
(2006) 04 RAJ CK 0026
In the Rajasthan High Court
Case No : Criminal Appeal No. 690 of 2003

Tej Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 147, 302, 328, 34, 447
Rajasthan Police Rules, 1965 — Rule 6.22

Citation : (2006) 4 RLW 2393 : (2006) 4 RLW 2593

Hon'ble Judges : Shiv Kumar Sharma, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : Ashok Mishra and Sunil Tyagi, for the Appellant; R.P. Kuldeep, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—On the allegation of causing death of Lakhan Singh by administering poison, the appellants were put to trial before the learned Additional Sessions Judge (Fast Track) Hindaun City District Karauli, who vide judgment dated April 28, 2003 convicted and sentenced them as under:

Man Singh @ Manak:

Under Section 302 IPC:

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

Tej Singh

Under Section 302/34 IPC:

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

2. As per the prosecution story Mukesh Chawla Sub Inspector (PW. 16) on July 16, 2000 reached Primary Health Centre Hindaun City and 9.20 PM recorded parcha bayan (Ex. P. 7) of Lakhan Singh (now deceased) who was admitted in Medical Ward. In the Parcha Bayan Lakhan Singh stated that while he had gone to his field to keep a watch, Man Singh along with three-four persons came to the field and pushed him down on the cot. All of them caught hold of his hands and feet and Man Singh poured three black tablets with water inside his mouth and forced him to swallow the tablets. After the tablets were swallowed by him, they left. Finding himself indisposed, he put his fingers in the month and vomited. After a long time his son Ajay Singh came. Other villagers viz. Vijendra, Vikram, Munna, Alam etc. also came over there and he was removed to the hospital where he died on July 18, 2000. On the aforesaid parcha bayan a case under Sections 147, 447 and 328 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Hindaun City District Karauli. Charges under Sections 147, 302 and 302/34 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 20 witnesses. In the explanation u/s 313 Cr.P.C., the appellants claimed innocence. Appellant Man Singh stated that Lakhan committed suicide because his father Mangi Lal executed a deed in regard to agricultural land in his (Man Singh) favour. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. The evidence adduced at the trial by the prosecution may be divided into three categories:

(i) Dying declaration recorded by Mukesh Chawla Sub Inspector (PW. 16).

(ii) Testimony of Ajay Singh (PW. 1), Vikram Singh (PW. 2) and Dharam Singh (PW. 3).

(iii) Testimony of Dr. Ravindra Sachdev (PW. 20) who conducted autopsy on the dead body.

4. We have heard the arguments canvassed before us on behalf of the accused and the State.

5. At the outset we deem it necessary to narrate the principles governing dying declaration, laid down by the Apex Court in the various judgments. They are as under:

(i) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination K. Ramachandra Reddy and Another Vs. The Public Prosecutor,

(ii) Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. Rasheed Beg and Others Vs. State of Madhya Pradesh,

(iii) A dying declaration which suffer from infirmity cannot form the basis of conviction Ram Manorath and Others Vs. State of Uttar Pradesh,

6. It is in view of the above parameters that we have to adjudge the acceptability of the alleged dying declaration. Mukesh Chawla, S.I. (PW. 16) in his cross examination stated that Vijendra, Vikram, Munna and Alam brought the deceased to the Hospital. He further deposed that he could not record the statement of deceased u/s 161 Cr.P.C. since he was referred to Jaipur. Mukesh Chawla however could not explain as to why he failed to get the statement of deceased recorded by Magistrate or Doctor and if there was any urgency then why at the time of recording the statement, presence of two independent eye witnesses was not ensured. Rule 6.22 of the Rajasthan Police Rules, 1965 provides thus:

6.22 Dying declaration (1) A dying declaration shall, whenever possible, be recorded by a Magistrate.

(2) The person making the declaration shall, if possible, be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no Magistrate can be obtained, the declaration shall, when a gazetted officer is not present, be recorded in the presence of two or more reliable witnesses unconnected with the police department and with the parties concerned in the case.

