
(2008) 04 RAJ CK 0015
In the Rajasthan High Court

Munshi and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 23-04-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 307

Citation : (2008) 4 RLW 3388

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—Convicted for offence u/s 307 Indian Penal Code (IPC for short) and sentenced to three years rigorous imprisonment and imposed with a fine of Rs. 500/- each and further directed to undergo an imprisonment of rigorous imprisonment for three months by the Sessions Judge, the appellants have challenged the judgment dated 9.1.86 before this Court.

2. The brief facts of the case are that on 16.6.82, one Umrao Singh, (PW. 1), submitted a written report (Ex. P. 1) to the SHO, Police Station, Bhusawar wherein he claimed that "on that very day in the evening around 8 O" clock when he returned from Bayana, he was told that Munshi S/o Prasadi and Munna S/o Babulal had picked up his mother, Smt. Rammo, and thrown her into a well. At that time his younger brother was not around. His younger brother ran to the village and told the villagers that Munshi and Munna have thrown his mother into the well. Upon his calling the villagers, Charan, Bhagi, Girdhari and others reached the well and pulled his mother out. Prabhu went to the village Nithar and called the "vaid" (a medical doctor in the Indian system of medicine) who administered some medicine to his mother. Subsequently, the villagers took his mother to the hospital at Bhusawar and admitted her there." On the basis of this report, a formal FIR, FIR No. 74/82 was chalked out for offence u/s 307 IPC. Subsequently, the police submitted the challan against the accused appellants. In order to support its case, the prosecution examined six witnesses and submitted

five documents. The defence also examined four witnesses and submitted few documents. After going through the oral and documentary evidence, the learned trial Court convicted the appellants as aforementioned. Hence, this appeal before this Court.

3. Mr. P.K. Sharma, the learned Counsel for the appellants has raised the following contentions before this Court : firstly, that the incident is said to have occurred on 15.6.82 at around 6.45 p.m., yet the written report was not submitted till 16.6.82 around 1.15 p.m. Thus, there is an inordinate delay of 17 hours. The delay has not been explained by the prosecution. Secondly, though the FIR was lodged after Smt. Rammo had regained consciousness and the said FIR was lodged at her instance, material facts are conspicuously missing in the FIR. Therefore, Smt. Rammo had exaggerated in her testimony. Hence, she is an unreliable witness. Thirdly, the prosecution has not produced independent witnesses despite the fact that the villagers had gathered at the well where allegedly Smt. Rammo was thrown by the appellants. Fourthly, that even material witnesses, such as Smt. Rammo's husband, Kamal Singh, has not been produced in the witness-box. Thus, the prosecution has withheld material witnesses. Fifthly, the interested witnesses such as, Rewati (PW. 5), who happens to be the son of Smt. Rammo, should not be believed. The prosecution has produced only two independent witnesses, namely, Prabhu (PW. 2) and Charan (PW. 3). Prabhu (PW. 2) happens to be a chance witness and Charan (PW. 3) clearly admits in his cross-examination that he did not see the appellants throwing Smt. Rammo into the well. Hence, Charan (PW. 3) is not an eye-witness. Thus, these two witnesses do not strengthen the prosecution case. Sixthly, Smt. Rammo had suffered only three injuries, two of them are bruises and one is merely a scratch. In case Smt. Rammo had fallen j into the well or was thrown into the well, she would have sustained grievous injuries I rather than simple ones. Therefore, the medical evidence contradicts the testimony of the witnesses. Seventhly, considering the nature of injuries, the case does not fall within the scope of Section 307 IPC. For, Smt. Rammo has suffered only three simple injuries that too on her hips. These injuries are insufficient to cause the death of Smt. Rammo in the ordinary cause of nature. Lastly, the learned trial Court has ignored the evidence of the defence witness. It has failed to appreciate the fact that the defence has probablised its case. According to the defence, a false and frivolous case was hoisted on the appellants because Smt. Rammo's husband had sold his land to the appellants and was paid Rs. 3,300/-, an amount the complainant did not wish to return back to the appellants.

