
(2010) 02 RAJ CK 0025
In the Rajasthan High Court

Pappu @ Patwari and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 302, 304, 307, 326, 34

Citation : (2010) 02 RAJ CK 0025

Hon'ble Judges : Govind Mathur, J;C.M. Totla, J

Bench : Division Bench

Judgement

1. To question validity of the judgment dated 7.7.2003, passed by learned Additional Sessions Judge (Fast Track), Hanumangarh in Sessions Case No. 131/2002, this appeal is preferred.

2. By the judgment impugned, learned Additional Sessions Judge convicted the accused appellants for the offence punishable u/s 302 read with Section 34 IPC and sentenced for life term with fine of Rs. 1000/- each and further to go one month's simple imprisonment in even of default in depositing the fine. Learned Additional Sessions Judge also convicted the accused appellants for the offence punishable u/s 449 IPC and sentenced to undergo life imprisonment with fine of Rs. 1000/- each and in default to further undergo one month's simple imprisonment.

3. As per the record available, the prosecution case is that one Shri Kewal Singh son of Shri Mahendra Singh lodged a first information report at Police Station Peelibanga at 3:00 PM on 31.7.2002 with assertion that on 30.7.2002 at 7:00 PM accused Chhinda @ Gandhi and his brother Shambhu Bajigar came to his house armed with lathis and assaulted Harbans Singh, uncle of the complainant. The first lathi blow was given by Shambhu and on his falling down Gandhi too gave a lathi blow at his head and the back. At the time of incident complainant Kewal Singh, his father and his mother were also said to be present at the spot. As per the first information report, injured Harbans Singh was taken to hospital at

Peelibanga and then he was referred for treatment to Hanumangarh hospital. Looking to his serious condition he was then taken to Bikaner hospital. A case accordingly was lodged under Sections 452 and 307/34 IPC. On death of Harbans Singh in the evening of 31.7.2002, allegation of commission of offences under Sections 449 and 302 IPC was also added and after usual investigation a charge sheet as per provisions of Section 173 Cr.P.C. was submitted before the competent court against the accused appellants. The case then was committed to the Sessions court and during the course of trial statements of 14 witnesses were recorded to support the prosecution case and for the same purpose 31 articles were exhibited. The accused appellants were put forth for examination as per provisions of Section 313 Cr.P.C. and they also defended themselves by producing DW-1 Swaroop Singh and DW-2 Meeto in witness box. In defence, nine articles were exhibited. Learned trial court, after considering the evidence available on record, convicted the accused appellants and sentenced them in the terms referred in preceding paras.

4. While assailing validity of the conviction recorded, the arguments advanced by learned Counsel for the appellants are that:

(1) the first information report (Ex.P/11) refers involvement of only two persons viz. Shambhu and Gandhi with the incident, but Pappu @ Patwari was included as an after thought at a belated stage and this factum makes the entire prosecution case unconvincing;

(2) the occurrence of the alleged incident took place on 30.7.2002 at 7:00 PM whereas the first information report was lodged on 31.7.2002 and that too at 7:00 PM, i.e. after a lapse of 24 hours, but by making certain interpolation, the time of lodging the first information report was changed from 7:00 PM;

(3) the first information report sent to the Magistrate on 1.8.2002 at 2:40 PM though the police station is just at the distance of one kilometer from the place of occurrence and this delay is absolutely unexplained;

(4) immediately after occurrence of the incident police reached at the hospital but did not try to record statements of PW-11 Kewal Singh or any other witness though even injured Harbans Singh at first instance was examined by PW-2 Dr. Hariom Bansal;

(5) there was no repetition of blows by any of the accused and, therefore, charge against them in no case travels beyond Section 326 IPC;

(6) the lathis recovered on basis of disclosure made by the accused appellants were not having any blood stains and as per site plan Ex.P/12 and Ex.P/12-A no blood was found at the place of incident, thus, as a matter of fact the prosecution case is quite doubtful; and

(7) no effort was made by any of the person said to be present at the time of occurrence to rescue the deceased from the assailants.

5. Before proceeding further, it shall be appropriate to refer Ex.P/21 Postmortem report, according to which the injuries received on the person of deceased Harbans Singh are as follows:

1. Two bruises 10 cms x 3 cms on left shoulder and adjacent back of chest, obliquely placed bruises are 1 cm apart;

2. Bruise 9 cms x 3 cms on left side of chest upper and middle 1/3, posterolaterally, obliquely placed;

3. Irregular bruise with abrasion 8 cms x 3 cms on right shoulder and adjacent back of chest, posteriorly, obliquely placed;

4. Bruise 6 cms x 5 cms on back of neck across midline in lower 1/3 with illdefined swelling on all over back of neck nearby transversely placed; and

5. Bruise 6 cms x 5 cms on left side of neck and mastoid process, obliquely placed with illdefined swelling.

6. The cause of death as opined is "coma due to head injury and cervical vertebrae injury, antemortem and self-sufficient to cause death in ordinary course of nature".

