
(2003) 07 RAJ CK 0077
In the Rajasthan High Court
Case No : Criminal Appeal No. 434 of 2001

Shakoor and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 306
Evidence Act, 1872 — Section 133, 134, 144
Penal Code, 1860 (IPC) — Section 120B, 201, 302

Citation : (2004) 2 RCR(Criminal) 224 : (2004) 1 RLW 179 : (2003) 4 WLC 230

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : Rajendra Singh Rathore, for the Appellant; Satish Purohit, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellants Shakoor and Jagdish Prasad along with other co-accused indicted before the learned Additional Sessions Judge (Fast Track), Ajmer for having committing murder of Nathu. Vide judgment dated June 22, 2001, the learned Additional Sessions Judge convicted them under Sections 302 read with Section 120B and u/s 201 IPC and sentenced as under:-

Under Section 302 r/w Section 120B IPC:-to suffer imprisonment for life and to pay a fine of Rs. 1,000/-each. In default of payment of fine to further undergo three months" simple imprisonment.

Under Section 201 IPC:-to suffer three years" year"s rigorous imprisonment and to pay fine of Rs. 500/- each. In default of payment of fine to further undergo simple imprisonment for one and half months.

All the substantive sentences were ordered to run concurrently.

2. Put briefly the prosecution case is that Daulat P.W. 9 intimated Police Station Pushkar on 6th June, 1996 around 7.15 A.M. over telephone that his father

Nathu Kahar was lying dead in a dried well. The police arrived at the spot where the written report Ex. P.2 was handed over by Daulat to the Station House Officer, Police Station, Pushkar. It was inter alia stated in the report that co-accused Bhanu (now dead) had enmity with Nathu and a day before the incident Bhanu had threatened Nathu to kill. On the basis of the said report, the case u/s 302/201 IPC was registered and investigation commenced. During the course of investigation, it was revealed to the I.O. that one Kailash Nath was also involved in the crime. Kailash Nath after his arrested agreed to testify against the appellants one Bhanu. He was therefore, tendered pardon and made approver. On completion of investigation charge sheet was filed and in due course the case came for trial before the learned Additional Sessions Judge (Fast Track), Ajmer. Charges under Sections 302 read with Section 201 and u/s 120B IPC were framed against the appellants who denied the charges and claimed to be tried. The prosecution in support of its case, examined as many as 19 witnesses. In the explanation u/s 313 Cr.P.C., the appellants claimed innocence. However, no witness was examined in defence. During the pendency of trial, co-accused Bhanu died, therefore, proceedings against him stood dropped. On hearing final submissions, the learned trial judge convicted and sentenced the appellants as indicated above.

3. The prosecution case undisputedly, rests on the testimony of accomplice Kailash Nath (P.W. 1) It is well settled that conviction on the testimony of accomplice could only be based if it is corroborated by independent evidence either direct or circumstantial connecting the accused with the crime. Their Lordship of the Supreme Court, in Haroon Haji Abdulla v. State of Maharashtra (1), have observed that "an accomplice is a competent witness and his evidence could be accepted and a conviction based on it if there is nothing significant to reject it as false. But the rule of prudence, ingrained in the consideration of accomplice evidence, requires independent corroborative evidence first of the offence and next connecting the accused against whom the accomplice evidence is used, with the crime."

4. The Apex Court in yet another case of Revinder Singh v. State of Haryana (2), had occasion to consider as to in what manner the evidence of approver is required to be appreciated by the Court. The Apex Court observed as under :-

"An approver is a most unworthy friend, if at all, and he, having bargained for his immunity, must prove his worthiness for credibility in court. This test is fulfilled, firstly, if the story he relates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place. The story if given of minute details according with reality is likely to save it from being rejected *brevi manu*. Secondly, once that hurdle is crossed, the story given by any approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. In a rare case taking into consideration all the factors, circumstances and situations governing a particular case, conviction based on the uncorroborated

evidence of an approver confidently held to be true and reliable by the court may be permissible. Ordinarily, however, an approver's statement has to be corroborated in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features of involvement disclosed by an approver appertaining directly to an accused, if reliable, by the touchstone of other independent credible evidence, would give the needed assurance for acceptance of his testimony on which a conviction may be based."

5. Bearing the aforesaid principles in mind when we dwelve deep into the material on record we find that vide post mortem report (Ex. P.I), deceased Nathu had sustained following injuries:-

1. Lacerated wound 2 x 1 cm x scalp tissue deep on Lt. side of occipital region.
2. Multiple Abrasions of size 2 x 1 cm to 1 x 1/2 cm, on lateral ends of both eyes at placers on Lt. side Abdo Lt. elbow Lt. shoulder at places.
3. Deformity in Lt. arm, there is fracture Lt. humerus lower part.

Dr. Bhagwati Prasad (P.W. 2) clarified in his letter dated June 26, 1996 (Ex. D. 5) clarified that injury shown at page 4 at item No. 5 were post mortem in nature and cause of death was strangulation by a thin rope of 1/2 cm diameter or by an electric wire.

6. A look at the testimony of Kailash Nath (P.W. 1) demonstrates that in the examination in chief he stated that after nine days of the occurrence Bhanu forced him to accompany and threatened him to pay money to the appellants but in his cross examination, he categorically deposed that he was never involved in the crime. Neither he conspired with co-accused to kill Nathu nor did he associate them at the time of commission of the crime.

7. Mr. Satish Purohit, learned Public Prosecutor urged that if the "evidence of approver inspire confidence there is no legal necessity to seek corroboration. Reliance is placed on State of Tamil Nadu v. Suresh (3), wherein their Lordships of the Supreme Court held that "law is not that the evidence of an accomplice deserves outright rejection if there is no corroboration. What is required is to adopt great circumspection and care when dealing with the evidence of an accomplice. Though there is no legal necessity to seek corroboration of accomplice's evidence it is desirable that Court seeks reassuring circumstances to satisfy the judicial conscience that the evidence is true."

8. Having analysed the case law and the relevant statutory provisions we find that the combined effect of Section 133 and 144 Illustration (b) of the Evidence Act is that though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal, yet the courts will as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

9. As we have already noticed that Kailash Nath did not participate in the crime at any stage. There is also no corroboration of his evidence by any independent evidence. Thin rope allegedly used for strangulation of deceased Nathu was recovered at the instance of co-accused Bhanu who is already dead. We find the testimony of Kailash Nath untrustworthy and it is not safe to place reliance on it. Learned trial judge has committed illegality in observing in the Judgment that deceased Nathu sustained injuries with live electric wire which was recovered at the instance of appellant Shakoor. This finding is against the record of the case.

10. It also appears that in the impugned judgment approver Kailash Nath (P.W. 1) has been shown by the learned trial judge as an accused, which is illegal. The Apex Court in State (Delhi) Admn. v. Jagjit Singh (4), in para 11 has observed that once an accused is granted pardon u/s 306 Cr.P.C., he ceases to be an accused and becomes a witness for prosecution.

11. For the foregoing reasons, we allow the appeal and set aside the impugned judgment of the trial judge. We acquit the appellants Shakoor and Jagdish Prasad ,of the charge under Sections 302-120B and 201 of the Indian Penal Code. Both the appellants are in jail, they shall be released forthwith if not required in any other case.