

(2015) 05 RAJ CK 0063
In the Rajasthan High Court
Case No : Criminal Appeal No. 1142 of 2007

Pappu and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 304, 34

Citation : (2015) 05 RAJ CK 0063

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J; Nisha Gupta, J

Bench : Division Bench

Advocate : Prahlad Sharma and K.S. Rajawat, for the Appellant; Aladeen Khan, Public Prosecutor, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Kanwaljit Singh Ahluwalia, J.—Three brothers namely Pappu, Ramveer and Mukhtyar Singh @ Ravindra all sons of Chhiddi Ram were sent for trial for having caused murder of their nephew Satish Chand son of the complainant Ram Kishan (P.W.1). Case of the prosecution is that on 8.2.2006, in the morning at 9.30/10.00 AM, appellant Mukhtyar Singh @ Ravindra had caused an injury with Sickle on the neck of Satish Chand. Ramveer also caused injury at the same place where Mukhtyar Singh @ Ravindra had caused injury.

2. The Court of Additional Sessions Judge (Fast Track) No. 2, Bharatpur vide impugned judgment dated 28.2.2007 held the appellant Mukhtyar Singh @ Ravindra substantively guilty of offence under Section 302 IPC whereas two other appellants Pappu and Ramveer were convicted with the aid of Section 34 IPC. The trial court vide a separate order of even date, sentenced the appellants as under:-

Accused, Mukhtyar Singh @ Ravindra

"U/s. 302 IPC: Life imprisonment, to pay a fine of Rs. 1000/- and in default

thereof to undergo six months simple imprisonment."

Accused, Pappu and Ramveer

"U/s. 302/34 IPC: Life imprisonment, to pay a fine of Rs. 1000/- and in default thereof to undergo six months simple imprisonment."

3. In the present case, appellant Mukhtyar Singh @ Ravindra had also received serious injuries and the complainant party was also tried as accused in cross case.

4. Shri Prahlad Sharma learned counsel for the appellants submits that the prosecution has suppressed the origin and genesis of the occurrence by not explaining injuries on the person of Mukhtyar Singh @ Ravindra and further, the appellants have acted in exercise of complete right of self defence of their person. We have been called upon to examine the above argument in the instant appeal preferred by the appellants to assail their conviction and sentence.

5. Ram Kishan (P.W.1) presented a written report (Ex.P.2) before Chug Singh (P.W.18) who was then posted as SHO, P.S. Nadbai, District Bharatpur. Ram Kishan (P.W.1) in written report (Ex.P.2) stated that on 8.2.2006 at about 9.00-10.00 AM his son Satish Chand was sitting in his "Bada". Then suddenly with a common intention, Ravindra @ Mukhtyar, Pappu, Ramveer armed with a Sickle and Bankh (Sickle fitted on a long stick) came with an intention to commit murder of Satish by keeping old grudge in mind. Ravindra @ Mukhtyar gave a blow with Sickle on the neck of his son Satish. Ramveer caused another blow at the same place. Pappu had taken his son in grip. Pappu was armed with a Bankh. The witness stated that he alongwith Gopal, Mahesh etc. rescued his son. Meanwhile, many people of village also gathered there. They brought Satish in an injured condition to Dhehra Police Chowki. The police personnel referred Satish in a Jeep to Government Hospital at Bharatpur. In the hospital, Satish died.

6. On the basis of above written report (Ex.P.2), a formal FIR (Ex.P.3) bearing FIR No. 55/06 was registered at Police Station Nadbai, District Bharatpur. The report of investigation alongwith accused was committed to the Court of Sessions and as stated by us earlier, the trial was entrusted to the Court of Additional Sessions Judge (Fast Track) No. 2, Bharatpur.

7. First we shall take notice of medical evidence. Dr. Amar Singh (P.W.15) on 8.2.2006 at 1.30 PM had conducted autopsy on the dead body of Satish son of Ram Kishan. As per post-mortem report (Ex.P.33), he had found following two injuries on the person of Satish:-

"1. Stab wound of size $4\frac{1}{2}$ x $1\frac{1}{2}$ x soft tissue with fresh clotted blood on left supra clavicular fossa with cut wounds, left clavicular muscles. External jugular vein, external carotid and internal carotid and internal jugular vein with clotted blood in huge amount.