4. On the other hand, the learned Public Prosecutor, Mr. Arun Sharma, has contended that delay in lodging of an FIR is not always fatal to the prosecution. In case the prosecution explains the reason for the delay, then the prosecution case is saved. Secondly, the testimony of interested witnesses cannot be thrown out only because they are related to the victim. Thirdly, the testimony of Smt. Rammo, the victim, has not been shaken in the cross-examination. Similarly, the testimony of Rewati (PW. 5) who is an eye-witness, has not been shaken in the

cross-examination. Therefore, both these witnesses are of sterling worth. Hence, the learned trial Court was justified in convicting the appellants on the basis of testimonies of these two witnesses. Fourthly, their testimony is corroborated by the medical evidence. Moreover, it is not necessary that merely because a person falls into the well or is thrown into the well, a certain type of injuries have to be sustained by the person. In fact, Dr. Virendra Singh (PW. 6) had clearly stated in his testimony that the injuries sustained by Smt. Rammo could be sustained by a person who falls into a well and the body hits against the wall of the well. Therefore, the medical evidence clearly corroborates the testimony of the witnesses. Fifthly, the nature of injury is not the determinative factor for deciding the commission of offence u/s 307 IPC. Lastly, the learned trial Court is justified in rejecting the evidence of the defence.

5. We have heard both the learned Counsel for the parties, have perused the impugned judgment and have examined the record.

6. It is not in disputed that Smt. Rammo was allegedly thrown into the well on 15.6.82 around 6.45 p.m. It is equally not in dispute that Umrao (PW. 1) lodged his report at P.S. Bhusawar on 16.6.82 around 1.15 p.m. Thus, clearly there is a delay of almost 17 hours between the occurrence and the lodging of the FIR. However, Umrao Singh (PW. 1) tells us that when he came in the evening from Bayana, he was told by the villagers that the appellants had thrown his mother into the well. When he went to his house, he found that his mother was being treated by the "vaid". The "vaid" also told him that "it is as much as he could do for his mother, but in the morning they should take her to the hospital." In the morning, she was taken to the Bhusawar Hospital. The injury report was drawn up at 11.00 a.m. on 16.6.82 and the FIR was lodged at 1.15 p.m. on 16.6.82. Thus, clearly the family was busy looking after the health and welfare of the mother. Therefore, the delay of 17 hours has been explained by the prosecution. Hence, the said delay is not fatal to the case of the prosecution. Therefore, the first contention raised by the learned Counsel for the appellants is without force.

7. According to the learned Counsel for the appellants, the FIR was lodged at the instance of Smt. Rammo, who had regained consciousness at the hospital. According to the learned Counsel Smt. Rammo had narrated the entire instance to her son Umrao (PW. 1) including the fact that her hand and feet were tied and her mouth was gagged by the appellants before she was thrown into the well. However, this fact is conspicuously missing from the FIR. Thus, omission of a material fact has been suppressed according to the learned Counsel for the appellants. However, this contention is also untenable. For, Umrao Singh (PW. 1), in his cross-examination, merely states that "when his mother regained conscious, she merely told him that the appellants had thrown her into the well." According to him, the mother did not tell him any of the great details about the occurrence. Therefore, just because the FIR does not mention the fact that Rammo's hand and feet were tied and her mouth was gagged and she was thrown into the well, it would not create a doubt about the veracity of Smt.

Rammo's testimony. Furthermore, neither the trial court, nor this Court can overlook the principle that an FIR is not meant to be encyclopedic in its scope. The purpose of FIR is to inform the police or the investigating agency about the occurrence of a cognizable offence. Therefore, the function of a FIR is merely to initiate the criminal machinery. It is neither the requirement of law, nor of prudence that FIR must contain minute details about the incident. What is important is that FIR must contain the essential features, the kernel of the prosecution story. Thus, merely because the victim being bound and gagged is not mentioned in the FIR, it would not dilute the importance of the FIR, or damage the case of the prosecution. Therefore, the second contention raised by the learned Counsel for the appellants is meritless.

