
(1990) 04 RAJ CK 0017
In the Rajasthan High Court
Case No : Criminal Appeal No. 73 of 1985

Sadda Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 23-04-1990

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 449

Citation : (1990) 2 WLN 49

Hon'ble Judges : R.S. Verma, J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Kanta Bhatnagar, J.—This appeal is directed against the judgment dated March 15/16, 1985 by which appellants Sadda Singh, Sagad Singh, Makhan Singh, Gural Singh and Malkiyat Singh were held guilty for forming an unlawful assembly and committing the murder of Jeet Singh. They were all sentenced to one year's rigorous imprisonment and a fine of Rs. 100/- in default to undergo 15 days simple imprisonment each u/s 147 IPC; five years rigorous imprisonment and a fine of Rs. 100/-, in default to undergo 15 day's simple imprisonment each u/s 449, IPC and imprisonment for life and a fine of Rs. 500/-, in default to undergo two months simple imprisonment each u/s 302 read with Section 149 IPC Appellant Malkiyat Singh was also convicted u/s 148 IPC and Section 27 of the Arms Act and was sentence to one year's rigorous imprisonment on the first count and one year's rigorous imprisonment and a fine of Rs. 200/-, in default to one month's simple imprisonment on the second court. All the substantive sentences were ordered to run concurrently.

2. Briefly stated, the prosecution story is that on 15-12 83 Bachan Singh P.W. 1 ledged an cial report at 9 a.m. before ASI, Ramjilal P.W. 9 at Police Station, Anoopgarh to the effect that in the previous evening at about 7.30 p.m., when he

and Jagtar Singh (PW 2) were sitting at the house of the latter, they heard report of gun shot from the house of Makhhan Singh and heard Makhhan Singh hurling abuses. He and Jagtar Singh came out of the house and stood at a little distance from the house of Makhhan Singh. Then Makhhan Singh, Maikiyat Singh, Sagad Singh, Sadda Singh and Gurpal Singh, resident of 9 LSM went to the house of Jeet Singh hurling abuses to him. They fired gun twice or thrice. Then Makhhan Singh ascended the Kotha of Jeet Singh and started breaking the roof with Kassi and cried that Jeet Singh may be burn while inside. Gurpal Singh asked Makhhan Singh to come down as the doors had been broken Then they heard report of two or three gun fires and one or two ahricksof Jeet Singh. Thereafter all the assailants came out and challenged that Jeet Singh and been done away with and if any body desires of meeting that fate, may go there. The report reduced into writing is Ex. P. 1 Nahar Singh, SHO of Police Station, Anoopgarh proceeded for investigation. He along with Ramjilal (PW 9) went to 9 LSM at the house of Jeet Singh and inspected the site. He found the dead body of Jeet Singh lying in his courtyard. He prepared the site plan Ex. P. 15, site inspection memo Ex- P. 16, Panch-nama of the dead body Ex.P 17 and the inquest report Ex. P. 18. A 12 bore pistol, empty cartidges and pellets found at the site were taken in possession vide memo Ex. P. 21.

3. The post-mortem examination of the dead body of Jeet Singh was conducted by Dr. Satya Ptakash -(PW 31), Medical officer in charge, Primary Health Centre. Anoopgarh on 15-12-1983 at 2 p.m. the doctor noted as under:

Rigor mortis started disappearing Post-mortem staining was present on the back of the body. Blood was coming out from mouth and nose. Clothes and surrounding soil was stained with blood.

Injuries:

(1) Lacerated wound 4 cm x 1 cm x 3 cm on left side of chin with fracture of mandible;

(2) Lacerated wound 20 cm x 10 cm x 8 cm of the right side of forehead and right side of scalp Fracture of frontal and right parietal and temporal bone with brain laceration. Bones are fractured in multiple pieces;

(3) Abrasion 1 cm x 1/2 cm on left ring finger.

