
(2017) 06 RAJ CK 0032
In the Rajasthan High Court
Case No : 117 of 1992

State Of Rajasthan

APPELLANT

Vs

Manak Lal s/O Sh. Ram Chandra Kumawat

RESPONDENT

Date of Decision : 06-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 378](#) - Power to examine the accused - Appeal in case of acquittal
[Indian Penal Code, 1860](#), [Section 302](#)

Citation : (2017) 06 RAJ CK 0032

Hon'ble Judges : Gopal Krishan Vyas, Dinesh Mehta

Bench : DIVISION BENCH

Advocate : Vishnu Kachhawa, ?Sanjay Mathur

Final Decision : Dismissed

Judgement

1. In this cr. appeal filed by the State of Rajasthan under Section 378 Cr.P.C., the judgment dated 17.5.1991 passed by the learned Sessions Judge, Udaipur in Sessions Case No.99/1988 is under challenged whereby the respondents were acquitted from the charges levelled against them under Section 302 IPC.
2. As per facts of the case on 9.5.1988, the ASI Sunder Lal (PW--1) was on duty in relation to visit of Central Sports Minister at Udaipur for attending programme at Government Girls School, Udaipur in between the way from Circuit House to Government Girls School, Udaipur alongwith other police officials of Police Station Ambamata. On that day respondents were travelling in

Truck No.RRY 7106 on the way where complainant ASI Sunder Lal (PW--1) was on duty. As per complainant, the vehicle intentionally hit one Shiv Shanker Kumawat, who was going on cycle on the road. The above incident was reported by the ASI Sunder Lal to the Police Station, Ambamata vide Ex.P/1 dated 9.5.1988 at 7.00 pm, which reads as under:

"VERNACULAR MATTER OMITTED"

3. Upon aforesaid report of ASI Sunder Lal (PW--1), the FIR no.72/1988 was registered at Police Station Ambamata, Udaipur on 9.5.1988 at 7.30 pm under Section 302 / 34 IPC against the respondents. After registration of the FIR, upon aforesaid allegations, the investigation of the case was handed over to Ganpat Singh, CI of Police Station, Ambamata. The Investigating Officer made inspection of the site in the morning at 7.30 am on 10.5.1988 and prepared the details of site and site plan vide Ex.P/2 and Ex.P/3 respectively. The blood stained soil and simple sole were also taken in possession vide Ex.P/4. One cycle, bag, pen, diary, identity card, license, sleepers, shoes and specks were also taken in possession from the place of occurrence vide Ex.P/5. The post mortem of the body of deceased Shiv Shanker Kumawat was conducted at 9.25 am on 10.5.1988 vide post mortem report Ex.P/12 in the hospital. The cloths of deceased were also taken in possession vide Ex.P/6. The truck No.RRY 7106 was seized vide Ex.P/7. The Panchnama of dead body was prepared vide Ex.P/8 and dead body of the deceased was handed over vide Ex.P/9 and notice was given to the owner of the truck RRY 7106 Sh. Trilok Chand. The registration certificate, permit and other documents of insurance including driving license of respondent Dilkhush were taken in possession vide Ex.P/10 and after completing investigation, charge-sheet was filed under Section 302 IPC

against the respondents in the court of Addl. Chief Judicial Magistrate No.3, Udaipur on 24.6.1988. The learned Magistrate committed the case for trial to the Sessions Court, Udaipur.

4. In the trial, after framing charge under Section 302 IPC against respondents statements of 14 prosecution witnesses were recorded including statement of informant PW--1 ASI Sunder Lal of Police Station Ambamata. Number of documents were exhibited during trial. Thereafter, statements of respondents were recorded under Section 313 Cr.P.C. in which respondents denied the allegations levelled by the prosecution witnesses and in defence statement of DW-1 Bhajan Lal were recorded to prove the fact that in between way from Swaroop Sagar to Railway Colony, the guarder are fixed, therefore, it is not possible for truck to pass through the roads. Photos (Ex.D/2, D/3 and D/5) were also exhibited from defence side. The learned trial court after recording evidence finally heard the arguments of the parties and while considering and assessing entire evidence acquitted the respondents from the charges levelled against them for offence under Section 302 IPC vide impugned judgment dated 17.5.1991.

