

BHAGALOO LODH AND ANR.

v.

STATE OF U.P.

(Criminal Appeal No. 207 of 2007)

JUNE 14, 2011

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Penal Code, 1860 – s.302 r/w s.34 – Homicidal death due to sharp edged weapon – Conviction under s.302 r/w s.34 – Challenge to – Held: Prosecution furnished satisfactory explanation for delay of 9 hours in lodging the FIR – PW1 explained that the incident occurred at night and he could not go to the police station, which was at a distance of 18 Kms, out of fear – Both eye-witnesses were closely related to the deceased but their testimonies had been found trustworthy by both the courts below, and thus cannot be discarded – Conviction accordingly upheld.

FIR – Delay in filing of FIR – Effect of – Held: Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version – In case there is some delay in filing the FIR, the complainant must give explanation for the same – In absence of such an explanation, the delay may give presumption that allegations/accusations were false – Delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained.

Evidence – Evidence of a close relative – Held: Can be relied upon provided it is trustworthy – Such evidence cannot be disbelieved merely on the ground that the witnesses are inter-related to each other or to the deceased.

According to the prosecution, pursuant to a quarrel, the two accused-appellants alongwith a co-accused-'RL'

A caught hold of PW1's brother while another co-accused-
 'BS' gave him several blows by a sharp edged weapon
 "Karauli" due to which PW1's brother died on the spot.
 'RL' died during the course of trial. The Sessions Court
 convicted the appellants and accused-'BS' under
 B Sections 302/34 IPC and sentenced them to life
 imprisonment. High Court upheld the conviction of the
 appellants and co-accused 'BS'.

C Before this Court, the appellants challenged their
 conviction inter alia stating that the FIR was lodged after
 a delay of 9 hours and the prosecution failed to furnish
 any plausible explanation for the same; and that PW1 and
 PW2, the alleged eye-witnesses, were very close relatives
 of the deceased, and thus, their testimonies cannot be
 D relied upon safely.

Dismissing the appeal, the Court

E HELD:1. The autopsy on the body of the deceased
 was conducted by PW.4 and he found 12 ante-mortem
 incised wound injuries. The cause of death spelt out in
 the post-mortem report was shock and haemorrhage as
 a result of ante-mortem injuries. In his deposition in the
 Trial Court, PW 4 reiterated the said cause of death and
 also stated therein that the ante-mortem injuries suffered
 F by the deceased were attributable to a sharp edged
 weapon, like *karauli* and were sufficient in the ordinary
 course of nature to cause death. [Para 5] [1045-B-C; 1046-
 E-F]

G 2. Prompt and early reporting of the occurrence by
 the informant with all its vivid details gives an assurance
 regarding truth of its version. In case there is some delay
 in filing the FIR, the complainant must give explanation
 for the same. In absence of such an explanation, the
 delay may give presumption that allegations/accusations
 H were false and had been given after thought or a coloured

version of events. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. In the instant case, so far as the delay in lodging the FIR is concerned, it has been explained by PW.1. The incident occurred at 9.00 P.M. on 25.10.1999 and the FIR was lodged on 26.10.1999 at 6.10 A.M. at the police station at a distance of 18 K.M. from the place of incident. PW.1 mentioned that on account of fear of the accused persons, he could not go to the police station to lodge the FIR at night. This explanation has been found by both the courts below to be perfectly convincing, and after considering all the facts and circumstances of the case, the courts below had drawn an inference that the explanation furnished was quite satisfactory. There is no cogent reason to take a view contrary to the view taken by the courts below. [Para 7, 9] [1046-G-H; 1047-A-B-D-F]

Sahib Singh v. State of Haryana, AIR 1997 SC 3247; *Gorige Pentaiah Pentaiah v. State of A.P. & Ors.*, (2008) 12 SCC 531; *Kishan Singh (dead) thr. Lrs. v. Gurpal Singh & Ors.*, AIR 2010 SC 3624) – relied on.