The Doctor opined that the cause of death was brain laceration. Injury No. 2 was found sufficient to cause "death in the ordinary course of nature. The post-mortem Examination Report is Ex.P 2. On 21-12-1983, SHO, Nahar Singh arrested Sadda Singh vide Memo Ex. P. 23, Sagad Singh vide Memo Ex. P. 24 and Makhhan Singh vide Ex.P 25. On 27-12-1983, the SHO arrested Gurpat Singh vide Memo Ex.P 26. At the time of arrest, Gurpal Singh was having one Lathi with him, which the SHO took in possession through the arrest memo itself. On 25-12-1983, SHO Nahar Singh being on leave. Ramji Lai had the charge of the investigation. He interrogated Makhhan Singh and Sadda Singh. Sadda Singh

furnished information Ex.P 11 for getting recovered cne "Jai" from his residential Kotha. In pursuance of that information, one "Jai" was recovered vide Memo Ex. P. 12. On 6-1-1982, Maikiyat Singh went to Police Station along with two persons and Ramjilal, AST. Arrested him vide Memo Ex.P 14 and took in possession his licensed 12 bore gun and made an endorsement in that regard in the arrest memo itself. The "Jai" Lathi and the clothes of the deceased were sent for chemical examination. The "Jai" and clothes were found to have stains of human blood.

4. Upon completion of necessary investigation, charge-sheet was filed against the appellant in the Court of Munsif and Judicial Magistrate,. Anoop Garb. The learned Magistrate committed the case to the Court of Additional Sessions Judge, Raisinghnagar. The learned Judgr chargersheeted the appellants and recorded their plea. All of them denied the charges and claimed to be tried. To substantiate its case, prosecution examined 11 Witnesses in all, In their statements u/s 313, Cr.PC, the appellants denied the allegations levelled against them. No defence witness was examined The learned Judge placed reliance on the testimony of eye-witnesses Bachan Singh (PW 1) and Jagtar Singh (PW 5) and passed the judgment under appeal.

5. We beard Mr. ML. Garg, learned Counsel for the appellant and Mr. N.D. Khan, learned Public Prosecutor for the State.

6. The prosecution has led direct as well as circumstantial evidence. The direct evidence is of Bachan Singh (PW 1) and Jagtar Singh. (PW 2) and the circumstantial evidence is recovery of Jai from appellant Sadda Singh, gun from Malkiyat Singh and Lathi from Gurpal Singh.

7. Mr. Garg, learned Counsel for the appellants strenuously contended that the learned trial Judge has not properly appreciated the evidence of Bachan Singh and Jagtar Singh, who because of their conduct in not going to the Police Station till next morning and not asking any villager to do so cannot be said to be witnesses"of credence. The conviction of the appellants for the offence u/s 449, IPC simplicitor been assailed as being a legal error. The learned Counsel emphatically urged that the medical evidence shatters the prosecution case as coming forth through the witnesses Bachan Singh and Jagtar Singh because none of the injuries sustained by deceased Jeet Singh could have been caused by gun shot. Gurpal Singh and Sadda Singh were said to be already there outside the courtyard of Jeet Singh. Makhhan Singh ascended the Kotha of Jeet Singh and tried to break the roof by Kassi. On being informed by Gurpal Singh that the door of the Kotha had been broken, became down and all of them went inside and fired two or three shots, Jeet Singh"s shrieks were heard then he fell down and all the appellants dragged him out and challenged that Jeet Singh has been murdered, if any body had any desire, may go there. Thereafter the appellants fired two or three shots more and Gurpal Singh went to his house and the other four to the other four to the house of Sagad Singh After that Bachan Singh and Jagtar Singh went towards the house of Jeet Singh and finding him dead

returned.

8. It is important to note that the place at which the witnesses were at the time of the incident has been shown in the site plan and if it is correct that in between that place and the Kotha in which the incident is said to have taken place, there was one Chhappar, then the witnesses could not have been as to who went inside and what transpired inside to Kotha. It is also note worthy that these witnesses in their statements in the Court have categorically stated about Sagad Singh, Malkiyat Singh and Makhhan Singh, the three appellants, having guns with them and firing the shots. They have not stated about any person having any other weapon except that Jagtar Singh has stated that Makhan an Singh had tried to break the roof of the Kotha of Jeet Singh with Kassi. Bachan Singh has stated that there was no kitchen near the place of the courtyard of Jeet Singh and there was one unroofed room with 8 high walls. Jagtar Singh has stated about there being one Chhappar and one kitchen near the Kotha in which Jeet Singh was, Bachan Singh has stated that there was no roof on the Kotha in which the incident had taken place. If that was so, then the version of these two witnesses that Makhhan Singh ascended the roof of the Kotha in which Jeet Singh was and tried to break it with Kassi and on Gurpal Singh informing him that doors had been broken, he came out becomes false.

