
(1991) 10 RAJ CK 0012
In the Rajasthan High Court
Case No : Criminal Appeal No. 304 of 1986

Kishan Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-10-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 302, 304, 324, 34

Citation : (1991) WLN 231

Hon'ble Judges : R.P. Saxen, J;Kanta Bhatnagar, J

Bench : Division Bench

Judgement

Kanta Bhatnagar, J.—This appeal is directed against the Judgment dated 1.8.1986 passed by the learned Sessions Judge, Bikaner by which appellant Kishan Singh was held guilty for the charge u/s 302 read with Section 34 I.P.C. and sentenced to imprisonment for life and a fine of Rs. 200/- in default to undergo two months Regorous Imprisonment and sentenced to six months Regorous Imprisonment. Appellant Hem Singh was convicted u/s 302 I.P.C. and sentenced to imprisonment for life and a fine of Rs. 200/-; in default to undergo two months Regorous Imprisonment. He was also convicted u/s 324/34 I.P.C. and sentenced to six months Regorous Imprisonment. Appellant Chhagan Singh was convicted u/s 302 read with Section 34 I.P.C. and sentenced to imprisonment for life; and a fine of Rs. 200/-, in default to undergo two months Regorous Imprisonment. He was also convicted u/s 324/34 I.P.C. and sentenced to six months Regorous Imprisonment.

2. Briefly stated the prosecution story leading to the trial of the appellants and their conviction and sentence as stated above, is that on 19th Oct. 1984 at about 9.00 P.M. Kishan Singh abused Mastan Singh deceased at the house of his brother. Hem Singh and Chhagan Singh were standing near the house of Mastan Singh. At that time Roopa Ram (P.W. 4), Udai Singh (P.W. 6) and Kami Singh (Co-accused since acquitted by the trial court) were also standing at the house of Mastan Singh. After some time at about 10.30 P.M. Kami Singh went to the

house, of Mastan Singh an asked him to accompany him, so that he may get the matter compromised. About 15 minutes thereafter from towards the house of Bhura Ram cry "Mare-Re-Mare-Re" was heard. Inder Singh rushed out followed by his two sisters Mena (P.W. 1) and Sampat (P.W. 7), Nar Singh (P.W. 8) relations of Mastan Singh was also their in the house. He also went towards the direction from of the cry. All these four witnesses found the three appellants and one Basti Ram surrouding Mastan Singh and giving him a beating. The prosecution allegation is that at the time Kishan Singh was armed with a "Barchhi", Hem Singh with a "Knife" (Dagger) and Chhagan Singh with a "Lathi". All the four appellants inflicted belows to the deceased with the weapons they had with them. Meanwhile, hearing the noise in the lane Roopa Ram and Udai Singh also reached there. On seeing them, the miscreants took to heels. The family members of the injured Mastan Singh brought him in the "Bakhal" of their house. He was thereafter, taken to P.B.M. Hospital, Bikaner where he was declared died. Inder Singh, with his brother Bhanwar Singh, went to the Police Station Gangashahar and lodged the report Ex. P-1 before P.W. 16 Pritam Singh, Station House Officer at 1.00 in the intervening night on 19/20th Oct., 1984. The Station House Officer chalked the formal information and went to the site. He conducted the necessary investigation at the site and prepared the site inspection memo and site plan (Ex. P-2). On 20th Oct., 1984 Dr. R.K. Gehlot (P.W. 15) conducted the post-mortem examination of the dead body of Mastan Singh and prepared the report Ex. P-27. The Doctor noted following injuries on the dead body:

- (i) Incised wound 7.5 cm x 6.3 cm x bone deep on Rt. Parie to occipital region of scalp placed obliquely nearing to antro posterior placed about 5.00 above & behind the ear.
- (ii) Incised wound 7.50 cm. x 1.0 x bone deep on Rt. occipital region of scalp obliquely placed about 6.00 posterior and lateral to injury No. 1.
- (iii) Incised wound 3.2 cm x 1.3 x deep on the anterior aspect of Rt. side chest at its lower 1/3rd placed obliquely about 10.5 cm lateral to midline in conjoint cartilage region.
- (iv) Abrasion 1.0 c x 0.3 c x on Rt. Posterior aspect of Rt. forearm at its proximal 1/3rd.
- (v) Incised wound 1.3 c x 6.5 cm. x muscle deep on anterior aspect of left forearm at its distal 1/3rd.
- (vi) Cut Abrasion 2.0 x 0.1 cm on Rt. hand plamer aspect hypothenar eminence region placed obliquely.
- (vii) Abrasion 2.0 c x 0.3 c on anterior aspect of Rt. knee at its lower 1/2nd.
- (viii) Abrasion 12.0 c x 0.3 c on the back of the chest across the midline in the junction region of scapular and intra scapular region.