5. Learned Public Prosecutor vehemently argued that judgment impugned is contrary to evidence on record because prosecution has proved its case beyond reasonable doubt while leading trustworthy evidence of eye witness ASI Sunder Lal (PW--1) who was present at the place of occurrence when incident took place but learned trial court disbelieved the testimony of eye witness without any reason, therefore, the finding of acquittal recorded by the learned trial court is erroneous.

6. Learned Public Prosecutor submit that finding of the learned trial court is not sustainable in law for the reason that the learned trial court has unnecessarily stretched upon minor contradictions

appearing in the statements of witnesses so as to disbelieve the prosecution case. Further, argued that although out of four eye witnesses, three turned hostile and did not support the prosecution case but there is no reason to disbelieve the statement of eye witness ASI Sunder Lal (PW--1), who was present at the time of incident and reported the incident to the police.

7. It is further submitted that statement of ASI Sunder Lal (PW--1) is corroborated by other witnesses namely Amba Lal and Viram Singh so also by the medical evidence, the learned trial court has failed to consider the entire evidence in right perspective, therefore, the judgment impugned deserves to be quashed and set aside.

8. Learned Public Prosecutor while inviting attention towards the fact that as per evidence there was enmity in between the respondents and deceased because deceased Shanker Lal was brother-in-law (gainer) of the respondent Kailash and Manak and was Phupha. In the year 1985 Shiv Shanker since deceased was involved in the murder case of his own wife and sons but acquitted by the learned trial court, therefore, to take revenge, respondents find an opportunity to kill Shiv Shanker when he was going on road upon bicycle. Thus, with the intention and motive they caused injury to the deceased by the truck and to try to give colour of accident, but unfortunately, complainant ASI Sunder Lal (PW--1) was present at the place of occurrence and saw the incident, therefore, learned trial court ought to have considered the aforesaid facts so as to hold respondents guilty for alleged offence of murder punishable under Section 302 IPC. According to Public Prosecutor, learned trial court erred in law not to accept the evidence of PW--10 Amba Lal who has categorically corroborated

the allegation made by the eye witness Sunder Lal (PW--1), therefore, the finding of acquittal recorded by the trial court does not inspire confidence.

9. Learned Public Prosecutor lastly argued that the trial court has committed an error while acquitting the respondents from the charges levelled against them only on the basis of minor contradictions/omissions in the statements of prosecution witnesses, but in fact, Shiv Shanker was killed with intention by hitting him, therefore, the judgment impugned deserves to be quashed and respondents are liable to be punished for the offence committed by them under Section 302 / 34 IPC.

10. Per contra, learned counsel appearing for the respondents argued that there is no evidence of independent witness in this case, more so, out of four eye witnesses, three turned hostile and did not support the allegation made by the complainant Sunder Lal (PW--1) in his complaint, therefore, without any corroboration of allegation, there was no option for the learned trial court except to acquit the respondents from the charges levelled against them.

11. While inviting attention towards the finding of the learned trial court based upon medical evidence, it is submitted that PW--5 Dr. Kothari who has conducted the post mortem of the deceased and gave post mortem report (Ex.P/12) categorically stated in his statement that the injuries found upon the body of the deceased cannot be treated to be caused with the intention as reported by the complainant ASI Sunder Lal (PW--1). As per learned counsel appearing for the respondents, it is a case in which the learned trial court has properly considered the entire evidence of prosecution and opined that out of four eye witnesses, three turned hostile and did not support the statement of ASI Sunder

Lal (PW--1), who lodged the complaint against the respondents. The learned trial court has not relied upon the testimony of Dr. Kothari who has categorically stated before the court that the injuries found upon the body of the deceased can be caused due to an accident not with intention, therefore, there is no question to interfere in this cr. appeal filed by the State.

