
(2003) 11 RAJ CK 0039
In the Rajasthan High Court
Case No : Criminal Appeal No. 587 of 1999

Mahipal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-11-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2004) 3 RLW 1685 : (2004) 2 WLC 453

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

Bench : Division Bench

Advocate : Mitruka and Alka Bhatnagar, for the Appellant; S.S. Rathore, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellant was indicated before the learned Sessions Judge, Jhunjhunu for having committed murder of Rang Lal in Sessions Case No. 49/1999 (old 13/1997). The learned judge vide judgment dated August 29, 1999 convicted and sentenced the appellant u/s 302 IPC to suffer imprisonment for life and fine of Rs. 1,000/-. In default, to further suffer three months rigorous imprisonment.

2. The prosecution story is woven like this; on December 17, 1996 around 4:25 P.M. informant Surendra Kumar P.W. submitted a written report Ex.P.3 with the police station Singhana stating therein that around 4:00 P.M. when he was on the verge of closing the shop he saw a boy going towards the market. When the boy reached a little ahead of the shop, reached near him and inflicted knife blow. The injured boy raised cry and fell down, The boy who inflicted the blow ran away towards the Higher Secondary School. Although the informant did not know the name of the assailant but could identify him. The name of the boy lying dead was disclosed by a school boy as Rang Lal. On the basis of the said report, a case u/s 302 IPC was registered and investigation commenced. After usual investigation, charge sheet was filed against the appellant and in due course the case came up

for trial before the learned Sessions Judge, Jhunjhunu. Charge u/s 302 IPC was framed against the appellant who denied the charge and claimed trial. The prosecution, in support of its case, examined as many as 16 witnesses and got exhibited 13 documents. In the explanation u/s 313 Cr.P.C. the appellant claimed innocence. The appellant examined one witness in defence. On hearing final submissions, the learned Sessions Judge convicted and sentenced the appellant as indicated hereinabove.

3. The prosecution case admittedly hinges on the testimony of Ram Kumar (PW.6). Who in his deposition stated that on December 17, 1996 around 4.00 P.M. he was proceeding towards Gurjar Bas for purchasing buffalo. Banshi was also with him. When he they reached near the house of Ram Vilas at Neemtarla Mohalla, he saw Rang Lal (deceased) and Mahipal (appellant) running. Mahipal gave a slap and pushed Rang Lal down and started inflicting knife blow s on his person while Mahipal was running away after committing crime her (Ram Kumar) chased him but could not catch hold of him. Crowd of 20-30 persons assembled there. Surendra Kumar was also in the crowd. He then asked Surendra Kumar to lodged the report. In his cross examination Ram Kumar stated that he did not inform about the incident to Banwari and Sarjeet. He also deposed that Rang Lal was lying straight and Mahipal climbed over him and inflicted knife blows on his person. He however, did not disclose the name of Mahipal to informant Surendra Kumar. According to Ram Kumar, the police had drawn site plan of the place of incident in his presence but memo of site plan did not bear his signatures.

4. Dr. Ranveer Singh PW.10 conducted autopsy on the dead body of Rang Lal and as per the post mortem report Ex.P. 12, following ante mortem injuries were seen:-

(1) Stab wound 2cm x 1 cm x through and through chest wall, spindle shape on Lt. side of chest on mid axillary line in 6th inter costal space 2-1/2" below and left to Lt. Nipple.

(2) Stab wound 2 cm x 1 cm x 3 cm just behind and fold of Axilla on Lt. side. Blood clots present in wound.

(3) Stab wound 2 cm x 1 cm x through full thickness chest wall Lt. Clavicular region just below mid of Lt. Clavicle.

(4) Stab wound 3 cm x 1 cm x 5 cm at Xiphistern spindle shaped and obliquely placed Depth of wound is above muscular layer of abdomen.

(5) Stab wound 3 cm x 1.5 cm x 2 cm epogasterium region of abdomen 3" blow wound No. (4).

(6) Stab wound 4 cm x 2 cm x 1 cm Lt. Cheek on prout of Lt. ear.

(7) Stab wound 2 cm x 1 cm x cm muscle deep over back of Lt. scapula in the middle of body.

