

Harjinder Singh Vs. State

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Court : Rajasthan Jodhpur

Decided On : May-07-2015

Appellant : Harjinder Singh

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Kripal Singh @ Pal Singh & Anr.

versus State of Rajasthan (1) D.B.Criminal Appeal No.412/2008 Atma Singh
versus State of Rajasthan (2) D.B.Criminal Appeal No.372/2008 Harjinder Singh
versus State of Rajasthan (3) D.B.Criminal Appeal No.411/2008 Appeals against
the judgment dated 1.5.2008 passed by Additional Sessions Judge (Fast
Track).Anupgarh, District Sriganganagar, in Sessions Case No.02/2006.

Date of Judgment :: 7th May, 2015 P R E S E N T HON'BLE MR.JUSTICE
GOVIND MATHUR HON'BLE MISS JUSTICE JAISHREE THAKUR Mr.HSS
Kharlia, Senior Advocate, assisted by Mr.Bhawani Singh].Mr.D.L.Rawla].for the
appellant(s).Mr.N.L.Joshi].Mr.J.Bhardwaj, Public Prosecutor, for the State...BY
THE COURT : (PER HON'BLE MATHUR,J.) These three appeals are directed
against the judgment dated 1.5.2008 passed by learned Additional Sessions

Judge (Fast Track) Anupgarh recording conviction and awarding sentence to accused Kripal Singh @ Pal Singh, Gursahab @ Sahab and Harjinder Singh as under:- -2- u/S.120-B IPC : Ten yearRs.rigorous imprisonment to each accused with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

u/S.394/34 IPC : Ten yearRs.rigorous imprisonment to each accused with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

u/S.397/34 IPC : Ten yearRs.rigorous imprisonment to each accused with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

u/S.302/34 IPC : Life imprisonment to each accused with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

By the same judgment accused appellant Atma Singh is also convicted and sentenced for the offences mentioned below :- u/S.120-B IPC : Ten yearRs.rigorous imprisonment with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

u/S.394/120-B IPC : Ten yearRs.rigorous imprisonment with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

-3- u/S.397/120-B IPC : Ten yearRs.rigorous imprisonment with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

u/S.302/120-B IPC : Life imprisonment with fine of Rs.1000/- and in default of payment of fine further to under six months additional simple imprisonment.

In brief, facts of the case are that on 7.8.2005 Shri Chandra Singh, Assistant Sub Inspector of Police, Police Station Ghadsana, reduced in writing the statement

made before him by Shri Balvinder Singh (deceased) at Government Hospital, Ghadsana.

As per the the statement (Ex.P/10).on 6.8.2005 at about 10:00 AM Atma Singh son of Bhajan Singh alongwith two other persons came to the house of Balvinder Singh.

The persons came with Atma Singh hired his tractor to carry household goods from Gumjal (Punjab) to Chhattargarh (Rajasthan).At about 05:00 PM in evening Balvinder Singh reached at Koopli crossing, where Atma Singh and two other persons were waiting for him.

Balvinder Singh as requested by Atma Singh went to his house to have dinner.

After having dinner and getting the diesel tank of the tractor filled proceeded for Gumjal with two persons who hired the tractor.

At about 11:00 PM at a place nearby Dhandhra Bus Stop the two persons get down from the tractor to urinate.

At that time a third person known to the two persons referred above came on a red boxer motorcycle.

All the three persons then pull down Balvinder Singh and also pull down his pajama.

His mouth, wrists and legs then were tighten by the pajama and its string.

All the three persons -4- then fled from the spot with tractor and also carried motorcycle with them.

In morning of 7.8.2005, two shepherds of village Dhandhra saw Balvinder Singh lying close to the road and then he was brought to Government Hospital in a jeep.

On basis of the statement given by Balvinder Singh a case was registered for the offences punishable under Sections 382, 323/34 Indian Penal Code.

During couRs.of investigation Balvinder Singh died on 25.8.2005.

The investigating agency after due investigation filed a police report as per provisions of Section 173 Code of Criminal Procedure against accused persons for the offences punishable under Sections 120-B, 394/34, 397/34 and 302/34 Indian Penal Code.

The case being sessions triable was committed to the court of Sessions.

