

SILAK RAM AND ANR.

v.

STATE OF HARYANA

AUGUST 6, 2007

[DR. ARIJIT PASAYAT AND D.K.JAIN, JJ.]

Code of Criminal Procedure, 1973—Section 154—FIR—Delay in lodging FIR—Effect on prosecution case—Held: Delay in lodging FIR by itself would not be fatal to prosecution case unless it is unexplained and such delay is coupled with the likelihood of concoction of evidence—On facts, delay in lodging FIR and in dispatching of the copy of report to Illaqua Magistrate fully explained, thus, delay not fatal to prosecution case—Also evidence of eye witnesses cogent and credible—Hence, conviction of accused under sections 302 r/w 34 for causing homicidal death of one, justified—Penal Code, 1860—Sections 302 read with 34.

According to the prosecution case, accused N had quarreled with J over a small issue. 15-20 days later there was exchange of hot words between the accused and J. Thereafter, during midnight, accused S, N and B armed with weapons inflicted injuries to J. On hearing his cries, J's mother, his uncle and uncle's son came to the spot and witnessed the incident. Thereafter, accused ran away from the spot and J died. There were floods in the village and the surrounding areas. The distance between the place of occurrence and the police station was 21 Kms. The statement of J's mother was recorded on the next day at 9.40 A.M and the FIR was lodged at 11 A.M. Illaqua Magistrate received the copy at 7 PM. Thereafter, accused were arrested. Recoveries were made pursuant to their disclosure statement. Prosecution examined 14 witnesses including 3 eye witnesses. Trial Court relied on the evidence of eye witnesses and convicted the accused under section 302 read with section 34 IPC and sentenced them to life imprisonment. High Court upheld the conviction and sentence of accused S and N. However, sentence of accused B was reduced to imprisonment for ten years. Hence the present appeal.

Appellant-accused contended that the evidence of PWs. 10, 11 and 14 cannot be accepted; that PW 10 failed to identify the accused persons; and that there was unexplained delay in lodging the FIR and in the dispatch of the

A copy of the report to the illaqua magistrate.

Dismissing the appeal, the Court

B HELD: 1.1. Delay in lodging FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay coupled with the likelihood of concoction of evidence. There is no hard and fast rule that delay in filing FIR in each and every case is fatal and on account of such delay in prosecution version should be discarded. The factum of delay requires the court to scrutinize the evidence adduced with greater degree of care and caution. [Para 9] [853-G-H]

C 2.1. The eye witnesses PWs. 10, 11 and 14 gave a vivid description of the events. The evidence of PW 11 was cogent and consistent and the same fitted with medical evidence. Therefore, the trial court and the High Court were justified in placing reliance on the evidence of eye witnesses more, particularly, PW 11. [Paras 8 and 9] [853-E; F, H; 854-A]

D 2.2. It has come on record in the evidence of the Investigating Officer, the distance between the areas. Investigating Officer categorically stated that there was flood in the areas. In the FIR it was specifically stated that the occurrence took place around mid night of 24/25.8.1995. The statement was recorded at the Chowk on 25.9.1995 at 9.40 A.M. and was dispatched to the police station. The formal FIR indicated that it was recorded at 11 AM and had reached the Magistrate at 7 p.m. It has been stated that the late delivery was due to flood in the area and the Judicial Magistrate specifically noted the same. The trial court and the High Court rightly accepted the prosecution case that the delay was attributable to the flood and there was no dispute raised at any stage that there was in fact no flood in the areas in question. The delay was fully explained. [Paras 9 and 10] [854-B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1020 of 2007.

G From the Judgment and Order dated 22.9.2006 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 296-DB of 1997.

Dr. Vikas Vashishth and Chander Shekhar Ashri for the Appellants.

Rajeev Gaur Naseem, Rajesh Ranjan and T.V. George for the Respondent.

