
(1977) 10 RAJ CK 0020
In the Rajasthan High Court
Case No : D.RCriminal Appeal No. 339 of 1971

The State of Rajasthan	Vs	APPELLANT
Gyandeo and Another		RESPONDENT

Date of Decision : 24-10-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302

Citation : (1977) WLN 559

Hon'ble Judges : V.P. Tyagi, C.J.; R.L. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.P. Tyagi, C.J.—This is a State appeal against the order of acquittal of Gyandeo and Rishideo for a charge u/s 302 I.P.C. for committing the murder of Megsingh. This judgment of the learned Additional Sessions Judge No. 2, Ganganagar is dated 30.11.1970.

2. The prosecution story as revealed by the prosecution witnesses is like this Wife of Gyandeo accused (sic with some body and it was suspected by Gyanandeo that Megsingh was in the know of the whereabouts of his wife. Megsingh was therefore sent for to village 16BB by Gyandeo from Ganganagar. It is said that pursuant to the call Megsingh came on March 22, 1970 by a bus to 16BB and from the bus stand he was seen going to the house of Gyandeo. At the time when Megsingh reached Gyandeo's house. Gyandeo was not there as he had gone to meet his younger son to Ganganagar. In the evening Gyandeo returned from Ganganagar and he found that his son Rishideo another accused in this case and Surrender kept Megsingh closed in a room On arrival Gyandeo was handed over a letter by Surrender which was perused by him and he remarked "Meg Singh teri yah himmat". It is alleged that thereafter all three persons, namely, Gyandeo, Rishideo and Surrender started giving beating to Megsingh with fists and shoes. Approver PW 15 Rajuram who was a servant of Gyandeo,

witnessed this incident at the initial stage when the beating was started by the three persons but mean while he was asked by the daughter of Gyandeo to go to the flour mill for grinding the wheat. After 1 1/2 hours Rajuram returned to the house of Gyandeo from the flour mill and he saw that the beating was still going on to Megsingh. Some time after his arrival, Rajuram was asked by Gyandeo to tie the legs of Megsingh and when it was done by Rajuram at the instance of Gyandeo, it is said that Rishideo & Surenier tied another rope round the neck of Megsingh and strangulated him. After the death of Megsingh, according to the prosecution case, the dead body was put in a gunny bag and at about 11 in the night it was taken by Rishideo, Surender and Rajuram to the canal in a tractor and there it was disposed of.

3. The wife of Megsingh knew that he was called to 16BB by Gyandeo and that it was at the call of Gyandeo that Megsingh had gone to that village. But when Megsingh did not return she started suspecting foul play with her husband. She gave out her suspicion to Hakimsingh the elder brother of the deceased, who lodged the first information report on 24th of March, 1970 at the police kotwali Ganganagar. It is said that the police did not move promptly after receiving the first information report Ex P 6 and therefore, an approach was made to the S.P. Ganganagar who directed Hakimsingh to hand over the report to the SHO Padampur. Ex P 7 is that report which was filed by, Hakimsingh at (he police station Padampur. The investigation started and Dy S.P. Mewaram PW 20 took the investigation in his hand. On 27th of March, 1970, the dead body of Megsingh was found floating in the water of the canal and an information to that effect was supplied to the police authorities. The dead body was sent for postmortem to Dr. K.M. Lal who after post mortem found out ligature marks on the neck of the dead body of Megsingh. Two months after, the death of Megsingh, Rajuram presented himself in the Thana and his statement was recorded by the police. He turned an approver and the statement of Rajuram was therefore taken down u/s 164 C.r. PC after granting pardon. It may be mentioned here that Surender could not be apprehended and therefore the challan was put up only against Gyandeo and Rishideo.

4. The prosecution at the trial examined as many as 20 witnesses including the approver Rajuram PW 15. The charges were denied by the accused person and they also brought in the witness-box four witnesses including one Chimnaram who was once suspected to be an accomplice in the beginning and was kept behind the bars for 1 1/2 months and later on he was released as no evidence could be collected against him. The learned Judge after carefully examining the prosecution as well as defence witnesses refused to place reliance on the testimony of the approver mainly on the ground that the presence of the approver in the village at the time of the incident was not beyond doubt, and that it was not necessary for the accused persons to have reposed confidence in the approver for the commission of such a heinous crime. The learned Judge also was of the opinion that the story disclosed by the approver was inherently inconsistent with the medical opinion which completely destroyed the

truthfulness of the approver's statement and the tendency shown by the police to introduce false witness which was established on the record beyond reasonable doubt, made the testimony of the approver doubtful. The learned Judge also doubted the presence of Megsingh on the fateful day in the village 16BB and therefore he acquitted both the accused persons. It is against this order of acquittal that the State has come in appeal before this Court.