7. From perusal of the injuries referred above, it is apparent that there was no bleeding as a consequent to assault but blood was clotted at left temporal muscle.

8. Heard learned Counsel for the appellants and the learned Public Prosecutor.

9. The first contention advanced by counsel for the appellants is that the first information report (Ex.P/11) refers involvement of only two persons viz. Shambhu and Gandhi, but Pappu @ Patwari was included as an after thought at a belated stage, thus, the entire incident appears to be concocted.

10. It is pertinent to note that the incident occurred on 30.7.2002 at 7:00 PM and even as per prosecution the first information report was lodged at 3:00 PM on 31.7.2002 i.e. after a lapse of about 20 hours. While lodging first information report informant Kewal (PW-5) specifically mentioned that Gandhi @ Chhinda and Shambhu are his neighbours and they assaulted his uncle Harbans Singh. In the first information report there is no reference of accused appellant Pappu @ Patwari. It is the position admitted that all the three accused persons are real brothers being sons of Shri Pyarelal Bajigar. Accused Pappu was introduced with the incident at first instance during the course of investigation at the instance of Smt. Anguri wife of Kundanlal Dhanak who on 31.7.2002 stated that Harbans told her that Gandhi, Shambhu and Patwari gave him lathi blows. Interesting enough to note that Smt. Anguri was not produced by the prosecution as witness before the court.

11. PW-5 Kewal Singh tried to explain non inclusion of Pappu @ Patwari in the first information report by saying that while lodging FIR he was facing troubles, therefore, name of Patwari was not referred. A bare reading of the document

Ex.P/11 shows that quite definite information with definite allegations was given by the informant. The FIR, that was lodged at least after 20 hours of the alleged incident nowhere refers any kind of trouble faced. Beside that, PW-6 Shambho stated that her son was busy with his usual business on 31.7.2002, morning. A man who was participating in his usual activities is normally supposed to be vigilant and conscious while giving facts in an FIR. From perusal of statements of PW-5 it appears that on 30.7.2002 he accompanied Mahendra Singh, Chhinda, Kala and his father to get deceased Harbans treated. From Peelibanga hospital Harbans was referred to Hanumangarh hospital but PW-5 Kewal returned to his home and in transit he also went to police station. On 30.7.2002 he did not choose to lodge an FIR relating to the incident. No satisfactory explanation is given by him in his statements in this regard too.

12. PW-6 Shambho Bai, though in examination in chief, stated that a lathi blow was given by Patwari @ Pappu also alongwith Shambhu and Gandhi, but while accepting the position that her son Kewal (nick name Jumma) accompanied her in carrying Harbans to Peelibanga hospital failed to give any satisfactory explanation for not lodging FIR on the same day and also not giving reference of Patwari in first information report. It is also relevant to note that after the incident dated 30.7.2002 her son Kewal was busy with his usual business activities on 31.7.2002 i.e. of purchasing newspapers and iron etc. It is also important to note that PW-5 Kewal and PW-6 Shambho Bai nowhere mention presence of Patwari @ Pappu with the incident of hot talks between the accused appellants and Harbans, whereas PW-7 Satpal refers presence of Patwari even in hot talks that took place about two hours earlier to the incident of assault as a consequent to which Harbans died. As stated earlier, all the three accused persons are real brothers and they are neighbours of deceased family including the informant PW-5 Kewal. Kewal in very unambiguous terms accepted that he was knowing Patwari @ Pappu quite well, as such his exclusion from involvement in the incident at first instance is quite strange. From appreciation of evidence available on record, the presence of accused Patwari at the time of occurrence is highly doubtful. As such, there is a reasonable possibility that his name would have been introduced as an after thought. The prosecution, therefore, failed to establish involvement of Patwari @ Pappu with the incident beyond shadow of doubt. Accused Patwari @ Pappu, therefore, is certainly entitled to receive benefit of doubt.

13. The another limb of argument advanced by counsel for the appellants is that the FIR was lodged after an inordinate delay and that creates doubts about truth of the prosecution story. True it is, the first information report as per prosecution was lodged after a lapse of about 20 hours, but looking to the circumstances available, that cannot be said fatal. The incident in question occurred at about 7:00 PM and immediately thereafter Harbans was taken to Peelibanga hospital. From Peelibanga hospital he was referred for treatment to Hanumangarh hospital and then looking to his serious condition he was taken to Bikaner hospital. The family persons of Harbans, who ultimately died on 31.7.2002 were obviously

busy in getting him treated. Beside that, the Station House Officer, Peelibanga PW-14 Sunil Charan himself visited Peelibanga hospital; and only on his requisition medical examination of Harbans was made. The family members of Harbans, therefore, may be under impression that the police is knowing about the incident, did not choose to lodge formal FIR immediately. This may also be a reason for not lodging FIR by Kewal on 30.7.2002 itself, though he went to police station on the same day while in transit from Peelibanga hospital to his residence. No benefit, therefore, can be given to the accused appellants due to alleged delay in submitting the FIR.

