
(2006) 05 RAJ CK 0058
In the Rajasthan High Court
Case No : Criminal Appeal No. 993 of 2001

Salim and Others	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 34, 394

Citation : (2007) 5 RCR(Criminal) 21 : (2006) 3 RLW 2344

Hon'ble Judges : Shiv Kumar Sharma, J; Prem Shanker Asopa, J

Bench : Division Bench

Advocate : Anurag Sharma, Arvind Sharma and Rakesh Singh, for Iqbal Khan, for the Appellant; R.P. Kuldeep and A.K. Sharma, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Salim and Afzal, the appellants in these two appeals, and one another Rakesh Singh were put to trial in Sessions Case No. 208/2001 (14/1996) before the learned Additional Sessions Judge (Fast Track) Hindaun. Learned trial Judge vide judgment dated November 23, 2001 convicted and sentenced the appellants Salim and Afzal as under:

Under Section 302/34 IPC:

To suffer imprisonment for life and fine Rs. 1000, in default to further suffer six months rigorous imprisonment.

Under Section 394/34 IPC:

To suffer rigorous imprisonment for ten years and fine Rs. 1000/-in default to further suffer six months rigorous imprisonment.

2. The Police Station Kotwali Hindaun registered a case u/s 302 IPC on September 23, 1996 on the basis of written report submitted by Pritam Singh

(PW. 2) with the averments that a dead body was lying in the pool of blood near his house. In the course of investigation it was revealed that dead body was of Ramji Lal who had been the tenant in the house of Manohari (PW. 1) Dead body was subjected to autopsy, statements of witnesses were recorded by the police, necessary memos were drawn and the appellants were arrested. After completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Hindaun. Charge u/s 302, 394 read with 34 IPC were framed against the accused, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 26 witnesses. In the explanation u/s 313 Cr.P.C, the appellants claimed innocence. No witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Having scanned the material on record with the assistance of the learned Counsel for the parties we notice that death of Ramjilal was homicidal in nature. As per post mortem report (Ex. P. 24) the deceased Ramji Lal sustained following ante mortem injuries:

1. Oblique incised stab wound of 2.5 cm x 1 cm x 2.5 cm on Rt. side of neck lat. in upper part clotted blood present
2. Incised penetrating wound of 2.7 cm x 0.5 cm x obliquely entering into thorecic cavity on right infraxillary region of chest margin clean cut.
3. Incised penetrating wound of 3 cm x 1 cm x obliquely entering into thorecic cavity on right side of cavity on right side of chest 5 cm infero lateral to Rt. Nipple clotted blood.
4. incised penetrating wound of 2.5 cm x 1 cm x cavity deep obliquely on right hypochondrine region.
5. Incised cut of 1 cm x 0.5 cm x 0.7 cm on lower part of chest in mid line of external region.
6. Incised wound of 1.5cm x 0.5 cm x 3 cm on right upper medially in lower part.
7. Incised wound of 1.5 cm x 0.8 cm x 3.5 cm on right forearm Ant. is upper part.
8. Lacerated wound of 2.8 cm x 1 cm x 0.6 cm on right parietal region of scalp.
9. Abrasion of 2 cm x 2 cm x on Rt. elbow post.
10. Abrasion of 2.5 cm x 2 cm on Rt. forearm post near elbow joint.
11. Abrasion of 3 cm x 3.5 cm on Rt. Knee joint.

In the opinion of Dr. N.N. Meena (PW. 23), who conducted autopsy on the dead body, the cause of death was hemorrhagic shock due to injuries to right lungs and liver.