In the opinion of the doctor all the injuries were antemortem in nature. Injuries No. 1, 2, 3, 5 and 7 were caused by sharp weapon and injuries No. 4, 6 and 8 by blunt object. The cause of death according to the doctor was shock and haemorrhage as a result of injury to River (injury No. 3) which in itself was sufficient to cause death in the ordinary course of nature. ON 4.11.1984 Station House Officer, Police Station arrested Kami Singh vide memo Ex. P-31. On 5.11.1984, Kishan Singh vide memo P-32 and Chhagan Singh vide memo P-33 on 27.10.1984. Hem Singh was arrested vide memo P-11. During the course of investigation in pursuance of the information furnished by Kishan Singh, the Station House Officer recovered "Barchhi" and blood stained trousers from his house. In pursuance of the information furnished by Hem Singh, the Station House Officer recovered one "Knife" from his house. In pursuance of the information furnished by Chhagan Singh one "Lathi" was recovered from his house and in pursuance of the information furnished by Basti Ram one "Dagger" was recovered from his house. The cloths stained with blood and the articles recovered at the instance of the accused persons were sent for chemical examination. The report of the Chemical Examiner (Serologist) is Ex. P-38. All the articles sent for examination were found to be stained with human blood. The Group of blood was "B" group.

3. Upon completion of all the necessary investigation, charge-sheets against the three appellants and co-accused Kami Singh and Basti Ram were filed in the Court of Munsif and Judicial Magistrate No. 1, Bikaner. Who committed the case to the Court of Sessions Judge, Bikaner. The learned Judge chargesheeted the appellants u/s 302 read with Section 34, 302 read with 120B and 324 I.P.C. and recorded their plea. They denied the charges and claimed to be tried. Prosecution examined 17 witnesses in all in support of its case.

All the accused-appellants in their statements u/s 313 Cr.P.C. denied the allegations levelled against them. The defence plea was that Mastan Singh had entered the house of Bhura Ram and tried to molest his wife and, therefore, Bhura Ram and his family " members gave a beating to him which resulted into the death. No defence witness was examined. The learned trial Judge did not hold the prosecution case established against Kami Singh and Basti Ram and acquitted them of the charges. He however held Kishan Singh, Hem Singh and Chhagan Singh guilty of certain charges and passed the judgment of conviction as stated earlier.

In grievance of their conviction and sentences the appellants have approached this Court in appeal.

4. We heard Mr. M.M. Singhavi, learned Counsel for the petitioner and Mr. S.M. Singhavi, learned Public Prosecutor assisted by A.K. Singh learned Counsel for the complainant.

5. Mr. M.M. Singhavi, learned Counsel for the petitioner has assailed the findings of the trial court on a number of grounds. It has been vehemently argued by him

though there was common evidence against the five accused facing the trial, the learned Judge without giving specific reasons found Basti Ram and Kami Singh innocent and acquitted them of the charges, and on the same, evidence convicted Kishan Singh, Hem Singh and Chhangan Singh holding them responsible for the death of Mastan Singh. Another argument of the learned Counsel for the appellants is that the prosecution witnesses have made a deliberate attempt to involve innocent persons which is evident from the fact that the initial story brought on record in the first Information Report has been subsequently changed. The learned Counsel for the petitioner referred to the medical evidence and submitted that the medical evidence docs not corroborate the evidence of the prosecution witnesses and, as such, the finding of the trial court regarding the charge u/s 304 against Hem Singh and 302 with the aid of Section 34, against the remaining two appellants is erroneous.

6. The learned Public Prosecutor controvert these submissions and justified the finding of the trial Judge and submitted that because of the perplexity, the witnesses might not have not written certain facts in the First Information Report and their version at the trial should not be discarded for that reason. It has been stressed by the learned Public Prosecutor that acquittal of two accused should not come in the way of conviction of the three appellants.

