
(2007) 09 RAJ CK 0060
In the Rajasthan High Court

Pawan Kumar and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120, 120B, 302, 34, 364

Citation : (2008) CriLJ 634

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Guman Singh, J.—Challenge in these three appeals is to the judgment dated January 15, 2003 of the learned Additional Sessions Judge (Fast Track) Sikar, whereby Pawan Kumar, Mukesh Kumar and Yogesh Kumar, appellants herein, were convicted and sentenced as under:

Under Section 302/34, I.P.C.

to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer additional simple imprisonment for three months.

2. Briefly stated the prosecution case is that Gulabnabi resident of Ramgarh Shekhawati handed over a written report to the SHO, Ramgarh at 4.00 a.m. on March 17, 2001 on the spot situated nearby Railway level crossing of Kayamsar. In the report, it was averred that his nephew Mohammad Ameer was engaged in plying his Jeep RJV 8944 as taxi. On 16-3-2001 at about 8/8.30 p.m. while Mohammad Ameer was standing with his vehicle at bus stand Ramgarh Shekhawati, three persons, namely; Pawan Kumar, Mukesh Kumar and Yogesh (appellants) hired the vehicle and in his presence as well as that of Rafiq Qureshi and Mohammad Ismail, the three persons proceeded for their destination. Informant then went to his house. At about 2/2.30 a.m. in the night, one constable came to call him at police station and told that dead body of Ameer

Khan was found lying near Kayamsar Railway level crossing. So, he along with Mohammad Akram with other, went to the level crossing and there Mohammad Ali Khan of village Kayamsar informed that at about 10/10.30 at night they heard cry near level crossing and on rushing along with other villagers, they saw three persons inflicting knife and "Khukhri" injuries to a boy and on seeing them, all the three persons ran away In a jeep towards village Lavanda. After going a little ahead, the jeep struck in sand (Kaccha). Then they ran on foot and on being chased, they were caught with the help of villagers and on being asked their names were stated to be Pawan, Mukesh and Yogesh resident of Ramgarh. So, they were asked to sit in the village. It was also reported that they had committed murder of Mohammad Ameer in conspiracy with Vishwa Soni, Raju Soni, Jagdish, Madan Sharma. The above report was sent to the Police Station Ramgarh Shethan where a case for the offence under Sections 302/34 and 120, I.P.C. was registered and the investigation commenced. During the investigation, the autopsy on the dead body was conducted and necessary memos were drawn. Accused persons were arrested and recoveries were effected. After collecting necessary evidence, the case was challenged. In due course, the case came up for trial before the Additional Sessions Judge (Fast Track) Sikar, for trial. Charges under Sections 364/34, 302/34, 394/34 and 120B, I.P.C. were framed. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 16 witnesses in support of its case. In their explanation u/s 313, Cr.P.C., the appellants stated that they were innocent and had nothing to do in the incident. However, they examined one witness in defence. On hearing final arguments, learned trial Judge convicted and sentenced the appellants as indicated hereinabove.

3. The death of deceased Mohammad Ameer was indisputably homicidal in nature. As per the post-mortem report of deceased, the following ante mortem injuries were found on his body:

Chest:

1. Stab wound 6 c.m. x 3.5 c.m. x 8 c.m. into left lung, site 4th to 5th intercostal space cutting through ribs, piercing through pleura and left lung. Dissection -- oblique below upwards caused by sharp object.
2. Stab wound 12 c.m. x 4 c.m. x entering downwards into abdominal cavity, cutting through Right 10th rib posteriorly, direction above downwards and oblique caused by sharp object.
3. Incised wound 7 x 1.5 x skin deep at left infra scapular region--caused by sharp object.
4. Incised wound 2 x 1 c.m. x skin deep at left infra scapular region -- caused by sharp object.
5. Incised wound 5x1 c.m. x skin deep at left scapular region - caused by sharp object.

Pleural cavity filled with blood. Pleura torn on left side corresponding to stab wounds Nos. 1 and 2.

Pleura torn on right side corresponding to stab wound No. 2.

