
(2006) 01 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 174-DB of 1998

Anand Singh and three others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-01-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 01 P&H CK 0047

Hon'ble Judges : Uma Nath Singh, J; Mehtab S. Gill, J

Bench : Division Bench

Advocate : Baldev Singh, with Mr. Arshwinder Singh, Mr. K.K. Aggarwal, with Mr. Kapil Aggarwal, for the Appellant; R.D. Sharma, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Mehtab S. Gill, J.—This is an appeal against the judgment of the Additional Sessions Judge (I), Bhiwani whereby he convicted Anand Singh son of Inder Singh, Inder Singh son of Chhaju Ram, Balwant Singh son of Kishna Ram and Raju alias Rajbir son of Ganga Ram u/s 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo life imprisonment. Further to pay a fine of Rs. 2000/- each, in default to undergo R.I. for two years.

2. The prosecution case is unfolded by the statement Ex. PR of Phul Singh son of Richhpal made to Rajinder Singh SI/SHO of Police Station Badhra on 27.7.1995 at the bus stand of village Bindrabani. Phul Singh stated that he has three brothers and four sisters. He is an agriculturist. About 42 years back, his sister Shingari was married with Rameshwar son of Kanhiya of village Pichhopa Kalan. Unfortunately, his sister did not give birth to any child. Rameshwar, his sister's husband expired about 5/6 months back. After his death, Phul Singh started looking after his sister Shingari. His brother-in-law Rameshwar remained ill and Phul Singh and his brother Daya Chand looked after him. On the night when Rameshwar expired, Phul Singh along with his brother Daya Chand was present in village Pichhopa Kalan. Phul Singh's brother-in-law Rameshwar advised both

Phul Singh and Daya Chand that they should go back to their house in village Bangothri, as he was now feeling well and they should come back after 2 to 4 days. Phul Singh along with Daya Chand left the house of Rameshwar. On the next day, they came to know that Rameshwar had expired. Phul Singh along with other respectable performed his last rites. It came to the knowledge of Phul Singh that Inder Singh son of Chhaju Ram, Balwant son of Kishna and Anand son of Inder residents of village Pichhopa Kalan after affixing the thumb impressions of Rameshwar got executed a Will fraudulently, of land measuring 22 Bighas 12 Biswas in their names. For correction of this Will, a suit had been filed by Shingari which was pending in the Court of the Sub Divisional Magistrate, Dadri and the case was fixed for orders on 27.7.1995. Phul Singh and his brother Daya Chand used to pursue this case and had come to the house of their sister Shingari on the previous day at about 6 P.M and had stayed there so that on the next day, they could go to the Courts at Dadri. At about 10/11 P.M. they saw a light in the but of Inder and Balwant. The but of Inder and Balwant was situated at about one killa (acre) from the house of their sister. Phul Singh and Daya Chand went towards the hut. While hiding, they saw that Balwant son of Kishna, Inder son of Chhaju Ram, Anand son of Inder and Raju son of Ganga Ram were sitting and talking to each other. All of them stated that they would not be able to get the land through Court. They should eliminate both, the mother-in-law and daughter-in-law i.e. Sunder and Shingari Phul Singh and Daya Chand on hearing this got afraid and hid themselves behind the house of Shingari. At about 1/1.30 A.M. these four persons came to the house of their sister Shingari Inder and Balwant pounced upon Sunder, while Anand and Raju pounced upon Shingari Hands of Sunder were caught by Inder and feet by Balwant, while hands of Shingari were caught by Anand and feet by Raju. First, Shingari was thrown into a well nearby by Raju and Anand and thereafter Sunder was thrown into the well by Balwant and Inder. The well was about 200 feet deep. All the assailants after throwing Sunder and Shingari went away, to village Pichhopa Kalan. Complainant and Daya Chand did not come out, out of fear. On day break, they saw both Sunder and Shingari lying dead in the well. On the basis of statement Ex. PR, FIR Ex. PR/2 was registered. Special report reached the Sub Divisional Judicial Magistrate, Dadri on 27.7.1995 at 2 P.M.

3. Prosecution to prove its case brought into the witness box Dr. K.K. Mittal as PW1, Surender Singh as PW2, Ram Jas Patwari as PW3, Kailash Chand as PW4, Madan Singh as PW5, Dev Vart HC as PW6, Attar Singh HC as PW7, Phul Singh as PW8, Daya Chand as PW9 and Rajinder Singh SI as PW10.