8. In the present case the star witness, Smt. Rammo (PW. 4) narrates the entire incident in her testimony. In her examination-in-chief, she says that "three years ago in the evening she had gone to her field. Both the appellants had confronted her at the field and had demanded to know from her as to why she was opposing the Registry of the sale deed whereby her husband was selling her field to them. Both the persons tied her hands and her feet and gagged her. Therefore, she was unable to scream when she was being dragged to the well. While she was being dragged, the appellants told her that today, they will finish her off. Subsequently, they threw her into the well. Later on, she regained her consciousness at the Bhusawar Hospital. Her injuries were examined. She further tells us that a day before the incident, the appellants had asked her husband for Registry of the sale-deed, whereupon she alongwith her son Rewati and Umrao, and Charan and Kishan Lal Godara went to the Tehsil Office and prevented the sale-deed from being registered. According to her, it is because of this prevention that the appellants had thrown her into the well."

9. In her cross-examination, she further tells the Court that her son, Rewati, was looking after the cows in the fields. Since she was gaged, she could not scream. She denies some of the suggestions made by the defence, such as that she had jumped into the well of her own free will as she was tired of the drinking habits of her husband, or because of the constant fight with her husband. She has further denied the suggestion that she was hoisting a false case upon the appellants because she and her husband did not wish to return the money that they had received after selling their land. There is nothing to show in her cross-examination that her testimony has been demolished. Thus, there is no reason to doubt the veracity of her testimony.

10. Smt. Rammo's testimony is further corroborated by the testimony of Rewati (PW. 5). The learned Counsel for the appellants has attacked his testimony on the ground that although Rewati claimed to have seen his mother being thrown into the well, he did not rush to her rescue. According to the learned Counsel this is an unusual conduct for a son not to rescue his mother who is in danger. He has further argued that the witness is related to the victim. Being an interested witness his testimony should be discarded. But, both these arguments

are unacceptable. The behaviour or conduct of individual does not follow mathematical formula. Human nature, being unpredictable, cannot be straight-jacketed into stereo type classification. Although Rewati did not rush to rescue his mother, he did raise hue and cry, he did rush to the villagers and sought their help, he did bring them to the well and ensured that his mother is rescued from the well. Thus, the conduct is rather natural for a son. Therefore, his omission to rescue his mother at the time when she was being thrown into the well cannot dilute the truthfulness of his testimony.

11. In catena of cases the Hon''ble Supreme Court has clearly held that merely because the witnesses are related or are interested, their testimony cannot be thrown out by the trial Court on this ground alone. Thus, the testimony of Rewati (PW. 5) cannot be discarded on the ground that he is Smt. Rammo's son. The rule of prudence merely demands that the testimony of interested witnesses should be examined carefully and the court should look for corroboration from other evidence.

12. In the case of Salim Sahib v. State of M.P. (2007) 1 SCC 699, the Hon''ble Supreme Court observed as under:

When the plea of false implication by the witness has some basis court must adopt a careful approach and see that the testimony is cogent and credible.

The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible.

13. Similar views have been held in the case of Vithal v. State of Maharashtra (2008) 1 SCC (Cri) 54 , Kulesh Mondal Vs. The State of West Bengal, and in the case of Abdul Rashid Abdul Rahiman Patel and Others Vs. State of Maharashtra, Keeping this principle in mind Rewati's testimony cannot be ignored only because he happens to be related witness. A bare perusal of his cross-examination also reveals - that his testimony has not been shaken. Thus, there is no cogent reason for doubting the truthfulness of his testimony. Hence, sufficient evidence does exist for proving the commission of a crime by the appellants.

