
(2006) 05 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 603 DB of 2000

Shyam and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2006) 17 CriminalCC 884

Hon'ble Judges : R.S. Madan, J;K.S. Garewal, J

Bench : Division Bench

Advocate : R.N. Kush, for the Appellant; S.S. Goripuria, DAG Haryana, for the Respondent

Final Decision : Allowed

Judgement

K.S. Garewal, J.—The appellants are Shyam (20) and Harender Kumar (18). They have filed this appeal to challenge their conviction by learned Sessions Judge, Faridabad on September 29,2000 for the murders of Kailash (12) and Satey alias Sat Parkash (14). The dead bodies bearing multiple incised and lacerated wounds were found near the D.A.V.School, Faridabad on the morning of November 11, 1999. The learned Sessions Judge had tried the two appellants as well Ram Chander (42) who was acquitted. Fourth person was Ram Chander's son Ghansi alias Ghansham (juvenile) who was produced before the Juvenile Court.

2. On the evening of January 10, 1999 Shyam, Harender and Ghansi (juvenile) went to Satey's house and took him alongwith them to the house of Kailash deceased. Thereafter all five of them were seen playing near the chowk adjacent to Kailash's house by his father Vijender Sharma (PW4). father of Kailash. Vijender Sharma had seen the five youth at about 8.00 P.M. but after about 20 minutes he could not locate the boys. He and Persy alias Paras Ram (grand father of Satey) began looking for the boys and enquired from Ghansi's father Ram Chander about their whereabouts as they were with his son Ghansi. Ram

Chander replied that his son might be lying drunk somewhere. Vijender Sharma and Paras Ram searched for the boys for whole night but in vain.

3. On the next morning at 10.00 A.M., when they were passing through Ashok Enclave Park, Sector 37 near D.A.V.School, Faridabad they saw dead bodies of Kailash and Satey. The corpses were lying in the park with injury marks on their bodies and faces caused with sharp edged weapons.

4. The matter was reported to the police by Vijender Sharma and in his statement at 10.30 AM on January 11, Vijender Sharma suspected that Shyam, Ghansi and Harender alongwith one or two other persons had murdered his son Kailash and Satey. Statement of Vijender Sharma was recorded by S.I. Sat Narain (PW11) and was sent to the Police Station, Sarai Khawaja, whereupon FIR 11 was registered at 10.40 AM. Special report of the case was delivered to Judicial Magistrate, Faridabad at 6.50 PM on January 11,1999.

5. S.I. Sat Narain took up investigation of the case. The place of the occurrence was got photographed. He prepared rough site plan and lifted blood stained earth from nearby the bodies of the deceased. Inquest reports were prepared whereafter the bodies were sent for post mortem examination.

6. Post mortems were conducted by a Medical Board consisting of Dr.Ravinder Mathur (PW1), Dr.P.K.Maghu and S.K.Manocha. The post mortem on the dead body of Satey revealed the following injuries:-

1. L.W. of 7cmx3.5cm into bone deep on the left front parietal region. Underlying bone was depressed.

2. L.W.3cm x 1.5cm x 1cm over left eye-lid.

3. L.W.4cm x 2cm x 1cm over left parietal region.

4. There were multiple incised wounds of the size of 2cm x 1cm x 2cm on the left side of neck.

5. Incised wound of 4cm x 2cm x 9cm deep present on the left side of neck just below the ear lobule. Underlying great vessels were cut. Muscles were lacerated. Trachea was also cut alongwith esophagus. All the wounds had clotted blood.

6. Incised wound of 4cm x 2cm x 5cm on the mid line of neck cutting the underlying trachea.

7. Incised wound of 4cm x 1.5cm x 2cm on the right cheek.

8.3 incised wounds of 4cm x 1.5cm x 2cm over right side of neck.

7. In the opinion of the Medical Officers, death was due to shock and haemorrhage as a result of multiple injuries. All the injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. The probable time between injury and death was within a few minutes. Post mortem had been conducted within 24 hours of death.

