
(2013) 02 RAJ CK 0109

In the Rajasthan High Court

Case No : Criminal Jail Appeal No. 1800 of 2007

Bhagirath Puri

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 134

Penal Code, 1860 (IPC) — Section 201, 301, 302, 436

Citation : (2013) 02 RAJ CK 0109

Hon'ble Judges : Veerendr Singh Siradhana, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Biri Singh, with Mr. Rajesh Choudhary and Mr. Dhruv Atri, for the Appellant; Rekha Madnani, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant appeal has been filed by accused appellant Bhagirath Puri assailing judgment & order dt. 12.09.2003 passed by Additional District & Sessions Judge, Fast Track, No. 2, Sikar in Sessions Case No. 13/2003 who while acquitting the accused appellant for offence u/S. 301 & 436 IPC convicted him for offence u/S. 302 IPC and sentenced him to suffer imprisonment for life and fine of Rs. 1,000/-, in default of payment of fine, to further undergo six months R.I. Taking the brief facts as unfolded by the prosecution are that complainant Ram Niwas son of Nathu Ram (PW4) lodged a written report (Ex. P6) on 18.12.2002 with the Station House Officer, Laxmangarh alleging therein that at about 8.30 pm while he was working in his field, his father Nathu Ram proceeded from his Dhani (hutment) to the Dhani of Bholji Sharma and on the way Bhagirath Puri called his father to come to his house and he went there and after five minutes when he heard the noise of "Bargoda" (randiness), he & his nephew Pyare Lal immediately rushed to the place of incident and before they reached there, Matadeen & Kishore had also arrived there and the appellant Bhagirath gave a blow by Moosli (pestle) on the head of his father who fell down and

become unconscious. At that time, the appellant Bhagirath alone was there in his house and his wife had gone to the forest. After he was rescued Pyare Lal S/o of Shravan Kumar (PW8) went to bring the jeep of Ayub and his father was taken to Nawalgarh for treatment but while they were on the way the deceased succumbed to the injuries. Thereafter they brought the deceased at their house and called the Sarpanch PW 2 Pyare Lal S/o Hardeva Ram and other local residents and narrated the story and in their presence the appellant put his Guwadi (house) to fire and erected himself on the rod which was inside his house and he was brought out by the persons who assembled there, both hands of the appellant were burnt & certain injuries were also caused to him. Some of the persons caught hold of the appellant Bhagirath and information was sent to the Police and thereafter the Police reached at the spot. The SHO Harphool was handed over the written report who sent the same to the Police Station, Laxmangarh and a regular FIR (Ex. P9) was chalked out and thereafter investigation commenced.

2. During investigation inquest report (Ex. P1) & site plan (Ex. P2) were prepared. Dr. Ratan Lal Modi (PW11) who conducted postmortem on the body of the deceased and prepared the postmortem report (Ex. P8), opined that cause of death of deceased was brain injury leading to shock & death. The accused was taken into custody at the spot on 18.12.2002 itself and after investigation the Police filed challan against the accused appellant for offences u/S. 302, 436 IPC and after the case was committed to the Court of sessions, charge was framed against the appellant for offences u/S. 302, 201 & 436 IPC. The prosecution in all examined as many as 16 witnesses (PW1-PW16) and produced 25 documents (Ex. P1-P25). Thereafter in the statement recorded of accused appellant u/S. 313 Cr. P.C. he stated that he is innocent, his both hands got burnt because of fire & he has no concern with the death of Nathu Ram nor the incident took place at his residence. However, his further explanation was that 2-3 unknown persons came at the house of deceased Nathu Ram and gave him beating. The appellant rushed to the house of Nathu Ram (deceased) and since he wanted to separate them from scuffle the deceased got injuries on his head and those unknown persons set his house on fire. But the explanation of the accused appellant was found wholly unreliable by the learned trial Judge. However, the learned trial Judge held him guilty and convicted & sentenced the accused appellant for offence u/S. 302 IPC and being aggrieved, the accused appellant has preferred the instant appeal.

3. Counsel for appellant submits that the incident didn't occur at the place as stated by the complainant-Ram Niwas (PW4) in his written report-dt. 18.12.2002 (Ex. P6) and no blood was found inside or outside the house in the alleged incident. It has also come in the statements of prosecution witnesses; Ram Niwas (PW4) & Pyare Lal (PW8) that the cot on which the dead body was lying, containing blood, was not seized and even the clothes of deceased or of the witnesses having human blood were not seized; the prosecution failed to come out with genesis of the incident & the place of alleged occurrence and failed to prove any motive to commit the alleged offence particularly when it has been

deposed by both the witnesses Ram Niwas (PW4) & Pyare Lal (PW8) that there was no previous enmity between accused & deceased (Nathu Ram) and they were friendly to each other and it is not acceptable with human mind that a person would commit offence at 8.30 A.M. and still will remain in the house till the written report was lodged at 3.45 P.M. on the same day i.e. 18.12.2002.

