

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Hearing : 10th May, 2011

Date of Decision: 5th July, 2011

+ **CRL.A. 253/2011**

STATE ... APPELLANT

Through: Mr.Jaideep Malik, APP for the State.

Versus

1.PARKHA RAM SURI (SINCE DECEASED)
2. LALA RAM (SINCE DECEASED)
3.SONA RAM (DIED DURING THESE PROCEEDINGS)
4.PREMA RAM
5.KARTAR SINGH
6.PUNJA RAM
7.MOHAN

... RESPONDENTS

Through: Mr.A.K.Sharma, Advocate for
Respondent Nos.1 to 4
Mr.P.C.Misra with Ms.Purnima
Maheshwari, Advocate for
Respondeent No.5

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE G.P.MITTAL

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| 1. Whether reporters of local papers may be allowed to see the Order? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Order should be reported in the Digest? | Yes |

J U D G M E N T

G.P. MITTAL, J.

1. Aggrieved by the judgment and order dated 12.03.2010 passed by the learned Sessions Judge in Sessions Case No.79/2009, the State preferred a leave petition. By order dated 18.02.2011 the Criminal Leave Petition was allowed and the Criminal Appeal filed by the State was admitted. The first two Respondents had

died during the trial of the case. The third Respondent Sona Ram died during the pendency of the leave petition. The proceedings against him, therefore, abated.

2. Briefly stated, the prosecution case is that Meera Devi (PW-7) daughter of the complainant Smt. Ambo Devi (PW-4) got married to Mohan Lal s/o Daula Ram about four years prior to the incident and there was some matrimonial dispute between them. Mohan Lal (the deceased) and his family told the complainant-Ambo Devi and her family that Meera Devi was of an immoral character. The matter reached before the community *Panchayat*. It is alleged that the *Panchayat* decided that a sum of ₹ 50,000/- would be deposited by the complainant-Ambo Devi with Respondent No.3-Sona Ram (since deceased). It was decided that two *bamboos* would be erected on the banks of the river Yamuna. Lalit (brother of Meera Devi-PW-7, from her parents' side) and Mohan Lal (Meera's husband, representing her in-laws) would sit in the water holding the *bamboos* for seven minutes and the person who comes out of the water first would be deemed to be a liar and the other person would be the winner. It was decided that this competition would be held on 18.10.1997 at 4:00 a.m.
3. It is alleged that on 17.10.1997 at 6:00 p.m. the people from both the families, members of the *Panchayat* and the villagers reached *Kudisia Ghat* on the bank of river Yamuna. It is the prosecution's case that complainant-Ambo Devi and the people from her side did not agree to this *jal pariksha* resulting into a quarrel at the spot. The DD No.26-A (Ex.PW-5/A) was recorded in P.S. Civil Lines on 18.10.97 at 6:20 a.m. to the effect that a *Panchayat* was being held at *Akhara Cheeranji Pehlwan* at the bank of river Yamuna leading into a dispute and exchange of abuses. SI Maninder Singh (PW-20) of P.S.Civil Lines immediately reached the spot and found about 50-60 persons present at the spot. On enquiry it was revealed by the *Panchayat* head that there was no dispute between any member of the *Panchayat* or any other person and that they did not want any police action. It was further represented to SI Maninder Singh that they would hold their *Panchayat* peacefully and both the parties would abide by the *Panchayat*'s decision. DD No.5A dated 18.10.1997 (Ex.PW-20/A) was recorded by SI Maninder Singh in the Police Station disposing of DD No.26A.

