

(1987) 03 RAJ CK 0079

In the Rajasthan High Court

Case No : Criminal Appeal No. 751 of 1976 and Criminal Miscellaneous Application No. 524 of 1976

State of Rajasthan and Another

APPELLANT

Vs

Sadhu Singh and Others

RESPONDENT

Date of Decision : 03-03-1987

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 344, 482
Penal Code, 1860 (IPC) — Section 148, 150, 194, 302, 336

Citation : (1987) 2 WLN 450

Hon'ble Judges : Shyam Sunder Byas, J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shyam Sunder Byas, J.—We have two matters before us, namely, the appeal of the State against the acquittal and the application u/s 482, Cr. P.C. of the Investigating Officer for expunging certain remarks made against him and since both the matters arise out of one and the same judgment of the learned Additional Sessions Judge, Sri Ganganagar dated February 13, 1976, they were heard together and are decided by a common judgment. By the impugned judgment, the learned Additional Sessions Judge acquitted the six accused-respondents Sadhu Singh, Indra Singh, Chand Singh, Mala Singh, Hansa Singh and Harbans Singh of the offences punishable under Sections 302, 440, 436, 150 and 148, I.P.C.

2. Briefly stated, the prosecution case is that PW 1 Bakhtawar Singh Jat-Sikh was living with his wife Mst. Harnam Kaur and son Hari Singh in a hut which he had raised in a field situate in Rohi 7-BNW, P.S. Sadar Kotwali. Ganganagar. Bakhtawar Singh has one more son PW 2 Atma Singh, who lives in village Pacca in Punjab. The fields situate in Budharwali and other places in district Ganganagar belonged to the father-in-law of PW 1 Bakhtawar Singh. His farther-in-law committed some murder nearly 40 years before this incident and since

then he remained absconding and was not heard of. On his death, his wife i.e. the mother-in-law of Bhakhtawar Singh (PW 1) was cultivating the fields of her husband, but she was murdered. Thereafter Bakhtawar Singh came in possession of the fields of his father-in-law and he gave them to Hazoor Singh, Kaka Singh, Karnel Singh and Kartar Singh for cultivation on the condition that they would pay Rs. 1000/- per Bigha to him. Some of the amount was paid. However, these persons refused to make further payment and to execute a registered document in favour of Bakhtawar Singh or his wife Smt. Harnam Kaur. They started picking-up quarrels and disputes with him. This led to criminal litigations between Bakhtawar Singh and the above persons. On May 31, 1974, Bakhtawar Singh went to Goduwali Dhani and from there to Hanumangarh, to meet his Lawyer in connection with the criminal case. At about 12.30 in the noon on June 3, 1974, he reached his village and found his wife Smt. Harnam Kaur and son Hari Singh lying dead and half burnt. He further found his hut completely burnt. He straight-way went to Police Station, Sadar Kotwali, Ganganagar and verbally lodged report Ex. P 1 of the occurrence at about 5.55 p.m. on the same day i.e. June 3, 1974. The police registered criminal case No. 61/1974 u/s 302 etc. of the Penal Code. The investigation was taken-up by the Station House Officer Gopal Ram (PW 10). When the FIR Ex. P 1 was completed and the Investigating Officer was just to leave the police station to reach the spot, PW 2 Atma Singh appeared there. He alleged that he had seen the entire incident. His statement Ex. D 1 was recorded on the same day i.e. June 3, 1974. In his statement Ex. D 1, he named the six accused persons referred to at the very beginning as the miscreants who had set fire to the hut and killed Smt. Harnam Kaur and Hari Singh. The S.H.O. arrived on the spot, inspected the site, and prepared the inquest report and made other investigation. The post-mortem of the victim's dead bodies was conducted at about on June 4, 1974 by Dr. Ramlal. Though the doctor did not express any definite opinion about the cause of death, but held that the death of Smt. Harnam Kaur could be possible due to multiple fractures on her face and the death of Harisingh could be possible on account of throttling. His reports are Ex. P 6 and Ex P 7. The accused respondents were arrested. On the completion of investigation, the police submitted a crime report against all of them in the Court of the Munsif cum Judicial Magistrate. Ganganagar, who, in his turn, committed the case for trial to the Court of Sessions. The case came for trial before the learned Additional Sessions Judge, who framed charges under Sections 302, 440, 436, 380, 148 and 336, I.P.C. and Section 25 of the Arms Act against them, to which they pleaded not guilty and faced the trial. In support of its case, the prosecution examined thirteen witnesses and filed some documents. In defence, no evidence was adduced. Out of 13 witnesses examined by the prosecution, PW 2 Atma Singh has claimed to have seen the entire incident from the commencement to the end. On the conclusion of the trial, the learned Additional Session Judge made a detailed and comprehensive analysis of the prosecution evidence and held that the fate of the case depends on the sole testimony of PW 2 Atma Singh. After making a full and elaborate analysis of the testimony of PW 2 Atma Singh, the learned Judge held that he was falsely

