
(2015) 02 RAJ CK 0163

In the Rajasthan High Court

Case No : Criminal Appeal No. 714/1999 and Criminal Appeal No. 377/2000

Mansaram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 437-A
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2015) 02 RAJ CK 0163

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.; R.S. Chauhan, J.

Bench : Division Bench

Advocate : Biri Singh, Senior Counsel, Rajesh Choudhary and N.S. Choudhary, for the Appellant; N.S. Dhakad, Public Prosecutor, Advocates for the Respondent

Judgement

R.S. Chauhan, J.—Aggrieved by the judgment dated 11.11.1999, passed by Addl. Sessions Judge No. 1, Sikar, the accused-appellants, namely Mansaram, Sukhdevram, Rameshwar and Mahendra have challenged their conviction under Sections 302/149, 323/149, 149 and 448 IPC. Meanwhile, aggrieved by the same judgment, the State of Rajasthan has challenged the acquittal of Mamraj, Phool Singh @ Phoolaram, Mangilal, Tarachand and Murlidhar for offences under Sections 147, 148, 448, 302/149 and 323/149 IPC. While Mansaram and others have filed D.B. Criminal Appeal No. 714/1999, the State of Rajasthan has filed D.B. Criminal Appeal No. 377/2000 before this court. Since both these appeals arise from the same impugned judgment, they are being decided by this common judgment.

2. Briefly the facts of the case are that on 19.7.1989, Harlal Singh (P.W.5) lodged a written report (Ex. P.12) with the S.H.O., Police Station, Laxmangarh, Distt. Sikar. When translated into English, the said written report (Ex. P.12) reads as under:

"To, The SHO, Police Station Laxmangarh, Distt. Sikar

Sir,

To, The SHO, Police Station Laxmangarh, Distt. Sikar

It is humbly submitted that yesterday, on 18.7.1989, around midnight my brother Laduram S/o. Baksaram, and his two sons, Surendra and Prakash were sleeping in the courtyard. My brother Laduram's brother-in-law, Chandaram, and Ramlal S/o. Juwara, by caste Jat, resident of Madhopura were also sleeping with us. Laduram's elder son, Brijendra, and his younger son, Mohan, were sleeping at a separate house constructed by Brijendra on the western side of the well. Suddenly, about 20-25 persons came, cursed and dragged out Brijendra and Mohan from the homes. They started assaulting them with barchhi (small axe), bhala (spear), lathies (wooden sticks), and swords. Brijendra's wife raised an alarm. Then, I, my brother Laduram, my nephews Surendra, Prakash and Chandaram, and Ramlal rushed to their rescue. We carried lathis with us. The moment we reached there, Surjaram S/o. Hukumaram, by caste Jat, resident of Rehnawa, and his son, Arvind @ Nemichand said "now the true enemy, Laduram has come". Saying this, both of them attacked him with farsies which they were carrying. With this, Birju S/o. Khumaram, by caste Jat, resident of Khevasar, Ramnarayan S/o. Rambux started attacking him. Laduram was killed at the spot; Mohan, Brijendra, Prakash, Surendra sons of Laduram, and Chandaram were badly injured. Thinking that they had expired, the accused ran away. Brijendra and Surendra in order to protect themselves, inflicted lathi blows on Arvind and Ramnarayan. Arvind and Ramnarayan's companions also said, while leaving, that they had killed Tara Singh Jat of Roru, so then who are we? Those whom I have named, I know them. Others I don't know them, but I can recognise them if they were brought before me. This gang of persons had come in two jeeps; they boarded the two jeeps and went towards Navalgarh. One jeep belonged to Surjaram S/o. Hukumaram, by caste Jat, r/o Rehnawa, whose registration numbers are RJB-7669. I do not know the number of the other jeep. I am submitting the report to you and pray that legal action should be taken against the culprits as soon as possible.

sd/- Harlal Singh S/o. Baksaram Jat Village Post, Rehnawa, Tehsil and Police Station, Laxmangarh."

3. After a thorough investigation, initially the police submitted charge-sheet against co-accused persons, namely Arvind Kumar, Harlal Singh, Ramnarayan, Birbal, Brij Mohan, Surjaram and Phool. But it kept the investigation pending against the present accused-appellants, and the accused-respondents. Subsequently, a charge-sheet was filed against ten persons. The case was committed to the Court of Sessions, wherefrom it was transferred to the learned Judge. By the order dated 14.7.1998 the learned Judge framed charges against the appellants for offences under Sections 147, 148, 444, 448, 302/149, 323 read with 149 IPC. In order to substantiate its case, the prosecution examined twenty witnesses, and submitted fifty-nine documents. In turn, the defence examined four witnesses, and submitted twenty-six documents. After concluding

the trial, the learned Judge convicted and acquitted the accused persons as mentioned above. Hence, both these appeals by the accused-appellants, and by the State of Rajasthan.

