
(2007) 12 RAJ CK 0010
In the Rajasthan High Court
Case No : Criminal Appeal No. 448 of 2003

Shambhu Dayal and Others	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 10-12-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 12 RAJ CK 0010

Hon'ble Judges : Shiv Kumar Sharma, J;M.C. Sharma, J

Bench : Division Bench

Advocate : Arvind Kumar Gupta, Mr. Rinesh Gupta, Mr. Harsh Saini and Ms. Sunita Khatri, for the Appellant; B.N. Sandhu, Public Prosecutor, for the State, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellants, three in number, have filed this appeal against the judgment dated February 21,2003 of the learned Additional Sessions Judge (Fast Track) Baran, whereby each appellant was convicted and sentenced u/s 302/34 IPC to suffer imprisonment for life and fine of Rs. 100/-, in default to further suffer simple imprisonment for three months.

2. The prosecution story is woven like this:

Babu Lal (since deceased) and informant Lal Chand PW16 were the friends. On April 22,2001 they proceeded from Kota and reached Mirzapur in the evening. Around 7.30 PM while they were passing through Mirzapur Market, Dinesh, Shambhu and Ramesh, cousin brothers of Babu Lal, met them. No sooner did Babu Lal asked about whereabouts of their father, they lost control and told Babu Lal that he wanted to grab the land. They inflicted blow with Dharia on the head of Babu Lal and Dinesh and Shambhu started causing injuries with lathis. Babu Lal was removed to the hospital where he was declared dead. Lal Chand submitted written report (Ex.PI) to the Police Officer who was present at the

Hospital at 11.30 PM. On that report a case was registered under sections 302 and 34 IPC and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and 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) Baran. Charge under sections 302 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 32 witnesses. In the explanation under Sec.313 Cr.P.C. the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Learned counsel for the appellants while assailing the impugned judgment took us through the material on record.

4. As per Post Mortem report (Ex.P10) following ante mortem injuries were found on the dead body:

1. Incised wound 6" x 3/4" x deep upto brain matter on post part of head vertically from parietal to occipital region.
2. Incised wound 3" x 1/4" x 1/4" on It. hand between index and middle finger.
3. Abrasion 1" x 1" on It Knee.
4. Abrasion 1" x 3/4" on It Knee.

In the opinion of Dr. Khem Raj Mehta PW12 the cause of death was coma as a result of head injury.

5. The prosecution case is founded on the testimony of informant Lal Chand PW16 and Mohd. Jafar PW32. Supporting the facts incorporated in the written report Lal Chand deposed that around 7.30 P.M. while he was passing through Mirzapur Market along with Babu Lal his cousins viz. Ramesh, Dinesh and Shambhu met them on the way. On being enquired by Babu Lal about their father, they lost control and asked Babu Lal whether he wanted to grab the land. Thereafter Ramesh inflicted Dharia blow on the head of Babu Lal and Dinesh and Shambhu caused injuries with lathis. Mohd. Jafar in his deposition stated that in the Mirzapur Market he had seen Babu Lal running and the appellants were chasing him. Identifying Ramesh in the trial court, he stated that Ramesh inflicted Dharia blow on the head of Babu Lal, who fell down thereafter all the three gave blows on his person.

6. Learned counsel for the appellants canvassed that no reliance could be placed on the testimony of Lal Chand and Mohd. Jafar since they were the chance witnesses. In order to appreciate the contention of learned counsel we have closely scrutinised the evidence of Lal Chand and Mohd. Jafar. Mohd. Jafar in his cross examination admitted that he did not know the names of the appellants. His statement was recorded on June 25,2002 in the trial court and after about

one year and two months he had identified the appellants in the court. The 10 did not make effort to get the appellants identified in the Identification Parade. Therefore, we find ourselves unable to place reliance on the testimony of Mohd. Jafar.

7. So far as the testimony of Lal Chand is concerned we find it consistent qua appellant Ramesh only. Possibility of over implication of appellants Shambhu and Dinesh cannot be ruled out in the facts and circumstances of the case. According to the prosecution story they inflicted lathi blows indiscriminately, whereas only two superficial abrasions were found on the knees of the deceased.

8. Law regarding chance witness is well settled that even the testimony of Chance witness may be acted upon. In AIR 1941 11 (Privy Council) it was held that though the chance witness is not necessarily a false witness, is proverbially rash to act upon such evidence. In the case of a chance witness, if that witness gives sufficient reasons for his presence, that evidence can be accepted.

9. Even truthful version of occurrence given by kith and kin of the deceased may be relied upon as was held in Krishna Ram and others Vs. State of Rajasthan, by the Hon"ble Supreme Court: (Para 4)

"We have gone through the evidence of the eye witnesses. No doubt PWs.1,2,3 and 6 are kith and kin of the deceased but they have given a truthful version of the whole occurrence. Even Ex.P 1 all the material particulars are mentioned particularly the fact that the deceased was dragged to the house of AI and that there he was tied and beaten. As noted already even AI admitted that the deceased was tied in his house but added that because of the scuffle between P W6 and the deceased, latter was tied. Immediately after registering the crime, the SHO went to the house of AI and found the deceased tied and he was having bleeding injuries. Thus the time, place of occurrence and the cause of death are established beyond doubt. So far as the presence and participation of the appellants are concerned there are statements of the eye-witnesses consistently to this effect. Both the Courts below have given cogent and convincing reasons for accepting the evidence of the eye witnesses. The evidence adduced in defence is not at all material and the courts below have rightly rejected the same. The trial court acquitted Keshra Ram A6 giving the benefit of doubt. In our view the same in any manner does not affect the evidence of eye witnesses who are the most natural witnesses. We see absolutely no merits in these appeals. The appeals are dismissed accordingly."

