

(2003) 08 RAJ CK 0012
In the Rajasthan High Court
Case No : Criminal Appeal No. 547 of 2001

Gopal Nai

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-08-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2003) 08 RAJ CK 0012

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : Bhanwar Lal Sharma and Mr. Manoj Sharma, for the Appellant;
Ashwani Kumar Sharma and Mr. S.S. Rathore, Public Prosecutor, for the
Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellant Gopal Nai was indicated before the learned Additional Sessions Judge (Fast Track) No. 1, Jaipur City Jaipur in Sessions Case No. 7/2001 for having committed murder of Sukhpal. Learned trial Judge vide judgment dated June 23, 2001 convicted and sentenced the appellant u/s 302 IPC to undergo imprisonment for life and fine of Rs. 100/-, in default to further suffer one Month Rigorous Imprisonment.

2. Put briefly the prosecution case is that Babu Lal SHO Police Station Vaishali Nagar, Jaipur recorded parcha bayan of informant Sukan Chand (PW 2) on June 21,1998, wherein Sukan Chand stated that as house over plot No. D-53, Vaishali Nagar belonging to Dr. Jai Kumar Motwani was under construction, he along with his family were residing there. Sukhpal chowkidar (now deceased) had also his abode there. Some two months back the appellant was also residing with Sukhpal but Contractor Laxmi Narain got the appellant replaced from the said plot. The appellant thought that Sukhpal was behind all this, therefore he became angry with Sukhpal. On June 20, 1998 around 3 AM in the night the informant awoke on hearing hue and cry of his wife Maya and found Sukhpal

badly injured. He then tied bandage on the cut wound appeared on the neck of Sukhpal and took him near the gate in the meanwhile the assailants scaled the wall and fled. Sukhpal died around 3.30 AM on account of injuries sustained by him on his neck, shoulder and head caused by sharp edged weapon. The informant raised hue and cry but no one from the neighborhood reached at the spot. On the basis of Parcha Bayan a case u/s 302 IPC was registered and investigation commenced and the appellant was arrested. On completion of the investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1, Jaipur City, Jaipur. Charge u/s 302 IPC was framed against the appellant who denied the charge and claimed to be tried. The prosecution in support of its case examined as many as 12 witnesses. In his explanation u/s 313 Cr. P.C. the appellant claimed innocence and stated that the Contractor Laxmi Narayan had illicit relationship with the wife of informant Sugan Chand and because he and Sukhpal were against the relationship, the Contractor implicated him in the case falsely. No witness in defence was however examined. Learned Trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Mr. Bhanwar Lal Sharma, learned counsel for the appellant pointed out following infirmities in the prosecution case:-

(i) The appellant was not name din the parcha bayan (Ex.P-3) by informant Sugan Chand;

(ii) Initially the case of prosecution was that the knife was used in committing the crime, but subsequently the story was changed and axe was shown as the weapon of offence.

(iii) The appellant though was available to police but was arrested after one month of the occurrence and before that other persons were suspected and interrogated by the police;

(iv) In the site-plan (Ex.P-1), which was drawn on June 21, 1998 the word "MULJIMAN" (more than one accused) was incorporated;

(v) As per the recovery memo of axe (Ex.P-10) no blood was found on the axe. Whereas motbirs of the said memo viz., Laxmi Narayan and Sugan Chand have deposed that while the axe was recovered it was profusely stained with blood;

(vi) Clothes allegedly recovered at the instance of appellant, were not produced at the trial no opportunity of defence was provided to the appellant;

(vii) Even the mattress where the occurrence is said to have been occurred was not seized;

(viii) A look at the site plan shows that the assailant could easily flee after scaling the boundary wall and the story that the assailant after committing the crime came to the place where the informant and his wife were sleeping, is exfacie

false.

(ix) Dog-squad remained wandering inside the house and did not got out side the place of incident which goes to show that the assailant never scaled the wall;

(x) Informant Sukan Chand and his wife Maya who are the star witnesses of the prosecution have made material improvements in their statements at the trial and they came under the category of highly unreliable witnesses.