14. The next argument advanced by counsel for the accused appellants is that the lathis recovered on basis of disclosure made by the accused appellants were not having any blood stains and the site plan Ex.P/12 and its report Ex.P/12-A also nowhere refer availability of blood at the place of incident, thus, even the occurrence of incident as alleged is highly doubtful. The argument advanced as a matter of fact is absolutely ill-founded. From perusal of details of injuries, it is clear that the person of deceased Harbans was not having any injury that would have resulted in blood flowing. Certain bruises and abrasions may not be sufficient for blood stains and also for availability of blood at the place of incidence. In view of whatever said above, this contention of counsel for the appellants is also having no merit.

15. The another argument advanced by counsel for the appellants is that there was no repetition of blows by any of the accused and, therefore, the charge against them in no case travels beyond Section 326 IPC.

16. We have examined the entire evidence available on record. As per all the eye witnesses lathi blows were given by accused appellants Gandhi and Shambhu. PW-5 Kewal who lodged the FIR mentioned that Shambhu gave a lathi blow on the head of Harbans and a lathi blow was given by Gandhi @ Chhinda. He nowhere mentions about subsequent or continuous giving of lathi blows by them. True it is, he also mentions giving lathi blows by Patwari @ Pappu on legs and back of Harbans, however, his presence at the incident itself has already been held by us as doubtful.

17. PW-6 Shambhu Bai also mentions that the accused persons gave lathi blows at various places of the body of Harbans, but she also nowhere states that the accused persons were having any intention to kill Harbans.

18. Similarly, PW-7 Satpal mentions that Shambhu gave a lathi blow on the head of Harbans and then Gandhi and Patwari too gave certain lathi blows. He also nowhere mentions that the accused persons were intending to kill Harbans. All the three eye witnesses referred above also state that on hearing hue and cry made by them, certain people came for rescue of Harbans and the accused persons immediately thereon ran away from the spot.

19. The other witness PW-8 Chhinda Bai (referred as eye witness) who is wife of deceased Harbans, mentions that her husband immediately after incident told

her that Gandhi, Shambhu and Patwari gave lathi blows to her husband. As a matter of fact Chhindo is not an eye witness as his presence at the spot is not at all shown. She in her statements also stated that she came to know about the incident on receiving information through her son. During cross examination she failed to give any satisfactory explanation regarding non-reference of utterance said to be made by her husband during investigation.

20. PW-9 Vakil is a minor son of deceased and he stated that accused persons gave lathi blows to his father, however, he also nowhere stated that these persons were intending to kill his father.

21. As per medial evidence, the injuries received were sufficient to cause death, but there is nothing to show that the accused persons were having any intention to kill Harbans. The intention of the accused appellants at the most could have been of causing bodily injury to Harbans which ultimately resulted into his death. The case of the accused appellants, therefore, does not travel beyond the offence punishable u/s 304 part-I IPC.

22. For the reason that the offence u/s 302 IPC is not made out against the accused appellants, no offence as punishable u/s 449 IPC too is sustainable against them.

23. In result of the discussions made above, this appeal deserves to be accepted in part.

24. So far as accused Pappu @ Patwari is concerned, he is acquitted from the charges punishable u/s 302/34 and 449 IPC. As such, his conviction recorded and sentence ordered are hereby quashed. His sentence was suspended by this Court under an order dated 19.9.2003. The personal bonds and solvent sureties furnished for getting sentence of accused Pappu @ Patwari suspended under the order dated 19.9.2003 passed by this Court stands discharged.

25. The conviction of accused Shambhu and Gandhi @ Chhinda, both sons of Pyarelal Bajigar, under Sections 302/34 and 449 IPC is quashed. The sentence awarded under the order impugned also stands quashed. However, they are found guilty for commission of an offence punishable u/s 304 part-I IPC and as such conviction for the offence referred above is recorded against them. So far as sentence part is concerned, both the accused persons are undergoing sentence i.e. of imprisonment since July, 2002, as such they have already completed a term of imprisonment for a period of seven years and eight months. We consider it appropriate to meet the ends of justice to impose the sentence of imprisonment which is already undergone by them with a fine of Rs. 1000/- each. In event of default in depositing the fine, both the accused appellants shall be liable to further undergo one month's simple imprisonment. Accused Shambhu and Gandhi @ Chhinda are required to be released forthwith, if not required in any other case.