5. It was vehemently urged by the learned Public Prosecutor that the approver's testimony does not suffer from any infirmity and the learned Judge has viewed the entire case with an angle which in his opinion was defective. The statement of PW 15 Rajuram was read over to us and lengthy comments were given by Mr. Purohit appearing on behalf of the State that "the statement of the approver shows that he had faithfully deposed all the facts which he had himself seen and he being a competent witness under the law can be relied upon to send the respondents to jail for having committed the heinous crime of murdering the man who had come to the home of the accused persons at their own call.

6. After going through the statement of Balwantsingh PW 9 and Bahadurpal Singh PW 19 it is difficult to uphold the finding of the court below that Megsingh on the fateful day did not at all go to village 16BB. The statement of Megsingh's wife Smt. Surjeet Kaur PW 4 corroborates the testimony of Balwantsingh PW 9 and Bahadurpal Singh PW 19 as she has definitely stated that her husband had left his house for 16BB. There is no reason to discard the testimony of Surjeet Kaur and these two independent witnesses Balwantsingh and Balvidurpal Singh. Under these circumstances, we can safely record that on the fateful day i.e. on 22-3-1971 Megsingh went from Ganganagar to 16BB but the establishment of this fact alone is not sufficient to dispose of the prosecution case. The real question to be decided by us is whether the murder of Megsingh had taken place in the house of Gyandeo and whether it was witnessed by Rajuram PW 15 who has been examined as an approver?

7. Before we deal with the testimony of Rajuram we would like first of all to discuss the statement of PW 7 Asha Singh who has tried to throw a great deal of light on the prosecution case. Asha Singh deposes that his niece was married in village 16BB. On the last Holi day he went to meet his niece. He knew Gyandeo and his house also, which was in the vicinity of the house of his niece. He states that at about 5 PM he saw Rishideo and Surender taking Megsingh deceased to their house forcibly and thereafter he heard the voice of Megsingh Mai ke guna hoon; mujhe kuch pata nahin hai: mujhe kyon marte ho." According to this witness the shrieks of Megsingh continued for one and a half hours. He says that he had also heard the voice of Gyandeo at that time. He further states that at about 10 or 11 PM he saw a (sic) going from the house of Gyandeo on which a gunny bag was put and Rishideo was driving the tractor. Besides Surender, according to this witness one other person whose face was muffled with a cloth was also sitting on that tractor. He could not recognise that person because his face was hidden. Learned Counsel appearing on behalf of the accused-respondents

urged that this witness has been falsely introduced in order to lend support to the testimony of the approver. The main ground for levying this charge is that PW 7 Asha Singh was present with the Dy SP Mewaram PW 20 on the spot of occurrence on 26th of March, 1970 when the Dy. S.P. came to inspect the site, but he did not disclose anything to him. It was on 28th March, 1970, that he came out as a witness and deposed that he had seen Megh Singh being forcibly taken in the house by Rishideo and Surrender. The witness is a history-sheeter and was a man of no character and, therefore, according to the learned Counsel for the respondents he could easily play in the hands of the police to oblige them by becoming a witness. However, we carefully perused the statement of this witness and the way he started deposing things do cast shadow of doubt on the veracity of the testimony. The witness says that for 11/2 hours the shrieks of Megh Singh were heard by him, But it cannot be believed that for 1 1/2 hours Megh Singh was continuously beaten by the accused persons. He has introduced a fact in his deposition that he saw three persons on the tractor. It was being driven away from the house of Gyandeo and one of them was a person whose face was muffled. According to the prosecution case Megh Singh was ultimately killed by Rishideo and Surrender by strangulating him. If there was any reason for any one to hide his face from the gaze of others then it should have been done by the real culprit viz. Rishideo and Surrender and not by a person who according to the prosecution case had simply assisted the real culprits by tying the legs of the deceased. It may also be mentioned here that in the beginning when Raju Ram PW 15 was examined by the police he never came out with a fact that he had muffled his face in order to hide it from the gaze of others. It is only after PW 7 was examined in the court that Raju Ram PW 15 deposed that when he was going on a tractor his face was muffled. If really Raju Rim had any cause to hide his face then that fact could not have escaped his memory when he was examined by the police for the first time. It may be mentioned here that Rajuram when examined in the court said very dearly that the faces of all the three persons were not muffled but later on he changed his stand probably to fill in line with the deposition of PW 7 Ashasingh. The (sic) of the statement of Ashasingh PW 7 hardly inspires any confidence and we can there fore say that the Court has rightly disbelieved a witness of this type.