3.1. So far as the issue of accepting the evidence of closely related witnesses is concerned, both the courts below had placed a very heavy reliance on the depositions of PW.1 and PW.2, inspite of the fact that PW.1 was the brother of the deceased and PW2 was closely related to PW.1. The daughter of PW.1 got married with the nephew (sister's son) of PW.2. Both of them had supported the prosecution case. Both of them have been extensively cross-examined by the defence, but nothing could be extracted therefrom which could impair their credibility. The courts below found that evidence of both the eye-witnesses inspired confidence and was worth acceptance as both of them had given full version of the

A incident. More so, both the courts below held that the witnesses had no reason to falsely implicate the appellants and the co-accused and spare the real assailants. [Para 10] [1047-F-H; 1048-A-B]

B 3.2. Evidence of a close relation can be relied upon provided it is trustworthy. Such evidence is required to be carefully scrutinised and appreciated before resting of conclusion to convict the accused in a given case. But where the Sessions Court properly appreciated evidence and meticulously analysed the same and the High Court re-appreciated the said evidence properly to reach the same conclusion, it is difficult for the superior court to take a view contrary to the same, unless there are reasons to disbelieve such witnesses. Thus, the evidence cannot be disbelieved merely on the ground D that the witnesses are inter-related to each other or to the deceased. In view thereof, no fault can be found with the evidence recorded by the courts below accepting while the evidence of closely related witnesses. [Para 14] [1049-B-F]

E *M.C. Ali & Anr. v. State of Kerala*, AIR 2010 SC 1639; *Myladimmal Surendran & Ors. v. State of Kerala*, AIR 2010 SC 3281; *Shyam v. State of Madhya Pradesh*, (2009) 16 SCC 531; *Prithi v. State of Haryana*, (2010) 8 SCC 536; *Surendra Pal & Ors. v. State of U.P. & Anr.*, (2010) 9 SCC F 399 and *Himanshu @ Chintu v. State (NCT of Delhi)*, (2011) 2 SCC 36 – relied on.

G 4. The incident had occurred outside the village and not inside the village. Therefore, it is likely that some other persons might have come there after the accused had run away from the place of occurrence. PW.1 had deposed that a resident of a far away village, who got married in the same village was also with him. However, no question had been put to PW.5, (I.O.) by the defence as to why the said person had not been examined. [Para H 12]

5.1. The accused examined defence witnesses, DW.1 and DW.2, to prove alibi that the appellants could not be present on the place of occurrence as they had been in their agricultural field. So far as the evidence of DW.1 is concerned, he has deposed that the appellants had been working in their paddy field at the time of occurrence of the crime. However, the courts below did not believe his statement for the reason that the witness had never got his statement recorded by the Investigating Officer, nor did he disclose such fact to any other person. He was examined first time in the court. Similarly, statement of DW.2 was not found worth acceptance. The said witness was present in the morning at the place of occurrence when the Investigating Officer reached there. The appellants had been named in the FIR. DW.2 also admitted that he knew that a murder case had been registered against the appellants, but he did not disclose to the Investigating Officer or to any other person that the appellants could not be the assailants. DW.2 also admitted that his father was the Pradhan and he had defeated a very close relative of the deceased. [Paras 2, 13] [1042-A-B; 1048-F-H; 1049-A-B]

5.2. In the statement under Section 313 of CrPC, the appellants had not taken the defence that they could not be present at the place of occurrence as at the time of occurrence they were working in their paddy (agricultural) field. Thus, in view of the above, the deposition of the two witnesses examined in their defence becomes meaningless. [Para 11] [1048-C-D]

6. The facts and circumstances of the present case do not warrant any review of the judgments and orders of the courts below. [Para 15] [1049-G]

Case Law Reference:

AIR 1997 SC 3247 **relied on** **Para 7** **H**

A	(2008) 12 SCC 531	relied on	Para 7
	AIR 2010 SC 3624)	relied on	Para 7
	AIR 2010 SC 1639	relied on	Para 14
B	AIR 2010 SC 3281	relied on	Para 14
	(2009) 16 SCC 531	relied on	Para 14
	(2010) 8 SCC 536	relied on	Para 14
C	(2010) 9 SCC 399	relied on	Para 14
	(2011) 2 SCC 36	relied on	Para 14

CRIMINAL APPEALTE JURISDICTION : Criminal Appeal No. 207 of 2007.

D From the Judgment & Order dated 28.4.2004 of the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Appeal No. 956 of 2002.

J.P. Dhanda, Atishi Dipankar for the Appellants.

E T.N. Singh, Manoj Kumar Dwivedi, R.K. Gupta, S.K. Dwivedi, Aviral Shukla, Abhinav Shrivastava, G.V. Rao for the Respondent.