6. Incised wound 3 c.m. x 1 c.m. x 1 c.m. at left supra clavicular region--caused by sharp weapon. Direction oblique above downwards.

7. Incised wound 7.5 c.m. x 3 c.m. x 4 c.m. at left side of the neck upper 1/3rd caused by sharp object - direction oblique above downwards.

Abdomen:

1. Stab wound 3 cm. x 1 c.m. x into abdominal cavity. At right Hypochondrium. Direction - oblique, below upwards.

2. Stab wound 12 c.m. x 6 c.m. x into abdominal cavity, intestine coming out of the wound, fecal matter also coming out of punctured lungs, intestine, side left lumbar region, posteriorly direction below upwards.

Arms, Bones and Joints:

1. Incised wound 7 cm. x 3 x through and through the arm - Middle 1/3rd of left upper arm euleranee laterally 7 c.m. x 3 cm. : exit medially 3 c.m. x 2 c.m., ellipitical in shape direction above downwards medially, caused by sharp object.

2. Incised wound 3.5 c.m. x 1.5 c.m. x Bone deep at right hand dorsal aspect. Direction vertical caused by sharp weapon.

3. Incised wound 3 c.m. x 2 c.m. x bone deep at right hand palmer aspect at base of thumb, direction boluque elliptical in shape--caused by sharp object.

Cause of death as per autopsy report was haemorrhage shock which occurred as a result of injuries caused over the body of the deceased. All the injuries were ante mortem in nature.

4. We have given our anxious consideration to the submissions advanced before us and carefully scrutinised the record.

5. On reappraisal of the evidence adduced in the matter, it is revealed that deceased Mohammad Ameer aged 19 years, was resident of Ramgarh Sethan. According to the testimony of Ali Mohammad (PW 7) who is uncle of the deceased and informant in the case, the deceased was engaged in plying his personal Jeep RJV 8944 as taxi. On the fateful day, i.e. on 16-3-2001 in the evening at about 7.30 p.m., he was seen standing at the New Bus Stand, Ramgarh Station and the three accused Pawan, Yogesh and Mukesh came to him and hired his jeep for going to Kayamsar-Fatehpur and proceeded from there. This part of sequence of incident was witnessed by Gulamnabi (PW 7) as well as Ismail (PW 10) and Rafiq (PW 9) who had also come there and these witnesses have corroborated this fact in their depositions. The fact that all these witnesses and the three appellants belonged to the same village (Ramgarh She than), and

that the mention of this part of the story in the first information report (Ex. P 2) lends further credence to this part of the incident.

6. The next part of the sequence of the incident is revealed from the testimony of Mohammad Ali Khan (PW 11) resident of village Kayamsar. According to his testimony, he was at his residence in the village at about 8.15-8.30 p.m., he heard cries and he along with his sister's son Rehman (PW 14) rushed towards the Railway level crossing Kayamsar. Other villagers had also reached to the place and they saw three persons armed with knife, "Khukhri" and "Daw", assailing one boy in the field. They could not go near to them as they had no weapon and the three assailants had threatened them to kill. Then all the three assailants went towards village Lavanda by the Jeep which they had kept standing on the road. By then 100-125 persons of the village gathered there. The person assailed was seen lying in a pool of blood and on recognising, he was found to be Ameer S/o. Shri Liyakat Kasai, resident of Ramgarh. Then Hari Ram, Sarpanch of the village Lanvanda was informed on telephone that three persons who had committed murder were coming in that direction and they be intercepted. Then, Hari Ram (PW 12), Sarpanch of village Lavanda, along 5-6 others went to chase the three accused in Armada vehicle belonged to Daulat Khan of village Lavanda. The three accused were found at a distance of 1 ? km. who were brought in the Jeep to Kayamsar. Then, SHO, Police Station Ramgarh was informed and he came with the police party and went to the dead body along with the accused. This witness narrated the whole incident to Gulamnabi (PW 7) who had come to the spot along with a constable and others and started weeping, thereafter the report was lodged to the police by him. Rehman (PW 14), sister's son of Mohammad Ali (PW 11) who rushed to the place of occurrence along with Mohammad Ali (PW 11), has also corroborated the testimony of Mohammad Ali Khan (PW 11). The learned trial Court has discussed the evidence of Mohammad Ali Khan in detail and has observed that the house of Mohammad Ali Khan (PW 17) was not very close to the place of incident as the same was situated in the village. So, the distance of his house being 1 km., he could not have reached so early that he could see the three assailants inflicting injuries to the deceased but the learned trial Court has placed reliance on the rest of the testimony of the witness. The learned trial Court has also not found the presence of Rehman (PW 14) established at the place of incident on the ground that this was not mentioned in the First Information Report (Ex. P. 2) as well as on the ground that his police statement (Ex. P 9) was recorded after 1? month of the incident i.e. on 29-4-2001. We do not find any infirmity in the view taken by the learned trial Court in this regard for the reasons assigned by the learned trial Court. However, we concur with the finding of the learned trial Court that the sequence of this event of the incident is so interconnected that the testimony of Mohammad Ali (PW 11) is found to be a sufficient link as to what next happened. The testimony of Mohammad Ali (PW 11) is further corroborated by Gulamnabi (PW 7) who reached to the place of occurrence where his nephew Mohammad Ameer was found lying dead and he was then narrated this part of