12. After hearing learned counsel for the parties, we have perused the statement of all the witnesses. Admittedly, the FIR was registered upon the complaint (Ex.P/1) submitted by ASI Sunder Lal (PW--1). In the investigation, charge-sheet was filed on the basis of statement of four eye witnesses, ASI Sunder Lal (PW--1), Kishan (PW--4), Hukum Raj (PW--6) and Mohan Lal (PW--7) , but out of four eye witnesses, three witness Kishan (PW--4), Hukum Raj (PW--6) and Mohan Lal (PW--7) turned hostile and did not support the prosecution case and the story narrated by ASI Sunder Lal (PW--1). The entire prosecution case is based upon testimony of ASI Sunder Lal (PW--1), but no other evidence has supported or corroborated the allegation levelled by ASI Sunder Lal (PW--1) against the respondents.

13. To reach to the conclusion whether it is a case of offence under Section 302 IPC, we have perused the statements of ASI Sunder Lal (PW--1), so also, statement of PW--5 Dr. N.S. Kothari. Although ASI Sunder Lal (PW--1) levelled so many allegations for causing injury with intention, but his allegations are not supported by other eye witnesses Kishan (PW--4), Hukum Raj (PW--6) and Mohan Lal (PW--7), PW--5 Dr. N.S. Kothari (PW--5) who performed the post mortem of the deceased Shiv Shanker and gave report (Ex.P/12). In the cross-examination, Dr. Kothari gave following statements with regard to the nature of injuries and cause of death, which reads as under:

"VERNACULAR MATTER OMITTED"

14. We have considered the finding of the learned trial court in the light of the statement of the ASI Sunder Lal (PW--1) and statement of PW--5 Dr. N.S. Kothari. Admittedly, except PW--1 Sunder Lal all the other eye witnesses turned hostile and there is no other witness to support the prosecution case or to prove the allegation of murder. The medical evidence is not supporting or corroborating the allegation levelled by ASI Sunder Lal (PW--1), therefore, it is obvious from our assessment based upon appreciation of evidence that no error has been committed by the learned trial court so as to acquit the respondents from the charges levelled against them because eye witnesses turned hostile and medical evidence is not supporting the allegation of ASI Sunder Lal (PW--1), alleged to be eye witness of the incident. Therefore, we are of the opinion that no error has been committed by the learned trial court to acquit the respondents from the charge levelled against them.

15. As per verdict judgments of Hon"ble Apex Court in the cases of Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan reported in (2013) 5 SCC 722, and Jose @ Pappachan Vs. The Sub-Inspector of Police, Koyilandy & Ors. reported in (2016) 10 SCC 519, if two views are possible then benefit goes to the accused appellant, therefore, it is obvious in this case that finding of trial court so as to hold respondents guilt for offence u/s 302 IPC is not sustainable in law.

16. In the case of Raj Kumar Singh @ Raju @ Batya (supra), the Hon"ble Apex Court while discussing earlier judgments rendered by Apex Court, held as infra:

"21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will

be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions.

In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

2 2. In *Kali Ram v. State of Himachal Pradesh*, AIR 1973 SC 2773, this Court observed as under:

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence".

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25. In *M.G. Agarwal v. State of Maharashtra* : AIR 1963 SC 200, this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.

26. Similarly, in *Sharad Birdhichand Sarda* (Supra), this Court held as under:

"Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which

goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt of the accused is sought to be established by circumstantial evidence."

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47. In view of the above, we have no hesitation in holding that the prosecution failed to prove the case against the Appellant beyond reasonable doubt and thus, he becomes entitled for benefit of doubt. Thus, the appeals succeed and are allowed. The conviction and sentence imposed on the Appellant are set aside. The Appellant be released forthwith unless wanted in some other case."

17. In view of entire evidence and in the light of aforesaid judgment, we are of the opinion that finding recorded by the learned trial court so as to convict the respondents from the charges levelled against them does not suffer from any illegality because prosecution has failed to establish the charge/s levelled against the respondents for commission of offence under Section 302 of IPC.

18. Consequently, the instant appeal filed by the State of Rajasthan is hereby dismissed.