

(2006) 08 RAJ CK 0071
In the Rajasthan High Court

Raju @ Rajesh @ Tinku

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 300, 302

Citation : (2006) 4 RLW 3295

Hon'ble Judges : Shiv Kumar Sharma, J; Chatra Ram Jat, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—One would have thought Surely nothing ought To be more difficult Than death itself But now a days Death itself Has become so easy.

Raju @ Rajesh @ Tinku, who easily took life of Tajpal by striking knife blow on his abdomen, was put to trial along with Shankar Lal and Roshan before the learned Additional Sessions Judge (Fast Track) Jaipur District Jaipur. Learned Judge vide judgment dated March 23, 2002 convicted and sentenced them as under:

Raju @ Rajesh @ Tinku: u/s 302 IPC:

To suffer imprisonment for life and fine of Rs. 500/-, in default to further suffer simple imprisonment for two months.

Under Section 342/34 IPC:

To suffer rigorous imprisonment for three months.

Roshan Lal and Shankar Lal:

Under Section 302/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 500/-, in default to further suffer simple imprisonment for two months.

Under Section 342 IPC:

Each to suffer rigorous imprisonment for three months.

The substantive sentences were ordered to run concurrently.

Challenge in the instant appeals is to be said judgment of the learned trial Judge.

2. The prosecution story is as under:

On April 8, 2000 informant Jagdish Prasad (PW. 9) submitted a written report (Ex. P. 7) at Police Station Chomu stating therein that on the said day he along with Tejpal (now deceased) Ram Singh, Shankar, Gopal and Bhagwan Sahai had travelled in Bus No. 1075 from village Tibawala to Chomu. When Bus reached Shyam Colony Chomu, Shankar and Roshan Balai dragged down Tejpal of the Bus and Raju Kashmiri (appellant) who was already standing there, struck knife blow on the abdomen of Tejpal who was removed to SMS Hospital Jaipur. On that report a case was registered under Sections 147, 148, 149, 341 and 307 IPC and investigation commenced. Necessary memos were drawn and statements of witnesses were recorded. After Tejpal succumbed to injuries Section 302 IPC was added. Dead body was subjected to autopsy. The appellants were arrested. At the instance of appellant Raju, recovery of knife allegedly used in commission of offence got effected. 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) Jaipur District Jaipur. Charges under Sections 342, 342/34, 302 and 302/34 IPC were framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 24 witnesses. In the explanation u/s 313 CrPC, the appellants claimed innocence. Four witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Having analysed the material on record we find that the death of Tejpal was homicidal in nature. As per post mortem report (Ex. P. 18) following ante mortem injuries were found on the death body:

1. Stitched wound 26cm long present over anterior abdomen in midline to (L) side extending from above umbilicus to below umbilicus. On further examination stitching of abdominal wall Msad positionius (done surgically) seen (1) stitched wound 3 cm long seen at the Masalty base obliquely placed. (2) Stitched wound on (1) renal vein. (3) Stitched wound 2 cm long at the sick wall of transfus colon.

In the opinion of Doctor Rajesh Verma (PW. 21) the cause of death was shock as a result of injuries.

4. The prosecution case is founded on the testimony of Shankar Lal (PW. 4), Lal Chand (PW. 5), Ram Singh (PW. 8), Jagdish (PW. 9), Bhagwan Sahai (PW. 12) and Laxman (PW. 14), who were examined as eye witnesses of the occurrence. Informant Jagdish (PW. 9) in his deposition stated that on April 7, 2000 he was going in bus from his village to Chomu along with Tejpal, Ram Singh, Nand

Kishore, Bhagwan Sahai, Gopal and Shankar and others. All of them were sitting on the roof of Bus. When bus got halted at the turn of Shyam Colony Chomu, Roshan and Nand Kishore picked up quarrel. Roshan and Shankar threatened Nand Kishore and Tejpal protested. On the next day while all of them were in bus which got halted near Shyam Colony, Shankar and Roshan dragged Tejpal down of the bus, Raju Kashmiri, who was standing on the road, inflicted blow with knife on the abdomen of Tejpal. Tejpal was removed to Hospital where he died. In the cross examination Jagdish stated that he was sitting inside the bus whereas Tejpal, Roshan and Shankar were on the roof of bus and he did not see whether Tejpal was dragged or not. He did not know Raju Kashmiri by name but he could recognise his face. Shanker Lal (PW. 4) stated that he was sitting on the back seat of bus and he had seen Tejpal after he got down of the bus. He did not see the occurrence. Lal Chand (PW. 5) and Prabhu Dayal (PW. 6) did not support the prosecution story. Statement of Jagdish (PW. 9) gets corroboration from the testimony of Ram Singh (PW. 8), who deposed that a day prior to the incident Roshan and Tejpal had altercations and Roshan threatened Tejpal. On the date of incident while he was sitting on the roof of Bus, he saw Shankar and Roshan making attempt to drag Tejpal. They abused Tejpal and got him down of the bus. They caught hold of Tejpal and Raju struck knife on the abdomen of Tejpal. In the cross examination he however stated that he did not see the occurrence. He admitted that Tejpal was his cousin brother. He also stated that he did not see the occurrence. He admitted that Tejpal was his cousin brother. He also stated that he did not see the occurrence.

