

PETITIONER:  
VIJAI SINGH AND OTHERS

Vs.

RESPONDENT:  
STATE OF RAJASTHAN

DATE OF JUDGMENT: 13/03/1996

BENCH:  
RAY, G.N. (J)  
BENCH:  
RAY, G.N. (J)  
HANSARIA B.L. (J)

CITATION:  
JT 1996 (3) 299 1996 SCALE (2)683

ACT:

HEADNOTE:

JUDGMENT:  
(With Criminal Appeal No.605 of 1988)  
J U D G M E N T

G.N.Ray, J.

12 accused including the appellants in these two appeals stood charged under Section 302 read with Section 149, 148, 201 and 447 of Indian Penal Code and the accused Nos.1 and 2, namely Ram Pratap and Het Ram, were further charged for offence under Section 27 of the Arms Act, in Sessions Case No.11 of 1985 in the Court of the learned Additional Sessions Judge, Nohar. By judgment dated March 31, 1986. Ram Pratap was convicted under Section 302 and was awarded a capital sentence for the said offence. The said Ram Pratap and accused No.2 Het Ram were further convicted under Section 27 of the Arms Act and were sentenced to suffer rigorous imprisonment for three years together with a fine of Rs.500/-. In default further imprisonment for three months. All the accused were also convicted under Section 148, 201 and 447 IPC and they were sentenced to suffer rigorous imprisonment for two years and a fine of Rs.500/-, in default of payment of fine to undergo rigorous imprisonment for three months for the offence under Section 148 IPC, and they were sentenced to suffer rigorous imprisonment for three years and a fine of Rs.500/-, in default of the payment of fine to undergo three months rigorous imprisonment for the offence under Section 447 IPC. Accused Nos.2 to 12 were also convicted under Section 302 read with Section 149 IPC and each of them was sentenced to suffer life imprisonment and a fine of Rs.500/-, in default three months rigors imprisonment. Against such convictions and sentences, Ram Pratap Singh, accused No.1, preferred an appeal being D.B.Cral.(Jail) Appeal No.52 of 1986 and other convicted accused preferred D.B.Crl.Appeal No.67 of 1988 and Onkar Singh preferred D.B.Crl.Appeal No.68 of 1986. D.B.Crl.Murder Reference No.1 of 1986 also came up for confirmation of the death sentence passed against Ram Pratap before the High Court (Jaipur Bench). The said Murder

Reference and the Criminal appeals were heard analogously and were disposed of by a common judgment dated April 22, 1987. By the aforesaid judgment, Murder Reference No.1 of 1986 and D.B.Crl.Appeal No.52 of 1986 were disposed of by commuting the death sentence to the sentence of life imprisonment so far as accused No.1 Ram Pratap was concerned. The High Court acquitted accused No.9 Onkar Singh, accused No.10 Smt.Nikki, accused No.11 Smt.Sumitra, accused No.12 Smt. Harla, but conviction and sentences passed against accused Nos.2 to 8 were confirmed by the High Court. Against the said judgment of the Rajasthan High Court, accused Nos.4, 5, 6, 7 & 8 have preferred Crl.Appeal No.604 of 1988 before this Court and accused No.2 Het Ram has preferred Crl.Appeal No.605 of 1988. Both the said appeals have been heard analogously and are being disposed of by this Judgment.

On the basis of an F.I.R. lodged by P.W.1 Rajender Kumar, the son of the deceased Bhagaram on May 24, 1985 at about 5.00 p.m. in Police Station. Nonar in the District Ganganagar, the said Sessions Case No.11 of 1985 was initiated before the learned Additional Sessions Judge. Nonar.

