

(2010) 04 RAJ CK 0085
In the Rajasthan High Court

Vinod Kumar and Another

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 302, 307, 323, 34, 447

Citation : (2010) 04 RAJ CK 0085

Hon'ble Judges : Govind Mathur, J;C.M. Totla, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—By judgment dated 1.11.2003 learned Additional Sessions Judge (Fast Track) No. 1, Pali convicted accused appellant Vinod son of Kishore for the offences punishable under Sections 302 and 447 Indian Penal Code and also convicted accused appellant Kishore son of Mangtu Ram for the offences punishable under Sections 302/34 and 447 Indian Penal Code. Both the accused were also sentenced as under:

Accused Appellant Vinod:

Under Section 302 IPC - Life imprisonment with a fine of Rs. 2000/- and to further undergo six months rigorous imprisonment in event of default in making payment of fine.

Under Section 447 IPC - Three months rigorous imprisonment with a fine of Rs. 100/- and to further undergo one week's rigorous imprisonment in event of default in making payment of fine.

Accused Appellant Kishore:

Under Section 302/34 IPC - Life imprisonment with a fine of Rs. 2000/- and to further undergo six months rigorous imprisonment in event of default in making payment of fine.

Under Section 447 UPC - Three months rigorous imprisonment with a fine of Rs. 100/- and to further undergo one week's rigorous imprisonment in event of default in making payment of fine.

2. To challenge the conviction and sentence aforesaid, this appeal is preferred.

3. Briefly stated, facts of the case are that a telephonic information from a constable Laxmandan was received and entered in daily diary at Police Station Industrial Area, Pali on 26.5.2002 at 10:35 PM. As per information, Ravindra son of Joharilal was admitted to Trauma Ward in Bangad Hospital, Pali in injured condition being beaten by Vinod etc.

4. On receiving the message aforesaid, Sub Inspector Bhagirath Singh alongwith other members of police squad proceeded and reached to the hospital, where at about 11:00 PM a written report Ex.P/10 was submitted by Smt. Pinky, alleging inter-alia that her husband Ravindra had some altercation with her father Kishore on 25.5.2002, while consuming liquor. Being annoyed by it, her brothers Vinod and Vikas came to her house on 26.5.2002 at about 10:00 PM. They were armed with iron rod and lathi and caused injuries on the head of Ravindra with an intention to kill him. Acting upon the report aforesaid, a First Information Report was lodged to investigate the alleged offence punishable under Sections 307, 323/34 IPC. While undergoing treatment Ravindra died at Mahatma Gandhi Hospital, Jodhpur, thus, investigation for an offence punishable u/s 302 IPC too was made, and after completion of that a charge sheet against the appellants was filed, case was committed to the court of Sessions and charges were framed. On denial of the same, accused appellants were tried. A co-accused Vikas being juvenile, was charge sheeted before the Juvenile Court.

5. The prosecution supported its case with the aid of 21 witnesses, out of whom PW-7 Roshan, PW-10 Prahlad, PW-11 Ashok, PW-14 Jugnu and PW-21 Kalu were cited as eye witnesses of the incident. PW-18 Dr. S.C.Jain examined injuries of Ravindra at Bangad Hospital, Pali and submitted injury report Ex.P/36, thus, he proved the same. As per Ex.P/36 Ravindra suffered with following injuries:

1. Incised wound with bleeding 11 x 3 cms x bone deep left tempo parietal region of skull;
2. Incised wound with bleeding 3.5 cms x 1 cm x bone deep left mastoid region;
3. Incised wound with bleeding 2 x 2 cms x bone deep right side of the face over maxillary region;
4. Incised wound with bleeding 4 x 2 cms x muscles deep left upper part of thigh;
5. Incised wound with bleeding 3 x 2 cms x muscles deep right thigh mid region laterally;
6. Abrasion 4 x 2.5 cms left side forehead;
7. Abrasion 4 x 1 cms left thigh upper part laterally;

8. Abrasion 1 x 0.2 cms left anterior chest;

9. Abrasion 2 x 0.5 cms on right knee;

10. Abrasion 1.5 cms x 1 cm on left leg mid region.

6. Out of the injuries aforesaid the injuries No. 1, 2, 3, 4 and 5 were caused from sharp edged weapon and the injuries No. 6, 7, 8, 9 and 10 were inflicted by some blunt object.

7. The autopsy on the body of Ravindra was conducted by PW-20 Dr. Jagdish Jugtawat, thus, he proved the postmortem report Ex.P/37, according to which the cause of death was head injury.

8. PW-1 Gajendra Singh, Assistant Sub Inspector, was the Investigating Officer, thus, he narrated the steps taken during the course of investigation. As per prosecution, a knife and a lathi were recovered from accused Vinod and Ki shore respectively. The articles aforesaid were serologically examined at Forensic Science Laboratory, Jodhpur, report of which is available on record as Ex.P/35. An iron rod ("saria") recovered at the instance of juvenile accused Vikas. As per Ex.P/35 none of the weapon or articles recovered as aforesaid were found with blood stains.