14. It is true that Prabhu (PW. 2) claims to be at the scene of the crime because he had gone to answer the call of nature. Thus, he is a chance witness. But the fact remains that he nowhere claims to be an eye-witness of the incident. He merely states in his testimony that after he had answered the call of nature, he had gone to the well to wash his hands. At the well, Rewati told him that the appellants had thrown his mother into the well. Once Smt. Rammo was pulled out of the well, Rewati asked him to go and fetch the "vaid" from the village. Similarly, Charan (PW. 3) in his cross-examination also admits that he did not

see the appellants actually throwing Smt. Rammo into the well. While answering the question posed by the Court, he clearly states that he saw both the appellants running away from the well, but he did not see them throwing Smt. Rammo into the well. Thus, he is not any eye-witness of the fact that the appellants had thrown Smt. Rammo into the well. He merely tells us that he saw the appellants running away from the well. The testimonies of the witnesses have to be read in conjunction. According to Smt. Rammo (PW. 4) she was bound and gagged and thrown into the well by the appellants. According to Rewati (PW. 5) he saw the appellants throwing his mother into the well. According to Charan (PW. 3), he saw the appellants running away from the well and lastly according to Prabhu (PW. 2), when he reached the well, the villagers, including the Charan and Rewati, were trying to pull Smt. Rammo out of the well. Hence, the entire sequence of the prosecution story stands proved beyond a reasonable doubt.

15. Since these witnesses were sufficient to prove the prosecution case, the prosecution was not required to produce the other witnesses. After all, it is the quality of the witnesses and not the quantity of the witnesses which is material in a trial. Therefore, the contention of the learned Counsel for the appellants that material witnesses were not produced by the prosecution is without force. For, the non-production of such witnesses has not weakened the prosecution case.

16. Considering the nature of injuries suffered by victim an issue has been raised whether the facts constitute the offence u/s 307 of 1PC or not. Section 307 IPC reads as follows:

307. Attempt to murder.-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts-When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

17. What is required for an offence u/s 307 is an Intent coupled with some overtact in execution thereof. It is not essential that the injury should be capable of causing death. Although the nature of injury caused may give considerable assistance in deducing the intention of the accused, but such intention can also be adduced from other circumstances, such intention can also be deduced without any reference to the actual wounds suffered by the victim.

18. There section certainly makes a distinction between the act of accused and its result. The Court is required to see whether the act irrespective of its result, was done with the intention or knowledge and in the circumstances mention in the section. It is not even important that the criminal act in order to be an attempt should be a pen ultimate act. It is sufficient in law if there is present an

intent coupled with some overtact act in execution thereof. [Ref. to Sarju Prasad Vs. State of Bihar, State of Maharashtra Vs. Balram Bama Patil and Others, , Girija Shankar Vs. State of U.P., Bappa v. State of Maharashtra (2004) 6 SCC 487 and Bipin Bihari v. State of M.P. (2006) 8 SCC 799.]

19. According to the evidence available in the present case both the appellants had tied and gagged Smt. Rammo and had thrown her into the well fully knowing the fact that a person thrown into the well would die. Therefore, their intention to kill the person is writ large in the case. Merely because she did not suffer any grievous injury would not take their act out of purview of Section 307 IPC. After all their intent is coupled with the overtact of throwing her into the well. Hence, the learned trial Court t was legally justified in convicting the appellants for offence u/s 307 IPC.