7. Prosecution has led direct as well as the circumstantial evidence in the case. The direct evident in the case is of P.W. 1 Maina, P.W. 2 Bhanwar Singh, P.W. 7 Sampat and P.W. 8 Narsingh. The circumstantial evidence brought on record against the appellants is recovery of weapons at their instance. An Additional circumstance against Kishan Singh is recovery of blood stained trousers in pursuance of the information furnished by him from his house. The prosecution case is that the quarrel has started when Kishan Singh hurled abuses to Maslan Singh at about 9.00 P.M. on 19.10.1984. All the eye witnesses have stated that on that day Kishan Singh being enraged and drunk had come to the house of his brother Chhagan Singh and Hem Singh and abused Mastan Singh. They had denied the fact that Mastan Singh was also drunk at the time, but on being confronted with their Police Statements they had to admit that at the time Mastan Singh was also in drunken stage. The prosecution case is that after sometime Kishan Singh called Mastan Singh. The initial version of the witnesses is that Kishan Singh asked Mastan Singh to have a drink and Mastan Singh denied and said he had no wine. Kishan Singh insisted and told that they would go to the wine shop for drink. Then they left the house. The subsequent improvement in the case is that Kishan Singh asked Mastan Singh to accompany him so that the matter may be compromised between him and Kishan Singh. Whatever it may be the fact is that Mastan Singh left the house with Kishan Singh. It was about 10 or 15 minutes thereafter that the cry of "Mare-Ra-Mare-Re" was heard at the house of Mastan Singh at which the four witnesses rushed towards that direction. The four witnesses have claimed to have seen the occurrence the weapons the assailants in their hands.

8. Before discussing the evidence against the individual accused it would be profitable to look to the circumstances at the time of initial quarrel. The prosecution witnesses have stated that when Kishan Singh hurled abuses, Chhagan Singh and Hem Singh were trying to pacify him and requested Mastan Singh not to heed. That at that time Chhagan Singh and Hem Singh fell at the feet of Udai Singh, brother of Mastan Singh, to excuse Kishan Singh for his misbehaviour in hurling abuses. Be that as it may it is evident that without any reasons Kishan Singh in a drunken state hurled abuses and Prosecution witnesses have admitted that Mastan Singh also hurled abuses to Kishan Singh at that time. The learned Counsel for the appellants has strenuously contended that careful examination of the statements of Maina, Sampat and Narsingh would show that they were not witnesses of the actual incident. That is to say they and not seen the miscreants giving the beating and might have reached the site after the beating was over. In this connection our attention has been drawn to the statements of the witnesses in the Court where their attention was drawn to the police statements of Maina Ex. D1 wherein at portion A to B she has stated that on coming out, she saw her father lying on the ground of Chhagan Singh, Hem Singh and Kishan Singh and Basti Ram running away from there. So far as weapons are concerned she has stated that she had seen the weapons. Basti and Hem Singh were having but at portion C to D of Ex. D-1 it is written that she could not see the weapons of the two. The witness could not explain this discrepancy. The argument of the learned Counsel for the appellants is that the witnesses might have reached the site after the incident was over and part could not see what was played by the miscreants and who caused which injury to Mastan Singh. Similarly Sampat P.W. 7 in her Police statement Ex. D-7 makes no mention of the accused causing injuries to Mastan Singh and at portion "D" to "P" has stated that Narsingh had seen the assailant running from the site. P.W. 8 Narsingh, another eye witness of the occurrence has been confronted with his police statement Ex. D.8 where at portion "G" to "H" he has stated that when he came out of the "Bhakha" he saw four persons running from the street and Mastan Singh was groaning and was bleeding from the injuries of head and chest. He has stated at portion "I" to "J" in Ex. D.8. that subsequently he was informed that Mastan Singh died and Inder Singh told him that Kishan Singh, Hem Singh and Chhagan Singh and Basti Ram had caused injuries with "Barchhi" to Mastan Singh which caused his death.

9. Learned Public Prosecutor submitted that in the initial version details might not have been given or the witnesses being terrified or perplexed because of Mastan Singh being injured might not have stated about their seeing the actual occurrence, but subsequently they might have disclosed what they saw and there is no reason to disbelieve the statements on oath given in the Court.

10. The statements before the Police are the initial version of the witnesses. If a witness does not claim to be the witness of the actual incident or cannot narrate the details of the incident before the police, then after the lapse of time if he gives the details, Court is expected to be slow and careful to place reliance on

the testimony of such a witness. From the careful examination of the statements of three witnesses we feel inclined to hold that these three witnesses had reached the site at the time when the process of beating was over and the assailants had run away and Mastan Singh was bleeding. As such their version about the actual act by any particular accused is not worth reliance. The prosecution case as such depends upon Inder Singh. Inder Singh had sustained injury during the course of incident and, therefore, his presence at the time is believable. The pertinent question however would be whether Inder Singh's statement in the court which is at variance with his version in the first information report is to be given more weight than the version in the F.I.R. In the first information report he has assigned injuries of Mastan Singh to Kishan Singh only. According to him Chhagan Singh had "Lathi" and Hem Singh caused injury to his finger with knife when he tried to intervene. In the statement in the court Inder Singh stated about Kishan Singh causing injuries on the head and neck of Mastan Singh with "Barchhi". He stated about Chhagan Singh inflicting "Lathi" blow to Mastan Singh. The injury of the chest has been attributed to Hem Singh with a knife.

