

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Cr. Appeal No. 10/2007
Confirmation No. 04/2007

Date of Decision: 31.01.2011

Shiv Pal Singh and anr. Vs. **State of J&K**

Coram:

**Mr. Justice J.P.Singh, Judge.
Mr. Justice Hasnain Massodi, Judge.**

Appearing Counsel:

For Appellant(s) : Mr. Amrish Kapoor, Advocate.
For Respondent(s) : Mr. Vinod Bakshi, Dy.A.G.

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|-----|----------------------------------------------------------|---|---------------|
| i) | Whether approved for reporting
in Press/Journal/Media | : | Yes/No |
| ii) | Whether to be reported
in Digest/Journal | : | Yes/No |
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J. P. Singh-J :

Sentenced to Imprisonment for Life for committing the Murder of Mst. Ghanshama Devi, inflicting her injuries with a *bat shaped wooden tool* known as *Dab*, and *sickle type implement* known as *Chindri*, in local dialect, the convicts-Shiv Pal Singh and his mother Raj Dei, have appealed to this Court questioning their conviction and sentence under Section 302/34 RPC, ordered vide Judgment and Order of May 04, 2007 of learned Sessions Judge, Bhaderwah.

The Sessions Judge too has made Reference for Confirmation of the sentence of Life Imprisonment awarded to the appellants vide order, referred above.

The facts, necessary for determination of the Appeal and the Confirmation Reference may be stated thus:-

Ghanshama Devi-deceased, was the real sister of Raj Dei-appellant. Both of them had been married to Faqir Singh of Village Malhori, Tehsil Doda. Ghanshama Devi had three sons besides daughters whereas Raj Dei has one son and two daughters. Faqir Singh, their husband, turned mad and died in that state. The dispute between the two wives and their children over Faqir Singh's property, however, continued even after his death.

It was at about 9.45 am of May 08, 1999 that PW-7 Jeevan Singh, while on his way to Pandit Brij Lal's house, noticed noise near Irrigation Canal and thereafter saw Ghanshama Devi proceeding towards the Canal and Shiv Pal Singh running after her with a *Dab* in his hand with which he hit her on the head resulting in her fall on the ground. *Raj Dei* and *Banni Devi*, her daughters too reached there, in the meanwhile. Raj Dei hit Ghanshama Devi repeatedly with the *Chindri* she was carrying.

On hearing Ghanshama Devi's cries, Kirna Devi and Sapna Devi, her daughters reached on spot when Shiv Pal Singh slipped into the forest, whereas Raj Dei

and Banni Devi ran towards their house. Saleema Begum and many others too in the meanwhile reached there.

The matter was reported to Police Post, Khalleni which, vide its Report No. 4, based on the report of Jagdish Raj, Chowkidar, requested Police Station, Doda for registration of FIR. On this Report, FIR No.66/99 was registered at Police Station, Doda. The investigation carried out pursuant to the registration of the FIR, led to the filing of the Final Police Report before the Chief Judicial Magistrate, Doda, who committed the case to the Sessions Court where the appellants were charged under Section 302/34 RPC. Claiming trial, they pleaded 'Not Guilty' to the Charge.

The prosecution relied upon PW-2 Kirna Devi, PW-3 Sapna Devi and PW-7 Jeevan Singh as its eye witnesses to the occurrence besides other corroborative and supportive evidence of its other witnesses to prove that the appellants had caused injuries to Ghanshama Devi with the *Dab* and *Chindri* with common intention to commit her Murder.

The appellants did not lead any evidence in defence.

Relying on the statements of PW Nos. 2 & 3, the daughters of the deceased, PW-27 Om Kumar, the Assistant Surgeon, Public Health Centre, Assar, who conducted the Post-Mortem Examination of the deceased, and other prosecution evidence, reference whereto shall be made at the time of consideration of the submissions of the learned counsel for the parties, learned Sessions Judge found the appellants guilty of committing the Murder of Ghanshama Devi and sentenced them to Imprisonment for Life.

We have perused the evidence and the material produced by the prosecution in support of its case and considered the submissions made by the appellants' learned counsel projecting appellants' innocence and those of the learned State Counsel, justifying their conviction and supporting the Confirmation Reference.

The star witness of the prosecution PW-7 Jeevan Singh, unfolding the events preceding appellants' hitting the deceased and following the actual occurrence indicating as to how had the appellants run away leaving Ghanshama Devi dead on spot, having not supported the prosecution, the prosecution depended

for the success of its case on the eye witness account of the occurrence supplied by PW Nos. 2 & 3.

According to the statements of PW-3 Sapna Devi, PW-18, Saleema Begum, the labourer, who was helping them in planting the seedlings, too had run with the two sisters towards the place from where they had heard Ghanshama's cry and found the appellants causing injuries to the deceased. PW-18 has, however, not supported them and according to her she had left the fields 10 to 20 minutes after Kirna Devi and Sapna Devi's running towards the place of occurrence. She does not support the two sisters' version that she had gone to inform and call the BSF personnel on spot. According to her, the police had recorded her statement 6/7 days after the occurrence.

Thus, with PW-18's too not supporting the prosecution, we are left with the statements of PW Nos. 2 & 3 alone for the eye witness account of the occurrence.

According to the statements of these witnesses, they had informed the police that the appellants had killed their mother, but their statements were not recorded on the day of occurrence and even thereafter when the police visited their Village 2/3 times.

Their statements are stated to have been recorded after about a month.