the incident that Mohd. Ali Khan heard the cries and rushed to the place of occurrence and saw the three assailants who after inflicting injuries to the deceased, were seen going by Jeep towards village Lavanda.

7. The final part of the sequence of incident is revealed from the testimony of Hari Prasad Sarpanch (PW 12), Gram Panchayat Kayamsar resident of village Lavanda. According to his testimony, at about 9.00 p.m. on the night of the incident while he was at his house at village Lavanda, somebody informed him on telephone from village Kayamsar that three persons who had killed one boy near Railway level crossing Kayamsar were leading towards village Lavanda. On this, he came out of the house and enquired from the children playing outside about the three strangers. They informed him that about 10 minutes before, they had seen three persons going on Basau-Dhaka way. He asked them to chase them as they were fleeing after killing one boy. He also asked Daulat Khan to come with his vehicle Armada. Daulat Khan sent his driver Liyakat Khan with the vehicle. Then they chased them in the vehicle and approached them after going 1? km. and brought them to Kayamsar in the vehicle. On being asked, three appellants stated their names Mukesh, Pawan and Yogesh, residence of Ramgarh Shethan. Then the appellants were taken to Kayamsar where 500-700 persons had gathered and there he came to know that Ameer S/o. Liyakat Ali was killed by the appellants near the Railway level crossing. By then, it was 10 p.m. in the night and the police had arrived, who took the three accused persons with them. The testimony of this witness has been corroborated by Liyakat Ali (PW 15) who was driver of the vehicle Armada which was used to nab the appellants. The fact of arrival of police party on receipt of telephonic information about the murder and that the three accused were apprehended by villagers, has been further corroborated by Ex. P6 A police daily diary report to this effect.

8. The whole sequence of the incident stands further corroborated from the fact that it finds mention in the First Information Report (Ex. P2) lodged that night at about 4.00 a.m. by Gulamnabi (PW 7) and on that basis the case was registered by the SHO, Police Station Ramgarh who prepared certain memos and thereafter handed over the investigation to the Dy. S.P. Tribhuwan Singh (PW 13). It has been argued on behalf of the appellants that the case against the appellants is concocted one in view of the fact that the first information report was registered after considerable delay and the arrest of the appellants was shown on 17-3-2001 at 11.30 a.m. while they were allegedly handed over to the police at about 10-11 p.m. on intervening night of 16 and 17 of March, 2001. On perusal of the testimony of Ahmed Khan (PW 2), SHO Ramgarh it is revealed that when he reached to the place of occurrence there was a crowd of about 1500-2000 persons and he had to control the crowd and the report Ex. P 2 was presented at 4.00 p.m. (dated 17-3-2001) and then the same was sent for registering a case. It has been further explained that at 12.00 p.m. on that night, he had taken the accused persons to Kotwali Fatehpur in view of the situation prevailed on the spot though he had denied any apprehension of the crowd attacking the police station Ramgarh. It has also been revealed that he received the formal FIR after

registration at 6.00 a.m. and the investigation was ordered to be handed over to the Dy. S.P. Fatehpur thereafter. In view of the above fact situation emerged on the spot, we find that the arrest of the three accused in the case on following morning at 11.45 a.m. is not fatal so as to brand the whole of the prosecution story as concocted one.

