2024 INSC 307

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1858 OF 2009

DHARAMBIR @ DHARMA **.....Appellant(s)**

VERSUS

STATE OF HARYANA **....Respondent(s)**

J U D G M E N T

Mehta, J.

1. Vide judgment and order dated 3rd May, 1999, learned Sessions Judge, Bhiwani convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and by an order of sentencing dated 10th May, 1999 awarded sentence of life imprisonment and fine of Rs.500/-, in default of payment of fine, to further undergo rigorous imprisonment of six months to the appellant.

2. The appellant challenged the said judgment by filing Criminal Appeal No. 259-DB of 1999 in the High Court of Punjab and Haryana at Chandigarh. The Division Bench rejected the appeal vide judgment dated 21st April, 2008 and affirmed the judgment and order of conviction and sentence passed by the trial Court.

Brief Facts: -

3. The prosecution case in nutshell is that on 5th June, 1998, at around 08:30 a.m., deceased Karambir, his brother Krishan Kumar (PW-5), Ravinder (PW-6) and Mahender (PW-7) along with two acquaintances (Mahender and Suresh) had gone to Prabhat Cinema, Bhiwani. At about 11:30 a.m., the accused appellant who was also present there, thrust a knife in the chest of Karambir causing his instantaneous death and escaped leaving the knife behind. The motive attributed to the accused appellant for committing the offence was that he bore a suspicion in his mind that deceased Karambir was involved in illicit relations with his wife.

4. Rohtas Singh (PW-11) posted as Inspector/SHO, Police Station City Bhiwani, received a telephonic message from Raj Kumar (PW-9), Manager of Prabhat Cinema, regarding the incident and acting in furtherance thereof, he along with other police

personnel reached the place of occurrence and recorded the statement of first informant-Krishan Kumar (Exhibit-PF) at 01:30 p.m., which led to the registration of FIR No. 309 of 1998 at Police Station City Bhiwani for the offence punishable under Section 302 IPC.

5. The requisite investigation was undertaken by Rohtas Singh (PW-11) Investigating Officer, who inspected the place of occurrence; prepared the inquest report; seized a knife lying near the dead body; prepared the site plan; recorded the statements of witnesses and forwarded the dead body of Karambir to the Medical Jurist for conducting the post mortem. The Medical Jurist-Dr. Hemant Singh (PW-1) carried out autopsy upon the dead body of Karambir taking note of two incised wounds, one in the epigastric region of the upper abdomen and other on the left forearm of the deceased. The Medical Jurist (PW-1) issued a Post Mortem Report (Ex.-PA) opining that the cause of death of the deceased was shock and haemorrhage, as a result of injury No.1 inflicted to the vital organs which was sufficient to cause death in the ordinary course of nature.

6. The accused appellant was arrested on 7th June, 1998 and chargesheet was filed against him for the offence punishable under

Section 302 IPC in the Court of the concerned Magistrate. The case being exclusively triable by the Sessions Court was committed to the Court of Sessions Judge, Bhiwani where charge was framed against the accused appellant for the offence punishable under Section 302 IPC, who denied the same and claimed trial.

7. The prosecution examined 11 witnesses so as to prove its case. The prosecution case was primarily based on the testimonies of Krishan Kumar (PW-5), the first informant, being the brother of the deceased and Ram Kumar (PW-8) who claimed that the accused had made an extra judicial confession before him.

8. The accused was questioned under Section 313 of Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') and upon being confronted with the circumstances appearing in the prosecution evidence, he denied the same and claimed to be innocent. One Piare Lal was examined as DW-1.

9. Vide judgment dated 3rd May, 1999, the trial Court proceeded to convict the accused appellant and sentenced him as above. The appeal preferred by the appellant against the judgment and order of conviction and sentence was rejected by Division Bench of High Court vide judgment dated 21st April, 2008, which is subject to challenge in the present appeal.