H The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Punjab and Haryana High Court dismissing the appeal filed by the accused-appellants. Three accused persons faced trial for alleged commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') for causing homicidal death of Jagbir (hereinafter referred to as the 'deceased'). They were convicted by Additional Sessions Judge (First), Bhiwani, Haryana and each was sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/- with default stipulation.

3. Prosecution version sans unnecessary details is as follows:

The accused and the deceased are residents of village Dhanana. Mst. Bhulan had a son, namely, Jagbir, the deceased, and a daughter, namely, Krishna. Both were married. On account of floods in the village, 15 days prior to the occurrence, Prem, wife of Jagbir had gone to her parental house. Due to floods in the streets of the village, Mst. Bhulan the complainant used to tether her cattle near Dharmashala Brahmchari Ashram and Jagbir used to sleep near the cattle. On 24.9.1995, at about 9/9.30 P.M., after taking meals, as usual Jagbir went to the sitting room of accused Silak Ram son of Ram Bhagat where Narotam alias Raja, Silak Ram and Bijender alias Binder i.e. all the three accused were present. During conversation Jagbir told one Narender who was present there that Bijender Singh alias Binder was a cheap person and he could commit crime at any time. Narotam had also quarreled with Jagbir 15-20 days prior to the occurrence over the turmoil created by buffalo of the former. There was exchange of hot words between them and Jagbir, which attracted Mst. Bhulan. She intervened and brought her son back to the house and directed him to sleep aside the cattle. Mst. Bhulan in her statement further submitted that during night when she woke up to urinate, she heard cries of her son and, therefore, she ran towards Brahmchari Ashram where her son was sleeping. Chater Singh (her husband's brother) and his son Ved Parkash also ran towards that side. They saw in the light of Brahmchari Ashram that accused Narotam alias Raja armed with gandasi, Bijender alias Binder armed with 'phali' and Silak Ram armed with lathi were causing injuries to Jagbir. In their presence, Narotam alias Raja gave gandasi blow on the right temporal region of Jasbir, Bijender alias Binder gave phali blow on the right side of his chest and Silak Ram also gave lathi blow to him. On seeing the witnesses, the accused ran away from the spot. When they reached near Jagbir, then they saw that he had breathed his last. Due to the flood water in the village

A and in the surrounding areas of the village and also on account of fear, they could not go to the Police Station immediately.

Ultimately, when they were going to lodge the report, ASI Nar Singh met Mst. Bhulan at the crossing of village Mandhal where she got recorded her statement (Ex. P.A.) which was completed at 9.40 A.M. on 25.9.1995, on the basis of which FIR was recorded at the Police Station, Bhiwani Khera, on the same day at 11.00 A.M. Special report was sent by SI Darshan Lal through Constable Devinder Kumar No.579 to the Illaqa Magistrate which was received by him on the same day at 7.00 P.M. The distance between the place of occurrence and the police station is 21 Kms. After sending ruqa, SI Darshan Lal proceeded for the village, got the dead body photographed, prepared inquest report, lifted bloodstained earth, a pair of chappel and some pieces of rori on which he had noticed blood. He also took into possession string of cot stained with human blood. He also took into possession bloodstains from thresher, trolley and took the same into possession vide different memos. He also prepared rough site plan of the place of occurrence and recorded statement of the witnesses. He also got conducted autopsy on the dead body of Jagbir. On 30.5.1995, he arrested the accused from the bus stand of village Dhanana. He got recovered the lathi, shirt-pajama from the room of a house in pursuance of the disclosure statement made by the accused Silak Ram.

Similarly, in pursuance of the disclosure statement made by accused Bijender alias Binder, he got recovered phalli, the weapon of offence and the clothes from the different places and took the same into possession.

He also got recovered gandasi under a heap of dung from some inhabited place, shirt and pajama from different places in pursuance to the disclosure statement made by Narotam and took the same into possession through different parcels.

4. On completion of the investigation, challan against the accused was presented in the Court. On finding a prima facie case against the accused, they were charge sheeted.

