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**(1976) 02 RAJ CK 0009**

**In the Rajasthan High Court**

**Case No :** Criminal Appeal and Jail Appeal No. 527 and 571 of 1976

Bheema and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 24-02-1976

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 182, 200, 202  
Penal Code, 1860 (IPC) — Section 169, 182, 302, 34, 366

**Citation :** (1987) 1 WLN 568

**Hon'ble Judges :** Shyam Sunder Byas, J;A.K. Mathur, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

Ashok Kumar Mathur, J.—The appellants have filed these two appeals one through jail and the other represented against the judgment of the learned Additional Sessions Judge, Jalore dated 31-5-1976, where by he has convicted all the three accused appellants u/s 302 read with Section 34 I.P.C. and sentenced them to life imprisonment and a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for 6 months.

2. The facts giving rise to this case are that a First Information Report was filed on 6-9-1975 at 6 p.m. at Police Station, Ummedpur. This was a written report by one Kesa son of Chatara by cast Kalbi resident of Godan to the Superintendent of Police, Jalore who forwarded the same to the Deputy Superintendent of Police, Jalore, Shri Jalamsingh who in turn after due interrogation of Kesa forwarded the report to Police Station, Ummedpur for registration of case u/s 302 I.P.C. It was disclosed in the report that on previous night i.e. night intervening 5th and 6th of September 1975 he, his father, mother and sister were sleeping in their hut situated at their well. At about mid night some voices were heard calling him out. Thereafter, he went out of the hut after opening the door and saw that accused Chhatarsingh, Mansingh and Bheema were standing there armed with lathis. On seeing Kessa accused told him that since he had put them to a loss of Rs.

10,000/- to 15,000/- by launching false report against them now they will not spare him. Thereafter, they went to assault him but he could manage to escape from that place. He kept himself hidden for whole night. Thereafter he came back to his well and he was told by his mother and sister who were weeping that since he has left that place, accused Chhatar Singh, Mansingh and Bheema dragged his father Chatra and threw, him into the well. Thereupon he went to the well and saw that body of his father was floating on the water. He went to village Godan and thereafter reached Jalore to the Superintendent of Police and submitted this written report. He further disclosed in the First Information Report that accused persons abducted his sister Gavari prior to this incident and they were after his life. Since he had no faith in the police at Ummedpur so he submitted this written report to the Superintendent of Police personally. This report was registered and the Deputy Superintendent of Police proceeded to the place of occurrence for holding the investigation. The dead body of Chatra was recovered from the well and the dead body was sent for post mortem. The site was inspected, site plan and site inspection notes were prepared. After the investigation the police came to the conclusion that no case is made out against the accused persons & the report submitted by Kesa was false. The police submitted a final report u/s 169O.P.C. Before submitting the final report to the Magistrate the complainant Kesa was also informed about the result of the investigation made by police. Meanwhile, Kesa also filed a complaint against the accused persons in the court of Munsif & Judicial Magistrate, Jalore. The teamed Magistrate examined the complaint u/s 200 Cr. P.C. and PW 3 Padma, PW 4 Mst. Tipu and Dr. Hanumandutt were also examined u/s 202 Cr. P.C. After the enquiry, the learned Magistrate took cognizance against the accused persons u/s 302 I.P.C. and did not accept the final report submitted by the Police. The accused persons were summoned through non-bailable warrants and the learned Magistrate ultimately committed the accused persons to the court of Sessions for trial u/s 302 I.P.C. read with Section 34 I.P.C.

3. In support of the prosecution case 4 witnesses were examined, namely, PW 1 Kesa, PW 2 Dr. Hanuman Dutt, PW 3 Padma and PW 4 Mst. Tipu. The plea of the accused was also recorded. The plea of accused Chhatarsingh was that this false case has been filed by Kesa at the instance of Magsingh and Anandsingh who also tried to implicate them in abduction of Gavari. It is further stated that Anandsingh and Magsingh want to usurp the land therefore they have instructed Kesa to launch this prosecution. Accused Bheema who is said to have abducted Gavari sister of the complainant Kesa, pleaded that Kesa lodged a case against him in respect of this abduction which was found to be false as Gavari deposed that she is willing to live with Bheema, therefore the prosecution was launched against the complainant u/s 182 CPC which is still pending in the court. This case has been launched out of that enmity at the instance Magsingh and Anandsingh. In the defence the accused persons examined Shri Jalamsingh, Deputy Superintendent of Police DW 1 and Gavari DW 2. After close of the trial, the learned Additional Sessions Judge found the accused persons guilty of

causing the death of deceased Chatra by throwing him into the well and convicted and sentenced them as aforesaid. Aggrieved against this the accused appellants have preferred this appeal.