The Sessions Court after providing an opportunity of hearing to the accused persons framed charges against them for commission of offences punishable under Sections 120-B, 394/34, 397/34 and 302/34 Indian Penal Code.

On denial of the charges trial commenced as desired.

The prosecution supported its case by getting testimony of 21 witnesses examined and by exhibiting 34 (Ex.P/1 to Ex.P/34) documents.

The accused while availing opportunity to explain adverse and incriminating circumstances against them in prosecution evidence termed the entire evidence concocted and stated that they were falsely implicated in the case concerned.

In defence certain documents were exhibited.

-5- The trial court after considering the entire evidence available on record convicted the accused persons and sentenced them accordingly.

In appeal, the argument advanced by learned counsels for the accused appellants is that no adequate evidence is available on record to arrive at a conclusion that the accused persons committed any offence described under Section 300 Indian Penal Code and further that they were sharing any common intention to commit murder of Shri Balvinder Singh.

The counsels appearing on behalf of accused persons except accused Atma Singh have not pressed into service any argument to challenge conviction of the accused persons for the offences other than under Section 302/34 Indian Penal Code.

Learned counsel appearing on behalf of accused appellant Atma Singh urged that even by accepting the evidence adduced by the prosecution no case against accused Atma Singh can be made out for the offence punishable under Section 120-B Indian Penal Code.

It is asserted that that the trial court seriously erred in holding accused appellant Atma Singh guilty for a part of criminal conspiracy and for commission of offences punishable under Sections 120-B, 397/120-B and 302/120-B Indian Penal Code.

Per contra, as per learned Public Prosecutor the accused other than Atma Singh gave serious beating to Balvinder Singh and also tighten his mouth, legs and wrists -6- that resulted into his death on 25.8.2005, therefore, the trial court rightly held them guilty for the offence punishable under Section 302/34 Indian Penal Code.

So far as accused Atma Singh is concerned, it is urged that he was the person who brought the other accused persons at the residence of deceased Balvinder Singh, therefore, his participation in conspiracy to kill Balvinder Singh is apparent.

Heard learned counsels.

Before examining other evidence available on record, we would prefer to discuss the medical evidence available.

On 7.8.2005 Balvinder Singh was fiRs.brought to Government Hospital, Ghadsana and as per injury report (Ex.P/8) he had following injuries :- 1.Abrasion .

x .

on left side of face.

2.Abrasion .

x .

on outer side of eye and face.

3.Swelling, oedue pain, tenderness of tissues blackening of skin and muscles and tissue and nail on left hand, wrist and forearm.

4.Swelling, oedue, pain, tenderness and blackening of skin, muscles, tissue and nail and blister radial artery not palpable on right hand, wrist and forearm distant part.

5.Bruise with blister 3.x 2.

on right lower leg anteriorly.

6.Abrasion with blackening of skin with blister formation with underlying tissue and muscles become black with oedeue and swelling on right lower leg ankal joint and right foot.

-7- 7.Blackening with oedue with blister formation with swelling on left lower leg.

The injury report was prepared by Dr.

Madan Mohan (PW-11) who while getting his testimony examined by the trial court stated that the injuries No.1, 2 and 5 were of simple nature.

He reserved his opinion with regard to injuries No.3, 4, 6 and 7 while noticing that haematoma with pain was existing and the muscles of wrists and nails were having black shade and further that blood was not flowing in radial arteries.

This witness did not notice any grievous injuries/hurt while examining Balvinder Singh.

This witness also disclosed that Balvinder Singh was not having any wound oozing with blood.

Pertinent to notice that as per this witness Balvinder Singh at the time of his medical examination was in position to conveRs.normally.

According to this witness looking to serious condition he referred Shri Balvinder Singh for treatment at some other developed centre.

The seriousness as per this witness was due to preliminary stage of gangrene.

Shri Balvinder Singh was taken to SMS Hospital, Jaipur via Bikaner from Ghadsana where while undergoing treatment he died on 25.8.2005 i.e. after a lapse of 19 days from the date of incident.

Autopsy on the corpus of Balvinder Singh was made by Dr.

Sumant Dutta (PW-16). As per this witness cause of death of Shri Balvinder Singh was septicemia occurred to various injuries antemortem and also caused during - 8- treatment.