4. According to the complaint (Ex.PW17/B) lodged by Ambo Devi with the police members of the *Panchayat* pressurised her to inform the police in writing that there was no dispute between the two families failing which they (complainant's family) would be defamed. On 18.10.1997 at about 12:00 noon the *bamboos* were fixed and Mohan Lal and Lalit were asked to enter the water and hold on to the bamboos which were firmly held by Hari and Sardari respectively. The complainant further alleged that two swimmers Atiya and Mansingh were also kept ready inside the water. Even after a considerable time Lalit and Mohan did not come out. The complainant informed the *Panchayat* members that her son Lalit did not know how to swim and that the two men should be taken out of the water or else they would die. According to the complainant the *Panchayat* members did not pay any heed, and stated that the time was not yet over. It is alleged in the complaint that Mohan Lal escaped by swimming (it was later on found to be incorrect as Mohan Lal also died of drowning in the water) whereas, Lalit was not permitted to come out of the water. According to the complainant when Lalit (deceased) was not found, a search for him was made but to no avail. The complainant wanted an action against the *Panchayat* members for recovery of a sum of ₹ 50,000/- (which was deposited with the *Panchayat* and for causing death of Lalit). The complainant informed SI Jagpal Singh (IO) that Sona Ram, Parkha Ram, Lala Ram, Prema Ram @ Prem Chand, Nathu Ram, Punja Ram, Dhaula Ram (Meera's father-in-law) and Kishan Lal (Meera's Jeth) and Mohan Lal (Meera's husband) were responsible for causing death of Lalit. The complainant wanted an action against the culprits. SI Jagpal Singh made his endorsement Ex.PW19/B on the statement of Smt.Ambo Devi, on the basis of which a case for the offence punishable under Sections 304 and 384 read with Section 34 IPC was made out and an FIR was got registered. During investigation it was revealed that it was not only Lalit who died of drowning but Mohan Lal (husband of Smt.Meera Devi and son-in-law of complainant Ambo Devi) also died of drowning. Dead bodies of Mohan Lal and Lalit were retrieved after four days. Post mortem examination on the dead bodies of Lalit and Mohan Lal was conducted by Dr. K. Goel who opined that the cause of death of both the deceased was asphyxia on account of drowning. In the supplementary statement recorded under Section 161 Cr.P.C., the complainant tried to make certain

improvements and stated that it was a sum of ₹ 5,000/- which was deposited by each of the party and the sum of ₹ 10,000/- was to be paid to the winner. Since some of the Respondents were initially declared as proclaimed offenders, the supplementary charge-sheets were filed against different accused persons after their arrest by the police.

5. On Respondents' pleading not guilty to the charge, the prosecution was directed to produce its evidence.
6. In order to bring home the guilt of the Respondents, the prosecution examined twenty five witnesses. PW-1 Constable Parduman, PW-3 Daula Ram (father of the deceased Mohan Lal), PW-4 Ambo Devi (mother of the deceased Lalit and mother-in-law of deceased Mohan Lal), PW-7 Meera Devi (widow of Mohan Lal), PW-9 Bhim Lal (brother of Meera Devi), PW-14 Kishan Lal (brother of deceased Mohan Lal), PW-19 Retd. SI Jagpal Singh (IO) and PW-20 SI Mahender Singh are the material witnesses. The cause of death of Lalit and Mohan Lal as per post mortem report Ex.PW-25/A was due to drowning and the same is not disputed as the post mortem report (Ex.PW-25/A) and the testimony of Dr.K.Goel (PW-25) was not challenged in the cross-examination. In the cross-examination Dr.K.Goel admitted that if any person who is conscious and did not know how to swim falls into the water, he would struggle for his survival. He further stated that if a person who is drowning comes across a stationary article, if conscious, would surely try to hold on to such article for his survival.
7. PW-3 Daula Ram, PW-4 Ambo Devi, PW-7 Meera Devi, PW-9 Bhim Lal and PW-14 Kishan Lal are the eye witnesses to the incident. PW-3 (Daula Ram) deposed that the marriage between Meera and his son took place five years before the incident. He testified that for deciding the dispute between them the *Panchayat* asked Mohan and Lalit to sit under water and whoever came out of the water first would be deemed a liar. However, in a subsequent part of his examination-in-chief, the witness stated that it was he himself (PW-3) and PW-4 (Ambo Devi) who had decided that the two deceased would sit in the water and the *Panchayat* had nothing to do with the same. The witness specified that there was no time fixed by the *Panchayat* for Mohan and Lalit to sit under water and nothing was done without their consent. He stated that Parkha Ram and Sona

Ram were not present when the deceased took a dip into the water. The witness was allowed to be cross-examined by the APP and was confronted with his previous statement where he stated that the *Panchayat* had decided that they would sit underneath the water for seven minutes. In his re-examination the witness again changed his stand and stated that the Respondents Prema Ram and Punja Ram were present at the spot at the time of the incident.