4. In support of its case the prosecution examined Badri Prasad (PW. 10), real

elder brother of the deceased, who resided in distant village Khankheda and incidentally came to Hindaun on the date of incident. In his deposition Badri Prasad stated that his brother Ramji Lal died on September 23, 1996. On that day he (Badri Prasad) and his younger brother Ram Sahay came from the village to Hindaun for purchasing manure. Ramji Lal was his younger brother and for the last 13-14 months prior to his death Ramji Lal was working in the Medical shop of Gopal and resided as tenant in Shiv Colony Hindaun. Since Ramji Lal could have been available in the evening at his house, Badri Prasad and Ram Sahay spent the whole day wandering in the market. Around 8 PM while they were proceeding towards the house of Ramji Lal, they, on the way heard "Salim Mar, Mar Afzal, Mar Afzal, Mar Sale Ko". They had seen the persons who were giving beating but the person who was beaten up could not be identified by them because he was lying down. They became frightened and fled away. In the morning police came to the village in the vehicle belonging to Gopal and then they came to know that Ramji Lal was killed. Badri Prasad identified the appellants in the trial Court. In the cross examination Badri Prasad deposed that he had seen the incident while he was proceeding towards Shiv Colony and immediately thereafter he fled away. While leaving the place he found many persons but he did not tell about the incident to them. He also did not go to the police but he went to the village. After going to the village he did not ask about the whereabouts of Ramji Lal. He categorically stated that at the time of incident he did not see his brother Ramji Lal.

5. Gullu Khan (PW. 26), who investigated the case, deposed that he recorded the statement of Badri Prasad (Ex. D. 3) on September 28, 1996 i.e. after five days of the incident. Badri Prasad did not come to him but he was summoned. He also did not know that Badri Prasad and the deceased were the real brothers. He further stated that on October 4, 1996 he had searched the house of appellant Salim, but he did not find Gupti or Patti in the house.

6. The prosecution also supported its case by circumstantial evidence such as recovery of weapon of offence, shoes and money at the instance of the appellants. Sum of Rs. 4200/-, recovered on October 6, 1996 at the instance of appellant Salim vide recovery memo (Ex. P. 17) and Ironpatti (Guptinuma) got recovered at his instance vide memo (Ex. P. 22). Similarly money, shoes and clothes got recovered at the instance of appellant Afzal vide recovery memo (Ex. P. 18).

7. The appellant Afzal in his explanation u/s 313 Cr.P.C. stated that the shoes were purchased by him from the money of his father and money so recovered was taken from his father. He stated as under:

twrs tks cjken gq, os esjs firk ds iSlS ds [kjHns Fks A :i;s esjs firk ds Lo;a ds Fks tks ?kj ls eaxk dj iqfyl us fy;s A esjs f[kykQ QthZ lk{; bdV~Bh dh gS A eqdnek >wBk gS A

As also appellant Salim in his explanation u/s 313 Cr.P.C. stated as under:

twrs esjs firk ds iSlS ls eSaus [kjhns A iqfyl us esjs firk dks Mjk /kedk dj :i;s eaxk
fy,s ftldh f"kdK;r esjs firk us mPp vf/kdkfj;ksa ls dh gS A iqfyl us esjs f[kykQ
>wBh o cukoVh lk{; cukdj eq>s blesa >wBk Qalk;k A cjkenxh;ka planted gS A
tks iqfyl us QthZ cukbZ A eSa funksZ"k gwa A

8. We have pondered over the submissions advanced before us by learned Counsel for the parties.

9. At this juncture we deem it appropriate to refer the ratio indicated in Hem Raj and Others Vs. State of Haryana, wherein their Lordships of the Supreme Court observed as under:

All the above factors would not have assumed much importance if the evidence of PWs 4 and 5 could be accepted without raising an eyebrow. However, two view are possible on the point whether these persons had really witnessed the attack. There is every reason to think that PW. 4, on being informed by a wayfarer, would have reached near the scene of offence almost after the attack was over. The possibility of seeing all the accused attacking the deceased with the knives and "neja" from a distance of 30 feet or more, that too, in the night-time, is rather doubtful. It is not safe to rely on his version that he had seen the accused with the particular weapons in their hands. In this context, it may be noted that PW. 4 did not mention the distance from which he observed the attack. In the site plan drawn to scale, the distance of the spot from where PW. 4 observed the incident was given as 30 ft. It was night time almost 9 pm and most of the shops were closed, as seen from the evidence of PW. 4. PW. 4 or any other witness did not give any details about the lighting in the vicinity. However from the site plan drawn by PW. 8 there was a tube light attached to the electrical pole situated at 20 feet distance. It would have been difficult for PW. 4 at the night time to notice each of the accused carrying a particular type of weapon, that too a small weapon like knife. But, PW. 4 came forward with the version that all the accused except one, were carrying knives and the other was carrying "neja". Thus he claims to have seen so clearly as to distinguish between a knife and "neja" at that juncture, when the attack would have been almost over and PW. 4 was trying to evoke the attention of the people around. It is difficult to accept the version of PW. 4 of having seen the weapon in the hand of each of the accused and the nature of weapon. The reference to "neja" in particular appears to have been introduced for explaining the injuries on the body of the deceased. It seems to us that the picture given PW. 4, as if he had seen each of them with the knife or "neja" seems to be an embellishment development with the idea of implicating all the brothers as the accused. His further version that PW. 5 having heard his cries joined him and witnessed the attack seems to be a story invented for the purpose of introducing another eye witness to corroborate his version. The possibility of PW. 5 who was at a sweet shop hearing his cries, joining PW. 4 and then observing the incident appears to be highly improbable. If PW. 5 had already been there near Channi Chowk for purchasing sweets, he would have noticed the commotion caused by the attack and would have seen the assailants

even before PW. 4 arrived at the spot. But his story is different. Another factor which casts a doubt on the evidence of PWs. 4 and 5 is that there were no blood stains on their clothes, though allegedly, they placed the deceased on a cot and carried him to the hospital. Moreover, soon after his brother was declared dead, PW. 4 did not go to the police station which was quite close to the hospital to lodge a report. That is not a natural course of conduct. It is on account of these doubtful features in the evidence of PW. 4 that the factum of non examination of independent witness, though available, assumes importance.

10. Having closely scrutinised the testimony of Badri Prasad, we find him highly unreliable. His presence at the place of incident is unnatural and doubtful. Neither did he see the assailants inflicting blows on the person of victim nor he saw the victim. While fleeing away he had occasion to meet many persons but he did not inform about the incident to anybody. He also did not go to the police station. Gullu Khan 10 (PW. 26) recorded his statement u/s 161 Cr.P.C. after five days of the incident. Investigation in the instant case appears to be tainted and unfair. Even the recovery of Ironpatti (Gupti type) has been effected in the suspicious circumstances. When the 10 searched the house of appellant Salim on October 4, 1996 nothing incriminating was found but no weapon of offence was found. It is admitted fact that since then appellant Salim did not go to his house till it was searched on October 6, 1996. Strangely on October 6, 1996 when second search of the house was made recovery of Iron-patti (Gupti type) got effected. This only shows that entire recovery of Ironpatti at the instance of appellant Salim is a myth. In a similar situation Hon"ble Supreme Court in observed as under:

... Admittedly, the flat of the appellant was searched in the night between 4.9.1980 and 5.9.1980 by the police after breaking open its lock. At that time except a pair of trousers, nothing incriminating was found by the police, much less seized. It is also the admitted case of the prosecution that after the flat was searched it was locked again and the keys were kept with none other than the brother-in-law of the appellant the reasons for which we are unable to fathom. Be that as it may, it is also and admitted fact that since then the appellant had not access to his flat till it was searched on 9.9.1980. If in spite of these tell tale circumstances a lot of articles - containing Group A blood -was found inside that flat on 9.9.1980 - it only shows that the entire story of search and recovery of the articles is a myth.

11. We therefore are of the view that the prosecution has failed to establish charges Under Sections 302/34 and 394/34 IPC beyond reasonable doubt against the appellants and they are entitled to benefit of doubt.

12. For these reasons, we allow the appeals and set aside the conviction and sentence rendered in the impugned judgment by the learned trial Judge. We acquit the appellants of the charges Under Sections 302/34 and 394/34 IPC. Appellant Afzal is on bail, he need not surrender and his bail bonds stand discharged. Appellant Salim, who is in jail shall be set at liberty forthwith if not

required to be detained in any other case.