
(2008) 01 RAJ CK 0044
In the Rajasthan High Court

Pappi @ Mehboob and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2008) 2 RLW 1608

Hon'ble Judges : Shiv Kumar Sharma, J;Mahesh Chandra Sharma, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—Four appellants viz. Pappi @ Mehboob, Lalit Kumar Singh @ Gyani, Hemu @ Hemant and Laxman were the accused on the file of learned Additional Sessions Judge (Fast Track) No. 2 Kota. Learned Judge vide judgment dated September 4, 2002 convicted and sentenced them as under:

Under Section 302 IPC:

Each to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer rigorous imprisonment for two months.

Under Section 148 IPC:

Each to suffer rigorous imprisonment for three years.

Under Section 324/149 IPC:

Each to suffer rigorous imprisonment for one year.

Substantive sentences were ordered to run concurrently.

2. The prosecution case as unfolded during trial is as under:

On January 15, 1998 informant Yunus (PW. 6) submitted a written report (Ex. P. 9) at Police Station Railway Colony Kota to the effect that on the same day around 4 PM while the informant and Guddu @ Shahzad were returning from

Meenawala Baba's Dargah they were confronted near the crossing with Pappi @ Mehboob Mansoori, Laxman Mahawar, Idrish, Hemu Mehar, Gyani @ Lalit Kumar Singh and two others, who were equipped with swords. Pappi @ Mehboob inflicted blows with sword on the head, arms and legs of Guddu, as a result of which Guddu fell down. Thereafter Idrish gave sword blow on right hand of Guddu. Laxman Mahawar dealt a sword blow on right foot of Guddu. Hemu Mehar gave sword blow on left hand of Guddu and Gyani @ Lalit gave sword blow on back and buttocks of Guddu. When the informant tried to intervene Idrish caused injuries on his fingers with sword. The incident was witnessed by Rashid on that report a case under Sections 147,148,149 and 307 IPC was registered and investigation commenced. During the course of investigation injured Guddu succumbed to his injuries and Section 302 IPC was added. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 2 Kota. Charges under Sections 147,148,302 alternatively 302/149,307 alternatively 307/149, 323/149 and 324/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 20 witnesses. In the explanation u/s 313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Death of Guddu @ Shahzad was concededly homicidal in nature. As per Post Mortem report (Ex. P. 30) following ante mortem injuries were found on the dead body:

1. Incised wound 5 x 1 cm x bone deep on center of parietal scalp oblique.
2. Abrasion 8 x 4 cm on Lt. half of forehead.
3. Abrasion (4 in no.) 1 x 1cm each on front of forehead.
4. Abrasion 2 x 1/2 cm on nose Rt. side.
5. Abrasion 3 x 2 cm on Lt. cheek maxillary area
6. Incised wound 8 x 1/2 cm x skin deep Rt. arm upper 1/3 lateral side obliquely placed.
7. Incised wound 5 x 1/2 cm x skin deep transverse on Rt. arm middle 1/3 anteriorly.
8. Scratch 4 cm long on Rt. arm lat. side obliquely.
9. Incised wound 2 x 1/2 cm x skin deep Rt. arm lower 1/3 posteriorly transverse.
10. Incised wound 9 x 2 cm x bone deep on back of Rt. elbow verticle there is fracture of Rt. radius & ulna upper.

11. Scratch 6 cm oblique on lat. side of Rt. elbow.
12. Incised wound 6 x 1 cm x skin deep on lat. side of Rt. elbow transverse.
13. Scratch 5 cm transverse on back of Rt. forearm lower 1/3.
14. Incised wound 1 1/2 x 1/4 cm x skin deep on Rt. little finger at distal interphalangeal.
15. Incised wound 2 x 1/4 cm x muscle deep on Rt. palm vertical.
16. Incised wound 1 x 1/4 cm x skin deep on Rt. hand webspace of thumb & index finger.
17. Scratch 1/2 cm long on back of Rt. index finger.
18. Scratch 1/2 cm long on back of Rt. middle finger.
19. Scratch 1 cm transverse on Rt. side of chest.
20. Scratch 6 cm long vertical on Rt. Lat. side of chest.

In the opinion of Dr. Ashok Mundra (PW. 19), who performed autopsy on the dead body, the cause of death was shock as a result of multiple injuries and fractures.