8. Post mortem on the dead body of Kailash revealed the following injuries:

1. A L.W.10cm x 4cm bone deep on the forehead. Underlying bone was fractured into multiple pieces.

2. Multiple lacerated wound of size 5.6cm x 3cm x 2.5cm upto 3cm x 2cm x 1cm on the both cheeks and orbits. Large sub dural haematoma was present in the brain. Maxilla and orbital wall were fractured.

3. Three incised wound on the left side of neck transversally placed along the medial border of sternocleidomastoid varying from 2cm x 1.5cm x 1cm to 5cm x 2cm x 4cm, underlying vessels were cut and blood was present in surrounding region of neck.

4. Two incised wounds 3cm x 2cm x 2cm x 2cm x 1.5cm x 1.5cm on right side of neck.

5. 4 incised wounds were present in the middle part of neck varying from size 2cm x 1.5cm x 1.5cm to 6cm x 2.5cm x 5cm, underlying trachea was cut. There was blood in the tissues of neck.

9. In the opinion of the Medical Officers, death was due to shock and haemorrhage as a result of multiple injuries. All the injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. The probable time between injury and death was within a few minutes. Post mortem had been conducted within 24 hours of death.

10. On January 11, 1999 Shyam (appellant) went to Ajay (PW6) who ran a Medical Store at Sarai Khawaja and confessed to him that he along with Ghansi and Harender had murdered Satey and Kailash and requested Ajay to produce him before the police. Thereafter Ajay took Shyam to S.I. Sat Narain, S.H.O. P.S., Sarai Khawaja. Likewise Ghansi went to Pardhan Singh (PW10) on January 11, at about 6.30 PM and confessed to him that he had murdered Satey and Kailash and accordingly Ghansi was also produced before S.I. Sat Narain.

11. Sham Singh's interrogation on January 12 led to the recovery of a knife, pants and pieces of stone in the bushes in between Agra canal and Gurgaon canal.

12. Ram Chander was arrested on January 24, while Harender on February 9, 1999, Harender on interrogation disclosed that he had concealed his knife behind bushes near Palla Power House and offered to get it recovered. Consequently Harender's knife was also recovered.

13. The Investigating Officer sent the case property for examination by the Forensic Science Laboratory. The Forensic Scientist opined that the chappals found at the spot, two knives, piece of brick, jersey, pants, Satey's T shirt as well as Kailash's shorts were stained with blood. Human-blood was also found on the blood stained earth, Kailash's chappal, piece of brick jersey and pants belonging to Shyam and also on Satey's underwear as well as on the two

sweaters, shirt and T shirts and pants of Kailash. After completion of investigation the accused were sent up for trial.

14. At the trial, prosecution examined Dr.Ravinder Mathur (PW1), Sunil Dutt, Photographer (PW2) in respect of 8 photographs taken of the dead bodies, S.I. Prem Narain (PW3) Additional S.H.O. P.S.Sarai Khawaja in respect of the registration of the case, Vijender Sharma (PW4), Laxmi Devi (PW5), mother of Satey, Ajay (PW6), ASI Chaman Lal (PW7) with regard to Ram Chander's arrest and Harender's interrogation, Hukam Chand (PW8) with respect to Shyam's interrogation and recovery of knife, Virender Singh (PW9) who was a recovery witness of the knife, Pardhan Singh (PW10), ASI Sat Narain (PW11), Anoj Kumar (PW12) Draftsman and closed the case.

15. Accused were examined u/s 313 Cr.P.C. They were questioned regarding the various circumstances that appeared in prosecution evidence against them. They denied all the facts and pleaded innocence and false implication. When called upon to enter defence they expressed the desire to lead defence but did not examine any defence witnesses.

