
(2004) 10 RAJ CK 0041
In the Rajasthan High Court
Case No : Criminal Appeal No. 61 of 2000

Harish Chand @ Har Chand @ Harak Chand and Another	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 201, 302, 34, 394, 397

Citation : (2004) 10 RAJ CK 0041

Hon'ble Judges : Shiv Kumar Sharma, J; R.P. Was, J

Bench : Division Bench

Advocate : Nagesh Soral, for the Appellant; B.N. Sandhu, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Vyas, J.—This appeal is directed against the judgment dated December 10, 1999, passed by the learned District & Sessions Judge, Jhalawar, by which he convicted and sentenced accused appellants Harish Chand @ Harchand @ Harak Chand and Ghanshyam u/s 302 read with Section 34, IPC to life imprisonment and to pay a fine of Rs. 1,000/- each, in default of payment of fine to further undergo six months" rigorous imprisonment. He also convicted and sentenced Harish Chand & Harchand @ Harak Chand u/s 404, IPC, to one year"s rigorous imprisonment and to pay fine of Rs.1000/-, in default of payment of fine to further undergo six months" rigorous imprisonment. All the sentences were directed to run concurrently.

2. In nutshell, the prosecution story is that on May 8, 1997, one Kalu Lal s/o Shri Bhuralal lodged a verbal report with the Police Station, Jhalrapatan. District Jhalawar that yesterday, as usual, his elder brother Gendilal had come to village Urmal at 10.00 a.m. He further stated that his brother Gendilal used to wear golden earrings in the ear and a golden "karawat" around his neck. In the rooming, around 12 noon, one Ram Chandra Gujar came to his village and

informed him that his brother Gendilal is lying dead in a side of "Nala" of Gangthi "chauraha". On the basis of this information, he went to the said "Nala" of Gangthi "chauraha" and found that the dead body of his brother Gendilal was lying there. There was a fatal injury on the left side of his head and golden earrings and golden "karawat" were not found on his person. He further stated that his brother -Gendilal and Harish Chand Dhakar, both had taken lunch at the shop of Dhannalal Thekedar of Urmal village and after taking a bottle of liquor, they had left the village Urmal. He also stated that this information was given to him by Dhannalal Thekedar on the place of incident. He does not know, who had killed his brother Gendilal and taken away earrings and golden "karawat" from the neck of his brother. He has come to report the matter, so the action may be taken in accordance with the law.

3. On the basis of the aforesaid verbal report. FIR No. 147/97 under Sections 302 and 394, IPC, was registered at Police Station, Jhalrapatan, District - Jhalawar and investigation was taken up by Tejraj Singh, S.H.O., PS - Jhalrapatan.

4. The Investigating Officer visited the place of occurrence, prepared site plan (Ex.P19). inquest report of the dead body vide Ex.PI, got the post-mortem of the dead body conducted by the Doctor, seized the blood stained clothes of the deceased vide Ex.P 16, seized the control and blood smeared soil from the place of incident vide Ex.P 17, arrested the accused Harish Chandra vide Ex.P21, prepared arrest memos of accused Ghanshyam and Kripashanker vide Exs.P22 and P23, seized the bicycle vide Ex.PI5, seized the stolen golden "rawat" and the amount of Rs.4000/- (which was received by the accused after selling them to the goldsmith) vide Exs.P6 and 7. He also seized the blood stained stone vide Ex.P8, shoes and blood stained soil of the deceased vide Ex.PIO, receipt Ex.P4 by which the stolen items were sold to the Goldsmith and the statements of the witnesses u/s 161. Cr.P.C. were recorded. The blood stained articles were sent to the Forensic Science Laboratory for examination and the report of the FSL is Ex.P29. According to the report of the FSL, the human blood was found on the bloodstained articles.

5. After completing the necessary investigation, challan under Sections 302/34. 397 and in the alternative under Sections 404 and 201, IPC was filled against the accused-appellants. The charge were read over to them. They pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as 23 prosecution witnesses (PW 1 to PW 23) and exhibited 28 documents (Ex.P 1 to Ex.P28). In defence, six witnesses (Ex.DI to Ex.D6) were examined. The statements of the accused-appellants u/s 313, Cr.P.C. were recorded. They denied the correctness of the statements appearing against them. They pleaded that they have been falsely implicated.

7. The trial Court, after hearing both the learned counsel for the parties and

perusing the documents on record, convicted and sentenced the accused-appellants Harish Chand @ Harchand @ Harak Chand and Ghanshyam under Sections 302/34 and 404, IPC, vide its judgment dated December 10, 1999.

8. Being aggrieved by the aforesaid judgment dated December 10, 1999, the accused-appellants have preferred the instant appeal.