Submissions on behalf of the appellant:-

10. Shri Rishi Malhotra, learned counsel representing the appellant vehemently contended that the evidence of the star prosecution witness Krishan Kumar (PW-5) is not reliable. The witness made gross improvements from his earlier statement (Exhibit-PF) based upon which, the FIR came to be registered. The time of incident narrated by Krishan Kumar (PW-5) in his testimony does not match with the time of incident as stated by Raj Kumar (PW-9), Manager of Prabhat Cinema. He further submitted that the very presence of Krishan Kumar (PW-5) at the crime scene is belied by the circumstance that he did not receive any blood stains either on his person or on his clothes, which was bound to happen if the witness was present at the crime scene because his natural reaction on seeing his own brother being stabbed would have been to make an attempt to save the victim and in this process, his hands and clothes would certainly get smeared with the blood oozing out from the wounds received by the victim. However, the witness admitted that he did not get any blood stains on his clothes and hands which makes his presence at the crime scene doubtful.

11. Shri Malhotra further pointed out that there is grave contradiction in the evidence of Krishan Kumar (PW-5) and Raj Kumar (PW-9), regarding the row of seats, where the witnesses and the deceased were seated and the row where the accused was seated. He further submitted that in the statement(Exhibit-PF) of first informant-Krishan Kumar, based whereupon the FIR came to be registered, it was recorded that after about 5 to 7 minutes from the interval, deceased Karambir cried '*aah'* and fell down from the chair. The first informant(PW-5) asked Mahender(PW-7), Ravinder (PW-6), the other two acquaintances (Mahender and Suresh) as to what happened to his brother. All of them were checking Karambir and during the intervening period, the accused escaped from the crime scene. The witness(PW-5) ran towards the gatekeeper and asked him to switch on the lights and in illumination, it was seen that a knife had been thrust into the chest of Karambir.

12. Referring to the deposition of Krishan Kumar (PW-5), Shri Malhotra submitted that the witness stated that he himself saw accused-Dharambir @ Dharma running away from the crime scene which is an improvement from what he had stated in the FIR. It was contended that two companions of the informant, namely, Ravinder (PW-6) and Mahender (PW-7) did not support the

prosecution case and were declared hostile. Krishan Kumar (PW-5) did not produce the ticket which he had purportedly purchased for watching the movie in Prabhat Cinema. The witness further stated that he and deceased Karambir were sitting in the first row which was reserved for women. However, Rohtas Singh (PW-11) Investigating Officer upon conducting the spot inspection, found that the eye witnesses were sitting on the back row, whereas deceased Karambir was sitting ahead of them.

13. The attention of the Court was drawn to the statement of Raj Kumar (PW-9), Manager of Prabhat Cinema who deposed that the gatekeeper approached him at around 11:30 a.m. to 11:45 a.m. and informed that one person was lying in the cinema hall. When he went there, he saw the victim lying between the seats of the first and second rows.

14. As per Shri Malhotra, there are grave contradictions, in the first version of the first informant-Krishan Kumar i.e Exhibit-PF and his sworn statement as PW-5. His testimony is also contradicted in material particulars by the testimony of Raj Kumar (PW-9), Manager of Prabhat Cinema and Rohtas Singh (PW-11) Investigating Officer. He also submitted that the gatekeeper of Prabhat Cinema who was the first person to be informed after the

incident, was not examined in evidence and thus, adverse inference deserves to be drawn against the prosecution because material evidence was withheld.

15. Regarding the allegation that the accused made an extra judicial confession before Ram Kumar (PW-8), ex-Sarpanch, Shri Malhotra submitted that there was no occasion for the accused to have made a confession before the witness who was closely related to the deceased. He also urged that as per Ram Kumar (PW-8), when the accused made the extra judicial confession, Piare Lal, s/o Jagmal was also present with him. The said Piare Lal was not examined by the prosecution, rather, he was examined as DW-1 and he emphatically denied that the accused had made any confession of guilt in his presence before Ram Kumar (PW-8), ex-Sarpanch and also denied that he and Ram Kumar (PW-8) had produced the accused before the police.