4. We have gone through the record and heard the learned Counsel for the appellants and the learned Public Prosecutor. The present case is of its own kind where the police during the investigation has found that no case against the accused appellants is made out and gave a final report. But the learned Magistrate took cognizance on the basis of the complaint filed by the complainant Kesa and therefore, he committed the accused persons to the court of Sessions for trial. The present case depends on the testimony of PW 1 Kesa, PW 3 Padma and PW 4 Mst., Tipu. As deposed by PW 1 Kesa when the accused persons came to his hut and threatened him, he escaped in the darkness to save his skin. Thereafter, when he came back, his mother and sister gave him out the version subsequent to his escape PW 3 Padma wife of deceased Chatra deposed that it was rainy night when the accused person came to their hut and called out Kesa. When Kesa and deceased Chatra came out of the hut, the accused persons told Kesa that he has put them to a loss and they will kill him, but Kesa could manage to escape from that place. Thereafter accused persons dragged her husband deceased Chatra to the well and threw him into the well. To the same effect is the testimony of PW 4 Mst. Tipu, daughter of the deceased. But the peculiar feature is that on 6-9-1975 when Jalamsingh, Deputy Superintendent of Police went to record the statement of Padma she came with, the plea that as a scorpion has stung she is not in a position to give her statement. Her statement was recorded on 7-9-1975 which is Ex. 6. In that statement she has stated that as on that night it was raining and when the deceased Chatra and his son Kesa who were sleeping outside came in the hut. While Kesa came in the hut, he heard a sound of some one falling in the well. She stated further that Kesa said that the old man seems to have fallen in the well-When he came out to find out what has happened then they came to know that the old man i.e. deceased Chatra has fallen in the well. She has further stated that their well does not have a parafeet wall. But during the course of her statement before the Magistrate u/s 202 Cr. P.C. and before the learned Additional Sessions Judge during the trial she gave a complete go by to her police statement Ex. D 6 Likewise is the position of the testimony of PW 4 Mst. Tipu. Mst. Tipu was also examined by the Investigating Officer, Jalam Singh, Dy. Superintendent of Police PW 4 Mst. Tipu during the trial has given out the version as given by her mother, but before that first she gave her statement during the course of investigation u/s 161 Cr. P.C. which was recorded on 6-9-1975 by the Deputy Superintendent of Police Jalamsingh. In that she has stated that the accused persons came in the night and called out Kesa and threatened him that he has put them to unnecessary expenditure on account of false case and that they will not spare him. But Kesa escaped from that place and thereafter these persons dragged her father and threw him in the well. Thereafter, on the next day i.e. 7-9-1975 she changed her version and gave out a statement u/s 161 Cr. P.C. to the Dy. Superintendent of

Police, Jalamsingh supporting to the version given out by her mother vide Ex.D 6 where in she has stated that deceased Chatra died by accidentally falling in the well as it was raining on that night. Thereafter, she gave her statement Ex.P 9 before the Magistrate u/s 164 Cr. P.C. Thereafter, she gave go by to her version before the Magistrate. Similar is the position of the testimony of PW 1 Kesa. His statement was recorded by the Deputy Superintendent of Police Jalam Singh on 7-9-1975. He has given out the version that since this was rainy night he along with his father was sleeping outside. As soon as rain started he asked his father to get up and come into the hut. Since their well was in between that place of sleeping and their hut, his father also got up for getting into the hut but since the well was in between the two and it did not have any parafeet wall therefore his father accidentally slipped into the well. But this statement was given go by him before the Magistrate. In this background the police gave a final report but cognizance was taken by the Magistrate on account of protest application filed by Kesa.

5. We have gone through the statements of these three witnesses and have examined them very closely. Having regard to the fact that Kesa has changed his version from time to time and likewise PW 3 Padma wife of the deceased and PW 4 Mst. Tipu daughter of the deceased it is not at all safe to convict the accused persons. When a witness changes his or her version from time to time then the testimony of such witness has to be examined very closely. In the present case as narrated above all the three witnesses uniformly stated before the police that deceased Chatra accidentally fell in the well as it was a rainy night and their well has no parafeet wall. But subsequently, they have changed their version. On the basis of the investigation made by the police, the police came to the conclusion that no case is made out against the accused persons, but PW 1 Kesa fearing that he can be hauled for giving such false reports he filed this protest application. All the three witnesses in order to save Kesa from this embarrassing situation have changed their version. It has also been argued by the learned Counsel that there is an active enmity of Kesa with the accused Bheema, who is said to have abducted Gavari his sister and a case u/s 366, I.P.C. was launched by Kesa but that prosecution failed and Kesa was served with a notice u/s 182, I.P.C. for making the false report.

6. In view of the evidence of such slippery nature, it would be too unsafe to convict the accused persons. Having regard to the slippery testimony of the witnesses the accused persons are entitled to benefit of doubt.

7. In the result, the appeal is accepted. The conviction and sentences of the accused appellants u/s 302 read with Section 34, I.P.C. are set aside and accused appellants are acquitted. The accused persons are already on bail, they need not surrender.