4. Counsel further submits that the learned trial Judge relied upon evidence of the alleged eye witnesses Ram Niwas (PW4) & Pyare Lal (PW8) while Dhuda Ram (PW9) and Ranjeet (PW15) were the independent witnesses but not the eye witness of the incident and since both the eye witnesses are directly related to the deceased & were interested witnesses, as such cannot be considered to be independent witnesses, more so when two other persons namely Matadeen & Kishore were shown in the calendar of witnesses and named in the written report (Ex. P6) but the prosecution without any justification has not produced them as prosecution witnesses and that creates doubt and it might be possible that they may not be inclined to support the prosecution story.

5. As per post mortem report (Ex. P8), there were five injuries on the body of the deceased and as per the prosecution witness the appellant inflicted only one injury by pestle and the prosecution failed to explain as regards other injuries, as such the prosecution evidence cannot be relied upon.

6. On the other hand, learned Public Prosecutor while supporting impugned judgment & order of learned trial Judge dt. 12.09.2003 submits that the same is based on proper appreciation of evidence and does not require any interference by this court.

7. We have heard learned counsel for the parties and with their assistance perused the material on record.

8. Before proceeding further it will be appropriate to first have a glance at the medical evidence of Dr. Ratan Lal (PW11) who conducted postmortem on the body of the deceased and while preparing report (Ex. P8), found the following injuries:-

1- Lacerated wound 1 1/2"x1 1/2"x upto Bone on Lt. Middle finger palms aspect.

2- Lacerated wound 2"x3/4"x opening in cranial cavity on occipital region.

3. Contusion 2"x2" on back of Rt. ear on opening injury the site there is collection of blood.

4. Contusion 2"x2" on Lt. Parietal region on opening injury site there is collection of blood.

5. Lt. Parietal Bone in multiple pieces & occipital bone in multiple pieces. Cranial cavity is full of blood, Membranes are torn & multiple places at injury sites & Rt. Parietal, Lt Parietal & occipital Brain lobe is lacerated at multiple places at fracture sites.

9. Dr. Ratan Lal Modi (PW11) in his testimony deposed that the cause of death was brain injury leading to shock & death and injury-2 which was the cause of death can be by blunt weapon like pestle. In view of his statement, the fact that death of the deceased was homicidal one stands proved and there is no dispute on this point.

10. The learned trial court while placing reliance upon the statements of Ram Niwas (PW4) & Pyare Lal (PW8), corroborated their statements with Dhuda Ram (PW9) & Ranjeet (PW15) and they all have deposed in their testimony that the appellant called the deceased Nathu Ram while he was on way to his house and inflicted a blow by pestle on his head, on account of which the deceased fell down and became unconscious and on the way to hospital, he succumbed to the injuries received by him.

11. What has been stated by all the four witnesses (supra) regarding the injury inflicted on the head of the deceased by pestle, was duly corroborated by Dr. Ratan Lal Modi (PW11) and also from Postmortem report (Ex. P8) and as regards place of occurrence, it was established by Rameshwar (PW1), Ram Niwas (PW3), Ram Niwas (PW4) & Ugam Chand (PW12).

12. As regards interested & related witnesses (PW4 & PW 8) on whose testimony the accused appellant has been convicted for offence u/S. 302 IPC, a close relative who is very natural witness in the circumstances of a case cannot be regarded as interested witness as has been held by Apex Court in *Mst. Dalbir Kaur and Others Vs. State of Punjab*, .

13. The mere fact that witnesses were relatives or interested would not by itself be sufficient to discard their testimony straightway unless it is proved that their evidence suffers from serious infirmities which raises considerable doubt in the mind of the court and that finds support from the view expressed by Apex court in *State of Gujarat Vs. Naginbhai Dhulabhai Patel and Others*, and in view of what has been observed in the judgment (supra) it is well settled that the evidence of natural witnesses cannot be discarded on the sole ground of interestedness, but their evidence should be subjected to close scrutiny. Interested witnesses are not necessarily false witnesses & evidence of interested witnesses cannot be equated with that of tainted witnesses. However, there is no absolute rule that the evidence of interested witness cannot be accepted without corroboration and simply because the eye witnesses happens to be the son & grandson of deceased, their testimony cannot be discarded, if otherwise acceptable.