16. Shri Malhotra concluded his submissions urging that the star prosecution witness Krishan Kumar (PW-5) falls in the category of a wholly unreliable witness and thus, his evidence cannot be relied upon so as to uphold the conviction of the appellant. He placed reliance on the judgment rendered by this Court in the case of

Pritinder Singh Alias Lovely v. State of Punjab [1] and contended that an extra judicial confession is a very weak piece of evidence and since the testimony of the witness, Ram Kumar (PW-8), before whom the accused allegedly made the extra judicial confession, has been contradicted by evidence of Piare Lal (DW-1), there cannot be any justification to rely upon his evidence as well.

17. As per Shri Malhotra, once the testimony of Krishan Kumar (PW-5) and Ram Kumar (PW-8) is discarded, there remains no evidence on record so as to uphold the conviction of the appellant as recorded by the trial Court and affirmed by the High Court. He implored the Court to accept the appeal and set aside the impugned judgments and acquit the appellant of the charge.

Submissions on behalf of the State: -

18. *Per contra*, Shri Deepak Thukral, learned Additional Advocate General representing the State vehemently and fervently opposed the submissions advanced by the learned counsel for the appellant. He urged that the evidence of Krishan Kumar (PW-5), being real brother of the deceased, is natural and trustworthy. The accused is also closely related to the witness (PW-5) and the

[1] (2023) 7 SCC 727

deceased and hence, there could not have been any reason for Krishan Kumar (PW-5) to falsely implicate the accused for the murder of his own brother. He further submitted that Ram Kumar (PW-8), ex-Sarpanch has also given convincing evidence to prove the factum of extra judicial confession made by the accused before him and hence, the testimony of the said witness lends corroboration to the evidence of Krishan Kumar (PW-5). He submitted that the judgments rendered by the trial Court and the High Court recording concurrent findings of facts do not suffer from any infirmity warranting inference and sought dismissal of the appeal.

19. We have given our thoughtful consideration to the submissions advanced at bar and have minutely appreciated the evidence available on record. We have also gone through the impugned judgments.

Consideration of evidence and submissions:-

20. There is no dispute on the aspect that the death of Karambir was homicidal as proved by the Medical Jurist-Dr. Hemant Singh (PW-1) in his testimony and thus no discussion is required on this aspect of the case.

21. The core issue, which requires consideration of this Court is as to whether the testimonies of the two star prosecution witnesses, namely, Krishan Kumar (PW-5) and Ram Kumar (PW-8) is reliable enough so as to affirm the guilt of the accused.

22. The motive for the incident as set out in the testimony of Krishan Kumar (PW-5) was that the accused who was closely related to the informant and deceased Karambir, was bearing a grudge in his mind that Karambir had developed illicit relations with his wife. As per the witness, the accused had threatened to take revenge upon Karambir, who was sent away from Bhiwani to live at Pali Gothra, Rewari, the village of his maternal uncle for further studies. Karambir returned to village Pehladgarh from his maternal uncle's home on 4th June, 1998. On 5th June, 1998, both the brothers, i.e., deceased Karambir and Krishan Kumar (PW-5) went to see their maternal aunt who was admitted in a hospital at Bhiwani for treatment. After meeting their maternal aunt, the brothers went to see a movie in Prabhat Cinema, Bhiwani. They were accompanied by four other persons, namely Ravinder, Suresh and two by the name of Mahender.

23. As per the FIR (Exhibit-PF/2), these six persons entered Prabhat Cinema at about 08:30 a.m. in the morning and occupied

the first row which was reserved for women. The witness Krishan Kumar (PW-5) stated on oath that he was sitting besides his brother Karambir who was occupying the last chair in the same row i.e. the first row. The accused Dharambir @ Dharma was allegedly sitting in the next row in front of the chairs occupied by the witness and the deceased which by itself is a contradiction because if the witness (PW-5) and deceased were occupying the first row, there could not have existed another row in front of the same.