The Judgment of the Court was delivered by

F **DR. B.S. CHAUHAN, J.** 1. This criminal appeal has been preferred against the judgment and order dated 28.4.2004 passed by the High Court of Judicature at Allahabad (Lucknow Bench) in Criminal Appeal No. 956 of 2002 dismissing the appeal against the judgment and order dated 12.7.2002
G passed by the Sessions Court, Hardoi, in Sessions Trial No. 108 of 2000 convicting the appellants and co-accused Bhagaloo Singh, under Sections 302/34 of Indian Penal Code, 1860 (hereinafter called as 'IPC') and sentencing them to
H undergo rigorous imprisonment for life.

BHAGALOO LODH AND ANR. v. STATE OF U.P. 1043
[DR. B.S. CHAUHAN, J.]

2. Facts and circumstances giving rise to this case are that: A

(A) An FIR dated 26.10.1999 was lodged by Rajesh Singh (PW.1) in Police Station-Tandiyanwan, Fatehpur District, Hardoi, against the appellants and two other co-accused Ram Lakhan and Bhagaloo Singh that the said four accused had killed Vinod Kumar on 25.10.1999 at 9.00 P.M. Vinod Kumar, aged 22 years was friend of Raj Kumar, the son of Ram Lakhan, accused, and thus had visiting terms with the family. One day, when he went to the house of Ram Lakhan, accused, he saw Bhagaloo Singh, accused in compromising position with the daughter of Ram Lakhan, accused and reprimanded him. Bhagaloo Singh was living with Ram Lakhan, accused and helping him in his agricultural work. Bhagaloo Singh had told Vinod Kumar not to disclose the factum of his intimacy with the daughter of Ram Lakhan to anyone. Thus, a quarrel took place between the two and Bhagaloo Singh, accused threatened Vinod Kumar to face the dire consequences. It is in that consequence that the two appellants, alongwith Ram Lakhan caught hold of Vinod Kumar (deceased) and Bhagaloo Singh gave several blows by a sharp edged weapon "Karauli". Vinod Kumar died immediately on the spot after having 12 injuries. There had been enmity in these groups of parties and there had been criminal cases between them. B C D E

(B) On the basis of the said FIR, Case Crime No.155/1999 was registered under Sections 302/34 IPC and investigation ensued. The dead body of Vinod Kumar was recovered and sent for post mortem examination. Buddhi Narain Lal (PW.5), Investigating Officer completed the investigation and submitted chargesheet under Sections 302/34 IPC. All the four accused pleaded not guilty and claimed trial. Thus, they were put to trial under Sections 302/34 IPC in Sessions Trial No. 108/2000. F G

(C) The prosecution in order to prove its case examined five witnesses, namely, Rajesh Singh (PW.1), Devi Gulam Singh (PW.2) as eye-witnesses, Dr. R.K. Porwal (PW.4), H

A Constable Shailendra Singh (PW.3), and Buddhi Narain Lal, I.O. (PW.5). The accused also examined Jag Dev (DW.1) and Salim (DW.2) to prove alibi that the appellants could not be present on the place of occurrence as they had been in their agricultural field.

B After conclusion of the trial, the Sessions Court convicted and sentenced the appellants along with Bhagaloo Singh under Sections 302/34 IPC and sentenced them to undergo rigorous imprisonment for life vide judgment and order dated 12.7.2002.

C It may be pertinent to mention here that accused, Ram Lakhan had died during the course of trial.

(D) Being aggrieved, the appellants and co-accused Bhagaloo Singh preferred Criminal Appeal No. 956 of 2002 before the Allahabad High Court (Lucknow Bench) which has been dismissed vide impugned judgment and order dated 28.4.2004. Hence, the appellants filed this appeal.