The short facts of the prosecution are that deceased Bhagaram had killed the father of Ram Pratap about 20 years back. Ever since such murder, there was animosity between the family of Ram Pratap and the family of deceased Bhagaram. On May 24, 1982, at about 8.00 or 9.00 a.m.. the said Bhagaram and the daughter of the deceased Hari Singh namely Guddi P.W.2 brought food for the members of the family of Bhagaram who had come to their agricultural field for harvesting and were working there. The adjoining field belonged to Ram Pratap and Het Ram. At about 11.00 or 11.30 a.m.. the said Ram Pratap and Het Ram came to the field of Bhagaram each one armed with a gun and they shouted that they would settle the dispute on that day. Thereafter, Ram Pratap fired from his gun on Bhagaram and Het Ram fired from his gun on Hari Singh, brother of Bhagaram, and both Bhagaram and Hari Singh fell on the ground being injured by the gun shot. Balram. Vijai Singh, Banwari, Rai Singh being armed with kasia and Raghuvveer, Devi Lal, Nikki, Harla being armed with lathis also came there shouting to kill the deceased and other members of their family who were present there. Inder Raj and Hans Raj, brothers of Rajender, seeing the said accused started running but they were apprehended and with kasia and lathis both Inder Raj and Hand Raj were done to death at the spot. After killing the said two persons, the accused went to the thrashing ground where Bhagaram and Hari Singh were lying critically injured. Smt.Dhapi, mother of Bhagaram and Hari Singh, requested the accused not to kill them but the accused did not pay any heed to such request and both Bhagaram and Hari Singh were further assaulted by Balram and the wife of Balram with khasia and they died immediately. Thereafter, the dead bodies of all the said four deceased were picked up by the accused and they were brought to the thrashing ground of the accused and the said bodies were put on the firm waste (guna) and the said guna was thereafter ignited, Smt.Dhabi followed the accused in their field. At that time, accused No.1 Ram Pratap caught hold of the said Dhapi and threw her in the fire. Rajender P.W.1 hid himself in a nearby field at a little distance and noticed the incident of killing. He thereafter rode on the camel which was kept tied near their field and started running towards the village. Accused Ram Pratap and Het Ram seeing Rajender fleeing away and fired four shots from their guns aiming at Rajender but they missed the target and Rajender was not

hit. He reached his house and out of fear kept himself concealed for some time. His sister P.W.2 Guddi who was present in the kotha (rdom) in the thrashing yard at the time of occurrence and had noticed the incident also ran to their house and then the incidents were narrated to the mother and the aunt of Rajender. Thereafter, he went to the Police Station which was about 20 kilometers away from his village and lodged the said F.I.R. at about 5.00 p.m. In the F.I.R., the names of all the accused excepting Onkar Singh were mentioned.

The depositions of the two eye witnesses namely Rajender P.W.1 and Guddi P.M.2 were held reliable by the learned Additional Sessions Judge and he convicted the said accused and passed the sentences against them as already indicated. The High Court, however, gave benefit of doubt to Onkar Singh, accused No.9 and the three ladies namely accused No.10 Nikki, accused No.11 Sumitra and accused No.12 Harla and acquitted the said accused. As aforesaid, the conviction and sentences passed against all the accused excepting accused No.1 Ram Pratap were affirmed by the High Court. So far as the accused No.1 Ram Pratap was concerned, the High Court commuted the death sentence to the sentence of life imprisonment for the offence of murder but the conviction and sentence passed for other offences were maintained.

Mr.S.K.Jain, learned Senior Counsel appearing for the appellants, has very strenuously contended that the prosecution case should not be accepted because such case had not been proved beyond reasonable doubt. Mr.Jain has submitted that if there was a strong motive of taking revenge against Bhagaram and Hari Singh and the members of their family by Ram Pratap, Het Ram and others for which they came prepared with two guns and other weapons, they would not have allowed Guddi P.W.2 and Rajender P.W.1 to escape and depose against them in a murder case of such magnitude. Mr.Jain has also submitted that the story as to how Rajender had escaped by riding on a camel's back is not at all leviabile and should be discarded. He has submitted that according to Rajender. P.W.1. when he rode on the camel's beck and started to flee away from the place of occurence, four shots were fired by the two guns by Ram Pratap and Het Ram. It was highly unlikely that neither Rajender nor the camel would receive any injury from such gun shots which had been fired from a reasonable close range. He has also submitted that Guddi P.W.2 was then a small cnilo of about 13 to 14 years and it was quite easy for the accused to apprehend Guddi and to finish her so that there would be no occasion for evidence by an eye witness. The case of the prosecution that Guddi was allowed to escape and to return to her village, therefore, does not inspire any confidence and should not have been accepted by the courts below.