8. PW-4 Smt.Ambo Devi (Lalit's mother) apart from deposing about the matrimonial dispute between Mohan and his daughter Meera, also testified that she was asked to pay a fine of ₹ 2,500/ for approaching the police (which was an improvement to her earlier statement made to the police). She further deposed that Sona Ram, Daulat Ram and Kishan Lal asked her to pay a sum of ₹ 2 lacs on the pretext that the *Panchayat* would spend this amount for resolving the dispute. She further deposed that, it was decided by the *Panchayat* that one member each, from the two families would sit in the water and that no time period was fixed for this purpose; it was also decided that whoever came out first (from the water) would be deemed to be a liar. It may be noticed that in the initial complaint Ex.PW-17/B there was no whisper of the fact that any time period was fixed for the two deceased to sit under the water much less seven minutes, as was stated in the supplementary statement. PW-4 testified that *bamboo* held by her son became weightless and Hari Ram (who was holding the *bamboo*) wanted to check what was happening underneath the water but the *Panchayat* members stopped him from doing so. After a while Hari Ram and Sardari put their hands in the water and they noticed that her son and son-in-law were not under the water. The witness was confronted with various improvements. In the cross-examination recorded on 12.12.2000 she resiled from all her previous statements and claimed that whatever was done on the fateful day was done with her and Daulat Ram's consent and there was no fault of the *Panchayat*.
9. PW-7 Meera Devi (wife of deceased Mohan) was taking contradictory stands in the statements made in the Court on various dates. Initially she did not support the prosecution case and was allowed to be cross-examined by the learned APP. She denied that seven minutes were fixed for Mohan and Lalit to remain under water by the *Panchayat*. In her further statement she deposed that Mohan Poti

did the counting after which Mohan and Lalit went underneath the water. PW-7 deposed that she cried and asked the *Panchayat* members to remove them (Mohan and Lalit) from the water but they refused to do so.

10. PW-9 Bhim Lal (brother of deceased Lalit) deposed that the members of the *Panchayat* namely Lala Ram, Prema Ram, Monia Poti, Sona Ram, Parkha Ram, Daulat Ram, Kishan Lal, Pooja Ram and Nathu struck in two *bamboos* in the water and asked Lalit and Mohan to enter into the water. He deposed that Hari and Sardari held the *bamboos* of Lalit and Mohan respectively. This witness testified that his mother informed the *Panchayat* that, Lalit did not know how to swim and that he might die of drowning and since Mohan knew how to swim he might escape. The witness stated that Mohan Koti asked the members of the *Panchayat* to remove Lalit from the water but, Daulat Ram (father of Mohan and who is not an accused) said that nobody should interfere in the matter. The witness was confronted with his statement Ex.PW9/DA where the factum of the various persons asking Mohan and Lalit to go into the water was recorded. The witness stated (before the Court) that his mother had informed the members of the *Panchayat* that her son Lalit did not know how to swim and that Mohan Koti had asked the members of *Panchayat* to remove Lalit from the water but, Daulat Ram intervened saying that nobody should interfere in the matter; the witness was confronted with his statement made to the police, where it was not so recorded. Thus, the part of the deposition (of the said witness) which could have been incriminating was found to be an improvement to his statement recorded under Section 161 Cr.P.C.
11. PW-14 Kishan Lal (brother of deceased Mohan) deposed about a dispute between Meera and Mohan regarding the character of Meera. A *Panchayat* was held in Meera's village and it was directed in that *Panchayat* that his brother (Mohan) would have to give *jal pariksha* at *Yamuna Ghat* near ISBT flyover. Thus, there is no whisper in this statement that any time limit was fixed for sitting underneath the water or that the deceased were compelled to sit in the water.
12. On closure of prosecution evidence the Respondents were examined under Section 313 Cr.P.C. to enable them to explain the evidence appearing against

them. The Respondents denied prosecution's allegations and pleaded false implication.

13. By the impugned judgment the Trial Court found that there were contradictions in the testimony of various witnesses on material points; the witnesses had made improvements to the initial version and were, therefore, confronted with their statements under Section 161 Cr.P.C.; improved versions given by the witnesses were not believable being an afterthought; and thus concluded that the prosecution failed to establish its case against the Respondents beyond shadow of all reasonable doubts. The Respondents were accordingly acquitted of the charges framed against them.
14. We have heard Mr.Jaideep Malik, learned APP for the State, Mr.A.K.Sharma learned counsel appearing for Respondent Nos. 1 to 4 and Mr.P.C.Misra learned counsel appearing for Respondent No.5 and have given out thoughtful consideration to their respective submissions.
15. Section 299 defines culpable homicide "which includes murder" as under:

Culpable homicide.- *Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

16. The prosecution relies on the third part of the definition of culpable homicide extracted above i.e. the Respondents had the knowledge that their act was likely to cause death of Lalit and Mohan Lal and, therefore, they were guilty of culpable homicide not amounting to murder punishable under Section 304(A) IPC. It is argued by the learned APP that some of the eye-witnesses did not support the prosecution version as they were won over by the accused persons. The examination-in-chief of such witnesses including that of the complainant Smt.Ambo Devi (PW-4) ought to have been taken into consideration by the Trial Court to return a finding of guilty against the Respondents. It is urged that the *mens rea* is writ large, as the people who tried to save Lalit and Mohan Lal were asked to refrain themselves from saving them. It is urged that non-examination of Hari and Sardari has been given undue importance by the Trial Court as the other evidences produced ought not to have been ignored by the Trial Court.