3. Shri J.P. Dhanda, learned counsel appearing for the appellants, has submitted that the appellants had falsely been implicated in the case due to enmity as there had earlier been criminal cases between the parties. The FIR was lodged with a delay of 9 hours and the prosecution failed to furnish any plausible explanation for the same. Rajesh Singh (PW.1) and Devi Gulam Singh (PW.2), the alleged eye-witnesses, were very close relatives of the deceased, and thus, their testimonies cannot be relied upon safely. Prosecution failed to examine any independent witness. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri T.N. Singh, learned counsel appearing for the State has opposed the appeal contending that the prosecution furnished satisfactory explanation of delay of 9 hours in lodging the FIR, as nobody could go to the police station at a distance of 18 Kms. out of fear. Both the eye-witnesses were closely related to the deceased but their testimonies had been found trustworthy by both the courts

below, and thus cannot be discarded. More so, the law does not prohibit to rely upon the evidence of the closely related witnesses of the deceased or victim if it is found to be reliable. In view of the above, appeal lacks merit and is liable to be dismissed. A

5. The autopsy on the body of the deceased Vinod Kumar was conducted Dr. R.K. Porwal (PW.4) on 26.10.1999 and he found the following ante-mortem injuries: B

- (i) Incised wound size 1 cm x 0.5 cm x muscle deep present on left temporal region, 1.5 cm lateral to left eyeball. C
- (ii) Incised wound size 16 cm x 5 cm x bone deep present in front of the neck, 2 cm above the xiphisenuim the trachea is clean cut, margins of the wounds are clean cut. D
- (iii) Incised wounds size 2 cm x 1 cm x chest cavity deep present on left side of the chest at the level of nipple at 9 O' clock position. Wound is 6 cm medial to nipple underlying heart is clean cut. E
- (iv) Incised wound size 2.5 cm x 1 cm x muscle deep present on right side of chest at 4 O'clock position from right nipple. It is 6 cm away from right nipple.
- (v) Incised wound size 2 cm x 0.7 cm x chest cavity deep (lower chest) present on right side of chest, 7 cm away from right nipple at 4 O' clock position underlying lower is lacerated. F
- (vi) Incised wound size 6 cm x 1 cm x chest cavity deep. Present on right side of chest left O'clock position, 9 cm away from nipple margins of the wounds are clean out. G
- (vii) Incised wound size 6 cm x 2.5 cm x chest cavity deep on left side of chest 1.5 cm left to midline. H

- A (viii) Incised wound size 1.5 cm x 1 cm x muscle deep present on left side of chest 4 cm lateral to midline at the level of xiphislesinim.
- (ix) Incised wound size 5 cm x 2.5 cm x abdominal cavity deep present on left side of upper abdomen 1 cm lateral to medline at the level of T8 spine intestine is coming out of the wound.
- B (x) Incised wound 1 cm x 0.5 cm x muscle deep present side of back at the level of T9 spine 8 cm lateral to midline.
- C (xi) Incised wound size 1.5 cm x 0.5 cm x muscle deep present on right side of back at left the level of T12 spine 6 cm lateral to medline.
- D (xii) Incised wound size 1 cm x 0.5 x muscle deep present on left side of back at the level of T10 spine 7 cm lateral to midline.

The cause of death spelt out in the post-mortem report was shock and hemorrhage as a result of ante-mortem injuries. It is pertinent to mention that in his deposition in the Trial Court, Dr. Porwal reiterated the said cause of death and also stated therein that the ante-mortem injuries suffered by the deceased were attributable to a sharp edged weapon, like karauli and were sufficient in the ordinary course of nature to cause death.

6. The fact of homicidal death of Vinod Kumar, the place of occurrence and time of his death are not in dispute. Shri Dhanda has raised very limited issues referred to hereinabove and the case is restricted only to those issues.

7. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case there is some delay in filing the FIR, the complainant must give explanation for the same. In absence of such an explanation, the delay may give presumption that allegations/accusations were false and had been given after

thought or had given a coloured version of events. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide: *Sahib Singh v. State of Haryana*, AIR 1997 SC 3247; *Gorige Pentaiah Pentaiah v. State of A.P. & Ors.*, (2008) 12 SCC 531; and *Kishan Singh (dead) thr. Lrs. v. Gurpal Singh & Ors.*, AIR 2010 SC 3624).

8. So far as the delay in lodging the FIR is concerned, it has been explained by Rajesh Singh (PW.1) as under:

"I had not gone to lodge report in Police Station Tandiyawan due to fear. We looked the corpse at night. I and Hanif went to Tandiyawan Police Station by motorcycle in next morning".