9. Tribhuwan Singh Dy. S.P. (PW 13) in his deposition stated that on the night of the incident he reached to the place of occurrence at about 5.00 a.m. in the morning and investigation file was handed over to him. He prepared site inspection map and other memos, he also recovered the jeep RJV 8944 at a distance of 1 km. from the place of occurrence which was struck in "Kachha". He also found one "Chappal" lying in the jeep which was stained with blood. This witness also corroborated the fact of arrest of the accused persons and consequent recovery of the weapons from them made on 22-3-2001 from the field at a distance of 1? k.m. from village Lavanda at the instance of accused Mukesh alias Suresh, Pawan Kumar and Yogesh alias Kalu vide recovery memo Ex. P. 20, Ex. P. 22 and Ex. P. 24, respectively. The fact of recovery of weapons at the instance of accused has been corroborated by attesting witnesses Nabbu Khan (PW 8) and Nabab Khan (PW 5). The weapons recovered were found stained with human blood vide FSL report Ex. P. 37. The shirt seized from the bag recovered at the instance of accused Yogesh vide recovery memo Ex. P. 24 was found stained with the same group of human blood which was found on the clothes seized from the dead body of the deceased Mohd. Ameer. In this regard, it has been argued on behalf of the appellants that the recovery has been effected after five days from the date of arrest and also from open field and as such the same is not worth credence. In this regard, it has been revealed that the recoveries have been effected about 1? k.m. ahead of village "Lavanda", the direction in which the accused persons were chased and caught and the fact of recovery has been sufficiently corroborated by Nabbu Khan (PW 8) and Nabab Khan (PW 5) the two "Motbir" witnesses and thus discovery of fact on the basis of disclosure statement made by the accused lends further corroboration to the sequence of incident discussed hereinabove.

10. The accused persons have not made any explanation with regard to the evidence adduced by the prosecution in their statement u/s 313, Cr. P.C. The only defence witness Smt. Ratni (DW 1), the wife of Pawan Kumar appellant has deposed that on the night of the incident, the police had come to her house and knocked the door and arrested her husband at Ramgarh Shekhawati but Pawan Kumar himself in his statement u/s 313, Cr. P.C. has not stated that he was arrested from his house nor any other accused has stated that they were not nabbed as alleged after committing the offence and that they were arrested from some other place.

The incident had occurred in the manner as alleged by the prosecution and the appellants had hired the jeep RJV 8944 at Ramagarh for going Kayamsar-Fatehpur and on way the vehicle was stopped near the railway level crossing and

the driver of the vehicle, Ameer was taken to the nearby field and there he was killed by causing injuries with sharp edged weapons like knife etc. and then the accused persons proceeded towards Lavanda in the jeep but the jeep stuck in Kachha after going at a distance of 1 k.m. and from there they tried to flee on foot and went towards village Lavanda and they were chased and were caught and brought back to Kayamsar where they were handed over to the police. This shows that the sequence of the incident is so closely knitted that there remains no gap from beginning to end until the accused persons were nabbed after crime.

11. On analysing the evidence adduced at the trial by the yardstick of probabilities and its intrinsic worth, we find that the prosecution is able to establish beyond reasonable doubt that appellants Pawan Kumar, Yogesh and Mukesh Kumar are guilty for committing murder of deceased Mohammad Ameer. Therefore, the conviction of appellants, recorded by the trial Court is liable to be confirmed for the offence u/s 302/34, I.P.C.

12. For the reasons the appeal preferred by the appellants Pawan Kumar, Mukesh Kumar and Yogesh being devoid of merit stands dismissed. Their conviction and sentence u/s 302/34, I.P.C. are maintained.