17. On the other hand it is submitted by the learned counsel for the Respondents that PW-3 and PW-4 (parents of deceased Lalit) have stated in their deposition that everything took place with their permission and nobody forced the deceased to remain under water for any specific time or for that matter even for seven minutes and therefore the case of the prosecution has to fail; thus the Trial Court rightly acquitted the Respondents. It is urged that even if the prosecution version is accepted, there was a *bamboo* stick which was firmly held by Hari and Sardari and thus, neither any intention nor any knowledge can be attributed to the Respondents, even if they were the members of the *Panchayat*, for holding them guilty for the offence punishable under Section 304 IPC.
18. If the case of the prosecution set out in the FIR is taken on its face value what emerges is: -
- (a) A *Panchayat* was held wherein Respondents Parkha Ram, Lala Ram, , Prema Ram, Punja Ram, Nathu Ram, Punja Ram, Dhaula Ram (meera's father-in-law) and Kishan Lal participated. Mohan Lal (deceased) is also included as a member of the *Panchayat* and the complainant also wanted an action against him (Mohan Lal) though he was one amongst the two persons who sat in the water and whose dead body was recovered on 21.10.1997. At that time the complainant was not aware that Mohan Lal had also died in the incident.
 - (b) Both Lalit and Mohan Lal were to remain inside the water.
 - (c) Anybody who came out of the water first would be treated as a liar and one coming out of the water later would be treated as truthful.
19. In the statement ExPW-17/B on the basis of which formal FIR was recorded, there is no mention that minimum time for the participants to remain in water was seven minutes.
20. There is not even a whisper in Ex.PW-17/B that either of the two deceased were prevented from coming out of the water at any point of time. On the other hand it is an admitted position that the deceased Lalit and Mohan were holding a *bamboo* (pole) which were firmly held by Hari and Sardari. Thus in the circumstances no *mens rea* can be attributed to the Respondents that by their act they were likely to cause death of Lalit and Mohan.

21. Thus mere possibility of death is not sufficient to attribute the knowledge as required by Section 299 IPC against the offender. In the case of *Shamsher Khan v. State (NCT of Delhi)* AIR 2000 SC 3662 a bomb explosion took place in the wee hours at 02.11.1989 in the areas of J.J.Colony in Shakurpur (Delhi) which resulted in the death of three and injuries to 19 persons. The Appellant was convicted for the offence punishable under Section 304, 308 and 120-B of the Indian Penal Code (IPC) as also under Section 5 of the TADA and Section 4(b) of the Explosive Substances Act. According to the prosecution in that case the Appellant enlisted several persons for the purpose of manufacturing bombs to arm themselves. The background was that a procession was staged by an organization called *Bajrang Dal* a few days earlier which involved shouting out some inflammatory slogans. This instilled fear in the mind of the Appellant (in that case) that unless he and his companions armed themselves with lethal weapons they might be victims of an attack. The Appellant contacted PW-2 (who latter turned approver) for securing services of Babu Khan who knew how to manufacture bombs. After acquiring necessary equipment and materials, Babu Khan and others manufactured bombs and stored them in his house. One of those bombs (or more than one) exploded in the wee hours of 02.11.1989. The Supreme Court set aside the conviction of the Appellant under Section 304 and for Section 308 IPC holding that by manufacturing a bomb alone, no one can normally think that it would explode without doing anything more. Para 12 of the report is extracted hereunder;

“We may also point out that prosecution has not brought out any circumstance by which the Court could remotely attribute knowledge to the appellant that by manufacturing and possessing bombs death of any person was a likely consequence. By manufacturing a bomb, alone no one can normally think that it would explode without anything more done. Here something more would have happened which caused the explosion, what was that additional act is unknown to us. At any rate there is no material to show that the appellant had done that additional act.”

22. Applying the ratio of *Shamsher Khan (supra)* to this case, it cannot be said that the Respondents possessed the necessary *mens rea* or knowledge that by their act they were likely to cause the death of Lalit and Mohan Lal.

