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RAM NIWAS

v.

STATE OF HARYANA

(Criminal Appeal No. 115 of 2007)

JULY 28, 2010

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[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Penal Code, 1860:

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ss. 302 and 307 – Prosecution of five accused for murder and attempt to murder – Conviction of one – HELD: Courts below have rightly assessed the evidence and held that the convict and another accused who died during trial, had committed the offences – Courts below, being cognizant of the strained relations between the parties and the possibility of false implication of others, have accordingly given the benefit of doubt to two of the accused – No interference with the conviction and the sentence is thus called for – Criminal Law – Motive.

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Evidence – A part of evidence of witness disbelieved – Effect of.

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The appellant along with his brother and three uncles was prosecuted for attempt to murder PW-6 and for the murder of his brother 'SS'. During the trial, two of the accused died. The trial court convicted the appellant u/ ss 302 and 307 IPC and acquitted the remaining two accused giving them benefit of doubt. The High Court affirmed the judgment.

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In the appeal filed by the convict, it was contended for the appellant that the prosecution story given by PW-7, the mother of the deceased, with respect to involvement of two of the accused having been

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disbelieved, there was no justification for conviction of the appellant for the murder; and that there being animosity between the parties due to conviction of the father of the complainant and the deceased in the earlier case of murder of the uncle of the appellant, the accused were falsely implicated in the instant case and, therefore, the evidence of two witnesses, namely PW-7, the mother, and PW-8, the brother of the injured and the deceased, could not be relied upon.

Dismissing the appeal, the Court

HELD: 1. The trial court observed that no positive act towards the murder had been attributed to accused 'BR' (who died during trial), 'YR' and 'RS' for the injury to PW-6 or the murder of his brother and there was no evidence whatsoever of a prior meeting of minds among all the accused so as to show their common object or common intention. On the contrary, the trial court observed, that the evidence of PW-6 and PW-7 with respect to the involvement of the appellant and 'PK' (who died during trial) was categorical that it was these two, who had committed the murder of the brother of PW-6, and caused injuries to him. The judgment of the High Court shows that this aspect has been carefully examined and the findings have been affirmed. [para 8] [117-F-H; 118-A]

2. It is true, that the relations between the two parties were extremely strained on account of the earlier murder case. While this fact could, undoubtedly, be a reason for false implication of the accused, but on the contrary, it could also be a motive for the commission of the crime. However, in the light of the fact that the FIR was recorded within a reasonable time of the incident and the medical evidence fully supports the ocular version and, additionally, the trial court has given the benefit of doubt to some of the accused, as they had no active role to play,

- A the possibility of false implication has also been examined and dealt with. The courts below have rightly assessed the evidence, and being cognizant of the strained relations between the parties and the possibility of false implication, have accordingly given the benefit of doubt to two of the accused. No interference with the conviction and the sentence is called for. [para 9] [118-B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 115 of 2007.

- C From the Judgment & Order dated 18.01.2006 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 352-DB of 1997.

Sarvesh Bisari and Anil Nag for the Appellant.

- D Kamal Mohan Gupta, Gaurav Teotia and Reeta Choudhary for the Respondent.

The Judgment of the Court was delivered by

- E **HARJIT SINGH BEDI, J.** 1. This appeal is directed against the judgment of the Punjab and Haryana High Court dated 18th January 2006 whereby the appellant's appeal has been dismissed.

- F 2. As per the prosecution story Chanda PW.6 was working as a Chowkidar in the Nuna Girls High School, which was being run under the aegis of the Panchayat of the village. He had three brothers, namely, Subhash, Tej Ram and Sher Singh. Raj Singh, the father of the three brothers, had been convicted and sentenced for the murder of one Prem, uncle of Ram Niwas and Pawan Kumar accused and the brother of Jog Raj, Raj Singh and Beg Raj accused. On 16th January 1991 at about 8.00 a.m., Chanda left for the school leaving Sher Singh asleep in the house. While on the way, Chanda observed Pawan Kumar and Ram Niwas armed with Pharsas coming towards

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him. Chanda ran into the school but was followed by Pawan Kumar and Ram Niwas who caused an injury each to him. Chanda raised a rousa which attracted Kanwal Singh and Tara and in their presence the two caused more injuries to Chanda and then ran away from the spot. A short while thereafter Tej Raj PW-8, Chanda's brother and their mother Brahmi PW7 reached the school premises and told him that Pawan Kumar, Ram Niwas, Jog Raj and Raj Singh had murdered Sher Singh while he was in the house. Brahmi and Tej Raj thereafter removed Chanda to the hospital where his statement Ex.PF was recorded by Sub-Inspector Som Dutt PW10 and on its basis the formal FIR was registered in Police Station Sadar, Bahadurgarh at 1.30 p.m. the same day. The Sub-Inspector then proceeded to the village and found Sher Singh lying dead on the charpai. He made the necessary investigations on the spot and also dispatched the dead body for the post-mortem examination to the Civil Hospital, Bahadurgarh. He also searched for the accused and arrested all of them on 19th January 1991 and pursuant to disclosure statements made by Pawan Kumar and Ram Niwas to Inspector Ashok Kumar PW9, two Pharsas were duly recovered. On the completion of the investigation, the accused were charge-sheeted for offences punishable under Sections 148 and 452, and under Sections 302 and 307 against Pawan Kumar and Ram Niwas and under Sections 302 and 307 read with Section 149 of the Indian Penal Code against Jog Raj, Beg Raj and Raj Singh.

