State Of Haryana vs Bhagirath And Others on 12 May, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2005, 1999 (5) SCC 96, 1999 AIR SCW 1708, 1999 (2) UJ (SC) 1046, 1999 CRILR(SC&MP) 363, 1999 (3) SCALE 613, 1999 CRILR(SC MAH GUJ) 363, 1999 (3) LRI 643, 1999 CRIAPPR(SC) 302, 1999 SCC(CRI) 658, (1999) 3 JT 602 (SC), 1999 (6) SRJ 438, (1999) 2 RECCRIR 825, (1999) SC CR R 470, (1999) 2 EASTCRIC 153, (1999) 3 CURCRIR 67, (1999) 5 SUPREME 387, (1999) 25 ALLCRIR 1395, (1999) 3 SCALE 613, (1999) 39 ALLCRIC 175, (1999) 2 CAL HN 67, (1999) 2 CHANDCRIC 33, (1999) 3 CRIMES 81

Bench: K.T.Thomas, D.P.Mohapatra

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
BHAGIRATH AND OTHERS

DATE OF JUDGMENT: 12/05/1999

BENCH:
K.T.Thomas, D.P.Mohapatra

JUDGMENT:

Thomas J.

Every father is the best protector of his own children that is the order of human nature. But there had been freaks in the history of mankind when father became killer of his own child. This case tells the story of such a freak when Subhram - the 33 year old son of Bhagirath was butchered by cutting the throat. As Subhram was congenitally blind perhaps the only solace in the eerie episode seems to be that the victim would not have had any idea of the physiognomy of his murderers. Bhagirath and his two nephews (Hanuman and Kheta) were convicted by the sessions court under Section 302 read with Section 34 of the Indian Penal Code and the three were sentenced to imprisonment for life. But the High Court, on appeal by the three accused, acquitted Bhagirath and confirmed the conviction and sentence of his two nephews. State of Haryana has filed this appeal by special leave against the acquittal of Bhagirath.

Backdrop of the prosecution story is the following:

Bhagirath and his wife Jamna have a son Subhram and a daughter (Naraini). Subhram though was born blind, was healthy and active and remained a bachelor. Naraini was given in marriage to a pedagogue in Rajasthan (PW8 Ram Sarup) and they were living separately at village Rawana. Bhagirath and his brother Kanharam together had 32 acres of ancestral property. The other two accused (Hanuman and Kheta) are the sons of Kanharam. In a family arrangement the share of Subhram in the aforesaid 32 acres had been settled as 1/6th. Bhagirath and his wife Jamna became estranged with each other long back, and they were living separately. Subhram was residing with his mother Jamna ever-since the separation and Bhagirath was residing in the house along with his nephews Hanuman and Kheta.

Disputes arose between Subhram on the one side and Bhagirath and his two nephews on the other side regarding enjoyment of the land, perhaps the accused would have thought that Subhram, being blind, might not get married and so on his death the properties would revert back to the family. But at the age of thirty three Subhram became desirous of married life and negotiations were on the move for finding out a suitable match for him. A couple of months prior to his murder Subhram executed a mortgage of his share of the properties to PW10 Prabhati for a sum of Rupees twenty two thousand. When Prabhati tried to cultivate the mortgaged land it was resisted and that led to initiation of proceedings under Section 107 of the Code of Criminal Procedure against the three accused as well as against Subhram and Prabhati. In the meanwhile, Subhram filed a Civil Suit for partition of his share in the properties by metes and bounds. Thus, the situation became tense and the acrimony reached its zenith.

The murder took place, according to the prosecution, at about 12.30 noon on 8th August, 1987. Prosecution version is thus:

Deceased Subhram set out to his sisters house. He proceeded to the bus stop but he missed the bus as the stage carriage had already moved off by the time he reached the bus stop. He was told that the next bus would be at 2.30 pm. So he went to a nearby house for whiling away the time in between. The lady of the house (Harbai-PW4) was an old woman. She and Subhram had a chat together for some time and then she withdrew to the kitchen and thereafter Subhram slumped on a cot on the verandah of that house. He might or might not have gone to siesta.

At about 12.30 noon his father Bhagirath along with Hanuman and Kheta reached there. Bhagirath held a grip on the legs of his son while Hanuman and Kheta whacked on his neck with Kulhari (heavy sharp weapon for cutting purposes). Hearing the sounds of death pangs of the victim, the two lady inmates of the house (PW4 Harbai and her daughter-in-law PW6 Hirli) rushed out of the culinary section. They were shellshocked by the sight of the blind young man being slaughtered by the three assailants who took to their heels after accomplishing the object. The hue and cry made by the ladies brought attention of the men and women of the entire

neighbour-hood, and all rushed to the scene. Deceaseds mother Jamna on hearing the saddest news in her life dashed to the scene, but the sight of her blind sons head remaining practically severed from the trunk had affected her mental equilibrium and she suddenly swooned.