4. Before dealing with the contentions of the learned counsel for the parties, it would be apposite to briefly deal with the prosecution evidence.

5. Harlal (P.W.4), the complainant, reiterates what he has narrated in the written report. Therefore, we need not reproduce his testimony. However, in his examination-in-chief he mentioned the names of both Phoolaram and Sitaram. Yet, in the FIR he had never mentioned either of these names. When he is confronted with the said omission, later on in his cross-examination, he claims that he had given the names, but he does not know why the names were not recorded. In his cross-examination he admits that he had not named Murlidhar, Mamraj, Tarachand and Mangilal in the FIR. He also admits that he had not even named them in his deposition in the first trial. But he claims that he had asked the names of these people from different villages. However, he does not remember the names of those who had given him the names. Most importantly, he admits that the accused were strangers to him. Yet, they were never subjected to a Test Identification Parade. Interestingly, in his cross-examination, he thoroughly denies the injuries which were sustained by Ramnarayan and by Arvind, the two main co-accused in the case.

6. Similarly, Brijendra Singh (P.W.5), an injured witness, names Phoolaram and Sitaram; yet, Sitaram has never even been charge-sheeted. He admits in his cross-examination, like Harlal, that although the persons were strangers to him, they were never subjected to a Test Identification Parade. He equally admits that none of the appellants had injured the deceased.

7. Vimla (P.W.7) has correctly identified Birbal @ Vinod. But in her cross-examination, she clearly admits that although she had told the police that Birbal had a sword, but why this fact has not been mentioned in her police statement (Ex. D.7), she cannot say.

8. Similarly, Om Prakash son of Bhanaram (P.W.8) does mentions the appellants in his examination-in-chief; but in his cross-examination he admits that he had not named these appellants either in his two police statements (Ex. D.8 and D.9) or in his testimony in the first case (Ex. D.10).

9. Om Prakash son of Laduram (P.W.9) surprisingly claims that Sitaram hit him over the head with a lathi. But Sitaram had never been charge-sheeted. In his cross-examination, he also admits that he did not take the name of the appellants in his police statement (Ex. D.18), or in his testimony in the first trial.

10. Chandra Ram (P.W.10) has wrongly identified the accused. He identified Rameshwar as Sukhdevram, Mahendra as Phoolaram, and Murlidhar as Mahendra. In his cross-examination, he admits that his police statement was recorded eight or nine days after the occurrence. He does admit that the police

was present in the hospital when he was rushed to the hospital. Yet the police did not record his statement then and there. When he is confronted with his police statement (Ex. D.19), he states as under:--

11. Ranglal Kateva (P.W.20), the S.H.O. Police Station Laxmangarh, does prove all the initial investigative documents. But when he is confronted with the delay in sending the FIR to the concerned Magistrate, he fails to give any cogent reason. In his cross-examination he does admit that "the distance between the Police Station and the Court of the concerned Magistrate is fifteen kilometers. The court is situated in Fatehpur" According to him, "both the Police Station and the court are situated on the National Highway and there is constant traffic movement." He also admits that "the police station does have a jeep at all times" He denies the suggestion that the FIR was registered in the afternoon but is ante-timed. Interestingly, for the delay he does not offer a cogent explanation.

12. Mr. Biri Singh, Senior Counsel, with Mr. Rajesh Choudhary, and Mr. Vijay Choudhary, the learned counsel for the accused-appellants, have pleaded that it is clearly a case of over-implication. For, although five persons were not even named in the FIR, namely Mamraj, Phoolaram, Mangilal, Tarachand, and Murlidhar, they were sent for trial by the police. Moreover, although the witnesses claim that Sitaram was present, and had participated in assaulting the injured witnesses, yet he has never been charge-sheeted by the police. This clearly proves that there was over-implication of innocent persons. Secondly, there is an inordinate delay in lodging of the FIR. For, according to Harlal the incident took place in the midnight of 18.7.1989, yet the FIR was not lodged till 6:00 AM on 19.7.1989. Thirdly, although the FIR is said to have been lodged at 6:10 AM on 19.7.1989, it did not reach the Area Magistrate till 5:00 P.M. of 19.7.1989. Thus, there is almost a gap of eleven hours in the lodging of the FIR and the reaching of the said FIR to the Area Magistrate. This inordinate delay in sending the FIR has been used for concocting a false story, and for implicating innocent persons. Fourthly, no overt act has been assigned to the accused-appellants for having caused any specific injury to the deceased persons. Only vague statements have been given about their presence. Fifthly, the injured witnesses admit that the accused-appellants are strangers to them. Yet the accused-appellants have not been subjected to a Test Identification Parade. They were identified for the first time in the court, but such an identification, that too after a lapse of ten years, is meaningless. Moreover, Brijendra Singh (P.W.5), and Chandra Ram (P.W.10) wrongly identified the accused persons in the court. Therefore, the prosecution has not been able/to prove its case to the hit against the appellants.