10. In Ram Lakhan and others Vs. State of U.P., held that the evidence of close relatives of deceased is not liable to be rejected on ground of interested witnesses. What is necessary is that Court should scrutinize evidence of such witness carefully.

11. In Baitullah and another Vs. State of U.P., Hon"ble Supreme Court held that evidence of interested witness cannot be discarded merely on ground that he is interested. It is normally expected that witness would not leave out real culprits

and rope in innocent persons.

12. In *Tapubha Bhagvanji and Others Vs. State of Gujarat*, the Apex Court held as under: (Para 12)

"The witnesses examined on behalf of the prosecution are witnesses who in normal course of event are expected to know about the incident. Their deposition do not reveal any good reason for rejecting their evidence as untrustworthy or unreliable. Nothing has been brought on record either in cross examination of the witnesses concerned or in any other evidence to show any good reason as to why they should falsely implicate the accused in the case. Thus rejection of their testimony on ground that they are interested witnesses being in relation of deceased, not proper."

13. In *Angnoo and Others Vs. State of Uttar Pradesh*, the Apex Court held that the fact of relationship would add to value of his evidence because he would be interested in getting the real culprit, rather than innocent persons, punished.

14. *Bolineedi Venkataramaiah and Others Vs. State of Andhra Pradesh*, the Apex Court considered the case where there was bitter enmity between prosecution party and accused party, group of persons chased deceased and inflicted injuries. The presence of witnesses at place of occurrence was not found doubtful. It was held that being interested witnesses their evidence was subjected to greater scrutiny. Specific overt acts attributed to accused. Corroboration of overt acts by medical and circumstantial evidence was found. Only those accused to whom specific overt acts had been attributed consistently by all witnesses were convicted. The plea that some of the accused were acquitted, the same evidence cannot be accepted against other accused, was not found tenable.

15. In *Suraj Pal Vs. State of U.P.*, the Apex Court found that the medical evidence fully establish the injury to eye witnesses, eye witnesses gave consistent version and it was held that their evidence cannot be discarded on ground that they were interested witnesses or that co-accused was acquitted on self-same evidence or that there were minor variations.

16. In *Ram Gopal v. State of Rajasthan* 1998 ACJ 646 (S.C.) : 1999(1) RLW SC 58 where the venue of the incident and time was such that no independent witness could be expected to be present the evidence of related witnesses was considered. The fact of absence of details of occurrence in FIR, which are consistent with the detailed narration of the eye witnesses in the evidence, was considered and held that the FIR cannot be rejected.

17. In *Kartik Malhar Vs. State of Bihar*, , the Apex Court held that "we may also observe that the ground that the witness being a close relative and consequently being partisan witness should not be relied upon, has no substance. This theory was repelled by this court as early as in *Dalip Singh and Others Vs. State of Punjab*, in which this court expressed its surprise over the impression which prevailed in the minds of the members of the bar that relatives were not

independent witness speaking through VIVIAN BOSE J., the Court observed para 25 of the AIR 1953 SC):

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eye witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the facts of seven men hangs on their testimony, we know of no such rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur."

18. In Thangaiya Vs. State of Tamil Nadu, the Apex Court indicated as under:

"In a murder trial by describing the independent witnesses as "chance witnesses" it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witnesses" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his elsewhere or in another man's castle, it is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence. In instant case, the plea of the accused that PW-3 was "chance witness" who has not explained how he happened to be at the alleged place of occurrence, it has to be noted that the said witness was an independent witness. There was not even a suggestion to the witness that he had any animosity towards the accused. Therefore, there is no substance in the plea that evidence of independent witness which is clear and cogent is to be discarded."

19. Law does not insist on plurality of evidence. The evidence is to be weighed and not counted. Section 134 of the Evidence Act lays down in clear terms that no particular number of witnesses is necessary for the proof of any fact.

20. A look at the material on record further goes to show that charge u/s 302 IPC was framed against Ramesh. Since injury caused by him was found fatal we hold him guilty u/s 302 IPC. We however grant benefit of doubt to Shambhu and Dinesh.

21. For these reasons, we dispose of the instant appeal in the following terms :

(i) The appeal filed by Ramesh Chand stands dismissed. We instead of sections 302/34 convict Ramesh Chand u/s 302 IPC and sentence him to suffer imprisonment for life and fine of Rs. 100/- and in default to further suffer three months simple imprisonment.

(ii) We allow appeals of Shambhu Dayal and Dinesh Kumar and acquit them of the charges under sections 302/34 IPC. These appellants are on bail, they need

not surrender and their bail bonds stand discharged.

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