4. Learned counsel for the appellants have argued, that the alleged eye witnesses i.e. Phul Singh PW8 and Daya Chand PW9, are implanted witnesses. They have not seen the occurrence. The murders of both Shingari and Sunder were blind murders. Both these alleged eye witnesses were brought on to the scene at a later stage. Their conduct is not natural. As per the statements of both Phul Singh PW8 and Daya Chand PW9, at about 10/11 P.M. On 26.7.1995, they saw a light burning in a but about one killa away. They approached the hut.

They allegedly heard the appellants conspiring to murder the deceased so that they could get the property of Rameshwar. Thereafter, both Phul Singh PW8 and Daya Chand PW9 hid themselves out of fear, near the house of the deceased. At about 1/1.30 A.M. on 27.7.1995, they saw the appellants picking up deceased Sunder and Shingari and taking them to a well nearby and thereafter throwing them into the well. It is strange that both these witnesses on hearing about the conspiracy to kill Sunder and Shingari at 10/11 P M., did not disclose this, to either their real sister Shingari or to her mother-in-law Sunder. It is not the case of the prosecution that Phul Singh PW8 and Daya Chand PW9 seldom came to the house of the deceased, but the prosecution case is that both Phul Singh PW8 and Daya Chand PW9 were regular visitors. They helped their brother-in-law Rameshwar in his agricultural work, as Rameshwar was not medically fit. After both Shingari and Sunder were thrown into the well both these witnesses behaved in a strange manner from 1/1.30 A.M. till 6/6.30 A.M they did not tell about this to any one in the village. It is in the morning, at 6/6.30 A.M. when Phul Singh PW8 and Daya Chand PW9 went to the well that they saw both Shingari and Sunder lying dead. At 9.15 A.M. on 27.7.1995 when Phul Singh PW8 was going to Police Station Badhra, he met SI Rajinder Singh PW10 at the bus stand of village Bindraban and gave his statement Ex.PR. On the basis of this statement Ex.PR, FIR Ex.PR/2 was recorded at 10.50 A.M. Special report reached at 2 P.M. on the same day. There is an unexplained delay of 16 hours from the time Phul Singh PW8 and Daya Chand PW9 heard the appellants conspiring to kill the deceased till the lodging of the FIR. The unexplained delay in the lodging of the FIR Ex. PR/2, falsifies the case of the prosecution. In fact this delay was being utilized for consultations and confabulations to falsely implicate the appellants. The conduct and behaviour of both Phul Singh PW8 and Daya Chand PW9 is most unnatural.

5. Rameshwar, the real brother-in-law of Phul Singh PW8 and Daya Chand PW9 had executed a Will in favour of appellants Balwant Singh and Anand Singh. Prosecution story is that both Phul Singh PW8 and Daya Chand PW9 had come to stay with the deceased on 26.7.95 as on the next day the Assistant Collector 1st Grade (Sub Divisional Officer (C)), Dadri was going to pronounce his order on the validity of the Will. Both these alleged eye witnesses have stated, that they were pursuing the case and they were to go to the Court to hear the final verdict. Court of Assistant Collector 1st Grade (S.D.O. (C) Dadri did not give his verdict on 27.7.1995, but on 28.7.95 sanctioned mutation Ex. PM in favour of appellants Balwant Singh and Anand Singh.

6. Both deceased Sunder and Shingari received several serious injuries on their person. These injuries could not have been caused by being thrown into a well. In fact they had been brutally assaulted by some unknown persons and thereafter thrown into the well, so that their bodies could not be discovered. Phul Singh PW8 and Daya Chand PW9 have not said a word about the injuries on the persons of both the deceased. They have not mentioned the weapon of offence. In fact as per the prosecution, the injuries on the deceased were caused when

the bodies were thrown into the well. Such like injuries cannot be suffered in such a manner. The conduct and the testimony of the alleged eye witnesses is not truthful.

7. Surinder Singh PW2 Photographer has stated in his testimony before the Court, that he reached the place of occurrence at 8 A.M and took photographs Ex. P-5 to Ex. P-7. This also falsifies the story of the prosecution, as statement of Phul Singh Ex. PR was recorded at 10 A.M by SI Rajinder Singh PW10.

8. Learned counsel for the State has argued that both the eye witnesses i.e. Phul Singh PW8 and Daya Chand PW9 are natural witnesses. They used to come to village Pichhopa Kalan off and on, to help their sister in cultivating the land, which had been left behind by their brother-in-law Rameshwar. Their sister did not have any issue. It is not only that they had been cultivating the land after the death of Rameshwar but before the death of Rameshwar they used to come to help Rameshwar, as he was ill. Both the alleged eye-witnesses had come to the house of their sister, as on the next day i.e. on 27.7 1995 they had to go to the Court of Assistant Collector 1st Grade (S.D.O. (C)) Dadri, to hear the final verdict of the proceedings of the will, which allegedly was fraudulently made in favour of appellants Balwant Singh and Anand Singh.