9. The accused appellants denied all the allegations and pleaded their innocence while explaining the circumstances available against them in prosecution evidence and DW-1 Shri Heeralal was produced as witness in defence of the accused appellants.

10. Learned trial court relying upon the statements of PW-7 Roshan, PW-10 Prahlad PW-11 Ashok, PW-14 Jugnu and PW-21 Kalu reached at the conclusion that accused Vinod gave a knife blow on the head of deceased Ravindra, consequent to which he died. Kishore gave lathi blow to deceased Ravindra and both the accused persons were having a common intention to kill Ravindra. Accordingly, conviction was recorded and sentence was awarded.

11. In appeal, it is contended that the evidence of eye witnesses is not genuine and that was cropped up at a later stage and as such the same is not at all reliable. It is also asserted that a conscious effort was made by the prosecution to suppress true facts inasmuch as the most relevant witnesses complainant Pinky and the telephonic informant Laxmandan were not brought before the court in witness box. Learned Counsel for the accused appellants Shri Vineet Jain also pointed out various contradictions in the statements of eye witnesses and also commented adversely on their conduct by citing various events including that before Juvenile Court in the trial of Vikas these persons did not support the prosecution and were declared hostile, thus, are not worth credence.

12. On the other hand, learned Public Prosecutor while supporting the conviction recorded and sentence awarded urged that instant one is a case where eye witnesses quite categorically stated all the facts seen by them and there is no

reason to impeach their credibility. It is also asserted by learned Public Prosecutor that adequate evidence was available on record and as such the non-production of complainant Pinky and Laxmandan is absolutely immaterial.

13. We have considered the arguments advanced and also examined the entire record.

14. In view of the medical evidence available on record, there is no doubt about homicidal death of Ravindra. The cause of death as per postmortem report Ex.P/37 is the head injury.

15. From scrutiny of the record the chronology of the entire incident that emerges is on 26.5.2002 deceased Ravindra was admitted to Trauma Ward at Bangad Hospital, Pali after receiving serious injuries. A telephonic information in this regard was given by Laxmandan at Police Station Industrial Area and in response thereto a police squad reached to the hospital. At hospital, wife of Ravindra viz. Pinky was present and on basis of her statement a first information report was lodged for commission of offences punishable under Sections 307 and 323/34 IPC. In the report Ex.P/10 Pinky referred two persons viz. Vinod and Vikas. No reference of accused Kishore is given in the report aforesaid. As per Ex.P/10 Vinod and Vikas were armed with iron rod and lathi respectively. No reference of any sharp edged weapon is given in this report. From a plain reading of document Ex.P/10 it also appears that Pinky brought Ravindra to the hospital and get him admitted there. After getting some treatment at Bangad Hospital, Pali Ravindra was referred to Mahatma Gandhi Hospital, Jodhpur for further treatment, where he died. After the death, autopsy of Ravindra's body was made by PW20 Dr. Jagdish Jugtawat on 29.5.2002.

16. It is pertinent to note that the investigating agency materially investigated the matter by recording statements of eye witnesses as per provisions of Section 161 Cr.P.C. on 29.5.2002 only. Prior to 29.5.2002 the eye witnesses viz. Roshan, Prahlad, Ashok, Jugnu and Kalu were not at all introduced to the process of investigation. At the stage of investigation the use of knife and presence of Kishore came on surface only on 29.5.2002. It is also relevant to note that accused Kishore and use of knife in assaulting Ravindra was introduced to the investigation by Prahlad, Ashok, Kalu, Roshan and Jugnu under Ex.P/12, Ex.P/13, Ex.P/14, Ex.P/15 and Ex.P/16 respectively on 29.5.2002, i.e. after death of Ravindra. Prior to that none of these persons came forward to assist the investigation though before the court all these persons claimed themselves as the persons quite intimate and close to deceased. The statements of Pinky u/s 161 Cr.P.C. were recorded on 4.7.2002 (Ex.P/20), where she named Kishore also and also stated that Vinod was carrying a knife.

17. PW-7 Roshan is a neighbour of deceased and as per this witness he was the first person to reach at the spot and subsequent to him Kalu and Ashok reached at the spot. Subsequent thereto PW-10 Prahlad also reached at the spot. This witness also stated that PW-11 Ashok and PW-21 Kalu came to the spot from

their house.

18. PW-10 Prahlad in his statement nowhere refers presence of Roshan. As per this witness he reached at the residence of Ravindra first and at that time none except Pinky was present there. The other witnesses Ashok and Kalu, accordingly to Prahlad, reached at the spot subsequent to him.