24. Be that as it may, nothing transpired till the interval of the movie. After the interval, the movie resumed and within five minutes, Karambir made a sound of '*aah*' on which, Krishan Kumar (PW-5) tried to enquire as to what had happened but by that time, Karambir had taken his last breath. Krishan Kumar (PW-5) claims to have seen Dharambir @ Dharma (accused) running away. He further stated that he ran towards the gatekeeper and asked him to switch on the lights and in the illumination thereof, he saw his brother lying dead with his face upwards. We find that there are inherent flaws in this version of Krishan Kumar (PW-5). The deceased Karambir, Krishan Kumar (PW-5) and the accused appellant were closely related and were

residents of village Pehladgarh. The accused appellant allegedly bore a grudge against the deceased and due to which, he had been sent away to a different village, namely, Pali Gothra, Rewari for pursuing further studies. From the deposition of Krishan Kumar (PW-5), it emerges that it was purely a chance visit of him and his deceased brother to Bhiwani in order to see their maternal aunt who was admitted in a hospital at Bhiwani. Thus, the accused who resides at village Pehladgarh, could not have had the faintest idea that the deceased would be visiting Bhiwani on that particular day or that he would be going to Prabhat Cinema to watch the first show.

25. The prosecution tried to prove through Jai Kishan (PW-10) that the accused had purchased a knife from him. However, the said witness did not oblige the prosecution and was declared hostile. Thus, the very probability of the accused having reached Prabhat Cinema at Bhiwani simultaneously with Krishan Kumar (PW-5) and the deceased Karambir and that too after making the preparation to kill the deceased by purchasing a knife is absolutely negligible and the prosecution story does not inspire confidence.

26. Out of the four persons who accompanied the deceased Karambir and the first informant-Krishan Kumar (PW-5) to

Prabhat Cinema, only two, i.e., Ravinder (PW-6) and Mahender (PW-7) were examined in evidence. They did not support the prosecution case and were declared hostile. Thus, there is no independent corroboration to the testimony of Krishan Kumar (PW-5).

27. As has been noted above, Krishan Kumar (PW-5) stated that he along with the deceased was sitting in the first row which was reserved for women. The accused was sitting in the next row in front of chairs occupied by Krishan Kumar (PW-5) and deceased Karambir. Contrary thereto, Rohtas Singh (PW-11) Investigating Officer stated that as per the spot inspection plan, there were two rows of chairs ahead of the point 'A' where the prosecution witnesses were sitting, whereas the deceased was sitting in the row in front of the prosecution witnesses. It may be stated that the version of Rohtas Singh, Investigating Officer(PW-11) regarding the row where the witnesses and deceased were sitting may not be strictly admissible in evidence, but it definitely creates a doubt on the prosecution story. This doubt is further fortified upon considering the evidence of Raj Kumar (PW-9), Manager of Prabhat Cinema who stated that the deceased was lying in between the seats of the first and second rows.

28. As per the first informant Krishan Kumar (PW-5), he along with other witnesses and the deceased was sitting in the first row of chairs. Thus, there was hardly any possibility that deceased Karambir after being stabbed with a knife would fall in between the seats of the first and second row. It is also highly improbable that the first informant-Krishan Kumar (PW-5) who was sitting on the seat adjacent to the one occupied by the deceased, would have failed to notice the commotion preceding the assault.

