused who turned approver. However, a close perusal of his statement as PW15, leaves no manner of doubt that neither he was a reliable witness nor his statement has been corroborated. In this view of the matter, it is not safe to uphold the conviction of the appellants on the basis of statement of this approver, PW15. The approver's evidence is a weak type of evidence. Because of this reason, the approver is under the legal obligation to pass the test of reliability as well as corroboration on the material particulars. The approver is bound to prove his credibility in the court beyond shadow of reasonable doubt. Until and unless an approver is found to be trustworthy and his statement is corroborated, it would not be safe to convict the accused on the basis of the evidence of the approver.

(21) The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in *Niranjan Singh versus State of Punjab (I)*. The relevant observations made by the Hon'ble Supreme

Court in para 11 of the judgment, which can be gainfully followed in the present case, read as under:

*“It is well settled that the approver’s evidence must pass the double test of reliability and corroboration in material particulars. It is said that the approver is a most unworthy friend and he having bargained for his immunity must prove his worthiness for credibility in Court. Firstly, we will have to scrutinize the evidence of Gurjant Singh (P.W.3), approver carefully to find out as to whether his evidence can be accepted as trustworthy. Secondly, once that hurdle is crossed the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Ordinarily, combined effect of Sections 133 and 114 of the Evidence Act is that conviction can be based on uncorroborated testimony of an approver but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver. Section 114 illustration (b) incorporates a rule of caution to which the courts should have regard. See **Suresh Chandra Bahri vs. State of Bihar 1995 Supp (1) SCC 80.***

(22) Further, the present case was based on circumstantial evidence. There was no eyewitness account. The date and time of the death of the deceased was only a guess work. Even PW3-Dr. Dinesh Podhar, who conducted post mortem examination on the body of Sumer Singh (deceased), stated in his cross examination that the deceased might have died on 9.2.2001 whereas he went along with the appellants in the evening of 4.2.2001. His dead body was found in the well of Bir Singh on 11.2.2001. In this view of the matter, the prosecution has failed to prove the evidence of last seen.

(23) It is also the settled proposition of law that whenever any case is based on circumstantial evidence, a heavier burden lies on the prosecution to prove its case by completing the chain of events, so as to sustain the conviction of the accused on the basis of circumstantial evidence. In the

present case, as noted above, the prosecution has failed to prove its case either regarding motive or last seen, besides recovery and inordinate long delay also. The chain of events has also not been completed. No recovery has been effected pursuant to the disclosure statements allegedly suffered by the accused, in spite of the fact that PW 15 has specifically stated before the court that appellants Laxman as well as Vijay Singh used a cable wire and put the same around the neck of Sumer Singh. They tightened the cable wire because of which the deceased died. Thus, the alleged disclosure statements without any consequent recovery, are of no use to the case of the prosecution. In this view of the matter, it is unhesitatingly held that the learned trial court has misdirected itself while recording the conviction of the appellants.

(24) Considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court feels no hesitation to conclude that the prosecution has failed to prove any motive, last seen evidence or any recovery. Similarly, inordinate long delay remained unexplained.

(25) The prosecution witnesses contradicted themselves on material particulars. Glaring contradictions and discrepancies in the prosecution evidence have created serious doubt in the case of the prosecution, because of which this Court is convinced that it is not safe to uphold the conviction in the peculiar fact situation of the present case. Consequently, the impugned judgment is set aside. The appellants are ordered to be acquitted of the charge framed against them.

(26) Resultantly, the appeal stands allowed. The appellants are directed to be set at liberty forthwith, in case they are not required in any other case.