14. "Related" is not equivalent to "interested". A witness can be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused punished. A witness who is a natural one and is the only possible eye witness in the circumstances of a case cannot be said to be interested and the Hon'ble Apex Court had an occasion to examine that issue in *State of Rajasthan Vs. Smt. Kalki*

and Another, . The relationship by itself is not a ground to discredit testimony of witness, if it is otherwise found to be consistent & true, as observed by Apex court in Sarwan Singh and Others Vs. State of Punjab, .

15. As also it has been held by the Apex Court in State of A.P. Vs. S. Rayappa and Others, :

The other reason assigned by the High Court in recording acquittal of the accused is that P.W. 1 and P.W. 2 were interested witnesses being relations of deceased and no independent witness was examined by the prosecution. By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.

On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the Court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. The High Court has brushed aside the testimony of P.W. 1 and P.W. 2 on the sole ground that they are interested witnesses being relatives of the deceased.

16. In this regard Section 134 Indian Evidence Act should also be looked into which enshrines the well recognized maxim that "Evidence has to be weighed not counted". The matter thus depends upon circumstances of each case and the quality of evidence even of a single witness whose testimony has either to be accepted or rejected. If such a testimony is found by the court to be entirely reliable there is no legal impediment to the conviction of the accused person on such proof. Even, as the guilt of an accused person may be proved by the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case of the prosecution.

17. The Apex court in State of U.P. Vs. Hakim Singh and Others, observed as under:

That law does not require a plurality of witnesses. Conviction can be passed on the testimony of a single witness, provided the evidence of the witness is

trustworthy. No particular number of witnesses is required to prove a fact and its corroboration is required in case of doubt or suspicion. It is also true that it is not quantum of evidence but the quality and credibility of the witness that lends assurance of the Court for acceptance but testimony of witnesses must be one which inspires confidence and leaves no doubt in mind of the court about the truthfulness of the witnesses.

18. Keeping in view the above principle in mind if we examine statement of Ram Niwas (PW4) recorded in the Court, it confers the contents of written report (Ex. P6) which was reported by him on 18.12.2002 to Ugam Chand (PW12) SHO, Police Station and in cross examination, he admitted that he has seen his father deceased Nathu Ram while going on his way to Dhani of Bhaulji Sharma which is near to their Dhani and that there was no enmity between the deceased & appellant but he has not seen talking each other but were having friendly relations and he reached the house of the appellant when he heard randiness and found that his father became unconscious but still the appellant was beating the deceased at the place of occurrence and he had seen the appellant beating the deceased from short distance of 5-7 steps ahead. Similar is the statement of Pyare Lal (PW8) who is grand son of deceased who further in his testimony deposed that immediately after the incident he rushed to bring the vehicle so that they could take his grandfather to the hospital and this fact was corroborated by the vehicle driver Ayub (PW14) and after the Sarpanch Pyare Lal PW2 & PW 3 Ram Niwas and other local people came around and caught hold of the accused and handed him over to the Police and the fact of his arrest from the site finds corroboration from his arrest memo dt. 18.12.2002 (Ex. P6) and if at all either of the witnesses Ram Niwas (PW4) and Pyare Lal (PW8) have anything in their mind at least would not have deposed in cross examination that the deceased had no previous enmity with the accused appellant and at the same time they were friends. The testimony of the eye witnesses has been further supported by other two independent witnesses Dhuda Ram (PW9) & Ranjeet (PW15). The site plan (Ex. P2) is duly supported & approved from the statement of Ugam Chand (PW12), S.H.O. who corroborated that the incident took place at the place of occurrence. It has come on record that since the appellant set his house on fire where the incident took place, the blood stained soil, because the place was gutted with fire as is evident from site plan (Ex. P2), could not be made available. The explanation given by the accused appellant in his statement u/S. 313 Cr. P.C. regarding cause of fire to his house and place of incident was not believed and rightly so by the learned trial judge since the ocular evidence corroborates from the postmortem report (Ex. P8) supported by Dr. Ratan Lal Modi (PW11) against the accused appellant and PW 4 and PW 8 corroborates the above facts.

19. As regards the submission made that there was no motive or previous enmity between the accused appellant & deceased Nathu; the genesis of occurrence is completely missing and it is also not the case of the prosecution that the appellant was insane person and there appears no reason for him to

commit a crime, it is true that the motive sometimes plays an important role & becomes a compelling force to commit a crime and, therefore, motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act, but with illegal means with a view to achieve that object. In a case where there is clear proof of motive for commission of the crime, it affords added support to the finding of the Court that the accused was guilty of the offence charged with, but it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of crime and this is what the Apex Court observed in *Suresh Chandra Bahri Vs. State of Bihar* with *Gurbachan Singh*, .