4. We have given our thoughtful consideration to the submissions advanced before us and weighted the material on record.

The prosecution case rests on the ocular evidence of Yunus (PW. 6), Rafiq (PW. 5) and Rashid Khan (PW. 8), who have been relied upon by the trial Court for the purpose of recording finding of guilt against the appellants.

Informant Yunus (PW. 6) in his deposition stated that on January 15, 1998 around 3-4 PM while he along with Guddu were returning from Mazar after performing Jiyarat, Pappi, Idrish, Laxman, Hemu, Gyani, Sabir and Shamsu came running and Pappi inflicted blow with sword on the person of Guddu, Idrish gave sword blow on the right hand of Guddu, Shamsu gave blow on the shoulder of Guddu as a result of which Guddu fell down and Laxman, Hemu, Gyani and Sabir started inflicting blow with sword. Idrish gave blow with sword on the fingers of his (Yunus) left hand. Rashid then took him on cycle to the police station where he lodged report Ex. P. 9. The injuries sustained by him were examined vide Medical Injury Report Ex. P. 11.

5. According to Ex. P. 11, Yunus sustained incised wound over palmer aspect and left middle finger.

Rashid (PW. 9) deposed that while he came from Mazar he saw Guddu lying down and Pappi, Idrish, Gyani, Hemu, Laxman and other two persons were inflicting blows with sword on Guddu. Yunus also sustained injuries on his hand. He then took Yunus to the police station on cycle. In his cross examination he stated that:

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Rafiq (PW.5) named only Pappi and Sabir. According to him Sabir caught hold of Guddu and Pappi and others were inflicting sword blows.

6. Learned Counsel for the appellants assailed the testimony of Yunus, Rashid and Rafiq on the ground that they were chance witnesses and since they had interest in the success of prosecution case, their testimony could not be relied upon. Before we analyse the evidence of these witness, it will be convenient to advert to the case law relating to chance and interested witnesses.

7. It is well settled that even the testimony of chance witness may be acted upon. In AIR 1941 11 (Privy Council) it was held that though the chance witness is not necessarily a false witness, is proverbially rash to act upon such evidence. In the case of a chance witness, if that witness gives sufficient reasons for v his presence, that evidence can be accepted.

8. Even truthful version of occurrence given by kith and kin of the deceased may be relied upon as was held in Krishna Ram and others Vs. State of Rajasthan, by the Hon"ble Supreme Court: (Para 4)

We have gone through the evidence of the eye witnesses. No doubt PWs 1, 2, 3 and 6 are kith and kin of the deceased but they have given a truthful version of the whole occurrence. Even Ex. P-I all the material particulars are mentioned particularly the fact that the deceased was dragged to the house of A-1 and that there he was tied and beaten. As noted already even A-1 admitted that the deceased was tied in his house but added that because of the scuffle between PW.6 and the deceased, latter was tied. Immediately after registering the crime, the SHO went to the house of A-1 and found the deceased tied and he was having bleeding injuries. Thus the time, place of occurrence and the cause of death are established beyond doubt. So far as the presence and participation of the appellants are concerned there are statements of the eye-witnesses consistently to this effect. Both the Courts below have given cogent and convincing reasons for accepting the evidence of the eye witnesses. The evidence adduced in defence is not at all material and the Courts below have rightly rejected the same. The trial court acquitted Keshra Ram A-6 giving the benefit of doubt. In our view the same in any manner does not affect the evidence of eye witnesses who are the most natural witnesses. We see absolutely no merits in these appeals. The appeals are dismissed accordingly.

9. In Ram Lakhan and others Vs. State of U.P., held that the evidence of close relatives of deceased is not liable to be rejected on ground of interested witnesses. What is necessary is that Court should scrutinize evidence of such witness carefully.

10. In Baitullah and another Vs. State of U.P., Hon"ble Supreme Court held that evidence of interested witness cannot be discarded merely on ground that he is interested. It is normally expected that witness would not leave out real culprits

and rope in innocent persons.

11. In *Tapubha Bhagvanji and Others Vs. State of Gujarat*, the Apex Court held as under: (Para 12)

The witnesses examined on behalf of the prosecution are witnesses who in normal course of event are expected to know about the incident. Their deposition do not reveal any good reason for rejecting their evidence as untrustworthy or unreliable. Nothing has been brought on record either in cross examination of the witnesses concerned or in any other evidence to show any good reason as to why they should falsely implicate the accused in the case. Thus rejection of their testimony on ground that they are interested witnesses being in relation of deceased, not proper.

