

PUNJAB AND HARYANA HIGH COURT
Satish Kumar Mittal and Jora Singh JJ.
Shiv Lochan v. State Of Haryana
Criminal Appeal No. 227 of 2000,
6.01.2010

IPC S. 302 - Related witness - Merely because a witness is a relative of the victim, his testimony cannot be discarded - In case of a related witness, as an abundant caution, the court is required to carefully examine the testimony of such a witness with a great caution

Held, In the present case, the presence of Chander Pal at the time of the alleged occurrence was natural. Undisputedly, he was one of the employees of the stone crusher, as the deceased and the accused were. All of them were residing in the cluster of quarters, meant for the labourers/workers of the stone crusher. The occurrence had taken place in the night in the crusher premises and the persons, who could have witnessed the occurrence, could be only the persons residing there. The version of this witness that he came out of his quarter to fetch water from the Tanki also cannot be termed as improbable. In the month of July, it cannot be said that a person cannot come out of the quarter to fetch water for his children. Therefore, the presence of Chander Pal at the time and place of the alleged occurrence cannot be said to be doubtful. The testimony of this witness has been fully corroborated by the medical evidence. The Post Mortem Report and the statement of Dr. Pardeep Bindal (PW.2) fully establish that Raju suffered homicidal death and the testimony of Chander Pal has proved that the accused gave two Kulhari blows on the neck of the deceased, which as per the opinion of the doctor proved fatal and were sufficient to cause death in the ordinary course of nature.

IPC S. 302 - Witness - Conduct of - Conduct of the witness that he did not make any effort to apprehend the accused cannot be said to be improbable or un-natural - Re- action of a witness at a particular spur of moment cannot be measured by any set standard of human conduct. It is very often that when a person witnesses the crime, he gets stunt and get overwhelmed by fear, with the result that he gets concerned for his self preservation and safet - - He was suddenly confronted with the crime and at that time, the accused was also armed with kulhari, in that situation, he could not have taken the risk to attack the accused or to apprehend him - Therefore, no adverse inference can be drawn . [Para 13]

IPC S. 302 - Motive - Not proved - Even if the alleged motive has not been proved by the prosecution, that itself is not sufficient to discard the prosecution version - Mere absence of proof of motive for the commission of crime is no ground to presume innocence of the accused, if his involvement is otherwise established by reliable and cogent evidence. Held, In the instant case, the testimony of PW.6 chander Pal, which has been found to be reliable and trust-worthy, has fully proved that the appellant has committed the murder of Raju. Therefore, in the absence of clear proof of motive, it cannot be said that the prosecution has failed to prove its case beyond reasonable doubt. [Para 17]

Judgment

SATISH KUMAR MITTAL, J.

1. Accused Shiv Lochan has filed this appeal against the judgment dated 15.5.2000 and order dated 17.5.2000, passed by Sessions Judge, Gurgaon, in sessions Case No.20 of 1998, arising out of FIR No.188 dated 14.7.1998 under section 302 IPC, Police Station Bilaspur, whereby the accused has been convicted and sentenced to undergo imprisonment for life, for committing the murder of Raju.

2. In brief, the prosecution version is that deceased Raju was working as driver of the dumper in Bharat Stone Crusher, Norangpur, owned by Virender singh (PW.7). Complainant Chander Pal (PW.6), uncle of deceased Raju and accused Shiv Lochan were also employed with the aforesaid stone crusher. All these persons were residing in the quarters of the said stone crusher. In the present case, the FIR (Ex. PJ) was lodged on 14.7.1998 at 10.05 AM on the basis of statement of Chander Pal (PW.6) made before SHO Jeet Ram (PW.9) at 9.30 AM. In his statement (Ex. PF), Chander Pal stated that on the intervening night of 13/14.7.1998, at about 2 A. M. , when he went from his quarter to take water from the Tanki, he saw that his nephew Raju was sleeping on the cot in front of his quarter, and accused Shiv Lochan was causing injuries to Raju with axe (Kulhari). When Chander Pal raised alarm, munna, a co-labourer, who was residing in the adjoining quarter, came to the spot and he also witnessed the incident. Complainant Chander Pal further stated that at that time, accused Shiv Lochan was saying that he had taught a lesson

to Raju for teasing his wife. He further stated that after causing injuries to Raju, accused ran away from the spot after throwing his Kulhari there. Raju received two injuries on his neck, as a result of which he died on the spot. This entire occurrence was witnessed by him and Munna. Thereafter, many neighbours came there. They tried to search accused Shiv Lochan and his wife, but they did not meet. He further stated that after the incident, he went to Delhi to inform the owner of the stone crusher in the morning and thereafter, he went to the police station to inform that Shiv Lochan had committed the murder of Raju with Kulhari on account of teasing his wife Ram Piari.