20. The prosecution is not bound to prove motive of any offence in a criminal case, in as much as motive is known only to the perpetrator of the crime and may not be known to others. If the motive is proved by the prosecution, the Court has to consider it and to see whether it is adequate. But the motive gets locked up into the mind of the makers and it is difficult to fathom it. If motive is proved, that would supply a chain of links but absence thereof is not a ground to reject the prosecution case.

21. As such, it is not a *sine qua non* for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to reasonable doubt, a conviction may well be based on it and this has been settled by consistent view of the Apex Court that where direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes, the motive is clear and can be proved; sometimes, when the motive is shrouded in mystery it is very difficult to locate the same. If, however, the evidence of the eye witness is credit worthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant.

22. Where the case of the prosecution has been proved beyond all reasonable doubts on the basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing crime on the part of the accused assumes greater importance. Of course if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of a motive for commission of such crime, the accused can be convicted.

23. In the present case there is a direct evidence of Ram Niwas (PW4) & Pyare Lal (PW8) and their statements are fully supported by two other independent witnesses Dhuda Ram (PW9) & Ranjeet (PW15) and gets corroboration from the medical evidence which is found in the statement of Dr. Ratan Lal Modi (PW11)

who conducted postmortem on the body of deceased on 18.12.2002 at 5.00 P.M. which reveals that the deceased received five injuries in all, however, injury-2 was lacerated wound 2"x3/4" and it was opined by the doctor that the cause of death was brain injury leading to shock & death and deposed in his testimony that such injury can be inflicted by hard blunt object and was sufficient to cause death in the ordinary course.

24. So far the submission made that the prosecution has failed to seize the clothes of deceased and of witnesses as well who took the deceased to hospital including the driver Ayub (PW14) or the soil from the place of occurrence, suffice it to say that it will not shatter the case of the prosecution when direct ocular evidence has come on record to support the incident in the form of testimony of Ram Niwas (PW4) & Pyare Lal (PW8) which is duly supported from other independent witnesses (PW9) Dhuda Ram and (PW15) Ranjeet.

25. Medical discrepancy in the statement of prosecution witnesses pointed out by the counsel for the appellant need not detained any longer. Since minor discrepancy in the witnesses' statement is not fatal to the prosecution case. Such discrepancy does not materially affect the prosecution case and does not create any infirmities.

26. Hon'ble the Supreme Court in Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others, observed as under:-

When the question for consideration is one of the fact, the decision which depends upon the appreciation of oral evidence, the appellate Court has got to bear in mind that it has not the advantage which the trial Court had of having witnesses before him and of observing the manner in which they deposed in Court. This certain does not mean that when an appeal lies on facts, the Appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses then unless there is special feature about the evidence of a particular witness which has escaped trial Judge's Notice and there is sufficient balance of improbability to displace the opinion as to where the credibility lies, appellate court should not disturb the findings of fact by the trial Judge.

27. Hon'ble Apex Court in M.S. Jagadambal Vs. Southern Indian Education Trust and Others, has held as under:

So far as appreciation of oral testimony is concerned by the appellate Court, there are two views. One view is that the Court of appeal has undoubted duty to review the recorded evidence and to draw its own inference and conclusion. The other view is that the Court of appeal must attach due weight to the opinion of the trial Judge who had the advantage of seeing the witnesses and noting their look and manners. The rule of practice which has almost the force of law is that the appellate Court does not reverse a finding of fact rested on a proper appreciation of oral evidence.

28. Thus, on the basis of above observations, it can be concluded that opinion of the trial judge on appreciation of evidence cannot be disturbed except for exceptional reasons.

29. Since in the present case, the learned trial Judge has assigned cogent reasons after discussing the evidence of prosecution as well as evidence of defence, this Court has no reason to disturb the findings of facts recorded by the learned trial Court and they do not suffer from basic infirmity or illegality and the exceptional circumstances are missing in this case.

30. For the reasons mentioned above the view taken by the learned Trial Court cannot be said to be either unreasonable or erroneous or much less perverse and the appreciation of evidence by the learned Trial Court is proper. We are not persuaded to take a different view and hence no interference is called for with the findings of guilt and conviction recorded by the learned Judge vide judgment & order dt. 12.09.2003 against the accused appellant for offence U/s. 302 IPC and this appeal deserves to be dismissed. Accordingly, this appeal filed by the accused appellant is dismissed confirming the judgment & order passed by the learned trial Judge dt. 12.09.2003.