Cause of death was massive internal haemorrhage due to multiple stab wound injuries.

5. The informant Surendra Kumar PW.3, however, did not support the prosecution case and was declared hostile.

6. Mr. Mitruka, learned counsel for the appellant canvassed that Ram Kumar PW.6 is wholly unreliable witness and no reliance could be placed on his testimony. Learned counsel substantiated his submissions by raising following points:-

(i) Rang Lal is a partisan witness and his presence at the place of occurrence in the facts; and circumstances of the case is, doubtful.

(ii) Informant Surendra Kumar (PW.1) did not mention the name of Ram Kumar in the written report although Ram Kumar claimed that he directed Surendra Kumar to lodge the report with the police.

(iii) Conduct of Ram Kumar in not narrating the incident to Sarpanch Banwari Lal and Sarjeet was highly unnatural.

(iv) Testimony of Ram Kumar to the effect that his statement u/s 161 Cr.P.C. got recorded around 5.00-5.45 P.M. on the date of incident appears to be false in view of inquest report (Ex.P.2), which was drawn on the next day of the occurrence i.e. on December 18, 1996, wherein it was stated that some unknown person had committed the crime. A look at the inquest report goes to show that till December 18, 1996 the police did not know the name of the assailant.

(v) Even from the receipt of delivery of dead body (Ex.P.33), drawn on December 18, 1996 it is evident that police did not know the name of assailant on December 18, 1996. In the receipt (Ex.P.33) it was mentioned that some unknown person committed murder of Rang Lal. But the words "some unknown person" got erased subsequently and this fact was admitted by Bhagwan Singh I.O. (PW. 16) in his cross examination.

(vi) Witnesses Surendra Kumar PW.3 and Banwari Lal PW.1 in their statements at the trial did not state about the presence of Ram Kumar at the time of incident.

(vii) Bhagwan Singh I.O. (PW.16) without obtaining permission of the Magistrate got the blood sample of the appellant with the help of Dr. JP Bugalia (PW. 13) while the appellant was in the custody of police. Act of I.O. in taking blood sample of the appellant smacks foul play.

7. Learned Public Prosecutor supported the impugned judgment of learned trial judge and urged that testimony of Ram Kumar was rightly relied upon. Statement of Ram Kumar gets support from the evidence of Ajeet Kumar (PW.5) who stated that after committing crime the appellant came to him and demanded money so as to get bandage over his wound sustained by him in the course of incident.

8. We have pondered over the rival submissions and closely scanned the material on record. In our opinion evidence of Ram Kumar does not inspire confidence. We have undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to broad and reasonable probabilities of the case. The prosecution has not been able to establish beyond reasonable doubt that statement of Ram Kumar u/s 161 CrPC was recorded on the dated of incident. Rojnamcha dated December 17, 1996 was deliberately withheld. Inquest report (Ex.P.2) and Receipt of dead body (Ex.P.33) also show that till December 18, 1996 name of assailant was not know to the Investigating Officer. The FIR also did not contain the name of Ram Kumar. Conduct of Ram Kumar in not narrating the incident to Sarpanch Banwari Lal and Sarjeet was highly unnatural. In there circumstance we find ourselves unable to place any reliance on the testimony of Ram Kumar. Ajeet Kumar (PW. 5) is also a got up witness. He also did not disclose this fact to any body that appellant came to him and demanded money for the purpose of dressing his wound. He also did not explain as to under the circumstances the police knew that the appellant came to him. Learned trial judge left the application u/s 311 CrPC. undecided, filed on behalf of the appellant for summoning Rojnamcha dated December 17, 1996 to ascertain whether the statement of Ram Kumar u/s 161 Cr.P.C. was recorded on the said day or not.

9. We find substance in the submissions advanced on behalf of the appellant. The learned trial judge, in our opinion, has not properly scanned the testimony of Ram Kumar and other material available on record and committed illegality in convicting him u/s 302 IPC.

10. For the reasons aforementioned, we allow the appeal and set aside the impugned judgment dated August 21, 1999 of the learned Sessions Judge, Jhunjhunu. We acquit the appellant of the charge u/s 302 IPC. The appellant is in jail, he shall be set at liberty if not required in any other case.