3. After registration of the case, the police took into possession the blood stained earth, cot and the Kulhari (Ex. P5) vide recovery memo Ex. PG. On 14.7.1998, post mortem of the deceased was conducted by doctor Pardeep Bindal (PW.2). Copy of the post mortem report is Ex. PB. At the time of autopsy, Dr. Pardeep Bindal noticed two injuries on the body of the deceased, one elliptical wound measuring 10 cms x 6 cms on the front of his neck, 7 cms below the chin, and the second was 7 cms x 4 cms cut wound on the right lateral side of neck, 3 cms below the right angle of mandible. According to Dr. Pardeep Bindal, both the injuries were ante mortem in nature and sufficient to cause death in the ordinary course of nature. The cause of death was described to be because of haemorrhage and shock caused by those injuries. The time between injuries and the death was stated to be within few minutes and the time between death and post mortem was within 24 hours. The weapon of offence, namely Kulhari (Ex. P5) was shown to the said PW in the court. Thereupon, he had stated that the possibility of causing the aforesaid injuries by this weapon cannot be ruled out. The accused was arrested on 30.7.1998.

4. After completion of investigation, the challan was filed against the accused and charge under Sec.302 IPC was framed, to which the accused did not plead guilty and claimed trial.

5. In support of its case, the prosecution examined PW.1 Constable Sarwan kumar, Draftsman, who prepared the scaled site plan Ex. PA, PW.2 Dr. Pardeep bindal, PW.3 SI Ram Avtar, who partly investigated the case, PW.4 Constable vijay Kumar, PW.5 Constable Attar Singh, the formal witnesses, PW.6 Chander pal, the complainant, PW.7 Virender Kumar, the owner of the stone crusher, PW.8 HC Sube Singh, another formal witness and PW.9 si Jeet Ram, the Investigating Officer of the case. Out of the two eye witnesses, only complainant Chander Pal was examined as PW.6, whereas the other eye witness, namely Munna, was given up by the prosecution being won over by the accused.

6. In his statement under Sec.313 Cr. P. C., the accused denied all the allegations appearing against him in the evidence led by the prosecution. He pleaded innocence and did not take any specific defence. He did not lead any evidence in defence.

7. The trial court, while relying upon the statement of the sole eye witness, namely Chander Pal (PW.6), medical evidence and the other corroborative evidence, convicted and sentenced the accused, as indicated above. Against the said judgment, the instant appeal has been filed by the accused.

8. Learned counsel for the appellant raised the following five arguments :

- (i) There are material discrepancies in the statement of PW.6 Chander Pal, which go to the root of the matter and reflect that testimony of this witness is not trust-worthy.
- (ii) The solitary testimony of the eye witness, namely PW.6 Chander Pal, who is relative of the deceased, cannot be relied upon, particularly when the second eye witness Munna has not been examined by the prosecution.
- (iii) No independent witness, who came present at the place of occurrence at the time of the alleged occurrence, has been examined by the prosecution to corroborate the testimony of the sole eye witness.
- (iv) The recovered Kulhari (Ex. P5) has not been connected with the commission of the offence.
- (v) The prosecution has failed to prove the motive to commit the alleged offence.

9. We have heard the arguments of learned counsel for the parties on the aforesaid submissions and have perused the record of the case.

10. Learned counsel for the appellant put much emphasis on the argument that the testimony of PW.6 Chander Pal is not reliable and trust-worthy for various reasons, therefore, on the basis of his sole testimony, conviction of the appellant for the offence of murder is not sustainable, particularly when he is relative of the deceased. Learned counsel pointed out that in his statement before the police, PW.6 Chander Pal has given motive of the crime, when he stated before the police that the accused caused injuries to the deceased because he had teased his wife, whereas while appearing in the court as PW.6, he stated that he does not know the reasons as to why the accused had killed Raju. It is further argued that in his statement (Ex. PF) before the police, Chander Pal stated that after the incident, he went to Delhi to inform the owner of the stone crusher and thereafter, he went to the police station. But in his statement before the court as PW.6, it is stated by him that the police came on the spot and his statement was recorded. Learned counsel further argued that the conduct of Chander Pal at the time of the occurrence was un-natural. He did not make any effort to apprehend the accused. She further submitted that all these factors coupled with the fact that this witness is related to the deceased, his presence at the time of the occurrence is highly doubtful.

11. After cautiously and carefully appreciating the testimony of PW.6 Chander pal in the light of the facts

and circumstances of the case and other evidence available on the record, we do not find that the testimony of this sole eye witness is un-natural or un-trustworthy. Merely because a witness is a relative of the victim, his testimony cannot be discarded. In case of a related witness, as an abundant caution, the court is required to carefully examine the testimony of such a witness with a great caution. In the present case, the presence of Chander Pal at the time of the alleged occurrence was natural. Undisputedly, he was one of the employees of the stone crusher, as the deceased and the accused were. All of them were residing in the cluster of quarters, meant for the labourers/workers of the stone crusher. The occurrence had taken place in the night in the crusher premises and the persons, who could have witnessed the occurrence, could be only the persons residing there. The version of this witness that he came out of his quarter to fetch water from the Tanki also cannot be termed as improbable. In the month of July, it cannot be said that a person cannot come out of the quarter to fetch water for his children. Therefore, the presence of Chander Pal at the time and place of the alleged occurrence cannot be said to be doubtful. The testimony of this witness has been fully corroborated by the medical evidence. The Post Mortem Report and the statement of Dr. Pardeep Bindal (PW.2) fully establish that Raju suffered homicidal death and the testimony of Chander Pal has proved that the accused gave two Kulhari blows on the neck of the deceased, which as per the opinion of the doctor proved fatal and were sufficient to cause death in the ordinary course of nature.