8. The entire case hinges on the testimony of PW 15 Rajuram who has turned approver in this case. The Judge learned has refused to believe the story that Rajuram was servant of Gyandeo. But there is hardly anything on the record which may lead us to this inference that he was not in the employment of Gyandeo. Even if Rajuram was the servant of Gyandeo we have to examine his statement with care and caution as he is a participant in the crime. The Supreme Court has rightly laid down a test to assess the testimony of an approver witness and before the Court should act upon such testimony the Court must satisfy itself that the deposition is truthful and that it finds corroboration from other facts.

9. The prosecution story as given out by Rajuram PW 15 is that Meghsingh came to Gyandeo's house and he was kept locked in a room till Gyandeo arrived from

Ganganagar. After the arrival of Gyandeo a letter was handed over to Gyandeo which enraged him and thereafter beating started. All the three persons namely, Rishideo, Surerder and Gyandeo began to beat Megsingh by fists and shoes. For some time he witnessed this beating and thereafter he was sent by the daughter of Gyandeo to the flour mill for grinding the wheat. When he returned after 1/12 hours from the flour mill he saw that the beating was still going on and thereafter Gyandeo asked the witness to tie the legs of deceased and when the legs of the deceased were tied with a rope it was there after that Rishideo and Surender tied another rope round the neck of the deceased and killed him by strangulating him. Then the rope was untied and thereafter the dead body was put in a gunny bag and was taken away in a tractor at about 10 or 11 P.M and was disposed of in the canal. The learned Judge did not find any corroboration from the medical testimony to the deposition of the approver except that there were ligature marks on the neck of the deceased. The learned Judge has rightly come to the conclusion that the testimony of the approver does not find corroboration from the medical testimony on all material facts. If really the beating was given to Megsingh by Gyandeo and his son Rishideo and Surender for 1 & 1/2 hours then there was no reason why such a beating may not have left some marks on the person of Megsingh. In the absence of any such marks of the beating on the body of Megsingh, the deposition of the approver is rendered highly unreliable and in these circumstances the learned Judge has rightly observed that not only the testimony of the approver does not find corroboration from the medical testimony, but it definitely stands contradicted.

10. We cannot overlook this glaring fact that Rajuram was in village 16BB when Gyandeo and his son Rishideo were arrested by the police. There was no reason why this witness was not arrested by the police. This witness was not at all arrested by the police till he himself surrendered before it. No doubt PW 20 Mewaram says that warrant of arrest was issued against Rajuram and that he was declared an absconder. But Rajuram says that he was all through living in his village and no body came to arrest him in that village. It appears that in a halfhearted manner Rajuram was being searched by the police and they never thought that he was a serious offender. It is submitted by the learned Counsel for the respondents that in the beginning Chimnaram was arrested by the police and he was kept under police custody for first fifteen days and then he was sent to the judicial lockup. An attempt was seriously made by the police to turn him approver but when he refused to dance at the tune of the police, the police thought of making some body else as an approver and then Rajuram came in the picture. This fact cannot be contradicted that Chimnaram was arrested as an offender in this case and 1 1/2 months he was kept under custody and it was after 2 months that Rajuram came in the picture and he readily agreed to oblige the police by playing the role of an approver. The person who was traced out after such a long time loses his importance and cannot be put in the category of a reliable witness. This fact also has been brought to our notice that on the day of the occurrence the flour mill where Rajuram was alleged to have been sent for

grinding the wheat and where he stayed for 1 1/2 hours was closed on that day which is clear from the deposition of the owner of the flour mill. The learned Judge after taking into consideration of these informities in the testimony of the approver did not think it proper to place reliance on it and to convict the accused persons for such a heinous crime as a murder. We carefully examined the arguments advanced by the learned Counsel for the State as well as the learned Counsel for the respondents and we find that it will not be safe to convert the order of acquittal into that of conviction on the strength of the testimony of the approver of this nature. We therefore cannot allow this appeal. The appeal is therefore dismissed.