29. Raj Kumar (PW-9), Manager of Prabhat Cinema stated in his cross-examination that when he reached the crime scene, 3 to 4 persons of village Pehladgarh were present there and they told the police that the deceased hails from village Pehladgarh. If at all, there is an *iota* of truth in the claim of Krishan Kumar (PW-5) that he was present in Prabhat Cinema with his deceased brother, this vague information would not have been provided to the police officials because Krishan Kumar (PW-5) would have immediately disclosed his brother's identity. Krishan Kumar (PW-5) admitted in his cross-examination, that the dead body of his brother was lifted from the spot at about 04:00 p.m. The incident had taken place at around 11:30 a.m. and thus it is indeed surprising as to why the dead body was lying in Prabhat Cinema till 04:00 p.m. Krishan

Kumar (PW-5) did not hand over the ticket of the cinema hall to the police. As per memo (Exhibit P-22), when the body of the deceased was searched, only one ticket was found in his pocket. Krishan Kumar (PW-5) admitted that he did not get blood stains on his hands and clothes when he touched the body of his brother.

30. There cannot be any doubt that witness-Krishan Kumar (PW-5) could not have decided at the first blush that his brother had expired as a result of the knife blow. The natural reaction expected from a brother in such a situation would have been to take immediate steps for taking the victim to the hospital so as to save his life. However, Krishan Kumar (PW-5) did not make any such attempt. In this background, we are of the view that the very presence of Krishan Kumar (PW-5) at the crime scene is doubtful and his testimony is not trustworthy.

31. Another significant contradiction regarding the sequence of events is noticeable in the evidence of Krishan Kumar (PW-5). In his statement (Exhibit-PF) based on which FIR was lodged, he narrated that he saw that the accused was missing from the seat but in the sworn testimony as PW-5, he tried to improve the version and stated that he saw the accused while he was fleeing away. This improvement made by the witness-Krishan Kumar (PW-5) again

creates a doubt on his presence at Prabhat Cinema at the time of the incident.

32. We, therefore, feel that it would not be safe to place reliance on the evidence of Krishan Kumar (PW-5) as he clearly falls within the category of a wholly unreliable witness.

33. Ram Kumar (PW-8) stated that he and Piare Lal (DW-1) were sitting at his house on 7th June, 1998 and at about 12:00 noon, the accused appellant approached them and confessed that he had killed his father's elder brother's son Karambir at Prabhat Cinema.

34. Ram Kumar (PW-8) also stated that he and Piare Lal took the accused to Bhiwani and produced him before the police.

35. However, Piare Lal was not examined by the prosecution and rather he was examined in defence. In his testimony, Piare Lal (DW-1) emphatically denied that any extra judicial confession was made by the accused in the presence of Ram Kumar (PW-8). Thus, the evidence of Ram Kumar (PW-8) regarding the extra judicial confession made by the accused is contradicted by the evidence of Piare Lal (DW-1). Even otherwise, extra judicial confession by its very nature is a weak piece of evidence. It may be used as a

corroborative piece of evidence in tandem with substantive evidence.

36. We are, therefore, convinced that both the star prosecution witnesses i.e. Krishan Kumar (PW-5) and Ram Kumar (PW-8) fall within the category of wholly unreliable witnesses and thus, in light of the law laid down by this Court in the case of ***Pritinder Singh Alias Lovely*** *(supra)*, it would be unsafe to place reliance on their evidence so as to affirm the guilt of the accused appellant. No other evidence was led by the prosecution for bringing home the charge.

Conclusion: -

37. In wake of the discussion made above, we have no hesitation in holding that the prosecution failed to bring home the charge and establish the guilt of the accused appellant beyond reasonable doubt.

38. As a consequence, the conviction of the appellant as recorded by the trial Court vide judgment and order dated 03rd May, 1999 and affirmed by the High Court vide judgment dated 21st April, 2008 cannot be sustained and the appellant deserves to be acquitted by giving him the benefit of doubt.

39. Resultantly, the appeal merits acceptance and is hereby allowed. The impugned judgments passed by the High Court and trial Court are quashed and set aside.

40. The appellant is acquitted of the charge.

41. The appellant is on bail and need not surrender. His bail bonds stand discharged.

42. Pending application(s), if any, stand(s) disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANDEEP MEHTA)

New Delhi;
April 16, 2024