According to this witness some of the fingers of both the hands as well as of a foot were amputated due to developing gangrene.

This witness also found several parts of the deceased infected but he failed to disclose whether infection occurred while undergoing treatment or that was existing prior to that.

Be that as it may, the medical evidence adduced in the case nowhere discloses that any injury was caused by the accused persons that was sufficient to cause death in normal course of life.

Dr.

Madan Mohan (PW-11) while examining deceased noticed that at least three injuries were simple and no opinion was given by him about remaining injuries.

He also noticed that Shri Balvinder Singh was in position to detail his pain and other events.

An important witness in the case is Smt.

Paramjeet Kaur (PW-1) widow of Shri Balvinder Singh, who stated that Shri Balvinder Singh was first taken to Ghadsana Hospital and then he was taken to Bikaner and then to Jaipur.

While in transit he was fully conscious and was giving all details of the incident taken place.

He was also taking food and other snacks as usual.

At SMS Hospital, Jaipur too he was quite fit to give all details of the incident occurred and he himself narrated about his injuries to the doct ORS. As per this witness no information with regard to movement from Ghadsana to Bikaner and Jaipur was given to the police.

The facts stated by Smt.

Paramjeet Kaur (PW-1) indicate that for good 19 days while undergoing treatment Shri Balvinder Singh was consuming food, tea, -9- snacks etc. and was behaving quite normally.

No evidence is available on record to infer that the cause of death of Shri Balvinder Singh was the injuries said to be assigned by the accused appellants.

As a matter of fact no grievous injury was noticed at fiRs. instance even by Dr.

Madan Mohan (PW-11). Looking to whatever evidence discussed above we are of considered opinion that the evidence available on record is not sufficient to hold the accused appellants guilty for an offence punishable under Section 302/34 Indian Penal Code.

The prosecution also failed to establish any grievous hurt to Shri Balvinder Singh by the accused persons, therefore, the offence punishable under Section 397/34 Indian Penal Code is also not made out against the accused appellants in the instant matter.

As already stated, accused Atma Singh has been convicted with the aid of Section 120-B Indian Penal Code.

Learned trial court while holding him guilty for entering into a criminal conspiracy has not discussed the evidence available on record.

He has been convicted with the aid of Section 120-B Indian Penal Code merely on the count that two other accused persons viz.

Kripal Singh @ Pal Singh and Gursahab @ Sahab came with him to the residence of Balvinder Singh to hire tractor.

Pertinent to notice here that as per Smt.

Paramjeet Kaur (PW-1) Shri Atma Singh was like her brother.

He was usually coming to her house with customers for hiring tractor.

This witness quite categorically stated that Atma Singh from last several -10- years was treating her as sister and was also discharging all duties and rituals like a brother.

He never caused any loss or injury to her or her family.

According to this witness Balvinder Singh while giving details of the entire incident stated that Atma Singh was not accompanying other accused persons.

It is well settled that to bring home the charge of conspiracy within the ambit of Section 120-B Indian Penal Code it is necessary to establish an agreement between the parties for doing an unlawful act.

There must be some material from which it can be reasonably established that a connection was there between the alleged conspiracy and the act done in pursuance thereto.

In the case in hand there is no material on record to establish any involvement of accused Atma Singh in any criminal conspiracy.

His conviction as a matter of fact is based on no evidence.

He, thus, deserves to be acquitted from all the charges alleged.

Accordingly the appeals preferred by accused Kripal Singh @ Pal Singh and Gursahab @ Sahab (Appeal No.412/2008) and Harjinder Singh (Appeal

No.411/2008) are allowed in part.

Their conviction recorded and sentence awarded for the offences punishable under Sections 394/34 and 120-B Indian Penal Code is affirmed, however, they are acquitted from the charges relating to commission of offences punishable under Sections 397/34 and 302/34 Indian Penal Code.

The appeal preferred by Atma Singh (Appeal No.372/2008) is allowed.

His conviction for the offences -11- punishable under Sections 120-B, 394/120-B, 397/120-B and 302/120-B Indian Penal Code is set aside.

He is acquitted from the charges aforesaid.

The sentence of Shri Atma Singh was suspended by this Court and he is already availing the same by executing bail bonds and sureties.

The same are hereby discharged.

(JAISHREE THAKUR),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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