9. Mr. Garg, has laid much emphasis on the delay in not informing the Police till 9 am in the next morning and submitted that Bachan Singh and Jagtar Singh must not have been the eye witnesses to the occurrence and on the next day at the instance of others might have lodged the report claiming themselves to be the eye witnesses.

10. Police Station, Anoopgarh is at a distance of about 20 kilometers from 9 LSM. The learned Public Prosecutor has tried to justify the delay in lodging the report by submitting that the witnesses and, the neighboured might have felt scared on the "Lalkar" of the appellants having guns with them and might not have come out and for that very reason Bachan Singh and Jagtar Singh might not have dared to go to the Police Station that evening.

11. We find force in the submission of the learned Counsel for the appellants that the statements of Bachan Singh and Jagtar Singh are straight-forward and the circumstances do raise suspicion about their having actually seen the occurrence Bachan Singh had admitted that on hearing the report of the gun fire, a member of persons from the village had reached the site though he could not tell their names He has further stated that the people have come out of their houses. Bachan Singh has stated that he has seen the occurrence standing in the door and had not gone inside. This version appears to be totally false in view of his position being shown behind the adjacent Chhappar in the site plan and also in view of the submission of Jagtar Singh that they had seen the occurrence from a distance when the five appellants armed with guns entered the Kotha. The witnesses have claimed to have gone there and concealing themselves behind another Chhapper. The statement of Bachan Singh that Jeet Singh at that time

was sleeping in the Kotha in front of the door, cannot be believed because according to them the door was closed and was broken by the culprits. Bachan Singh has stated that he and Jagtar Singh after the culprits going away from there, saw the dead body from a Distance of 5 to 6 paces and not go near it. According to the witness, they remained that boundary of the court yard and Jagtarsingh also remained there and both of them did not go inside. The witness admitted that he did not tell about the incident to any person of the village and the explanation given by him was that many persons had reached the site. He also admitted that he did not ask any body to lodge the report. Prosecution has not proved that Bachan Singh and Jagtar Singh had any enmity with the appellants. The defence has suggested to the witness that two or three years back his son Kashmira Singh had some quarrel with Jeet Singh and in the case instituted by Jeet Singh against his son Kashmira Singh, Sagad Singh was a witness of Jeet Singh. The witness denied the suggestion and stated that in that case the Panchayat got the matter compromised and no witness was examined. Another suggestion to the witness was that Sagadsingh owed money from him on account of a promissory note & the witness denied that suggestion. Jaswantsingh, a relative of Jeet Singh, was there at the time of investigation but he also did not tell about any enmity between Jeet Singh and appellant that might have motivated the latter to commit the crime.

12. Jagtar Singh had admitted that Bachan Singh had gone inside the police station to lodge the report and he remained outside. Both the witnesses have stated that after lodging the report, they went away and returned to the village at 3 p.m. Nahar Singh and Ramjilal have stated that on receiving the information they proceeded for the site & started investigation at the site. Post-mortem examination was conducted at 2 p.m. If Bachan Singh and Jagtarsingh were the eye witnesses, the Investigating Officer should have asked them to accompany him instead of allowing them to remain behind at Anoopgarh. It is important to note that if these two witnesses were not there till 3 p.m. at whose instance, the place where from they saw the occurrence was shown in the site plan. This strengthens the argument of the learned Counsel for the appellants that the First Information Report was an after investigation document. In this concern, the learned Counsel has also submitted that the information lodged at 9 a.m, on 15-12-1983 reached the concerned court on 16-12-1983 and there is no explanation for the delay.

13. The truthfulness of the version of the eye witnesses is to be judged from the circumstances referred to above. The eye witnesses have stated about Makhhan Singh, Sagad Singh and Malkiyat Singh being armed with guns and firing the shots. Jagtar Singh has stated about there also being a Kassi with Makhhan Singh by which he tried to break the roof of the Kotha. Even if, Bachan Singh's version that the kotha in which the incident had taken place had no roof, is ignored, still according to the doctor, the injuries noted by him on the dead body of Jeet Singh were two lacerated wounds and one abrasion leading to the conclusion that Kassi must not have been used.