16. Learned Sessions Judge accepted the evidence of Vijender Sharma (PW4), who had seen all the accused (barring Ram Chander) together with the two deceased boys and some other boys near the chowk in Sarai Khawaja but after 20minutes the group of boys had disappeared. Virender Sharma and Paras Ram waited for the boys. They first went to Ram Chander's house whose son Ghansi was one of the boys who had been seen with the deceased. Ram Chander upon enquiry replied that his son must be lying somewhere after consuming liquor. They searched for the boys in the night but could not find them. Learned Sessions Judge also accepted the statement of Satey's mother Laxmi (PW5) that he had left the house with Ghansi, Shyam and Harender on the evening of January 10.

17. Learned Sessions Judge accepted the disclosure statements made by Shyam and Harender and the recovery of the knives on the basis of their respective statements. Lastly, the learned Judge took into consideration the extra judicial confession made by Shyam and came to the conclusion that all the circumstances stood fully established and the facts were consistent only with the hypothesis of guilt against Shyam and Harender. Both were convicted while Ram Chander was acquitted.

18. In appeal learned counsel for the appellants argued that the chain of the circumstances against the appellants was weak. Neither the recovery of the knives nor extra judicial confessions could be believed. Harender's participation was an improvement since Satey's mother Laxmi Devi (PW5) never stated in her police statement that Harender had also accompanied Shyam and Ghansi on the night of January 10, 1999 when Satey left the house. It was contended that the two disclosures of Harender were recorded on February 8 and 9 respectively. Therefore, it could not be accepted that he had made any disclosure statement

regarding the knife in the second statement when he had made a disclosure regarding the knife in his first statement which was found to be false. From this argument it was built up that knife upon Harender was planted.

19. On behalf of the State the argument was that Vijender Sharma (PW4) has seen the deceased playing with the accused but found the deceased missing after 20 minutes. This established that the deceased had been last seen alive in the company of the two accused and the juvenile. This was further supported by the statement of Satey's murder Laxmi (PW5) and the confession made by Shyam before Ajay (PW6).

20. The case against the appellants is based entirely on circumstantial evidence, therefore, each circumstances must be dealt with independently and we proceed to do so as follows:

(i) The deceased were seen with the accused by Vijender Sharma (PW4)

Vijender Sharma is the father of Kailash deceased. He testified that at 8.00 P.M. on January 10, his son Kailash and Satey were seen by him with the two appellants and 2/3 other boys playing in the chowk near his house. The witness gave a detailed statement in which he concluded by saying that Satey had complained to Ghansi's father Ram Chander that Ghansi, Harender and Shyam had teased some girls whereafter Ram Chander had beaten Satey. In cross examination the witness admitted that he had not told this fact to the police. Obviously this was an improvement but would not have any effect on the credibility of the witness. His cross-examination did not reveal any other point which could established was that what he had stated was false. According to the learned counsel for the appellants all that the statement of Vijender Sharma establishes that the two deceased had been seen with the accused near his house and not at the place where the dead bodies were found. Therefore, even if the deceased had been seen with the accused by Vijender Sharma, the group had dispersed and thereafter moved to a different place. There may not be direct link between what Vijender Sharma saw and the murder of boys whose dead bodies were found. The argument of the learned counsel is ingenuous but cannot be accepted since what Vijender Sharma saw was not the murder being committed but only the deceased playing with the accused near his house. This is only one circumstance but not the only circumstance which the prosecution has presented. In linking the chain of circumstantial circumstance no single circumstance has to be considered and it is only when all the circumstances are considered together that the court comes to a conclusion one way or the other. The solitary circumstance may not be enough by itself to destroy the other circumstances.

(ii) Satey deceased was seen by Laxmi Devi (PW5) leaving the house in the company of the accused.

Laxmi Devi was Satey's mother. According to her Satey had a quarrel with Ram Chander, father of Ghansi, Satey abused Ram Chander and the latter slapped

him 2-4 times. On January 10, 1999, Ghansi, Shyam and Harender had come to her house and taken Satey alongwith them. In cross-examination, Laxmi Devi's statement regarding the incident between Satey and Ram Chander was not challenged. However, quite significantly, it was brought out that in her police statement she had not stated that Harender was also with Shyam and Ghansi when they took Satey alongwith them.