11. The medical evidence of doctor R.K. Gehlot (P.W. 15) is that injury No. 3 was fatal in nature and sufficient in the ordinary cause of nature to cause death. That injury according to the doctor could not be caused by a "Barchhi" which is a cutting weapon, rather it would have been caused by some stabbing weapon. The argument of the learned Counsel for the petitioner is that according to the initial version of Inder Singh, Kishan Singh had caused injury with "Barchhi" and he assigned no over-tact of Hem Singh regarding Mastan Singh. The medical evidence cannot be said to be corroborated by the prosecution version. The learned Public Prosecutor argued that regarding injury there may be two possibilities. The chest injury might be either by "Barchhi" of Kishan Singh or the witness in haste being perplexed or might not have been able to see Hem Singh causing injury with knife and for that reason he might not have mentioned in the F.I.R. that Hem Singh caused knife injury.

12. The significance of the first Information Report is that it is the initial version of the case set-forth. It is an immediate reproduction of what the informant had seen or knew, whereas there may be improvement in the subsequent version. In the present case first information report is by the eye witness. Inder Singh happens to be the son of Mastan Singh and had himself sustained injury on the finger. It is not his case that because of the perplexed state of mind he could not tell the details to the police. His contention rather is that he had told the police that Chhagan Singh had inflicted "Lathi" blow and Hem Singh had inflicted knife blow on the chest of Mastan Singh. It is also pertinent to note that the prosecution case is that after Inder Singh sustained injury at the hands of Hem Singh, Hem Singh inflicted knife blow on the chest of Mastan Singh. If that would have been so, infliction of the knife blow by Hem Singh would not have been missed in the initial version of Inder Singh. In such circumstances we find force in the argument of the learned Counsel for the appellant that Hem Singh being

author of the injury by knife on the chest of Mastan Singh is an after thought. Doctor R.K. Gehlot has categorically stated that injury No. 3 which had proved fatal could not have been caused by a "Barchhi". The learned Counsel for the petitioner wanted to Show the "Barchhi" to the doctor at the trial, but he could not do so because the "Barchhi" had not by that time reached the Court after chemical examination. It is on account of this type of medical evidence that the learned trial Judge has not held Kishan Singh responsible for injury No. 3 of Mastan Singh. As the doctor has stated that, that injury could be caused by stabbing weapon and because of statement of alleged eye witnesses the learned trial judge has attributed injury No. 3 of Mastan Singh to Hem Singh. It is important to consider that in the first information report and the police statement of the witnesses in night, there is no allegation of Hem Singh causing any injury with knife to Mastan Singh or Chhagan Singh inflicting "Lathi" blow to him. In such circumstances the argument of the learned Counsel for the appellants is that because of the submissions of the doctor about the possibility of injury No. 3 not being caused by "Barchhi" and the remaining three injuries by blunt object, the prosecution witnesses were made to improve their version to fit in with the version of the Doctor. The learned Counsel for the appellant emphatically argued that the prosecution witnesses have stated about Basti Ram also being there equipped with "Dagger" and possibility of his being the author of the fatal injury cannot be ruled out. The learned Counsel for the appellant argued that if the learned Trial Court has disbelieved the prosecution evidence for Basti Ram because of its being an after thought, then the same analogy applied to the version of he witnesses regarding the over tact of Chhagan Singh and Hem Singh.

13. The improvement of the prosecution case at the trial for some reason or the other is always dealt with great case and caution by the courts.

14. In the case of Badri v. State of Rajasthan 1975 CL.R. 678, like the case on hand there was only one eye witness who modulated his evidence to suit the prosecution story in view of the doctor's opinion and their lordships declared to uphold the conviction of the accused u/s 302 I.P.C. and conviction and sentence were set aside.

15. In the case of Ram Kumar Pandey Vs. State of Madhya Pradesh, omission of important fact in the First Information Report was given great importance in judging the veracity of the prosecution case.

16. In the case of Mahendra Singh Vs. State of Rajasthan, conviction of the appellant u/s 302 I.P.C. was passed on the testimony of solitary eye witnesses. The version in the F.I.R. by that witness as to the injuries on the body of the deceased changed while giving evidence before the trial court. The improvements made to suit medical evidence. Their lordships in such circumstances did not find it safe to place implicit trust on the testimony of sudha witnesses and the judgment of conviction was set aside.