9. Both Phul Singh PW8 and Daya Chand PW9 were afraid to call for help, or go to some body in the village as it was night time and if they had been identified, the appellants would have murdered them also. Occurrence had taken place at 1/1.30 A.M. on 27.7 1995. It is thereafter, that when day broke that Daya Chand PW9 told Phul Singh PW8 to report the matter to the police, after they had detected, that the dead bodies of their sister Shingari and her mother-in-law Sunder were lying in the well. Phul Singh PW8 and Daya Chand PW9 belong to village Bangothri while the appellants in whose favour allegedly Rameshwar had made a Will belong to village Pichhopa Kalan. No body would have come to their help, as in such like situations, villagers tend, to support their own. There is no delay in the lodging of the FIR. Occurrence had taken place on 27.7.1995 at 1/1.30 A.M. FIR Ex. PR/2 was recorded by 10.50 A.M. and the special report reached the Sub Divisional Judicial Magistrate, Dadri at 2 P.M. Distance between Police Station Badhra and village Pichhopa Kalan is about 11 K.M.

10. We have heard learned counsel for the parties and perused the record with there assistance.

11. Phul Singh PW8 and Daya Chand PW9 as per the prosecution, are eye witnesses to the occurrence. They are no other persons, than the real brothers of Shingari deceased. Phul Singh PW8 was 60 years of age and Daya Chand PW9 was 42 years old. Daya Chand PW9 was running a cloth shop and was also a cultivator. Similarly, Phul Singh PW8 was also a cultivator. They had come to the house of their sister Shingari deceased at about 8/9 P. M. on 26.7.1995, as on the next day i.e. on 27.7.1995 they had to go to the Court of Assistant Collector 1st Grade (SDO (C)) Dadri, to hear the pronouncement of the order regarding

the mutation of the property of their brother-in-law Rameshwar Phul Singh PW8 and Daya Chand PW9 were lying on the cot at a distance of 15 to 20 feet from the cot of Shingari and Sunder deceased. Both Shingari and Sunder had gone to sleep. Phul Singh PW8 and Daya Chand PW9 noticed a light in a Jhopri (hut) about one Killa away from the house of their sister. They both went to the hut. There they saw the appellants sitting on a cot and talking, that they were not likely to get the land from the Court and that they should kill Shingari and her mother-in-law Sunder. On hearing this, both, Phul Singh PW8 and Daya Chand PW9 got afraid and retracted their steps slowly. They came on the back side of the house of their sister Shingari, and sat there. At about 1/1.30 A.M. on 27.7.1995 the appellants came to Shingari's house. Appellants Anand Singh and Raju caught hold of Shingari, whereas Inder Singh and Balwant Singh caught hold of Sunder. First they lifted Shingari and threw her in a well, which was nearby. Thereafter Sunder also was thrown in the well. All the appellants after throwing Shingari and Sunder in the well left the place and went towards their village. Phul Singh PW8 and Daya Chand PW9 out of fear kept hiding behind the house of their sister. On the next morning at about 6 A.M. both of them went towards the well and saw that their sister Shingari and her mother-in-law Sunder were lying dead in the well. After leaving his brother Daya Chand PW9 at the spot, Phul Singh PW8 left for the police station. On the way, at the Bus Adda of Bindraban, he met SI Rajinder Singh PW10 and gave his statement Ex.PR. The conduct of these witnesses from the time they heard the appellants' conspiring to murder Shingari and Sunder till the recording of the statement Ex.PR of Phul Singh PW8 is most unnatural. Both these witnesses Phul Singh PW8 and Daya Chand PW9 are farmers. Daya Chand PW9 is not only a farmer but also has a cloth shop. Such like persons are mentally strong. When their sister was being assaulted they would not have been silent spectators specially when both the ladies Sunder and Shingari dependent on Phul Singh PW8 and Daya Chand PW9. Both these witnesses i.e. Phul Singh PW8 and Daya Chand PW9 did not tell anybody or even their sister Shingari about the conspiracy. Though they had come to help their sister. Not only they did not tell about the conspiracy to eliminate them, to Shingari and Sunder, but cowardly hid themselves behind the house of their sister. The appellants allegedly came at about 1.30 A.M. on 27.7.1995, picked up both Shingari and Sunder deceased and threw them in the well. Both these witnesses Phul Singh PW8 and Daya Chand PW9 though robust farmers, one aged 60 years and the other aged 42 years, did not utter a word or shouted for help nor intervened to save their sister and her mother-in-law. It is not the case of the prosecution that Phul Singh PW8 and Daya Chand PW9 were not familiar with area around and the fields of their brother-in-law Rameshwar. If they had been cultivating the fields of Rameshwar and were helping him before his death, they definitely would have come into contact with a number of neighbours of their brother-in-law. It is not the case of the prosecution that the appellants were armed and that they threatened Phul Singh PW8 and Daya Chand PW9. We cannot be oblivious of the fact that strangely these witnesses kept quiet. They could have gone to village Pichhopa Kalan and asked for help