Evidently compliance of Rule 6.22 was not made by Mukesh Chawla. It also appears from the statement of Dr. Ram Lal Meena (PW. 6) that the persons who brought the deceased to the Hospital informed the doctor that the deceased had consumed tablet of Cellphos. In the examination in Chief Dr. Ram Lal Meena deposed as under:

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It thus appears that the persons who brought the deceased to the hospital were present at the time of recording alleged dying declaration and the possibility that the declaration was the result of tutoring cannot be ruled out. Since the declaration appears to be suspicious we proceed to consider the corroborative evidence adduced by the prosecution in its support. Ajay Singh (PW. 1), son of the decease, in his deposition stated that on his reaching to the field he had seen his father lying on a cot, his hands, feet and head were caught by Vijendra Singh, Charan Singh, Bharat, Mukesh, Tej Singh and Rajveer @ Kallu and Man Singh opened the mouth of his father and dropped three black tables inside the mouth and poured water. He further deposed that he and other villagers took his father to the Hospital Hindaun from where he was shifted to Govt. Hospital Jaipur where he died. Ajay Singh submitted written report (Ex. P.2) to the Police Station Hindaun City on July 19, 2000. Vikram Singh (PW. 2) and Dharam Singh (PW. 3) deposed that on hearing cries of Ajay Singh when they reached to the field they

saw the accused running. Lakhan was lying on a cot and was not in a position to speak.

7. Coming to the testimony of Dr. Ravindra Sachdev (PW. 20) who conducted autopsy on the dead body, we notice that in the cross examination he categorically stated that it was not possible to enter celphos in the mouth of a person without causing injury to him. As to whether the death was suicide or homicide, Dr. Ravindra Sachdev did not express any opinion. Dr. Ram Lal Meena (PW. 6) who examined Lakhan after he was admitted to hospital Hindaun, admitted in his cross examination that he did not see any injury on the person of Lakhan.

8. From the evidence discussed herein above following fact situation emerges:

(i) Written report (Ex. P. 2) was submitted at the police station Hindaun City on July 19, 2000 by Ajay Singh (PW. 1) after the death of his father Lakhan.

(ii) Parcha Bayan (Ex. P. 7) of Lakhan was recorded by Mukesh Chawla, Investigating Officer (PW. 16) on July 16, 2000 at 9.20 PM.

(iii) Lakhan died on July 18, 2000 at Jaipur.

(iv) Mukesh Chawla, Investigating Officer did not make any attempt to get the statement recorded by Magistrate.

(v) In the Parcha Bayan it was stated by Lakhan that his son Ajay Singh came after a long time. According to Parcha Bayan Ajay Singh (PW. 1), Vikram Singh (PW. 2) and Dharam Singh (PW. 3) were not present at the time of incident.

(vi) As per the testimony of Dr. Ravindra Sachdev (PW. 20) it was not possible to drop tablets of Celphos in the mouth of Lakhan Singh without causing injury.

(vii) According to Dr. Ram Lal Meena (PW. 6) no injury was found on the person of Lakhan Singh.

(viii) Original FSL report was not placed on record and photo stat copy of FSL report was not allowed to be exhibited.

9. In *Bashir v. State* 1994 (2) Rajasthan Law Reporter 30, this Court held that whenever the dying declaration is taken to be the sole basis of conviction and sentence, strict compliance of Rule 6.22 of the Police Rules in letter and spirit must be ensured.

10. In the instant case the mysterious circumstances under which alleged dying declaration was recorded by Mukesh Chawla S.I. create doubt about its genuineness. The declaration in our considered opinion suffers from infirmities and it could not have been made the basis of conviction. Having analysed the evidence of Ajay Singh, Vikram Singh and Dharam Singh, we find them highly unreliable. The prosecution thus failed to establish the charges under Sections 302 and 302/34 IPC.

11. As a result of above discussion we allow the appeals and set aside the impugned finding of conviction and sentence. We acquit the appellants Man Singh @ Manak and Tej Singh of the charge under Sections 302 and 302/34 IPC. Appellants Man Singh @ Manak and Tej Singh who are in jail shall be set at liberty forthwith if not required to be detained in any other case.