20. Undoubtedly, the testimony of the defence witnesses has to be given equal weightage as the testimony of prosecution witnesses. The testimony of the defence witnesses has to be scrutinised as carefully as the testimony of the prosecution witnesses. Of course, it is a settled principle of criminal law that the defence need not prove its case beyond reasonable doubt. The defence is merely required to probablise its case and to create doubt about veracity of the prosecution case. In the present case, the defence has produced four witnesses, namely Mangi (D.W. 1), Kaluwa (D.W. 2), Munshi Lal (D.W. 3) and Ramakant (D.W. 4). Through these witnesses, the defence has tried to create the impression that Smt. Rammo jumped into the well in order to commit suicide as she was tired of the consistent fights with her husband and was against the sale of land by her husband to the appellants. However, there are contradictions within the testimonies of the defence witnesses as to the reason why Smt. Rammo jumped into the well. According to Mangi (D.W. 1) Smt. Rammo told them that she jumped into the well because of the Fight with her husband. Yet, in his cross-examination he states that "Smt. Rammo merely plead that she should be taken out of the well and did not utter any other words." Therefore, this witness contradicts his own testimony as given in the examination-in- chief. According to Kaluwa (D.W. 2) Smt. Rammo told him that she jumped into the well because her husband drinks too much and because he is constantly assaulting her. However, according to Ramakant Sharma (D.W. 4), the "vaid" who treated her both at the well and at her house, "Smt. Rammo told him that she fell into the well because she fainted." Since there is a contradiction between the testimonies of the defence witnesses as to the reason why Smt. Rammo fell into the well or jumped into the well, their testimonies are untrustworthy. Hence, the learned trial Judge was certainly justified in rejecting their testimony.

21. The learned Counsel for the appellants has made much about the fact that the prosecution has nowhere revealed the factum of sale of land by Rammo's husband Kamal Singh to the appellants. According to the learned Counsel, Kamal Singh, had accepted Rs. 3,300/- from the appellants as consideration for sale of his land to them. But, Smt. Rammo and her family members neither wished to

part with the land, nor wished to return the money. Therefore, they filed a false case. According to the learned Counsel for non-returning of the money was the motive for creating a false case. Hence, according to the learned Counsel, animosity existed between the appellant and the complainant party.

22. However, the existence of an animosity is a double-edged sword. Since Smt. Rammo did not wish her husband to part with the land left for the family, it was sufficient reason for the appellants to get rid of her by throwing her into the well. Moreover, merely because the prosecution has not proved the motive, the prosecution case does not stand to loss anything in a case of direct evidence. After all, it is a settled principle of criminal jurisprudence that motive is irrelevant in a case of direct evidence. Lastly, it is rather unbelievable that a women would jump into the well, endangering her life, in order to save Rs. 3,300/- and in order to foist a false case upon the appellants. If, indeed, the appellants had to be roped into a frivolous case there were other ways and means to do so than for Smt. Rammo to jump into the well. Therefore he defence story is unacceptable.

The learned Counsel for the appellants has also argued that the Injury Report (Ex. P. 5) shows that Smt. Rammo had suffered only two bruises and one scratch. According to the learned Counsel, these are too minor injuries to be suffered by falling into a well. Therefore, he has hypothesised that in fact Smt. Rammo did not jump into the well, but descended into the well by holding on to the pipe which went inside the well. This argument is too weak to be able to stand on its leg. Firstly, according to Dr. Virendra Singh (PW. 6), the injuries on the body of Smt. Rammo could be caused by scrapping against the walls of a well. Secondly the nature of injuries sustainable by falling into a well are highly unpredictable. For, one neither knows the velocity, the direction, the speed, the force by which the body falls into the well. Therefore, merely because Smt. Rammo sustained two bruises on her body does not lead to the conclusion that she did not fall or was not thrown into the well. In the totality of the circumstances, admittedly, Smt. Rammo was pulled out from inside the well, thus, the factum that she was inside the well is undisputed. Even if it is held that she jumped into the well of her own free will, according to learned Counsel, she should have sustained more grievous injuries than she has. Therefore, the argument of the learned Counsel does not support his contention that Smt. Rammo was not thrown into the well by the appellants. As far as her descending into the well by holding the pipe is concerned, no such suggestion was made to the witnesses in their cross-examination. Therefore, this particular defence appears to be an afterthought and appears to be a defence created at the appellate stage. Hence, this hypothesis is outrightly rejected.

23. For these reasons this appeal has no force. It is, hereby, dismissed. Since the appellants Mukesh S/o Prasadi and Munna S/o Babu Lal are on bail, their bail-bonds are forfeited immediately and they shall be arrested and shall undergo the punishment as awarded by the trial Court vide judgment dated 9.1.86.