9. Learned counsel for the appellants contended that the findings of the trial court are against the facts and material available on record. He further contended that the learned trial court has erred in law in not taking into consideration the proper appreciation of prosecution witnesses, particularly P W 3 Rameshwar, PW 4 Devilal, PW 5 Balaram and PW 6 Tulsiram in its right perspective. Apart from that, there is serious discrepancy on material point in the statements of the aforesaid three witnesses, which goes to the root of the case, therefore, in this situation, the conviction of the accused-appellants is bad and the same deserves to be set aside by the Hon"ble Court.

10. Learned counsel for the appellants has referred to the decision given in Mohan Singh Vs. Prem Singh & Another, 2003 (1) WLC (Raj) 8. In this case eye-witness as following the deceased, but did not intervene, but, in the instant case, the three eye witnesses Devilal (PW 4), Gopal (PW 5) and Tulsi Ram (PW 6) came to the place of incident and the accused, seeing the eye-witnesses coming to his field, took to his heels. Therefore, this authority is of no help and is not applicable in the instant case due to entirely different facts and circumstances of the present case.

11. On the other hand, PW 4 Devilal, PW 5 Gopal and PW 6 Tulsiram, who are eye-witnesses, have given sequence of events in right perspective and have deposed almost on the same lines that Harchand was beating Gendilal and he inflicted a fatal blow with stone on the head of Gendilal, which resulted in bursting of his skull and Gendilal died instantaneously. The blood was oozing from his head. Due to bursting of the head of Gendilal, clothes of Harchand were also smeared with blood. They are independent persons. They used to graze she-goats in the fields. However, due to fear, they abruptly did not reveal to anyone in the village about this incident. They have no enmity with the accused and they do not belong to his caste. In cross-examination also, nothing adverse was elicited from their statements which may cast doubt on their testimony.

12. PW 7 Dr. Arvind Kumar Bohra, who was posted as Medical Officer, in Government Hospital, Jhalrapatan. on the day of the incident, has deposed that on the request of the police, he conducted the post mortem examination of the dead body of Gendilal and prepared post mortem report (Ex.P3). He found the following injuries on the dead body of the deceased:-

"1. Lacerated wound 10"x5"x 1" over the head and face left side extending from left parietal bone, left temporal bone, left maxillary bone and none and left mandible region and left ear.

2. Traces of right ear torn. Associated, left parietal bone, left temporal bone, occipital bone, left mandible, nasal bone, maxillary bone fracture towards left side."

13. According to Dr. Arvind Kumar Bohra (PW 7), the injury could have been inflicted by a big stone. He opined that injury No. 1 was sufficient in the ordinary course of nature to cause death. He deposed that the brain and cerebrum were distorted and the scalp was completely broken. Duration of the injuries were between 24 to 30 hours. He further deposed that the bones were crushed into pieces.

14. PW 8 Vimal Kumar Jain, who is running a shop in the name and style of M/s. Shankerlal Fundilal Jain Harkara Sarraf, Indragarh, District - Bundi (Rajasthan), has deposed that in May 1997, Rameshwar Dhakar and accused Harish Chandra had visited his shop. Accused Harish Chandra was not known to him. Rameshwar Dhakar introduced Harish Chandra to me as his maternal-uncle-in-law (Mami-Sasur). He told me that the accused had come to visit "mataji-ka-sthan" here and he is running short of money, therefore, he (the accused Harish Chandra) wants to sell his earrings. The weight of the earrings was about 1 tola and were amounting to Rs.5650/-. The said earrings were sold to Vimal Kumar Jain and he issued a "kharid-patra" dated 9.5.97 (Ex.P4) which bears the signatures of accused Harish Chandra, Rameshwar and Vimal Kumar Jain (PW 8) himself. It may be mentioned that the report of the incident was made to the Police on 8.5.97. The said earrings were sold by accused Harish Chandra to Vimal Kumar Jain on 9.5.97. Thereafter, when the police along with accused Harish Chandra arrived at his shop, then he came to know that the stolen golden earrings have been sold to him by the accused. In the cross-examination also, nothing adverse was elicited from his statement, which may cast doubt on the story of the prosecution.

15. PW 10 Badri Lai Pareek, a Retired Tehsildar, has deposed that on 8.7.97, he was posted as Tehsildar, Jhalrapatan. Identification proceedings of earrings and "rawat" (Articles 1,2 and 3) were conducted in his supervision. Mohanlal, the son of the deceased Gendilal, identified the exact earrings and "rawat". Thereafter, Fard Ex.P5 was prepared by him and was sent to the CJM, Jhalawar.

16. PW 11 Mohanlal, who is son of the deceased-Gendilal has deposed that his father used to visit Urmal Village. He further deposed that his father used to wear earrings in the ear and "rawat" around the neck. He has identified the Articles 1,2 and 3 correctly. He has also supported the prosecution story.

