Chunthuram vs The State Of Chhattisgarh on 29 October, 2020

Author: Hrishikesh Roy

Bench: Hrishikesh Roy, Krishna Murari, Sanjay Kishan Kaul

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
Criminal Appeal No.1392 of 2011

Chunthuram — Appellant

Versus

State of Chhattisgarh — Respondent

JUDGMENT

Hrishikesh Roy, J.

1. The present Appeal challenges the judgment and order dated 15.2.2008 of the Chhattisgarh High Court, whereby the Criminal Appeal No.513/2002 was disposed of upholding the conviction of the appellant in terms of the conclusion reached by the learned Additional Sessions Judge, Jashpurnagar (hereinafter referred to as, "the trial Court") in Sessions Case No.149/2001. The trial Court convicted the appellant and co-accused Jagan Ram, under Sections 302/34 of the Indian Penal Code, 1860 (for short "the IPC") and sentenced them to undergo life imprisonment and fine of Rs.500/- each and for the conviction under Sections 201/34 IPC three years imprisonment and fine of Rs.500/- each was ordered. The co-accused Jagan Ram was however acquitted by the High Court.

2. The case of the prosecution is that on 14.6.2001 at 1900 hours when the deceased Laxman was returning from Tamta market to Pandripani village, the appellant Chunthuram and the co-accused Jagan Ram assaulted him with axe and stick, and Laxman died on the spot. The FIR was lodged by Mahtoram (PW1), the father of the deceased stating therein that when his son did not return home from Tamta market at night and enquiries were made in the village, his grandson Santram informed him that Chunthuram and Jaganram had killed Laxman and concealed his dead body in a pit. The informant rushed to the location and found the injury inflicted dead body of his son. The FIR mentioned a land dispute between the accused and the victim as also the fact that the deceased Laxman was charged with murder of one Sildhar, the brother of the two co-accused and because of this animosity, the accused had murdered Laxman.

3. Following the investigation, charges were framed and the case was committed for trial. The prosecution examined seven witnesses to prove the charges. The accused in their Section 313 CrPC

statements pleaded innocence and alleged false implication.

4. On evaluation of the evidence, the trial Court reached a guilty verdict and sentenced both accused accordingly.

5. In the resultant criminal appeal, the High Court referred to the testimony of Bhagat Ram (PW-4) who admitted that he could not recognize the second person at the spot and could identify only Chunthuram. On this testimony of the eyewitness, the co-accused Jagan Ram was acquitted. The High Court however upheld the conviction of Chunthuram referring to the testimony of the eye-witness Bhagat Ram (PW-4) as it was corroborated by other evidence.

6. We have heard Mr. Yashraj Singh Deora, the learned Amicus Curiae for the appellant. The learned counsel has painstakingly taken us through the evidence on record to firstly point out that recovery of the weapons of assault from the house of the accused, was never linked to the crime and therefore the recovered articles can be of no use for the prosecution. The so called identification of the lungi by Filim Sai (PW-3), whose testimony is made the basis of establishing the presence of Chunthuram at the site of the incident, is next questioned by Mr. Deora. The credibility of the sole eye-witness Bhagat Ram (PW-4) with his poor eyesight (inability to see anything beyond a distance of two feet) coupled with his weak hearing is challenged by the learned advocate by highlighting the fact that the incident occurred on a cloudy evening. According to the learned counsel the past land dispute does not provide a direct motive for the murder since the said dispute was finally resolved more than two years prior to the incident and the murder of Sildhar was allegedly related to the said dispute. Explaining the simple injuries found on the two accused, Mr. Deora reads Doctor P Sutharu's (PW-7) evidence who in his cross-examination admitted that the simple injuries on Chunthuram could be due to thorny shrubs.

7. In his turn, Mr. Nishanth Patil, the learned counsel for the State adverts to the land dispute and the fact that deceased Laxman was tried for murder of Sildhar, the brother of the accused to argue that the appellant had the motive for the crime. The State counsel then refers to the weapons of assault and the recovery of those from the place pointed out by the accused. According to Mr Patil, the eye-witness Bhagat Ram (PW-4), heard the deceased cry out and saw him being assaulted by Chunthuram and another which establishes the presence of the accused and this evidence must be given due weightage. The State therefore argues that prosecution has discharged its burden to sustain the conviction through projection of motive, recovery of the murder weapons and wearing articles, the testimony of the eye-witness and other related evidence.

DISCUSSION AND CONCLUSION 8.1 The alleged weapons of assault recovered on the basis of statement of the accused could be a key evidence to support the prosecution, but unfortunately, the recovered articles were never linked to the crime. The police sent them to the CHC for examination and the CHC Doctor (PW-7) had stated that the injuries found on the body could have been caused by those weapons. However, in his cross-examination, the Doctor admitted that bloodstains or other marks on the exhibits could not be seen. The weapons were reportedly sent for chemical examination and although the trial Court had referred to the report of chemical analyst to conclude the presence of blood on the exhibits but the purported chemical analyst report is not found

available with the case records. Moreover, there is no mention of any such report in the High Court's judgment. This would suggest that the prosecution did not produce any chemical analyst report in the case.

8.2 The relevant forensic evidence for the seized shirt (supposedly worn by the co-accused Jagan Ram acquitted by High Court) was withheld by the prosecution. When such vital forensic evidence is kept away, an adverse inference will have to be drawn against the prosecution.