Mr.Jain has also submitted that according to P.W.1 Rajender, while he was returning to his village, he had met one Krishna Kumar and on anquiry by him had told him that the father and uncle had been murdered but the said Krishna Kumar had not been examined by the prosecution in order to lend credence to the deposition of Rajender that when he had been returning weeping, on being asked by Krishna Kumar, he told about the said incident shortly after the incident. Mr.Jain has also submitted that there was a police outpost within 1 to 2 kilometers from the village of Rajender and it was expected that Rajender should immediately go to the police outpost and report the said incident. Instead of doing so, he had gone to Nohar Police Station which was

about 20 kilometers away from the village, to lodge the F.I.R. Mr.Jain has also contended that if the incident had taken place at 11.00 or 11.30 a.m.. it was highly improbable that Rajender would first come to his village which was about three miles from the place of occurrence and after spending some time in his house, he would cover the distance of 20 kilometers on foot and would lodge the F.I.R. at the Nohar Police Station by 5.00 p.m.

Mr.Jain has also submitted that it has come out in the deposition of Rajender that when Guddi has reached the house weeding, Rajender had enquired of Guddi as to way she was weeping and then Guddi told the mother and aunt of Rajender about the said tragic incident. Mr.Jain has submitted that if Rajender had reached home earlier by riding on the camel and had stated about the incident to his mother and aunt, there would not have been any occasion for him to ask Guddi as to what had happened. Such fact only indicates that Rajender was not present at the place of occurrence but he had heard only from Guddi and on that basis, he logged the F.I.R. in the police station. In the aforesaid circumstances. Rajender should not be accepted to be the eye witness and the prosecution case therefore hinges on the evidence of the sole eye witness namely P.W.2 Guddi. Mr.Jain has submitted that P.W.2 Guddi was a minor at the time of incident and her presence was also doubtful for the reasons already indicated. She had not been able to name the other accused and in her statement before the police and also in her deposition only the names of Ram Pratap and Het Ram were mentioned.

Mr.Jain has also submitted that in the instant case, the prosecution had alleged about strong enmity between the families of the deceased and the accused because of an incident of murder 20 years back by the deceased Bhagaram. In such circumstances, the chance of false implication of the innocent family members of Ram Pratap and Het Ram should not be underestimated. Mr.Jain has submitted that as a matter of fact, Onkar Singh was not named in the F.I.R. but later on he was falsely implicated. Three women members of the family of the accused were sought to be implicated. The High Court therefore did not accept the prosecution case against Onkar Singh and also against accused Nos.10, 11 and 12 Nikki, Sumitra and Harla and they were acquitted by the High Court by giving them benefit of doubt. If the case of strong enmity between both the families and false accusations against some of the accused in order to road them in the said incident of murder are considered in the light of the other should be no difficulty in discarding the prosecution case as a whole. Mr.Jain has, therefore, submitted that the appeals should be allowed by setting aside the conviction and sentence passed against the appellants.

Mr.Bhati, the learned counsel appearing for the respondent State of Rajasthan, has, however, disputed the contention made by Mr.Jain. He has submitted that there is no difficulty in fixing the place of incident and also the time of occurrence. He has also submitted that the deposition of Rajender Kumar that he could escape by riding on the camel's back cannot be discarded because neither Rajender nor the camel sustained injuries from the gun snots aimed at Rajender. Mr.Bhati has submitted that the police had recovered four spent up cartridges from the field of the accused from where the accused No.1 and accused No.2 Ram Pratap and Het Ram had fired four shots towards Rajender. Mr.Bhati has submitted that Rajender had undergone a great mental shock and traumatic experience by witnessing the said

ghastly incident where four of the family members were not only brutally killed but their bodies were disposed of by putting them on fire. In such circumstances, it is quite likely that he had failed to mention the name of Onkar Singh. Mr. Bhati has also submitted that such omission clearly indicates that there was no attempt to falsely implicate the members of the family of the accused. If from the very beginning, there was such a calculated attempt, there would not have been any omission in mentioning the name of Onkar Singh.