12. In the statement of Chander Pal (Ex. PF) made before the police, there is no major contradiction, on the basis of which an adverse inference can be drawn about his truthfulness and trustworthiness. Merely because before the court, he did not state about his visit to Delhi to inform the owner of the stone crusher or that he did not mention about the motive, it does not lead to the conclusion that he did not witness the alleged occurrence. It cannot be ignored that slight variances are bound to occur in the statements of the witnesses, who are examined after a lapse of time. Merely because of such minor discrepancies, statements of such witnesses cannot be discarded and their credibility cannot be doubted.

13. In the facts and circumstances of the case, the conduct of this witness that he did not make any effort to apprehend the accused also cannot be said to be improbable or un-natural. In the present case, Chander Pal was suddenly confronted with the crime and at that time, the accused was also armed with kulhari. In that situation, he could not have taken the risk to attack the accused or to apprehend him. It is now well settled that re- action of a witness at a particular spur of moment cannot be measured by any set standard of human conduct. It is very often that when a person witnesses the crime, he gets stunt and get overwhelmed by fear, with the result that he gets concerned for his self preservation and safety. Therefore, no adverse inference can be drawn from the fact that Chander Pal (PW.6) being a relative of the deceased did not take any step to apprehend the accused, when he was running after committing the crime. Even otherwise, it is not suggested to this witness in the cross-examination that he had any enmity with the accused prior to the day of the occurrence.

14. As per the prosecution version, along with Chander Pal (PW.6), Munna had also witnessed the occurrence, but the prosecution has not examined him on the plea that he had been won over by the accused. Merely because the prosecution did not examine the said witness, no inference can be drawn that the prosecution has failed to prove the alleged offence. It is not mandatory for the prosecution to examine all the eye witnesses. The testimony of one reliable and trust-worthy witness is sufficient to prove the alleged offence. As already observed, the testimony of PW.6 Chander Pal, the sole eye witness examined by the prosecution in this case, is fully reliable and trust-worthy. The non-examination of Munna cannot be said to be fatal to the prosecution case. As far as non-examination of other independent witnesses is concerned, their examination cannot be said to be necessary to prove the prosecution case. As per the statement of Chander Pal (PW.6), all other persons had come out of their Jhuggies after the occurrence had taken place and the accused had left the scene of crime. In view of this fact, non-examination of other persons, who had come at the spot, soon after the occurrence, is not fatal to the prosecution case.

15. Learned counsel for the appellant, while referring to the FSL report (Ex. PL), argued that in the description of the weapon, it is not stated that the Kulhari was blood stained. Rather, in the description, it has been stated that the Kulhari was having rusty metallic blade and wooden handle stained with muddy brownish stains on the blade and handle, whereas no sign of rust was noticed by the Doctor in the Post Mortem Report (Ex. PB). Learned counsel further argued that for the first time, this weapon was shown to Dr. Pardeep bindal (PW.2) in the court and prior to that the police did not obtain opinion of the Doctor, after showing the said weapon to him. From all these facts, it is clear that the prosecution has failed to connect the Kulhari as a weapon used for the commission of the alleged crime.

16. After considering the aforesaid argument in the light of the record of the case, we are of the opinion that this submission is without any basis. In the fsl Report (Ex. PL) itself, it has been mentioned that the blood was detected on the Kulhari. In the recovery memo (Ex. PG), it has been categorically stated that a blood stained Kulhari was taken into possession in the presence of the witnesses. The recovery of Kulhari from the spot has been duly proved by SI Jeet Ram (PW.9), the Investigating Officer of the case, and Virender Singh (PW.7), the owner of the stone crusher. PW.6 Chander Pal, who had witnessed the occurrence, has categorically stated that after causing injuries to the deceased, accused ran away from the spot after throwing the Kulhari. The kulhari was taken into possession by the police from the spot soon after the occurrence. Therefore, it cannot be said that the Kulhari has not been connected with the commission of the offence.

17. So far as the motive to commit the offence is concerned, even if the alleged motive has not been proved by the prosecution, that itself is not sufficient to discard the prosecution version. It is now well settled that mere absence of proof of motive for the commission of crime is no ground to presume innocence of the accused, if his involvement is otherwise established by reliable and cogent evidence. In the instant case, the testimony of PW.6 chander Pal, which has been found to be reliable and trust-worthy, has fully proved that the appellant has committed the murder of Raju. Therefore, in the absence of clear proof of motive, it cannot be said that the prosecution has failed to prove its case beyond reasonable doubt.

18. In view of the above, we do not find any ground to interfere in the impugned judgment and order and the same are upheld. Consequently, the instant appeal is dismissed.