According to PW-34 Naib Chand, ASI, the Investigating Police Officer, he had not recorded the statement of any eye witness in the case till May 11, 1999, And until June 02, 1999, he had not proved any offence against the accused. Appellant-Raj Dei was arrested on May 22, 1999 and that too on the basis of suspicion alone. He had visited the Village to record the statements of PW Nos. 2 & 3 several times but could not do so as they were reported unwell and in shock. He recorded their statements only on June 20, 1999.

Giving the details of the place of occurrence, he says that the place of occurrence was at a distance of **1½ Kms** from the fields where PW Nos. 2 & 3 were planting the seedlings and it would take 15 minutes to reach the place of occurrence therefrom. According to him, Mushtaq Ahmed, Manjit Singh, Chael Singh, Bodh Raj, Kartar Singh, Nazir Ahmed, Govind Ram, Bodh Raj, Faqir Chand, Hem Raj, Satish Kumar, Bashir Ahmed, Satish S/o Chandu Ram, Mohd. Iqbal, Kirna Devi D/o Faqir Singh, Raj Pal Singh, Raghbir Singh

and Jagdish Raj remained on spot during the course of his investigation on 08.05.1999.

Perusal of the site plan EXPWNC prepared by him on the day of occurrence records that Shiv Pal Singh was stated to have killed the deceased.

PW-1 Jagdish Raj, the Chowkidar who had lodged the report on the basis whereof FIR came to be registered does not support the contents thereof in which the appellants are stated to have caused injuries to Ghanshama Devi resulting in her death.

PW-27 Dr. Om Kumar, who conducted the autopsy of Ghanshama Devi on 08.05.1999, had observed following injuries on her person:-

1. Lacerated cut over the chin, cutting skin, muscles and mandible is broken (compound fracture mandible).
2. Maxillary bone fractured.
3. Teeth are broken (disimpacted)
4. Bone deep incised wound on right cheek anterior to the ear.
5. Incised wound on forehead 4-5 cm long, bone is also cut, Brain matter oozing out.
6. Fracture (compound) of frontal bone creating a big hole in skull, brain matter, scattered out on clothes and hair.
7. Bleeding from both ears and nostrils, lower lip and upper lip were cut.
8. Compound fracture of occipital bone, temporal bone and frontal bone. Membranes congested, lacerated, skull was empty.
9. 4-6 cms long bruises over neck anteriorly, bleeding plus under the skin.

According to him the deceased had died due to cerebral concussion and multiple effects of the injuries resulting in sudden Cerebro-Respiratory Cardiac Failure.

The statements of PW Nos.1 & 2, when read in juxtaposition with the statement of the Investigating Police Officer, who reached the Village on the day of the occurrence itself, several persons of the Village including PW-2 Kirna Devi were with him till evening. It, therefore, becomes difficult to accept Kirna Devi's statement of having witnessed the appellants causing injuries to her mother because had she seen the occurrence, she would have told the Investigating Officer about it on that very day. Another factor which belies her having seen the occurrence is the statement appearing in the site plan EXPWNC which indicates Shiv Pal Singh alone as the person who had committed the offence. Although mention of Shiv Pal Singh's name in the site plan appears to have been recorded therein on the basis of some loose information gathered on spot yet omission of Raj Dei's name therefrom indicates that the information so conveyed was not that of Kirna Devi. This is so because had

Kirna Devi disclosed any thing about the occurrence to the Investigating Officer, even without getting her statement recorded, Raj Dei's name would not have been omitted from the site plan.

The reason projected by the Investigating Police Officer in not recording the statements of Kirna Devi and Sapna Devi for 40 days saying that they were in shock and not feeling well, is not supported by these two eye witnesses as nothing of this sort has been projected by them in their statements in the Court.

This apart, looking to the location of the place of occurrence, which is stated **1½ Kms** away from the place where these two witnesses were planting seedlings in their fields, it becomes difficult to accept that they had heard the cry of their mother from such a long distance and moved towards the place and seen the appellants causing injuries to the deceased.

The prosecution has not produced any evidence on the basis whereof omission of Kirna Devi and Sapna Devi to disclose the police or any other person in the Village that they had witnessed the occurrence, for about 40 days, may be justified and explained.

Even otherwise, the eye witness account given by the two witnesses about the manner in which the occurrence had taken place, when considered in the light of the number and seat of the injuries, does not inspire confidence to accept their version of the occurrence as true and correct.

Thus looking to the totality of the circumstances of the case, it comes out that the two witnesses could not have heard the cries of their mother from a distance of 1½ kms which is stated to have derived them towards the place of occurrence where they saw the appellants causing injuries to the deceased.

The first informant being not the person who had actually seen the occurrence, as admitted by him in his statement in the Court, the FIR appears to have been lodged about the involvement of the appellants in the commission of crime only on the basis of suspicion.

Thus, there being no eye witness to the occurrence, the prosecution cannot be said to have proved its case of appellants' involvement in the Murder of the deceased, in the absence of any other corroborative or supportive evidence on the basis

whereof it may be said that appellants' presence on the place of occurrence had been established.

Suspicion, however, strong it may be, cannot take the place of proof.

We, therefore, find substance in the appellants' learned counsel's submission that statements of PW Nos. 2 & 3 were not worthy of credence.

Barring the statements of PW Nos.2 & 3, the prosecution has not produced any incriminating evidence against the appellants.

Thus, finding no sustainable evidence to connect the appellants with the commission of the Murder of Ghanshama Devi, we allow the Appeal setting aside their conviction and sentence ordered vide learned Sessions Judge, Bhaderwah's Judgment and Order of May 04, 2007, declining the Confirmation Reference.

The appellants are ordered to be set to liberty forthwith.

(Hasnain Massodi)
Judge

(J. P. Singh)
Judge

JAMMU:
31.01.2011
Pawan Chopra