Mr. Bhati has also submitted that Rajender has stated in his deposition that he was very frightened and after reaching his house he initially hid himself. Shortly thereafter, Guddi reached and then the incident was told to the mother and aunt of Rajender. Mr. Bhati has submitted that the dispositions of Rajender and Guddi do not suffer from any material contradiction for which the veracity of their evidences may be reasonably doubted. On the contrary, the deposition of one gets corroboration from the deposition of the other in material particulars. Mr. Bhati has submitted that there is nothing unnatural in the depositions of either Rajender or Guddi. Both of them had deposed in a straightforward manner and they stood the test of cross-examination quite convincingly without being shaken. Hence, the courts below had no difficulty in accepting the prosecution case. Mr. Bhati has submitted that the High Court has not held that the prosecution case was false and the depositions of the eye witnesses were not worthy of credence. Since the name of Onkar Singh was not mentioned in the F.I.R. and as the High Court was of the view that the acquitted women members though present at the place of occurrence, might not have participated in the actual commission of offences, gave benefit of doubt to accused Nos. 9, 10, 11 and 12. But the prosecution case against the rest of the accused has been accepted by the High Court without any hesitation. Mr. Bhati has submitted that in the instant case, the F.I.R. has been lodged at the earliest possible time by Rajender. The evidence of Rajender gets corroboration from the evidence of Guddi the other eye witness and also from the associated facts namely recovery of spent up cartridges, charred skeletons of three deceased and also the recovery of the dead body of Dhaoi at the instance of one of the accused. In view of such clinching evidences, the order of convictions and sentences have been passed against the appellants. Hence, no interference is called for in these appeals and the same should be dismissed.

After giving our anxious consideration to the facts and circumstances of the case and the depositions adduced through which we have been taken, it appears to us that the eye witness account of Rajender P.W.1 and of Guddi P.W.2 should not be discarded. It is the specific case of the prosecution that attempt on the life of Rajender was also made by firing four shots but luckily he could escape unhurt from the place of occurrence. Such attempt by firing four shots gets corroboration from the recovery of spent up cartridges from the place from where the shots were stated to have been fired by Ram Pratap and Het Ram. Rajender lodged the F.I.R. by 5.00 p.m. after covering a distance of about 20 kilometers from his village. When the incident had taken place at 11.00 or 11.30 a.m., such filing of F.I.R. by 5.00 p.m. must be held to have been lodged very promptly. In the F.I.R., the incident was described in detail and firing of four shots at Rajender was also specifically mentioned. Such factum of firing four shots could not have been

mentioned if Rajender had not witnessed the incident. We do not think that the prosecution case is to be disbelieved only because Krishna Kumar was not examined. Law does not receive corroboration of the evidence like that of Rajender. He has stated that after reaching home, he had hid himself for some time out of fear. It also transpires from his deposition and also the deposition of Guddi that shortly after his return, Guddi also reached the house, Hence, reporting of the incident by Guddi on being asked by Rajender cannot be taken to indicate that Rajender had not seen the occurrence. He was trying to know from Guddi whom she had seen. We have considered the depositions of Rajender and Guddi. But we have failed to notice any infirmity or contradiction in material particular for which their depositions are to be discarded. Mr. Bhati has rightly indicated that other facts and circumstances established on cogent evidence only corroborate the prosecution case of murder of the said four persons and setting the bodies in fire.

No interference is, therefore, called for in these appeals and the same are dismissed.