19. PW-11 Ashok stated that he saw the entire incident from a nearby bridge, where he was standing with Kalu. As per this witness, he and Kalu reached at the spot at first and at that time none except Pinky was present there. According to this witness he alongwith Kalu took Ravindra to hospital. This witness accepts that he, Ravindra and Kalu were intimate friends. He also admitted that all the three friends were facing several criminal cases. This witness also nowhere refers presence of PW-7 Roshan at the spot.

20. PW-14 Jugnu though is cited as eye witness but from examination of his statements it is apparent that he did not witness the incident. As per this witness, at about 10-10:15 PM when was sleeping outside his house, he saw Vinod carrying a blood stained knife, Kishore and Vikas armed with stick and iron rod respectively. He further stated that wife of Kishore asked him that where he had been, then he replied that "Ravindra has been finished". As per this witness, residence of Kishore, Vinod and Vikas is just opposite to his house.

21. PW-21 Kalu is an other eye witness and as per him he saw the entire incident from the bridge, where he was standing with his brother Ashok. As per this witness, he and Ashok reached at the spot at first and subsequent to him Prahlad too came at the spot. This witness also claimed that he alongwith Ashok carried Ravindra to hospital. This witness admitted that he mostly roams in courts and earlier also he gave statements in Vikram Singh's murder case. As per this witness he did not inform police about the incident after getting Ravindra admitted to the hospital.

22. An important aspect of the matter is that neither Pinky, who submitted the report Ex.P/10, nor Laxmandan who made telephone at Police Station, were produced before the court as a witness. Laxmandan is a police constable, but even during the course of investigation, as per Investigating Officer, no investigation was made from him. Both the persons named above would have been quite relevant for unfolding of entire incident and their testimony would have been quite helpful to reach at a definite conclusion regarding commission of crime, but it appears that the investigating agency much more relied upon the witness who reached at the spot of occurrence later than Pinky and also chose nothing to say about the persons who brought Ravindra in injured condition to Bangad Hospital. In this regard Laxmandan could have been a witness most relevant.

23. We are aware of the position that the prosecution need not to call all the witnesses, if the witnesses essential to unfold the incident had been examined. In the instance case, as already stated earlier, the prosecution relied upon

certain eye witnesses and, therefore, credibility of those is to be examined to see that whether those were sufficient to unfold the narration.

24. We found that lot of contradictions exist regarding first arrival of the person/ persons at the spot of occurrence from among the eye witnesses. As per Prahlad, he reached at the spot first, whereas, PW-7 Roshan claims to be the first person to reach at the spot. On the other hand, Ashok and Kalu also claimed that they were the persons first to reach at the spot. These two persons also stated that they brought Ravindra at the hospital, however, as per Ex.P/10 Pinky brought Ravindra to the hospital in injured condition. It is also pertinent to note that PW-7 Roshan, PW-10 Prahlad, PW-11 Ashok and PW-21 Kalu all are the persons quite close to deceased Ravindra, but they did not choose to say anything to the police regarding the incident prior to 29.5.2002. In normal course, these persons should have informed the police, as they claimed to be the first to attend and help the victim. It is quite strange that the persons immediately reaching to the spot of occurrence and taking the victim to the hospital, did not choose to say anything to police till 29.5.2002. The conduct of all the persons named above in the present case is quite contrary to the normal human behaviour.

25. It is also to be noticed that Ashok and Kalu were admittedly facing number of criminal cases alongwith deceased Ravindra and they were also regularly visiting the courts. From cross examination of Kalu it also reveals that earlier too he appeared as prosecution witness and was cited as an eye witness in a murder case. In that case he was declared hostile.

26. An another important aspect to examine conduct of eye witnesses upon whom the trial court relied, is that all these persons turned hostile before the Juvenile Court where the case of other accused Vikas was tried. Learned Counsel for the appellants has supplied us certified copies of the statements tendered by these persons before the Juvenile Court. Before the Juvenile Court all these persons stated that they did not saw Vikas giving any kind of blow to deceased Ravindra. We have considered statements of these persons given before the Juvenile Court only to settle their conduct and to examine credibility of these witnesses.

27. From examination of entire evidence available on record, we are of the view that variance and contradictions available in the evidence prescribed by PW-7 Roshan, PW-10 Prahlad, PW-11 Ashok, PW-14 Jugnu and PW-21 Kalu gives space for reasonable doubt about involvement of present accused appellants with the incident. We are of the opinion that testimony of the eye witnesses cited by the prosecution is not so cogent or definite as required to convict the appellants.

28. Accordingly, this appeal deserves acceptance and, therefore, the same is allowed. The judgment impugned dated 1.11.2003 passed by learned Additional Sessions Judge (Fast Track) No. 1, Pali in Sessions Case No. 33/2002 is set aside. The conviction of the accused appellants recorded and sentence awarded under the judgment aforesaid also stand set aside. Let accused Vinod be released from

judicial custody forthwith, if not otherwise required. Accused Kishore is already availing suspension of sentence in pursuant to the order dated 6.4.2004. Thus, the bail bonds and sureties furnished by him stand discharged.