(xi) The story that Sukhpal before his death disclosed the name of the appellant is ex facie false as nature of injury on his neck was such that he was not in a position to speak.

(xii) The testimony of Sukan Chand that he covered the injury on the neck of Sukhpal with bandage, appears to be false as no bandage was recovered by the Investigating Officer.

(xiii) As per testimony of Constable Maliram (PW 7) when police reached at the spot 5-6 persons were already present at the place of occurrence, whereas Sukan Chand stated that nobody was present when police arrived;

(xv) A look at the FSL report (Ex.P-18) demonstrates that no blood was found on the axe.

4. We shall now delve deep into the facts and circumstances of the case to find out the tenability of the submission advanced before us.

5. Udhavdas Motwani (PW 1) in his deposition stated that one Naveen Khatri residing at Vaishali Nagar informed him on telephone that somebody killed a labour by inflicting knife-blow on his neck at the plot belonging to Dr. Jai Kumar Motwani. Dr. Jai Kumar Motwani (PW 3) also stated that Sukhpal was killed by some unknown person" by inflicting knife-blow at his plot.

6. The prosecution witness Sukan Chand (PW 2) and Maya (PW 4) improved their statements at the trial and implicated the appellant with the crime. As per the improved story the appellant after inflicting injuries on the person of Sukhpal came to the place armed with axe, where these witnesses were sleeping and thereafter Sukhpal also informed them that the appellant gave axe blow on his neck. Laxmi Narayan (PW 6) and Nemi Chand (PW 8) also named the appellant as assailant.

7. As per post-mortem report (Ex.P-14) following five ante mortem injuries were found on the person of deceased Sukhpal and cause of his death was shock & haemorrhage brought about as the result of antemortem injuries:-

1. Incised Wound of size of 6x1 cm x bone deep oblique over Rt. rib parietal province region fasblock head blood underneath bone found cut fracture through and through proof at Pt. palletal bone-reddish clotted blood.

2. Incised wound of size 7x2cm x bone deep obliquely Rt. side supra scapula region bitterly fasblock head blood.

3. Incised wound 3x2cm x bone deep fasblock head blood oblique over superior of Rt. rib shoulder joint.

4. Incised wound 6x3, 1/2cm x muscle deep oblique over Rt. arm upper medially as axillary region fasblock head blood-underneath large artery and veins and nerves bundle cut-clotted blood found over ends of large vessals.

5. Incised would 9x3cm x trochal cavity deep obliquely over front of neck upper part fresh clotted blood anterior trochal cavity lege rings and thyroid antelege found cut with ante mortem haemating in remain present. (The margin of injury No. 1,2,3,4,5 are clear cut result and well defined)

6. Abrasion : 8x5cm wagalry reddish Rt. left arm upper laterally.

8. Mr. S.S. Rathore, learned Public Prosecutor supported the impugned judgment and canvassed that the contradictions shown in the statements of eye-witnesses are not material and it was not necessary to name the appellant in the parcha bayan.

9. We do not find any merit in the submission of the learned Public Prosecutor. As already noticed, Sugan Chand in the parcha bayan stated that there were more than one accused (Muljiman) and after committing the crime they scaled the boundary wall. In the site plan the Investigating Officer also incorporated the word "Muljiman". The appellant although available was not arrested immediately. The arrest could be affected after one month and before that the Investigating Officer had suspicion against some other persons and they were detained and interrogated. Initially the case of prosecution was that injuries on the person of deceased were caused by knife, but subsequently this theory was changed. The appellant neither was named by the informant Sugan Chand in the FIR nor the deceased was shown alive and talking with the informant. The improvements and embellishments made by the prosecution witnesses at the trial are material and they cause dent in the prosecution story. We find substance in the submission of the learned counsel for the appellant and the infirmities shown by him are fatal to the prosecution case. In view of this we have no option but to give benefit of doubt to the appellant.

10. As a result of above discussion, we allow the appeal, set aside the impugned judgment and acquit the appellant of the charge u/s 302 IPC. The appellant who is in custody, shall be set at liberty forthwith if not required in any other case.