introduced as an ocular witness by the prosecution. He had not seen the incident nor his statement Ex. D 1 was recorded on June 3, 1974. He further held that the Investigating Officer Gopal Ram (PW 10) had wrongly shown that statement Ex. D 1 of Atma Singh was recorded on June 3, 1974. Since Atma Singh (PW 2) was found a witness of no reliance and faith, the learned Sessions Judge acquitted the six accused-respondents of the offences they were charged with. Simultaneously, he passed an order purporting to be u/s 344, Cr. P.C. and took cognizance of the offence u/s 194, I.P.C. against Atmasingh (PW 2) and Gopal Ram (PW 10). Aggrieved against the aforesaid judgment, the State has come up in appeal and challenges the acquittal. The Investigating Officer Gopal Ram (PW 10) has presented an application u/s 482, Cr. P.C. for expunging the remarks made against him in the judgment and for quashing the cognizance of the offence u/s 194, I.P.C. taken against him.

3. We have heard the learned Public Prosecutor appearing for the State, Mr. B.R. Purohit, appearing for the accused respondents and Mr. S.K. Mathur, appearing for the applicant Gopal Ram. We have also gone through the case file carefully.

4. The learned Sessions Judge formulated three points for decision. The first is whether the death of victims was homicidal and the second and third are whether the two victims were done to death by the accused-respondents and whether they committed the other offences like that of setting fire to the but etc. The learned Sessions Judge held that the death of Smt. Harnam Kaur and Harisingh was homicidal. Regarding the actual incident, he observed that the entire case depends on the sole testimony of PW 2 Atmasingh. We agree with the learned Sessions Judge that the fact of the prosecution case hinges on the testimony of PW 2 Atmasingh, who is the sole and lone witness of the incident. In case his testimony is accepted as true and he is treated as a witness of faith and reliance, there is no escape for the accused-respondents But if he is found to be a witnesses of doubtful credentials, the entire prosecution case crumbles down.

5. In assailing the order of acquittal, the learned Public Prosecutor contended vehemently before us that the testimony of PW 2 Atmasingh was wrongly disbelieved by the Court below. The witness had given a graphic picture of the incident which shows that he had really seen the occurrence. It was, on the other hand, contended by Mr. Purohit that the Court below has advanced a number of reasons to show that PW 2 Atmasingh has been falsely introduced as an ocular witness of the incident. The reasons advanced by the trial Court are weighty and convincing and should not be lightly disturbed. It was further argued that in an appeal against acquittal this Court should be slow in interfering with the findings of fact recorded by the trial Court. We have taken the respective submissions into consideration.

6. We have carefully gone through the statement of PW 2 Atmasingh and the reasons advanced by that trial Court for disbelieving him. After making a careful scrutiny of what this witness deposed, we are of the considered opinion that the

approach of the trial Court relating to the credibility of his testimony is fully justified.