5. To further the prosecution version 14 witnesses were examined. The three witnesses, who were claimed to be eye-witnesses were PWs.10, 11 and 14. The trial court placed reliance on the evidence of the prosecution witnesses and directed conviction and imposed sentences as aforementioned. Before the High Court, an appeal was preferred. Apart from challenging the conclusions of guilt, it was contended that the accused Bijender alias Binder was a

Juvenile and was therefore entitled to the protection given under the Juvenile Justice Care and Protection of Children Act, 2000 (in short the 'Juvenile Act'). In this case the High Court while considering the various decisions of this Court held that at the time of the commission of offence, accused Bijender was 16 years of age, and at the time of High Court's judgment was 29 years of age. It was held that if he is allowed to be mixed with juveniles the apprehension that he was likely to spoil the juveniles more in comparison with his own reformation. Therefore, he was sentenced to undergo imprisonment for ten years. The present appeal has been filed by Silak Ram and Narotam alias Raja. The High Court has confirmed the conviction and sentence so far as these two accused persons are concerned.

6. In support of the appeal learned counsel for the appellants submitted that the evidence of PWs 10, 11 and 14 cannot be accepted. In fact PW 10 had failed to identify all the accused persons and had failed to identify one co-accused, Raja. It was pointed out that there was unexplained delay in lodging the FIR and in dispatch of the copy of the report to the Illaqua Magistrate.

7. Learned counsel for the respondent on the other hand supported the judgments of the courts below.

8. It is to be noted that the trial court has placed reliance on the evidence of eye witnesses PWs. 10, 11 and 14. Even though there was some confusion in identification by PW 10, the High Court rightly noticed during examination-in-chief she has correctly identified the accused persons. But at the time of cross-examination, she only identified one accused. The evidence of PW 11 has been analysed by the trial court and the High Court and his version has been found to be cogent and credible. Therefore, the trial court and the High Court were justified in placing reliance on the evidence of eye witnesses more, particularly, PW 11.

9. Coming to the stand that there was delay in lodging the FIR and in dispatch of the report to the Illaqua Magistrate, this also has been elaborately dealt with by the High Court. Delay in lodging FIR by itself would not be sufficient to discard the prosecution version unless it is unexplained and such delay coupled with the likelihood of concoction of evidence. There is no hard and fast rule that delay in filing FIR in each and every case is fatal and on account of such delay in prosecution version should be discarded. The factum of delay requires the court to scrutinize the evidence adduced with greater degree of care and caution. In this case the eye witnesses have given

- A a vivid description of the events. The evidence of PW 11 as noted above, is cogent and consistent and the version given by this witness fits with medical evidence. It has come on record in the evidence of the Investigating Officer (in short 'IO') that the distance between Bawani Khera and Bhiwani is about 20 k.m. and from Dhanana to Bhiwani is about 18 k.m. and from Dhanana to Mundhal is about 12 k.m. Investigating Officer has categorically stated that there was flood in the areas. In the FIR it was specifically stated that the occurrence took place around mid night of 24/25.8.1995. The statement was recorded at Mundhal Khurd Chowk on 25.9.1995 at 9.40 A.M. and the same was dispatched to the police station of Bhiwani Khera. The formal FIR indicates that it was recorded at 11 AM and had reached the magistrate at 7 p.m. It has been stated that the late delivery was due to flood in the area and this has been specifically noted by the Judicial Magistrate who has reported as follows:
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- C

“Received from constable Devender Kumar at 7 p.m. on 25.9.1995. Stated that due to the flood, he reached late”

- D 10. The trial court and the High Court rightly accepted the stand of the prosecution that the delay was attributable to the flood and there was no dispute raised at any stage that there was in fact no flood in the areas in question. The delay was fully explained as held by the Trial Court and the High Court.

- E 11. Above being the position, there is no merit in this appeal which is dismissed.

N.J.

Appeal dismissed.