3. To support its case, the prosecution examined, inter-alia, Dr. N.K. Mudra PW3, Dr. M.K. Bishnoi PW5, Chanda PW6, Brahmi PW7, Tej Ram PW8, Inspector Ashok Kumar PW9 and Inspector Som Dutt PW10 respectively. The prosecution case then put to the accused and they denied the allegations levelled against them and some of them pleaded alibis. They also examined certain witness in defence. Pawan Kumar and Beg Raj died during the trial. The learned Additional Sessions Judge on a careful consideration of the evidence acquitted Raj Singh and Jog Raj but convicted Ram Niwas under Section 302 and

A 307 of the IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/- on two counts and in default thereof to undergo further imprisonment for three years on each count.

B 4. The matter was thereafter taken in appeal by the solitary appellant, Ram Niwas. The High Court on a consideration of the arguments observed that merely because the statement of Brahmi PW7 with regard to the participation of Raj Singh and Jog Raj had not been believed, could not mean that the case against the appellant was not made in the light of the fact that
C it was the case of the prosecution that only Ram Niwas and Pawan Kumar (since deceased) had been wielding Pharsas, that had been used on Sher Singh and Chanda. It was further stated that Chanda PW6 was an injured witness and had lodged the FIR of the murder on information received from
D Brahmi and that the ocular evidence was fully corroborated by the medical evidence as the deceased had six incised injuries on his person.

E 5. Mr. Sarvesh Bisari, the learned counsel for the appellant has argued that having disbelieved the prosecution story as given by PW7 Brahmi with respect to the involvement of Yog Raj and Raj Singh, there was no justification whatsoever in relying on her evidence with respect to the murder of Sher Singh by the appellant. It has also been submitted that the appellant
F and his brother had been roped in on account of the admitted animosity between the parties inasmuch that Chanda's and Sher Singh's father had been convicted for the murder of Prem, the uncle of Ram Niwas and Pawan Kumar and brother of Jog Raj, Raj Singh and Beg Raj and in this view of the matter, the statement of the two witnesses Brahmi and Chanda was to be
G looked at with suspicion.

6. The State counsel has, however, supported the judgment of the trial court and the High Court.

H 7. We have gone through the judgment of the trial court with

respect to the acquittal of Raj Singh and Yog Raj. We reproduce herein below the portions thereof: A

“However, as far as the other three accused, namely Yog Raj, Raj Singh and Beg Raj (who died during the pendency of trial) are concerned, they are alleged having been seen present with lathis at the house of PW7 Brahmi Devi and they, as PW7 deposed, had even run after her and her son Tej Ram. However, neither their presence is marked nor any role is associated to them for second part of the happening at the school compound where Chanda Singh received injuries. As such, the five accused get grouped as Ram Niwas and Pawan (who died during trial), as first group and the remaining three accused, namely; Jog Raj, Raj Singh and Beg Raj (who died during the trial) as the second group. B C D

Though charge against the accused is that all of them having common object for the present crime, but for the deposition of PW6 and PW7 Brahmi Devi that she had seen all the five accused together in her house, the prosecution has failed to lead any other evidence of prior meeting of minds or other circumstances from which it may be inferred that at any occasion, prior to the happening, they had even physically met and agreed over any such object.” E

8. The trial court further observed that no positive act towards the murder had been attributed to these accused for the injury to Chanda or the murder of Sher Singh and there was no evidence whatsoever of a prior meeting of minds between all the accused so as to show their common object or common intention. On the contrary, the trial court observed, that the evidence of Chanda and Brahmi with respect to the involvement of Ram Niwas and Pawan Kumar (who died during trial) was categorical that it was these two, who had committed the murder of Sher Singh, and caused injuries to Chanda. It is in this situation that the trial court drew a distinction between the F G H

A two sets of accused. We find from the judgment of the High Court that this aspect has been carefully examined and the findings have been affirmed.

B 9. It is true, as contended, that the relations between the two parties were extremely strained on account of the murder of Prem. While this fact could, undoubtedly, be a reason for false implication of the accused, but on the contrary, it could also be a motive for the commission of the crime. However, in the light of the fact that the FIR had been recorded within a reasonable time of the incident and the medical evidence fully supports the ocular version, and additionally, the trial court has given the benefit of doubt to some of the accused, as they had no active role to play, the possibility of false implication has also been examined and dealt with. The courts below have, in our opinion, rightly assessed the evidence and being cognizant of the strained relations between the parties and the possibility of false implication, have accordingly given the benefit of doubt to two of the accused. No interference is thus called for by us in this appeal. It is accordingly dismissed.

R.P.

Appeal dismissed.