17. From the above discussion it can be deduced that Inder Singh was the only

person who reached the site at the time of actual incident. The three other alleged eye witnesses namely Maina, Sampat and Narsingh reached there at the time when the appellants had run away. The prosecution case therefore is to be judged from the testimony of Inder Singh, who as observed above, named Kishan Singh as the assailant of Mastan Singh. The learned Public Prosecutor on this type of evidence raised a question that if Kishan Singh was not the author of the fatal injury according to the medical opinion and Hem Singh's active participation is disbelieved because of Inder Singh not stating so in the first information report then who was the author of the fatal injury. It is not for the prosecution to raise such question. Prosecution is to prove as to who was the person responsible for the injury or whether any of the accused from the material available on record can be held to be author of any particular injury. The learned Public Prosecutor justified the acquittal of Basti Ram and Kami Singh. So far as Kishan Singh is concerned it is important to observe that there is not an iota of evidence of the prosecution witnesses about Kami Singh being present at the site. All that has come against him is that he took Mastan Singh from his house. It was 10 or 15 minutes thereafter that the beating incident had taken place. This raises suspicion about the prosecution case. The learned Counsel for the petitioners has rightly raised the arguments that Kami Singh might have taken Mastan Singh to some place and thereafter some thing might have happened between Kiahnsn Singh and Mastan Singh leading to the quarrel. Be that it may, this is clear that the only allegation against Chhagan Singh in the initial version is that he instigated others to give a beating to Mastan Singh. As already observed these two accused-appellants namely Chhagan Singh and Hem Singh were there at the initial quarrel when there was exchange of abuses between Kishan Singh and Mastan Singh and their conduct was very fair and credible. According to the prosecution witnesses they prayed Mastan Singh, Udai Singh and Roopa Ram to excuse Kishan Singh who has hurled abuses, because of excessive drink. There is evidence that Kishan Singh had no enmity with Mastan Singh. Inder Singh has stated that Kishan Singh hurled abuses as he was drunk and for no other reason. All this shows the over implication and exaggeration of the testimony the prosecution witnesses. All that can be inferred from the circumstances of the case is that whatever might be cause of quarrel i.e. either Kishan Singh might have hurled abuses or Mastan Singh might have said something to Kishan Singh, the fact is that Kishan Singh caused simple injury with sharp weapon "Brachhi" to Mastan Singh. The author of the fatal injury is not known. This becomes all the more difficult when one co-accused said to be armed with "Dagger" at the time of occurrence has been acquitted by the trial Court. This being the position the conviction of Hem Singh accused appellant u/s 302 in view of the initial version of the case and the remaining two appellants under that Section with the aid of Section 34 cannot be sustained.

18. The next point emerging for determination is to what offence is made out against the appellants. The learned trial Judge has held Kishan Singh liable u/s 324 I.P.C. for the injuries of Mastan Singh and rightly so because from the

evidence of Inder Singh, this charge is duly established. So far as Chhagan Singh is concerned the only allegation is that he instigated others for the crime. Evidence of Inder Singh on this point is not worthy of belief, because he has subsequently improved upon the version that Chhagan Singh had inflicted "Lathi" blow to Mastan Singh. But when his attention was drawn to the F.I.R. and Ex. D.1 his police statements regarding the omission of any overtact by Chhagan Singh i.e. inflicting "Lathi" below, he could not explain it so far as Hem Singh commensurate he could be held responsible for the simple injury i.e. incised wound of Inder Singh on his finger.

19. Kishan Singh and Hem Singh, therefore can be held guilty only u/s 324 I.P.C. The learned Counsel for the petitioner submits that Kishan Singh had remained in custody from 5.11.1984 to 1.8.1986 and Hem Singh from 27.10.1984 to 1.8.1986 and they may not be sent bedding the bars again.

20. Consequently, the appeal of Chhagan Singh is allowed. He is acquitted of the charges levelled against him. His conviction and sentences are set aside. Appeal of Kishan Singh and Hem Singh is partly allowed. Conviction and sentences of Hem Singh u/s 302 I.P.C. and that of Kishan Singh u/s 302 read with Section 34 I.P.C. are set aside. The conviction of Kishan Singh u/s 324 I.P.C. is maintained. He had already undergone the sentence awarded on this court. The conviction of Hem Singh u/s 324/34 I.P.C. is maintained. He had also undergone the sentence imposed for the charge. Chhagan Singh and Hem Singh are on bail. Their bail bonds stand discharged. Kishan Singh is in jail. He shall be set at liberty forthwith if not required in any case.