Bhagwan Sahai (PW. 12) corroborated the version narrated by Jagdish and Ram Singh but he disowned major portion of his police statement (Ex. D-4). Laxman (PW. 14), who was Conductor of the Bus, deposed that he did not see Raju inflicting blow with knife but he had only seen him running with knife. Yad Ram (PW. 23) was posted as ASI on the date of incident. He got the knife recovered at the instance of appellant Raju vide Ex. P. 12.

5. It is canvassed by learned Counsel for the appellants that the prosecution has failed to establish beyond reasonable doubt that appellants Roshan and Shanker shared common intention to kill Tejpal. There is nothing on record to show that they had prior knowledge of this fact that at Shyam Colony Chomu, Raju was standing with open knife. In order to consider the submission we have scanned the material on record and we find that Raju, Shanker and Roshan did not share common intention to kill Tejpal. Ordinarily, intention is a matter within the personal knowledge of the person whose Intention is in question but according to the principles governing criminal trials, the burden of proving in the sense of establishing a case is always on the prosecution. Intention like any other fact may be proved either by direct or by circumstantial evidence. The evidence led by the prosecution in the instant case falls short in establishing charge u/s 34 IPC against appellants Roshan and Shanker. It is proved by examining Jagdish, Ram Singh and Bhagwan Sahai that Tejpal; Roshan and Shanker were sitting on the roof of Bus but it could not be established that they had any knowledge that

Raju was standing at the turn of Shyam Colony Chomu with open knife. From the facts and circumstances of this case, we cannot draw irresistible inference that Shanker, Roshan and Raju actuated by the common intention to cause the death of Tejpal. The evidence of prosecution witnesses that Roshan and Shanker caught hold of hands of Tejpal does not inspire confidence. On examining the statements of Jagdish, Ram Singh and Bhagwan Sahai from the point of view of trustworthiness we find them reliable qua the allegations against appellant Raju only.

6. It is next contended by learned Counsel that since single knife blow on the abdomen of the deceased has been attributed to appellant Raju, his case did not travel beyond Section 304 Part I in view of Exception 4 to Section 300 IPC. For considering this contention if we look the post mortem report of Tejpal, we notice that 26 cm long stitched wound was present over anterior abdomen. The cause of death was shock brought as a result of ante mortem Injuries sufficient to cause death in ordinary course of nature. According to Dr. Rajesh Kumar Verma (PW. 21) the three injuries sustained by Tejpal could be caused by one blow. A look at recovery memo of knife (Ex. P. 12) reveals that blade of knife was 15 cm in length and sharp from both the sides. Considering the deadly nature of the weapon the vital part of the body where the injury was inflicted, the ferocity with which the blow was death, the nature of Injuries, as also the fact that appellant Raju deliberately armed himself with the weapon, we are of the view that the appellant Raju Intended to kill Tejpal and in pursuance to the intention inflicted three injuries with one blow. The solitariness of (he blow does not in any way militates against the gravity of the crime. The blow was not given by appellant Raju as a result of provocation, in the heat of passion upon a sudden quarrel and Exception 4 to Section 300 IPC is not attracted. Injuries caused with knife by the appellant Raju over the abdomen of Tejpal in the instant case are covered by Clause I of Section 300 IPC and he has rightly been held guilty u/s 302 by the learned trial Judge.

7. For the reasons afore-mentioned, we dispose of the instant appeals in the following terms:

(i) We dismiss the appeal of appellants Raju @ Rajesh @ Tinku and maintain his conviction and sentence u/s 302 IPC. We however acquit him of the charge u/s 342/34 IPC.

(ii) We allow the appeal of appellants Roshan Lal and Shankar Lal and acquit them of the charges under Sections 302/34 and 342 IPC. The appellants Roshan Lal and Shankar Lal are on bail. They need not surrender and their bail bonds stand discharged.

(iii) The impugned judgment of learned trial Court stands modified as indicated herein above.