12. In *Angnoo and Others Vs. State of Uttar Pradesh*, the Apex Court held that the fact of relationship would add to value of his evidence because he would be interested in getting the real culprit, rather than innocent persons, punished.

13. In *Bolineedi Venkataramaiah and Others Vs. State of Andhra Pradesh*, the Apex bitter enmity between prosecution party and accused party, group of persons chased deceased and inflicted injuries. The presence of witnesses at place of occurrence was not found doubtful. It was held that being interested witnesses their evidence was subjected to greater. Scrutiny. Specific overt acts attributed to accused. Corroboration of overt acts by medical and circumstantial evidence was found. Only those accused to whom specific overt acts had been attributed consistently by all witnesses were convicted. The plea that some of the accused were acquitted, the same evidence cannot be accepted against other accused, was not found tenable.

14. In *Suraj Pal Vs. State of U.P.*, the Apex Court found that the medical evidence fully establish the injury to eye witnesses, eye witnesses gave consistent version and it was held that their evidence cannot be discarded on ground that they were interested witnesses or that co-accused was acquitted on self-same evidence or that there were minor variations.

15. In *Ram Gopal v. State of Rajasthan* RLW 1999(1) SC 58 where the venue of the incident and time was such that no independent witness could be expected to be present the evidence of related witnesses was considered. The fact of absence of details of occurrence in FIR, which are consistent with the detailed narration of the eye witnesses in the evidence, was considered and held that the FIR cannot be rejected.

16. In *Kartik Malhar Vs. State of Bihar*, the Apex Court held that "we may also observe that the ground that the witness being a close relative and consequently being partisan witness should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and Others Vs. State of Punjab*, in which this Court expressed its surprise over the impression which prevailed in the minds of the members of the bar that relatives were not

independent witness Speaking through Vivian Bose, J., the Court observed para 25 of AIR 1953 SC:

We are unable to agree with the learned Judges of the High Court that the testimony of the two eye witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the facts of seven men hangs on their testimony, we know of no such rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur.

17. In Thangaiya Vs. State of Tamil Nadu, the Apex Court indicated as under:

In a murder trial by describing the independent witnesses as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere chance witnesses." The expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence. In instant case, the plea of the accused that PW 3 was "chance witness" who has not explained how he happened to be at the alleged place of occurrence, it has to be noted that the said witness was an independent witness. There was not even a suggestion to the witness that he had any animosity towards the accused. Therefore, there is no substance in the plea that evidence of independent witness which is clear and cogent is to be discarded.

18. Coming to the factual scenario emerged in the instant case we find that informant Yunus is an injured eye witness and his presence at the time of incident is quite natural. He assigned specific role to appellant Pappi and Idrish. According to his testimony at the trial Pappi gave sword blow on the person of Guddu and Idrish gave sword blow on his right hand. He also stated that Shamsu gave blow on the shoulder of Guddu and after Guddu fell down Laxman, Hemu, Gyanl and Sabir inflicted blows with sword.

19. It appears from the material on record that charge sheet was not filed against Shamsu and Idrish was absconded during trial. Learned trial Court acquitted Sabir on the ground that he was not named in the FIR.

Having analysed the evidence of Yunus, Rashid and Rafiq with particular reference to its trustworthiness and truthfulness by a process of judicial scrutiny, we find that case of appellants Gyani, Hemu and Laxman is not distinguishable with that of the case of Shamsu and Sabir. All these accused persons have been assigned identical role by injured eye witness Yunus. Since Shamsu was not charge sheeted and Sabir got acquitted and no appeal was Tiled by the State

against him, appellants Gyani, Hemu and Laxman, in our opinion, are entitled to benefit of doubt. We do not want to express any opinion in regard to accused Idrish since he is not before us.

20. As a result of the above discussion, we dispose of the instant appellants in the following terms:

Appeal of Pappi @ Mehboob stands dismissed and his conviction and sentence u/s 302 IPC are maintained. He however stands acquitted of the charges under Sections 148 and 324/149 IPC.

Appeals of Gyani @ Lalit Kumar Singh, Hemu @ Hemant and Laxman are allowed and they stand acquitted of the charges under Sections 302, 148 and 324/149 IPC. These appellants are in jail, they shall be set at liberty forthwith, if they are not required to be detained in any other case.

Impugned Judgment of learned Trial Court stands modified as indicated above.