14. In order to appreciate the evidence of the two eyewitnesses, the statement of Dr. Satya Prakash Sharma, who conducted the post-mortem examination would be significant. The doctor has categorically stated that the injuries noted by him on the dead body would not have been caused by fire arm. If it was so, then the recovery of gun from Malkiyat Singh at the time of his arrest and there being a pistol lying near the dead body would not connect the death of Jeet Singh with fire arm. Certain pellets were found inside the room and there were marks of pellets by gunshot on the door leaf lying at the site. It, however, appears strange that if the guns were fired in the Kotha by three persons, how not a single injury by fire arm was sustained by Jeet Singh.

15. The learned Public Prosecutor submitted that Jeet Singh might have fired the pistol from inside in response to the gun shots by the appellants standing outside and that might be the reason of the pellets being inside. It has also been argued that Gurpal Singh and Makhan Singh might be having, lathies and that might be the weapon of offence.

16. While deciding a case, courts look to the material available on the record and arrive at a conclusion as to whether the story advanced by the prosecution is believable or not. If the prosecution story stands falsified by the testimony of the witnesses and the circumstances brought on record, courts are not expected to built up a different story in order to bring home the guilt against the suspects simply because a life is lost. The Investigating Officer has not taken care to send the empty cartridges and pistol found at the site to ballistic expert to find out whether those empties could have been fired from the gun recovered from Malkiyat Singh. Even if there would have been material to suggest that Malkiyat Singh had fired the gun and empties were connected with the gun said to have been recovered from him, that would not have served the purpose of the prosecution in view of the categorical statement of the doctor that the injuries sustained by Jeet Singh were not caused by fire arm.

17. Apart from the fact of unnatural conduct) of Jagtar Singh and Bachan Singh, as discussed above. Their testimony become unbelievable in view of the medical evidence because if they are to be believed the weapon of the offence were to be guns only and the injuries of Jeet Singh could not have been caused by gun fire. The prosecution has introduced: recovery of "Jai" from Sadda Singh and two lathies, one from Makhan Singh and another from Gurpal Singh. Ramji Lal has stated about interrogation of Sadda Singh and Makhan Singh on 25-12-83 but has only stated about Sadda Singh furnishing information for recovery of "Jai" and getting the same recovered. Megha Ram (PW 5) and Ramu Ram (PW 6) are the witnesses to the recovery of that "Jai". Both of them have denied any, such recovery, having been made in their presence and have been declared hostile by the prosecution. There is no penetrating injury that could have been caused by "Jai". Only one lathi has been sent for chemical analysis and no blood was found on it. It is strange that the initial story of prosecution, as coming forth from the statements or the alleged eye-witnesses, was about Makhan Singh having gun

with him then he was stated, to behaving a Kassialso and then a lathi was recovered from him to fit in with the medical evidence meaning thereby that at the time of the incident he. was having three weapons; gun, lathi and Kassi with him- The eye-witnesses have stated about Jeet Singh being dragged out of the room after being injured. The narration of the witnesses about Jeet Singh lying there in front of the door and falling down after the gun fires, is not believable because if they would have been in such a position to see all that, the appellants who were said to be so particular to give a "Lalkar" after the occurrence would not have spared them. There is no blood found by the Investigating Officer inside the Kotha nor was there any trail of blood from Kotha up to the place where dead body of Jeet Singh was found by the Investigating Officer. Had the witnesses been there, they should have gone near Jeet Singh instead of remaining out side and forming an opinion that he was dead. If a number of persons. as stated by the witnesses, have assembled there, it appears strange that none of them would have gone near the dead body. More over, if number of persons had assembled there, there was no reason for the two witnesses to feel fright end of the appellants in going near the injured to ascertain that Jeet Singh was dead or not. All these fact have rightly been taken help of by the learned Counsel for the appellants that Bachan Singh and Jagtar Singh must not have seen the occurrence as claimed by them, rather must have reached; subsequently.

18. The medical evidence have tumbled down the prosecution case brought on record through the statements of the two eye witnesses and as such it becomes a case of no evidence against the appellants. The conviction of the appellants, therefore, cannot be sustained.

19. Consequently, the appeal is allowed. The conviction and sentences awarded by the trial court are set aside and the appellants are acquitted of the charged levelled against them. Appellant Sadda Singh is on bail: He need not to surrender. His bail bonds are discharged. Appellant Sagod Singh, Makhhan Singh, Gural Singh and Malkiyat Singh are in jail. They shall be set at liberty forth with, if not required in any other case.