2. Abrasion on dorsum of right thumb and dorsum of right index $1\frac{1}{2}$ cm x $1\frac{1}{2}$

cm each."

8. Injury No. 1 was caused with sharp edged weapon and injury No. 2 was caused with blunt weapon.

9. As per the doctor, cause of death was hemorrhagic shock brought about as a result of ante-mortem cut wound in left supra clavicular region. The injuries were ante-mortem in nature.

10. In cross-examination, Dr. Amar Singh (P.W.15) stated that injury No. 2 on the right thumb and finger can be result of fall.

11. To appreciate the case of the accused also, it will be pertinent to mention testimony of Dr. Mukesh Gupta (D.W.1). This witness in the court stated that as per injury report (Ex.D.10) on 8.2.2006 he had examined Mukhtyar Singh @ Ravindra who was admitted in Male Surgical Ward in RBM Hospital, Bharatpur and was patient of Bed No. 14. Dr. Mukesh Gupta (D.W.1) as per injury report (Ex.D.10) had found following injuries on the person of Mukhtyar Singh @ Ravindra:-

"1. Stab wound with surgical emphysema, 3 1/2 x 1 1/2 cm x chest cavity deep,

2. Diffused swelling 8 cm x 4 cm on right foot dorsal aspect.

3. Lacerated wound 4 x 1/2 cm on right side parietal bone of the skull.

4. Abrasion 2 x 1 cm on the left eyebrow laterally.

5. Incised wound on right hand in four fingers, and thumb (a) 2 x 1/2 cm x muscle deep, at little finger proximal pharynx joint palmer aspect (b) 2 x 1/2 cm x muscle deep at ring finger at proximal, (c) 2 x 1/2 cm x muscle deep at middle finger distal to PI joint, (4) 2 x 1/2 x 1 cm x muscle deep at middle finger joint proximally, (5) 2 x 1/2 x 1 cm x muscle deep at distal inter pharynx finger, palmer aspect."

12. Injuries No. 1, 2, 3 and 5 were caused with sharp edged weapon and injury No. 4 was caused with blunt weapon. Doctor further stated that the accused present in person is the same person to whom he had medico-legally examined.

13. Ram Kishan (P.W.1) stated that they are nine brothers. Three accused person in court are his brothers. All the brothers had about 100 Bigha of shamlati land. Accused were having grudge with other brothers of the family due to dispute over the land. They are engaged in litigation. Furthermore, the accused had not accepted the marriage of his son Satish as accused were having grievance that the complainant Ram Kishan (P.W.1) without marrying accused, had performed marriage of his son Satish. In the court Ram Kishan (P.W.1) reiterated as to what he had stated in the written report (Ex.P.2). He stated that on 8.2.2006 all the three accused had come to his Bada. Blow was given by Ravindra with Sickle on the neck of Satish. Ramveer had also given a blow at the same place. Pappu also gave a blow on the back. The occurrence was witnessed by Ram Gopal (P.W.3),

Maresh (P.W.14), Rambabu (P.W.6), Dropati (P.W.13) etc. The witness was cross-examined. He admitted that in his statement recorded by the police he had not specified the weapon with each accused. Suffice it to say that in his testimony, Ram Kishan (P.W.1) has not stated anything regarding the injuries suffered by Mukhtyar Singh @ Ravindra.

14. Ram Gopal (P.W.3) is another brother. He has also corroborated the testimony of Ram Kishan (P.W.1). In his cross-examination he stated that out of nine brothers, five brothers are married and four brothers are unmarried which include three appellants and another brother named Bachhu Singh.

15. Rambabu (P.W.6) is another brother. He has also supported his two brothers Ram Kishan (P.W.1) and Ram Gopal (P.W.3).

16. Bachhu (P.W.9) is another brother. He has also deposed regarding the sequence of the occurrence as to what has been stated by his brothers.

17. Dropati (P.W.13) stated that she had gone to the tubewell to fetch water. The tubewell was at a short distance. When accused encircled Satish and he raised noise, she came towards Satish. She also reiterated the same sequence as stated by other witnesses.