Sessions Court placed complete reliance on the evidence of PW4 Harbai and her daughter-in-law PW5 Hirli and held the three accused guilty under Section 302 read with Section 34 of the IPC and convicted them and sentenced them as aforesaid.

A Division Bench of the High Court of Punjab and Haryana concurred with the sessions court regarding the reliability of evidence of the two eye witnesses and confirmed the conviction and sentence passed on Hanuman and Kheta. But regarding Bhagirath the Division Bench said like this:

"Although we find the testimony of Harbai and Hirli realiable and trustworthy but as Bhagirath has not caused any injury we, as a matter of abundant caution, give him benefit of doubt and acquit him of the charge. The conviction and sentence of other two are maintained."

The High Court has failed to consider the implication of the evidence of the two eye witnesses on the complicity of Bhagirath particularly when the High Court found their evidence reliable. Benefit of doubt was given to Bhagirath as a matter of abundant caution. Unfortunately, the High Court did not point out the area where there is such a doubt. Any restraint by way of abundant caution need not be entangled with the concept of benefit of doubt. Abundant caution is always desirable in all spheres of human activities. But the principle of benefit of doubt belongs exclusively to criminal jurisprudence. The pristine doctrine of benefit of doubt can be invoked when there is reasonable doubt regarding the guilt of the accused. It is the reasonable doubt which a conscientious judicial mind entertains on a conspectus of the entire evidence that the accused might not have committed the offence, which affords benefit to the accused at the end of the criminal trial. Benefit of doubt is not a legal dosage to be administered at every segment of the evidence, but an advantage to be afforded to the accused at the final end after consideration of the entire evidence, if the judge conscientiously and reasonably entertains doubt regarding the guilt of the accused.

It is nearly impossible in any criminal trial to prove all elements with scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression reasonable doubt is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the judge.

Francis Wharton, a celebrated writer on Criminal Law in United States has quoted from judicial pronouncements in his book on Whartons Criminal Evidence as follows

(at page 31, volume 1 of the 12th Edition):

"It is difficult to define the phrase reasonable doubt. However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the Webster Case. He says: It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

In the treatise on The Law of Criminal Evidence authored by HC Underhill it is stated (at page 34, Volume 1 of the Fifth Edition)thus:

"The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt."

In Shivaji Saheb Rao Bobade vs. State of Maharashtra [1974 (1) SCR 489] this Court adopted the same approach to the principle of benefit of doubt and struck a note of caution that the dangers of exaggerated devotion to rule of benefit of doubt at the expense of social defence demand special emphasis in the contemporary context of escalating crime and escape. This Court further said:

"The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt."

These are reiterated by this Court in Municipal Corporation of Delhi vs. Ram Kishan Rohatgi [AIR 1983 SC 67].

Learned counsel for the respondent Bhagirath argued that the injuries found in the post-mortem examination are not consistent with the testimony of the eye-witnesses and, therefore, a reasonable doubt would arise in that region. The anti-mortem injuries found on the neck of the dead body of the deceased, as described by Dr. Vijay Singh Yadav (PW7) is this:

"One incised wound on the right side of neck 4 cms from the manubrium sterni. The wound started from the left side of the neck, one cm from the midline and it was 14 cms long and 4½ cms wide. There was transaction of all the viscera and bone at the level of cervical vertebrae No.5. Only the skin left downwards."

PW7 said in cross-examination that the said injury "is possibly by a single blow by one weapon with some backward support and it is not the result of two blows with two weapons. In re-examination the doctor did not agree to the suggestion of the Public Prosecutor that after one blow was inflicted with a kulhari it is possible to cause the said injury if a second blow is also inflicted by kulhari.

The opinion given by a medical witness need not be the last word on the subject. Such opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and another doctor forms a different opinion on the same facts it is open to the judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.

Looking at the width of the wound on the neck (4.5 cm) and its length (14 cms) a doctor should not have ruled out the possibility of two successive strikes with a sharp weapon falling at the same situs resulting in such a wide incised wound. If the doctor does not agree to the possibility of causing such a wound the doctor should have put-forth cogent reasons in support of such opinion. But PW7 did not give any such reason for the curt answer given by him that such an injury could not have been caused by two strikes with the same weapon or with different weapons of the same type. We are, therefore, not persuaded to entertain any doubt regarding prosecution version on that score.

We have absolutely no doubt that prosecution has proved with reasonable certainty that Bhagirath was holding the legs of the deceased when his nephews cut his throat and after finishing their work all the three ran away together. In the broad spectrum of the occurrence there is no scope to entertain even a semblance of doubt that Bhagirath would have shared the common intention with the other two assailants. The Division Bench of the High Court has grossly erred in absolving Bhagirath from the crime on a misplaced doubt which, in fact, did not arise at all.

In the result, we allow this appeal and set aside the acquittal of respondent Bhagirath and restore the conviction and sentence passed on him by the trial court. We direct the Sessions Judge, Narnaul(Haryana) to take prompt steps to put respondent Bhagirath back in jail to undergo the remaining portion of the sentence.