9. To establish the presence of Chunthuram at the place of incident, the Courts relied on the Test Identification Parade and the testimony of Filim Sai (PW-3). The Test Identification evidence is not substantive piece of evidence but can only be used, in corroboration of statements in Court. The ratio in Musheer Khan vs. State of Madhya Pradesh1 will have a bearing on this issue where Justice A.K. Ganguly, writing for the Division Bench succinctly summarised the legal position as follows:

> 1 (2010) 2 SCC 748 "24. It may be pointed out that identification test is not substantive evidence. Such tests are meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on right lines.

10. The infirmities in the conduct of the Test Identification Parade would next bear scrutiny. The major flaw in the exercise here was the presence of the police during the exercise. When the identifications are held in police presence, the resultant communications tantamount to statements made by the identifiers to a police officer in course of investigation and they fall within the ban of section 162 of the Code. (See Ramkishan Mithanlal Sharma vs. The State of Bombay)2

11. The next important flaw is that while the pahchan patra of the TIP mentions that three lungis were presented, the related witness was shown only one lungi for identification as per the own statement of the witness Filim Sai (PW-3). Such infirmities would 2 (1955) 1 SCR 903 therefore, render the TIP unworthy of acceptance, for supporting the prosecution.

12. Inconsistencies are also found in the statement of PW-3 as regards the spot inspection report prepared by the police and the recovery of the lungi. The PW-3 stated that lungi was found 10-12 steps from the dead body. However, the spot report noted that the lungi was found at a distance of 150 feet from the body and in a plastic bag. In any case, the material exhibit may have no bearing since Filim Sai (PW-3) admitted that similar lungi is worn by many farmers in the village. No distinguishing factor to link the exhibit to accused Chunthuram is presented except a vague averment that the appellant was seen wearing lungi on many occasions. Therefore it would be unsafe in our view, to link the appellant with the exhibit, relied upon by the prosecution.

13. The testimony of the eye-witness Bhagat Ram (PW-4) will now bear scrutiny. His testimony was discarded by the High Court to acquit the co-accused Jagan Ram. To reach a different conclusion for the appellant Chunthuram, the eye-witness's Testimony was found to have been corroborated by Taj Khan (PW2). The question therefore is whether Bhagat Ram (PW-4) can be treated as a reliable eye-witness of the incident. The witness Bhagat Ram admitted to having poor eyesight and through

his cross-examination it was elicited that witness is incapable of seeing things beyond one or two feet. The witness also admitted that when he left Tamta market, it was dark and cloudy as it was raining on that day. Besides he claimed to have heard the deceased cry out for help while being attacked. The record indicates that PW4 was at a distance of 200 yards when he heard the cry. However, Taj Khan (PW-2) who was only around 54 yards away from the place of the incident and was expected to better hear the victim's cry, never heard anything. This would render the testimony of Bhagat Ram unreliable, particularly because of the poor vision and hearing capacity of the witness.

14. Next the unnatural conduct of PW4 will require some scrutiny. The witness Bhagat Ram was known to the deceased and claimed to have seen the assault on Laxman by Chunthuram and another person. But curiously, he did not take any pro-active steps in the matter to either report to the police or inform any of the family members. Such conduct of the eyewitness is contrary to human nature. In Amar Singh v. the State (NCT of Delhi)3, one of us, Justice Krishna Murari made the following pertinent comments on the unreliability of such eye-witness:-

> "32. The conviction of the appellants rests on the oral testimony of PW-1 who was produced as eye witness of the murder of the deceased. Both the Learned Sessions Judge, as well as High Court have placed reliance on the evidence of PW-1 and ordinarily this Court could be reluctant to disturb the concurrent view but since there 17 are inherent improbabilities in the prosecution story and the conduct of eye witness is inconsistent with ordinary course of human nature we do not think it would be safe to convict the appellants upon the incorroborated testimony of the sole eye witness. Similar view has been taken by a Three Judge Bench of this Court in the case of Selvaraj V/s The State of Tamil Nadu. Wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary course of human nature concurrent findings of guilt recorded by the two Courts below was set aside" 3 2020 SCC Online SC 826 The witness here knew the victim, allegedly saw the fatal assault on the victim and yet kept quiet about the incident. If PW4 had the occasion to actually witness the assault, his reaction and conduct does not match upto ordinary reaction of a person who knew the deceased and his family. His testimony therefore deserves to be discarded.

15. On the motive aspect, the land dispute was finally decided and it was stated by Mahtoram PW-1 (father of the deceased) that Sildhar was murdered when the said land dispute was still pending. If this be the situation, without any further material to show any proximate and immediate motive for the crime, it would be difficult to accept the cited motive, to support the conviction.

16. We might also reiterate the well established principle in criminal law which propagates that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and the other to their innocence, the view favourable to the accused should be adopted.

17. With the above understanding of the law and the re- lated discussion on the infirmities in the prosecution evidence, the appellant according to our assessment, has made out a case for

interference. The appeal therefore is allowed and the judgment of the trial Court as also of the High Court are consequently set aside.

.....J. [SANJAY KISHAN KAUL] .....J. [KRISHNA MURARI] .....J. [HRISHIKESH ROY] NEW DELHI OCTOBER 29, 2020