18. Mukesh (P.W.14) is brother of deceased Satish. He has also narrated the occurrence as has been told by other witnesses.

19. Suffice it to say that no witness had mentioned anything regarding the injuries suffered by accused Mukhtyar Singh @ Ravindra.

20. Chug Singh (P.W.18), Investigating Officer, in court admitted that regarding injuries suffered by Mukhtyar Singh @ Ravindra at the hands of the accused he had registered a cross case. In cross-examination Chug Singh (P.W.18) stated as under:-

21. Chug Singh (P.W.18) has also proved various facets of investigation. In order to avoid burdening the judgment with the details, which are not germane to the controversy raised i.e. non-explanation of the injuries on the person of accused Mukhtyar Singh @ Ravindra and whether he is entitled to grant the right of self defence, we shall proceed further by noting that prosecution in all have examined eighteen witnesses and have proved on record thirty-eight documents being Exhibit-P.1 to P.38.

22. Appellant Mukhtyar Singh @ Ravindra in his statement under Section 313 Cr.P.C. has pleaded right of self defence. The accused stated that he along with accused Pappu and Ramveer were staying in one house. On that day, wood of Peepal tree stored by him, went missing. He made a complaint to Ram Kishan regarding theft upon which Satish, Mukesh, Ram Kishan, Ram Gopal etc. armed with sharp edged weapons came in the courtyard of his house and caused him injuries. In the process to save himself, injury was also caused to Satish. He was got admitted in the hospital.

23. As stated earlier, accused Mukhtyar Singh @ Ravindra was examined by Dr. Mukesh Gupta (D.W.1) in defence and also proved on record fifteen documents, Ex.D.1 to Ex.D.15. Exhibits-D.1 to D.7 are the statements of eye-witnesses recorded under Section 161 Cr.P.C. Exhibit-D.8 is the copy of the FIR of the cross case. Exhibit-D.9 is certified copy of the charge-sheet of the cross case. Exhibit-D.10 is the certified copy of injury report of Mukhtyar Singh @ Ravindra. Exhibit-D.11 is certified copy of site plan relied in the cross case. Exhibit-D.12 is a letter written from the SHO, P.S. Nadbai to Medical Officer, CHC, Nadbai for examination of accused Pappu and Ramveer. Exhibit-D.14 is the statement made by Mukhtyar Singh @ Ravindra to the police on the basis of which cross FIR has been registered. Exhibit-D.15 is the certified copy of the chargesheet submitted by the investigating agency in the cross case.

24. We have heard Shri Prahlad Singh learned counsel for the appellants and Shri Aladeen Khan learned Public Prosecutor duly assisted by Shri Rinesh Gupta learned counsel for the appellant.

25. It is not denied that at the same time, on the same day Mukhtyar Singh @ Ravindra had also suffered injuries. On the same day he was admitted in Male Surgical Ward at RBM Hospital, Bharatpur. He had suffered five injuries. Injury No. 1 was on chest having surgical emphysema, thus damage was caused to the chest cavity. Injury No. 2 was on the head and injury No. 3 was on left eye. The complainant party and the eye-witnesses namely Ram Kishan (P.W.1), Ram Gopal (P.W.3), Ram Babu (P.W.6), Bachhu (P.W.9), Dropati (P.W.13) and Mukesh (P.W.14) have given no explanation regarding the injuries suffered by accused Mukhtyar Singh @ Ravindra. We find merit in the contention raised by Shri Prahlad Sharma that the prosecution has suppressed the origin and genesis of the occurrence.

26. The Hon'ble Apex Court in the case of Lakshmi Singh and Others Vs. State of Bihar, AIR 1976 SC 2263 : (1976) CriLJ 1736 : (1976) 4 SCC 394 : (1976) SCC(Cri) 671 , has held as under:-

"This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probabilise the plea taken by the appellants. The High Court in the pre-sent case has not correctly applied the principles laid down by this Court in the decision referred to above. In some of the recent cases, the same principle was laid down. In Puran Singh v. The State of Punjab Criminal Appeal No. 266 of 1971 decided on April 25, 1975: which was also a murder case, this Court, while following an earlier case, observed as follows:

In State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975:) one of us (Untwalia, J., speaking for the Court, observed as follows:

In a situation like this when the prosecution fails to explain the injuries on the

person of an accused, depending on the facts of each case, any of the three results may follow:

- (1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.
- (2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.
- (3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case.