(iii) Medical Evidence in this case shows that Satey was only 4"-10" tall, moderately built and nourished and had lacerated wounds of different dimensions on the front of the left parietal region (7cm x 3.5cm) with the underlying bone depressed, over left eye lid (3cm x 1.5cm) and left parietal region (4cm x 2cm x 1cm). There were also incised wounds of the size 2cm x 1cm x 2cm on the left side of neck. Another incised wound of 4cm x 2cm x 9cm on the left side of the neck just below the ear lobule. Underlying great muscles were cut. Muscles and trachea along with esophagus were cut. There was incised wound 4cm x 2cm x 5cms on the mid line of neck cutting the trachea. There was also an incised wound of 4cm x 1.5cm x 2cm on the right cheek. There were three incised wounds of the above mentioned dimensions on the right side of neck.

From the above it appears that the deceased was repeatedly hit on the head which gave rise to lacerated wounds and also repeatedly stabbed on the neck which gave rise to seven incised wounds of almost the same dimensions.

Medical evidence also shows that Kailash was 3"-6" tall, moderately built and nourished and had a lacerated wound of 10cm x 4cm on the bone deep on the left forehead and the underlying bone was fractured into multiple pieces. Multiple lacerated wounds of different dimensions on both cheeks and orbits with large subdural haematoma in the brain. Maxilla and orbital wall were fractured. There were three incised wounds on the left side of the neck of varying dimensions from 2cm x 1.5cm x 1cm to 5cm x 2cm x 4cm with underlying vessels being cut. Kailash also had four incised wounds on the neck which had cut the trachea.

The pattern of injuries on the both the deceased, who were young lads not yet full grown, shows that both had been overpowered and brutally murdered with repeated blows on the head and repeated stabs on their respective necks. The lacerated wounds on the head could have been caused if the head was smashed with a stone or on a stone or with some heavy blunt or some other weapon used from the blunt side. The incised wounds on the necks were certainly knife injuries with the knife being used in a chopping fashion.

(iv) Shyam's confession to Ajay (PW6)

On January 11 Shyam went to Ajay (PW6) and confessed that he alongwith Ghansi and Harender had committed the murders of Satey and Kailash. He asked to be produced before the police whereupon Ajay took Shyam to the Investigating Officer who arrested him. The witness was cross-examined and stated that he had not known Vijender earlier though he knew that Satey was Paras Ram's grand son. He did not on the night of January 10 know that Satey

and Kailash were missing. He came to know about this on January 11 at 11.00 A.M. It was at 12.00 Noon that he learnt that the boys had been murdered. Shyam came to him at 4/5 P.M. and was produced before the police at 6/7 P.M.

Criticism against Ajay's evidence was that he was not such a well connected person before whom any accused person would go and confess to seek help with the police. This argument misses the point that when an accused is on the run he clutches at any straw that he can find to help him to overcome his difficulties.

In the present case Ajay was cross-examined regarding his relationship or association with the Investigating Officer and he replied that Sat Narain, S.H.O. Police Station Sarai Khawaja, used to visit his medical store for medicines and would also come and sit at the shop without any purpose. The witness had no special relationship with him. This was the first time that he produced any accused person before the police. The witness did not know Shyam's parents and was not visiting terms with them. Shyam used to visit his medical store and would sometimes purchase medicines. From the above it appears that Shyam did have some association with the witness who in turn did know the Investigating Officer. All this has in fact come out in cross-examination. Therefore, it must be accepted as true. The position that emerges is that after the occurrence Shyam was obviously on the run, and he came to Ajay's store seeking help. It is natural that when someone asks for help with the police, the person from whom help is sought would certainly like to know why that person was required to be taken to the police. It must be true that during such an exchange Shyam would have revealed the truth and freely confessed to Ajay.