17. PW 12 Prahlad is a witness of recovery of golden "rawat" and a sum of Rs.4,000/- has deposed that the accused Harish Chandra had got recovered the aforesaid article and amount to the Police in his presence, which were recovered from a corner of the house of the accused Harish Chandra. Not only that, even blood stained stone was also got recovered by the accused Harish Chandra in his presence from the field in question, which was seized by the police vide Ex.P8 and blood-smeared soil was seized vide Ex.P9. An empty bottle of liquor was also

recovered vide Ex.PI 1 in his presence. The witness further deposed that Gendilal used to wear golden earrings and "rawat". In cross-examination also, nothing adverse version was given by him which may discredit his testimony.

18. Similar statement has been given by PW 13 Ramkalyan.

19. PW 14 Dhannalal has deposed that on the day of the occurrence, he was working as salesman on the wine shop Thekedar Dhannalal. About seven months, ago, deceased Gendilal and accused Harish Chandra had visited his shop. They purchased liquor and had taken lunch. Then they both left the shop. After a little time, Harish Chandra again brought Gendilal to his shop and purchased a bottle of liquor and told him that they would consume it in the field. At that time, deceased Gendilal was wearing earrings and "rawat".

20. PW 14 Shahjan Modh. has deposed that he took the sealed articles from Police Station to the S.P.OfTice, Jhalawar and from S.P.Office, Jhalawar to the Office of F.S.L., Jaipur. The seals on the articles were intact.

21. Tejraj Singh (PW 23) has given in his statement a detailed description of the sequence of events. FIR No. 147/97 was registered by him. Investigation was taken up by him. Recoveries were made by him. He deposed that at the instance of accused Ghanshyam, blood-smeared soil and a pair of shoes (Jootiyan) of the deceased were recovered and fard Ex.P.10 was prepared by him. He also recorded the statements of witnesses Ex.DI to Ex.D6. He conducted necessary investigation and collected material evidence in right perspective. In cross-examination also, he stood by the version of his investigation.

22. Learned Public Prosecutor has supported the judgment of the trial Court and submitted that the judgment is based on sound reasonings and it clearly shows that the accused-appellants have committed heinous offence, so they do not deserve any lenience and, in the facts and circumstances of the case, the conviction and sentence passed by the learned Sessions Judge may.be maintained.

23. We have heard learned counsel for the parties.

24. Nothing has been elicited in the cross-examination of the aforesaid prosecution witnesses to discredit their testimony. Their statements find corroboration from the recovery memos, post mortem report as well as FSL report. The Serologist has opined that the human blood was found on the seized articles. The articles were intact throughout the process uptil they reached the office of FSL, Jaipur.

25. In our view, they are credit-worthy witnesses. On reappreciation of evidence, we find the statements of PW 4 Devilal, PW 5 Gopal and PW 6 Tulsiram, who are witnesses of the occurrence creditworthy. The evidence of recovery of golden earrings and "rawat" sounds well and stands corroborated from the statement of Vimal Kumar Jain (PW 8). The contradictions pointed out by the learned counsel for the appellants are minor in nature.

26. So far as accused-appellant Ghanshyam is concerned, it is stated on the day of the occurrence, in the evening, he returned to the village and narrated the incident to his friend Kripashanker. Then they went to the scene of occurrence alongwith the cycle of Kripashanker. They lifted the dead body of Gendilal from the place of occurrence, took it on the cycle of Kripashanker and threw it in a side of "Nala" of Gangthi "chauraha". Thereafter, they returned back to the place of occurrence and in order to destroy the evidence, they took away blood-smeared soil, a pair of shoes ("Jootiyan") of the deceased, and empty bottle of liquor and kept them hidden in bushes ("Jhariyan") and thereafter, disappeared from the place of occurrence. Kripashanker has already been acquitted from the charges under Sections 302/34,397/404 and 201, IPC by the learned trial Court.

27. Apart from that, it appears that Ghanshyam has no specific role in the incident. It is stated that he had a lathi in his hand and he inflicted blow with lathi on the deceased. But no injury has been attributed to him. The Doctor has also not stated in the injury as well as post mortem report that any injury by lathi was caused on the deceased Gendilal. The prosecution has also failed to prove the role of Ghanshyam beyond reasonable doubt in the said incident.

28. For these reasons, we find no merit in the appeal of Harish Chand @ Har Chand @ Harak Chand and the same stands dismissed. We, however, allow the appeal of appellant Ghanshyam and acquit him of the charge u/s 302/34, IPC. The appellant Ghanshyam is on bail, he need not surrender and his bail bonds stand discharged.