9. The incident occurred at 9.00 P.M. on 25.10.1999 and the FIR was lodged on 26.10.1999 at 6.10 A.M. at the police station at a distance of 18 K.M. from the place of incident. Rajesh Singh (PW.1) has mentioned that on account of fear of the accused persons, he could not go to the police station to lodge the FIR at night. This explanation has been found by both the courts below to be perfectly convincing, and after considering all the facts and circumstances of the case, the courts below drawn an inference that the explanation furnished was quite satisfactory. We do not see any cogent reason to take a view contrary to the view taken by the courts below.

10. So far as the issue of accepting the evidence of closely related witnesses is concerned, both the courts below had placed a very heavy reliance on the depositions of Rajesh Singh (PW.1) and Devi Gulam Singh (PW.2), in spite of the fact that Rajesh Singh (PW.1) was the brother of the deceased Vinod Kumar and Devi Gulam Singh was also closely related to Rajesh Singh (PW.1). The daughter of Rajesh Singh (PW.1) got married with Sarvesh, the nephew (sister's son) of Devi Gulam Singh (PW.2). Both of them had supported the prosecution case. Both of them have been extensively cross-examined by

A the defence, but nothing could be extracted therefrom which could impair their credibility. The courts below found that evidence of both the eye-witnesses inspired confidence and was worth acceptance as both of them had given full version of the incident.

B More so, both the courts below have held that the witnesses had no reason to falsely implicate the appellants and the co-accused and spare the real assailants.

C 11. In the statement under Section 313 of Code of Criminal Procedure, 1973, the appellants had not taken the defence that they could not be present at the place of occurrence as at the time of occurrence they were working in their paddy field. Thus, in view of the above, the deposition of the two witnesses examined in their defence becomes meaningless.

D 12. The incident had occurred outside the village and not inside the village. Therefore, it is likely that some other persons might have come there after the accused had run away from the place of occurrence. Rajesh Singh (PW.1) had deposed that one Sushil Kumar, a resident of far away village of district E Hardoi, who got married in the same village was also with him. However, no question had been put to Buddhi Narain Lal (PW.5), I.O. by the defence as to why Sushil Kumar had not been examined.

F 13. So far as the evidence of defence witness, namely Jag Dev (DW.1) is concerned, he has deposed that the present appellants had been working in their paddy field at the time of occurrence of the crime. However, the court below did not believe his statement for the reason that the witness had never got his statement recorded by the Investigating Officer, nor did G he disclose such fact to any other person. He was examined first time in the court. Similarly, statement of Salim (DW.2) has been found not worth acceptance. The said witness was present in the morning at the place of occurrence when the Investigating Officer reached there. The appellants had been H named in the FIR. Salim (DW.2) also admitted that he knew

that a murder case had been registered against the appellants, but he did not disclose to the Investigating Officer or to any other person that the appellants could not be the assailants. Salim (DW.2) has also admitted that his father was the Pradhan and he had defeated Saroj Singh, a very close relative of Vinod Kumar, deceased.

14. Evidence of a close relation can be relied upon provided it is trustworthy. Such evidence is required to be carefully scrutinised and appreciated before resting of conclusion to convict the accused in a given case. But where the Sessions Court properly appreciated evidence and meticulously analysed the same and the High Court re-appreciated the said evidence properly to reach the same conclusion, it is difficult for the superior court to take a view contrary to the same, unless there are reasons to disbelieve such witnesses. Thus, the evidence cannot be disbelieved merely on the ground that the witnesses are inter-related to each other or to the deceased. (Vide: *M.C. Ali & Anr. v. State of Kerala*, AIR 2010 SC 1639; *Myladimmal Surendran & Ors. v. State of Kerala*, AIR 2010 SC 3281; *Shyam v. State of Madhya Pradesh*, (2009) 16 SCC 531; *Prithi v. State of Haryana*, (2010) 8 SCC 536; *Surendra Pal & Ors. v. State of U.P. & Anr.*, (2010) 9 SCC 399; and *Himanshu @ Chintu v. State (NCT of Delhi)*, (2011) 2 SCC 36).

In view of the law laid hereinabove, no fault can be found with the evidence recorded by the courts below accepting the evidence of closely related witnesses.

15. In view of the above, we are of the considered opinion that the facts and circumstances of present case do not warrant any review of the judgments and orders of the courts below. The appeal lacks merit and is accordingly dismissed.

B.B.B.

Appeal dismissed.