from the Sarpanch or any other respectable of the village. Both Phul Singh PW8 and Daya Chand PW9 had to come forward, to save no other person, but their own sister Shingari, who at that moment of time was totally dependent on them as her husband Rameshwar had died. Both Phul Singh PW8 and Daya Chand PW9 behaved in a very unnatural manner. In fact, they were not present at the time of the occurrence, but are implanted witnesses and were brought on to the scene after the occurrence had taken place. They did not witness the occurrence.

12. The first incident of conspiracy allegedly had taken place at about 10/11 P.M. on 26.7.1995 and the occurrence of throwing Shingari and Sunder in the well had taken place at 1.30 A.M. on 27.7.1995. FIR was recorded at 10.50 A.M. Special report reached the Sub Divisional Judicial Magistrate, Dadri at 2 P.M. There is an unexplained delay of 16 hours in the lodging of the FIR. In fact this time was utilized to get Phul Singh PW8 and Daya Chand PW9 to the place of occurrence from village Bangothri to village Pichhopa Kalan and thereafter the prosecution story was built up and appellants were falsely implicated.

13. Surrender Singh PW2 Photographer in his testimony, which has gone unchallenged, has stated that he reached the place of occurrence at 8 A.M. (morning) on 27.7.1995. He had been called by the police officials. He took photographs Ex. P-5 to P-7. It is strange that the photographer had reached much before the time, of the FIR coming into existence i.e. at 10 50 A.M. on 27.7.95. The police in fact had come to know of the occurrence and investigation had already started before the FIR came into existence.

14. Post mortem was conducted by Dr. K.K. Mittal PW 1 on 27.7.1995 at 3.30 P.M., Post mortem report of deceased Sunder is Ex. PA and that of Shingari is Ex. PE. Sunder deceased received 15 injuries on her person. Going through these injuries, injuries No. 1, 2, 3, 5, 9, 11 and 14 are fractures on the various parts of her body. Injury No. 15 is a haematoma on the right temporal region near the left eye. All the ribs of the deceased were fractured. In the opinion of the doctor, the cause of death was due to extensive injuries to skull and brain. Similarly, Dr. K.K. Mittal PW1 conducted post mortem on Shingari on 27.7.1995 at 4.30 P.M. He found nine injuries on her person. All the injuries were of a serious nature. It seems that both the deceased Sunder and Shingari were assaulted first with blunt weapons. Serious and extensive injuries were inflicted on the two old ladies and thereafter they were thrown into the well, so that their bodies could not be discovered. Phul Singh PW8 and Daya Chand PW9 have not uttered a word as to whether these injuries were inflicted at the time of occurrence, nor have they said anything regarding the appellants carrying any weapon of offence. Though Dr. K.K. Mittal PW 1 has opined in his testimony before the Court and in his opinion Ex. PD/1 and Ex. PH/1 that injuries are possible due to a fall in the well and death is possible due to the said injuries. In his opinion Ex. PH/1 a specific question was put to him to opine, as to whether, by throwing, the deceased in the well, could these injuries be inflicted by sticking against an electric motor and the foundation thereof. In his reply, Dr. K.K. Mittal PW1 has stated that the

injuries may be possible due to fall. We are of the considered view, after going through the nature of injuries in detail, on both Sunder and Shingari deceased, it is difficult for us to go with the opinion Ex. PH/1 of Dr. K.K. Mittal PW1. Injuries are so extensive and serious in nature on the persons of the deceased, that they could not have been suffered by them being; thrown into the well. They were assaulted first and then were thrown into the well. The medical evidence does not corroborate the ocular account.

15. As per observations and discussion above, the allegedly eye witnesses Phul Singh PW8 and Daya Chand PW19 were not present at the time of the occurrence but were introduced at a later stage. They have not witnessed the occurrence.

16. A doubt is created in our mind, the benefit of which goes to the appellants.

17. Appeal is allowed Appellants are acquitted of all the charges framed against them. If in custody, they be set free forthwith.