13. On the other hand, Mr. V.R. Bajwa, the learned counsel for the complainant, and Mr. N.S. Dhakad, the learned Public Prosecutor, have argued that all the accused-appellants were named in the FIR; they were equally named by the injured witnesses in their testimonies. It was further submitted that upon information furnished by the accused, a lathi was recovered from Mansaram, and a lathi was equally recovered from Mamraj. Therefore, there is even

corroborative evidence of recovery for convicting Mansaram. Hence, the prosecution has succeeded in proving the case against the accused-appellants. Thus, the learned counsel for the complainant and for the State, have supported the impugned judgment.

14. In the case of Bijoy Singh and Another Vs. State of Bihar, , the Hon"ble Supreme Court has elaborately dealt with the effect of delay in sending the FIR to the Area Magistrate as under:

"7. Sending the copy of the special report to the Magistrate as required under Section 157 of the Criminal Procedure Code is the only external check on the working of the police agency, imposed by law which is required to be strictly followed. The delay in sending the copy of the FIR may by itself not render the whole of the case of the prosecution as doubtful but shall put the court on guard to find out as to whether the version as stated in the Court was the same version as earlier reported in the FIR or was the result of deliberations involving some other persons who were actually not involved in the commission of the crime. Immediate sending of the report mentioned in Section 157 Cr.P.C. is the mandate of law. Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if plausible and sufficient explanation is tendered, no adverse inference can be drawn against it." 15. A bare perusal of the record clearly reveals that only vague and general allegations have been made against the accused-appellants. Considering the fact that there is an inordinate and inexplicable delay in sending the FIR to the concerned Magistrate, a great possibility does exist that the accused-appellants were roped in falsely in the case. Considering the fact that on the basis of the same evidence the learned Trial Court has acquitted five persons out of nine, the possibility of over-implication cannot be ruled out in the present case.

16. As noticed above, the witnesses consistently admit that the accused appellants are strangers to them, yet they have not been subjected to any Test Identification Parade. While Vimla (P.W.7) does identify Birbal @ Vinod in the court, but the said identification is after a lapse of ten years. Meanwhile, Chandra Ram (P.W.10) misidentifies the accused persons. Thus, the identification of the accused by the witness is meaningless.

17. Om Prakash son of Bhanaram (P.W.8), and Om Prakash son of Laduram (P.W.9) clearly admit that the names of these appellants were not mentioned by them in their police statements, or even in the first trial. Thus, their mentioning the names in their examination-in-chief, for the first time in the present case, cast a great doubt about the veracity of their testimonies. Lastly, even the independent recovery witnesses, namely Ramdev (P.W.17) and Baluram

(P.W.18), have turned hostile and have not supported the case of prosecution. Therefore, the prosecution has singularly failed in proving its case against the accused-appellants.

18. As far as the acquittal of the accused appellants, namely Mamraj, Phool Singh @ Phoolaram, Mangilal, Tarachand and Murlidhar is concerned, the learned Judge has given cogent reasons for the same, namely that their names were never mentioned in the FIR, they were never subjected to an Test Identification Parade, they were merely identified for the first time in the court, that too, after a lapse of ten years. The said view is a possible interilretation of the evidence produced by the prosecution. Therefore, it calls for no interference by this court. To convict the accused-respondents on mere suspicion would tantamount to a moral conviction -- a conviction not warranted by criminal jurisprudence. Hence, this court does not find any reason for interfering with the judgment of acquittal passed by the learned Trial Court qua the accused-respondents.

19. Therefore, for the reasons stated above the Criminal Appeal filed by Mansaram and others, namely D.B. Criminal Appeal No. 714/1999 is accepted. Mansaram, Sukhdevram, Rameshwar and Mahendra are acquitted of the charges framed against them. The Criminal Appeal filed by the State of Rajasthan, namely D.B. Criminal Appeal No. 377/2000 is dismissed.

20. Keeping, however in view the provisions of Section 437-A of the Procedure, Code of Criminal Procedure, the appellants, namely Mansaram, Sukhdevram, Rameshwar and Mahendra, and respondents Mamraj, Phool Singh @ Phoolaram, Mangilal, Tarachand and Murlidhar are directed to forthwith furnish a personal bond in the sum of Rs. 20,000/- (Rupees Twenty Thousand only) each, and a surety bond in the like amount, before the trial Court. The bonds, so furnished shall be effected for a period of six-months. The bonds shall contain an undertaking that in the event of filing of Special Leave Petition against the judgment or on grant of leave, the appellants/respondents, on receipt of notice thereof, shall appear before the Hon''ble Apex Court.