7. PW 2 Atmasingh was not living in the village in which the incident took place. He was living in village Pacca in Punjab, which is nearly 105 miles away from the place of the incident. Nathuram by, his presence on the spot was highly doubtful. He was not present there in the village of the incident on June 2, 1974. He stated that he had gone to Hanumangarh to find out the whereabouts of his father Bakhtawarsingh and contacted the Advocate. In his police statement Ex. D 1, he deposed:

XXX XXX XXX This statement Ex. D 1 was alleged to have been recorded by the Investigating Officer on June 3, 1974. Bakhtawar Singh (PW 1) has admitted that his date of hearing was fixed on June 4, 1974. If it was so, the statement Ex. D 1 could not be recorded on June 3, 1974. The words "XXX XXX" i.e. June 4, 1974, leave no room for doubt that Ex. P 1 was not recorded on June 3, 1974 but was, in fact, recorded on June 5, 1974.

8. In FIR Ex. P 1, some persons were suspected to be the miscreants and some of them were arrested, who have not been challaned by the police. In case the statement Ex. D 1 was recorded on June 3, 1974, there was no occasion for arresting those persons who have not been challaned, though they have been mentioned as the miscreants in FIR Ex. P 1.

9. PW 2 Atmasingh claimed that he was sleeping in the hut in the night of the incident. Hearing some noise he got-up, tried to awake his brother and mother, but could not. He got frightened and hid himself in the field of sugar-cane and from there he saw the incident. What he spoke cannot be readily accepted as true. Had he been present and made efforts to awake his brother and mother, there was no question that they would have not awoken and had not accompanied him for saving themselves. It is highly strange that the witness hid himself in the field of sugar-cane and saw the incident without raising any noise. His conduct is highly unnatural and irrational. The inaction on his part speaks volumes against him and strongly suggests that he had, in fact, not seen the incident.

10. We are hearing an appeal against acquittal. It is well settled that an acquittal is not to be disturbed unless there are substantial and compelling reasons to do so, A finding of fact recorded by the trial Court in an appeal against acquittal can be disturbed only when the finding appears to be perverse or manifestly erroneous. Where the evidence has been properly appreciated by the trial Court and its view does not appear to be ex-facie wrong, the interference should not be there.

11. In the instant case, the learned Judge has made a detailed and elaborate analysis of the testimony of PW 2 Atmasingh. The learned Public Prosecutor could not convince us that the testimony of PW 2 Atmasingh was wrongly disbelieved by the trial Court. The view and approach of the trial Court relating to the

testimony of Atmasingh (PW 2) are perfectly justified. We, therefore, decline to make any interference in the order of acquittal. The appeal of the State must, therefore, fail.

12. Coming to the application u/s 482, Cr. P.C. filed by the Investigation Officer Gopal Ram (PW 10), it was argued that the trial Court crept into an error in taking cognizance of the offence u/s 194, I.P.C. against him. We find no force in the submission of the learned Counsel. We have discussed above that the statement Ex D 1 of PW 2 Atmasingh was not recorded on June 3, 1974 but that it was actually recorded on June 5, 1974 or thereafter. If Ex. D 1 was not recorded on June 3, 1974, the action of the Investigating Officer in making it ante-dated is highly objectionable. The learned Sessions Judge, therefore, was justified in taking cognizance of the offence u/s 194, I.P.C. against him and PW 2 Atmasingh.

13. There is yet another aspect of the matter. The learned Sessions Judge took the cognizance by virtue of Section 344, Cr. P.C. After" taking cognizance, a notice is to be issued to Mr. Gopal Ram (PW 10) to show cause as to why he should not be punished for the offence u/s 194, I.P.C. He is yet to show cause and has, thus, an opportunity to explain as to why he should not be tried and punished. It is only after he submits his explanation that the Sessions Judge would try him summarily and that too when his explanation is not found convincing or reasonable. Gopal Ram has, thus, an opportunity of showing cause against the cognizance. If his explanation is found reasonable or plausible, the cognizance may be dropped. Since, he has an opportunity of showing cause against his proposed trial, we decline to interfere u/s 482, Cr. P.C. at this stage. His application u/s 482, Cr. P.C. has, thus, no force.

14. In the result, the appeal of the State and the application of Gopal Ram u/s 482, Cr. P.C. are dismissed.