Extra judicial confessions are by themselves insufficient to base conviction but lend assurance to courts as regards the other pieces of circumstantial evidence which had appeared against the accused and that other evidence appears to be sufficient for conviction. If this happens then extra judicial confession can be used to buttress the view otherwise not. Therefore, for the time being the extrajudicial confession shall be ruled out of the consideration though it may be referred to after the other evidence has been analyzed.

(v) Recovery of knife on the basis of Shyam's disclosure statement

After Shyam was arrested by SI Sat Narain he was interrogated on the following day and he disclosed that he had kept the knife in the house of his aunt in Noida. Later on January 13 Shyam was again interrogated and disclosed that he had concealed the knife in bushes between the Agra and Gurgaon canals. The first disclosure statement was a false one and was discarded. On the basis of the second disclosure statement the pants and knife were recovered from the stated place. According to the learned counsel for the appellants there can never be two disclosure statements, the first one must lead to the discovery. The learned counsel misses the point that the accused are often prone to tell lies to gain time and to mislead the Investigating Officer, in the present case the first disclosure statement was obviously a lie. Therefore, it need not be looked into particularly

because it did not lead to the discovery of any knife. A statement to the police by the accused which does not lead to any discovery is inadmissible and falls outside the purview of Section 27 of the Evidence Act. Since the first disclosure statement did not lead to any discovery, Shyam was further interrogated and made the second statement on January 13 which led to the recovery. There appear to be no reason for us to discard the statement made by Shyam on January 13 and the recovery made on the basis thereof.

(vi) Recovery of knife on the basis of Harender's disclosure statement.

Harender was arrested by ASI Chaman Lal (PW15) on February 9 and interrogated. He disclosed that he had concealed his knife behind bushes near the Palla Power House. The police went to the stated place and recovered the knife. According to the learned counsel for the appellants, the knife was one which was freely available in the market and the background of the interrogation were also quite suspicious. Harender had been interrogated at 5.30 A.M. and had made the disclosure statement after 1-1/2 hours of continuous interrogation at 7 A.M. The witness had admitted in cross examination that he had not summoned any independent person to witness the interrogation but only Vijender had come to the spot to witness the recovery. The Investigating Officer had not visited Harender's village Harchana, District Bulandshahar(Uttar Pradesh). It was further argued that Harender had no reason to conceal the knife in Faridabad whereas he could have easily have taken it with him to his village in the neighbouring State and disposed it off conveniently.

21. We have considered the arguments advanced by the counsel for the appellants and the State. We are of the view that evidence against Shyam is very strong. There is evidence of Shyam being seen with the deceased and other co-accused by Vijender Sharma (PW4). There is also evidence of Shyam going to the house of Satey on the evening of January 10 and being seen by Satey's mother Laxmi Devi (PW5). Although Vijender did testify that Harender was with Shyam and others and seen with the deceased, the evidence of Laxmi Devi (PW5) to the effect that Harender had come to pick up Satey from her house was obviously an improvement made to what she had stated to the police. In her police statement she had not mentioned that Harender was one of the persons who had accompanied Shyam to pick up Satey.

22. The medical evidence in this case seems to indicate that there were atleast two assailants. The person who had the main grouse against Satey was actually Ghansi (juvenile) whose father had been abused by Satey. The other accused whose participation seems to be established is Shyam. The chain of circumstances against Shyam and Harender is not the same. While Shyam was seen by Vijender Sharma (PW4) and Laxmi Devi (PW5) on the evening of January 10 in the company of Satey and Kailash, Harender was only seen by Vijender Sharma and not by Laxmi Devi. It is true that at the trial Laxmi Devi did not mention Harender's name but that was an improvement over her statement made to the police. Furthermore, Shyam had also confessed the crime and was

arrested on the following day while Harender was arrested after almost a month. We find that circumstantial evidence against Shyam was strong and conclusive, it did not admit of any hypothesis other than his guilt. Therefore, his appeal deserves to be dismissed and it is ordered accordingly.

23. However, Harender's appeal is allowed and he is directed to be released forthwith unless wanted in any other case.