It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

- (1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:
- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
- (3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

27. We also cannot become oblivious of the fact that on the same night accused Mukhtyar Singh @ Ravindra had given his version and got cross FIR (Ex.D.8) registered against the complainant party. Mukhtyar Singh @ Ravindra was admitted in the hospital and his statement (Ex.D.14) was recorded by the Investigating Officer in Male Surgical Ward on 9.2.2006 at 11.15 AM. In the cross version leading to registration of FIR (Ex.D.8), the accused Mukhtyar Singh @ Ravindra has clearly stated that in order to save himself, he had caused an injury with a Sickle on the person of deceased Satish. We also cannot ignore the fact that in the post-mortem report, there is only one fatal injury caused on the neck of deceased which is attributed to Mukhtyar Singh @ Ravindra and injury No. 2 is on right hand fingers and thumb which, according to Dr. Amar Singh (P.W.15) can be suffered due to fall.

28. Investigating Officer has also admitted that Police Station, Nadbai and the

court of Magistrate at Nadbai adjoin each-other. The witness further admitted that gate of the court from the gate of police station is at a distance of 60 ft. The investigating officer further admitted that he had sent the special report on 10.2.2006 as 9.2.2006 was a holiday. Special report can also be sent to the house of the Magistrate. From 8.2.2006 at 7.15 PM when the case was registered, the special report was sent only on 10.2.2006. Thus, it is apparent that the delay has been used to implicate two other brothers Pappu and Ramveer.

29. It is a consistent case of the prosecution witnesses that Ramveer also had given a blow which landed on the same place where accused Mukhtyar Singh @ Ravindra caused injury to the deceased. Thus, one injury has been attributed to two brothers. Mukhtyar Singh @ Ravindra had admitted causing injury No. 1 to deceased Satish. Thus, it is apparent that Ramveer is a victim of over implication due to the delay in reaching the special report.

30. The witnesses have also stated that Pappu had taken Satish into his grips from back side. Injury has been caused on the neck of Satish with full force. It is difficult that somebody who had taken deceased into his grip will not suffer any injury especially when injury has been caused on neck. To us, the story of Pappu having taken deceased into his grip is also concocted to inflate the number of accused. Thus, we shall extend the benefit of doubt to accused Ramveer and Pappu. As has been mentioned by us earlier, only one injury on the neck has been noted in the post-mortem report (Ex.P.33) and another injury is on the thumb and finger of right hand which, as stated by Dr. Amar Singh (P.W.15), can be result of fall, also.

31. Consequently, the conviction and sentence awarded upon the appellants Pappu and Ramveer by the trial court is set aside. They are acquitted of the charges framed against them.

32. Having acquitted accused Ramveer and Pappu by extending benefit of doubt, now we shall take case of Mukhtyar Singh @ Ravindra.

33. As stated earlier, accused Mukhtyar Singh @ Ravindra received serious injuries on his person. The said injuries have not been explained by the prosecution. Mukhtyar Singh @ Ravindra has lodged a cross version. Prosecution has also suppressed the origin and genesis of the occurrence. But we find that there was no justified reason for the accused Mukhtyar Singh @ Ravindra to cause injury on the neck which is a vital part of the body. Thus, we are of the view that Mukhtyar Singh @ Ravindra has exceeded right of self defence and his case would fall under Section 304 Pt.I IPC.

34. Consequently, we convert the conviction of the accused Mukhtyar Singh @ Ravindra from offence under Section 302 IPC to Section 304 Pt.I IPC. Resultantly, we set aside the life imprisonment awarded upon accused-appellant Mukhtyar Singh @ Ravindra and sentence him to ten years rigorous imprisonment and further order him to pay a fine of Rs. 10,000/-, in default thereof he shall undergo one year rigorous imprisonment.

35. With the above modification in conviction and sentence, the appeal stands disposed of.