23. The story that the two deceased were to remain under water for seven minutes was introduced in the supplementary statement under Section 161 Cr.P.C. of PW-4. But this was not supported by PW-4. PW-3 Daula Ram denied the suggestion in his cross-examination on behalf of the State that the *Panchayat* had decided that Mohan and Lalit would sit in the water for seven minutes. This story of seven minutes time was introduced by the police for the first time when the second supplementary statement of Ambo Devi (PW-4) was recorded on 28.10.1997. This part of the police version was not supported by the witness in spite of the fact that she was permitted to be cross-examined by the learned APP. Even if it is assumed that it was decided by the so called *Panchayat* (although witnesses have differed with each other about composition of the *Panchayat*) that the deceased Lalit and Mohan Lal were to remain in water for seven minutes at the same time there is nothing on record that any overt act was committed by the Respondents whereby Lalit and Mohan Lal were prevented from coming out of the water for seven minutes. During the course of arguments the learned APP for the State took us through the examination of various witnesses to prove the criminal intent on the part of the Respondents. In her statement recorded on 07.11.2000 Smt. Ambo Devi stated as under:

“Then accused Mohan Potti counted one, two three and claped and all the members of the *Panchayat* asked Lalit Kumar and Mohan to sit inside the water by holding one *bamboo* each. Accordingly, my son Lalit Kumar and son-in-law Mohan sat inside the water by holding one *bamboo* each. As soon as they sat inside the water by holding one *bamboo* each. As soon as they sat inside the water bubbles started coming out from the place where they sat in the water. I asked the members of the *Panchayat* to take them out of the water but they declined saying “Abhi time nahi hua hai”. Hari Ram was holding the *bamboo* which was held by my son-in-law to sit in the water. It appeared that the *bamboo* held by Hari Ram had become weightless and thereupon Hari Ram wanted to see by putting his arm in the water. All the members of the *Panchayat* alongwith Daulat Ram and Kishan asked Hari Ram not to do saying “merte hai to merne do nikalana nahi hai, merte hai to merte raho, abhi time nahu hua hai.”

24. These facts were not stated by PW-4 (Ambo Devi) in her statement Ex.PW-17/A or even in the subsequent statement made to the police.

25. Though we may not attach much importance to the affidavit Ex.PW-1/DX sworn and filed by this witness giving a clean chit to the Respondents but we cannot lose sight of her statement in her cross-examination recorded on 15.04.02 where she admitted that they had voluntarily participated in the proceedings at *Yamuna Ghat* (on the day of the incident)
26. PW-9 Bhim Lal tried to set up an entirely new case when he deposed that he asked the members of the *Panchayat* to remove Lalit from the water but Daulat Ram (father of deceased Mohan Lal) warned that anybody doing so would be killed.
27. Apart from this no specific role has been assigned to the Respondents by PWs 3,4,7,9 and 14 who are eye witnesses examined by the prosecution. Different witnesses deposed about the absence/presence of various accused persons as per their convenience. Thus, apart from the fact that no case was made out against the Respondents for the offence punishable under Section 304 IPC, the testimonies of the prosecution witnesses on the basis of which this case is made out are not believable as they constantly made improvements and contradicted their previous statements at every stage, in their depositions before the court.
28. Coming to the offence punishable under Section 384/34 IPC, again there were systematic improvements. In the statement Ex.PW-17/B, complainant Ambo Devi made out a case that she was compelled to deposit ₹ 50,000/- with the *Panchayat* after selling her house and this amount was to be returned if her son Lalit passed the challenge of *jal pariksha*. In her deposition Ambo Devi (PW-4) stated that an amount of ₹10,000/- was deposited. In view of her later statement that, whatever was done i.e. whether any deposit was made for any challenge etc. was with her consent, completely demolishes the prosecution case with regard to the allegations of extortion.
29. It may be noticed that according to the prosecution version Hari and Sardari held the *bamboos* with the support of which deceased Lalit and Mohan sat inside the water. They were the most crucial witnesses for the prosecution to depose what exactly happened before or after the deceased entered the water. It is quite strange that they were not interrogated nor cited as witnesses in the case. An

adverse inference has to be drawn against the prosecution for their non-examination which also creates doubts in the prosecution version.

30. It has been repeatedly held by the Supreme Court that High Court should be slow to interfere with an order of acquittal passed by the court below as an order of acquittal is an affirmation of the presumption of innocence of an accused. The High Court interferes in an order of acquittal only when there are substantial and compelling reasons which warrant a second look against the order of acquittal. Such reasons may be, the finding being perverse, serious or grave misapplication of law resulting into miscarriage of justice. In the instant case we do not find any ground to interfere with the order of acquittal. The Appeal is, therefore, without any merit and the same is accordingly dismissed.

(G.P. MITTAL)

JUDGE

(S. RAVINDRA BHAT)

JUDGE

JULY 5, 2011

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