

Ram Singh Vs. State

Ram Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/754492

Court : Rajasthan

Decided On : Aug-14-1975

Reported in : 1976CriLJ667

Judge : Kan Singh and; P.D. Kudal, JJ.

Appellant : Ram Singh

Respondent : State

Judgement :

ORDER

P.D. Kudal, J.

1. The accused-appellant Ram Singh has filed this appeal against the judgment of the learned Additional Sessions Judge, Dholpur dated 6th July, 1971, whereby Ram Singh has been convicted under Section 302, read with Section 34, I. P. C, and sentenced to undergo imprisonment for life.

2. The prosecution story, in brief, is that on 22nd September, 1970, Sumera had gone to his field known as Pokharwala Khet to fetch grass for his cattle. He was returning from the field with a load of grass at about 12 noon. He was accompanied by his son Raj Bahadur, aged 7 years, and his elder brother Laxman P.W. 1 was following him. When Sumera reached near the well, known as Pokharwala Khet, Nathi, Ram Singh, Chhitaria and Phaguni rounded him. Ram

Singh was armed with spear (sel), and the other accused were armed with lathis. These four persons assaulted Sumera saying that today is a good occasion for finishing Sumera. Sumera having received a lathi-blow on his right leg by Nathi ran into the field of Jwala where the crops of Bajara were standing. All these four persons followed him there, and assaulted him. Sumera fell down.

Ram Singh assaulted Sumera on the left leg by the spear causing fracture of the tibia bone. Another assault by the spear was made on his left arm. Phaguni and Chhitaria gave him lathi blows on the back, head and other parts of the body. Nathi asked his- accomplices to catch hold of Raj Bahadur and to give him a good thrashing so that he may not go and tell the village people. Laxman, the elder brother of Sumera raised a cry. He was also beaten by these persons. Ram Singh came and having seen all this, he ran to the village and informed the other villagers. Mst. Chameli wife of Sumera and Mst. Harbheji, daughter of Sumera and other villagers- Ram Gopal, Jwala etc. came to the site. Mst. Chameli enquired from Sumera as to who had beaten him. Sumera told her that Ram Singh, Nathi. Chhitaria and Phaguni had beaten him. Having said so, Sumera became unconscious, and died after half an hour.

3. The dead body of Sumera was taken to the village by the villagers, and First Information Report was lodged by Laxman P.W. 1 at the Police Station, Bari. After necessary investigations, the police challaned the accused Ram Singh under Section 302, I. P.C. The other three accused persons, viz. Chhitaria, Phaguni and Nathi were not apprehended, and are still at large.

4. The First Information Report was lodged by P.W. 1 Laxman on 22-9-1970, at 5.45 p.m. at the Police Station, Bari. In the FIR, Laxman stated that Nathi and his brother Ram Singh had severe inimical terms with his brother Sumera, When Sumera was returning from his field, at about 12 noon, Nathi, Ram Singh, Chhitaria and Phaguni assaulted him saying that today is a good opportunity, All these four persons rounded him in Jwala's field. Chhitaria and Phaguni gave lathi strokes on the head of Sumera. Ram Singh gave a spear blow on his left leg as a result of which Sumera fell down. Ram Singh then gave a second spear blow on his left arm. On getting the information Ramji, Mst. Chameli, and Mst. Harbheji

came to the site and enquired from Sumera as to who has assaulted him. Sumera told them that Nathi, Ram Singh, Phaguni and Chhitaria have assaulted him.

5. Laxman was examined as P.W. 1. He stated that Raj Bahadur P.W. 9 was ahead of Sumera while he was following him, when Sumera was returning to his house at about 12 noon with a grass-load on his head. Nathi, Ram Singh and Phaguni rounded Sumera. Ram Singh had a 'sel' with him, and the other accused-persons had lathis with them. Nathi struck lathi-blow on Sumera. Phaguni struck a lathi-blow on Sumera. While Chhitaria struck Sumera on his back, head, and all other parts of the body. On hearing the cries of Laxman, Ramji came and seeing this, Ramji went to the village and informed people where Mst. Chameli, Mst. Harbheji and the other village people came. On an enquiry from Mst. Chameli, Sumera told her that Ram Singh, Nathi, Chhitaria and Phaguni have assaulted him.

Sumera died after half an hour, after arrival of Mst. Chameli and other villagers. When this witness Laxman object-ed to the beating of Sumera, he was also assaulted. Four or five lathi blows were dealt on him, as a result of which he fell down, and became unconscious for a while. When he regained consciousness he saw that Lai Kishan, Kishora, Chama, Jwala Brahman and Bohra Ram Gopal of the village had come. On being questioned, whether Raj Bahadur's name was given out by him in his statement before the committing Court, the witness said that he might have given Raj Bahadur's name. When the statement was read over to him, he said that Raj Bahadur was a child, he may not have mentioned his name.

He further stated that in the First Information Report he had stated that Nathi dealt lathi-blows on the head of Sumera, while it might have been noted as having struck on the legs. Phaguni dealt a lathi-blow on Sumera's head, and other parts of the body. Phaguni gave 10 or 20 lathi-blows, as a result of which Sumera's head was broken, and he had fractures of the arms, shoulder and the legs. Chhitaria also dealt 15 or 16 lathi-blows. The accused had assaulted Sumera in the sand dune, and left Sumera there. This witness did not tell anything to Mst. Chameli regarding the assault. P.W. 5 Surya Bhan stated that Nathi had reported against

Sumera and Laxman on 31-12-1969 regarding a 'marpeet'.

This report was taken down by Surya Bhan, who was the Head Constable in the Police Station, Bari. P.W. 8 Mst. Chameli stated that when Ramji came to the village, and told about the assault on Sumera, she, accompanied by her daughter Mst. Harbheji, went to the site. She enquired from Sumera as to who had assaulted him. Sumera replied that Ram Singh assaulted him with spear, and that Nathi dealt him a lathi blow on his leg. Chhitaria and Phaguni have also dealt lathi-blows. Sumera was bleeding from his legs and head. She has further stated that P.W. 1 Laxman did not tell her anything about the assault by these four persons on Sumera.

P.W. 9 Raj Bahadur is the minor son of Sumera. Raj Bahadur is aged 7 years. He has stated that his father Sumera was rounded up near the well. Ram Singh had a spear with him. He saw the accused-persons assaulting Sumera. He has further stated that he told his mother that Nathi had killed Sumera. He was caught at the well by the accused persons, but nobody beat him. The statement of Raj Bahadur was recorded on 22-9-1970 by the police, wherein he stated that Nathi, Ram Singh, Chhitaria and Phaguni came out of the fields of Nathi, and said that today we shall kill Sumera, and so saying, all of them started assaulting his father. Nathi dealt a lathi-blow on Sumera. Sumera ran into the fields where 'bajari' was standing, after having received this blow. P.W. 12, Mst. Harbheji is the daughter of Sumera.

She has stated that Raj Bahadur returned from the fields, and said that 'marpeet' is going on between Sumera, Chhitaria, Phaguni, Ramji and Nathi. Soon thereafter Ramji came and said that all the four accused persons were beating Sumera. On getting this information, she accompanied by her mother, Mst. Chameli P.W. 8 went to the site. When her father called that he was there in the field, on being asked Sumera said that Chhitaria, Ram Singh, Nathi and Phaguni had beat him. In the statement before the Court, she stated that Raj Bahadur has told that Nathi, Chhitaria, Ram Singh and Phaguni have beat Baba. When she went to the site, Laxman was sitting by the side of Sumera. Laxman did not tell anything to this witness. Sumera told her that Nathi has struck a lathi-blow on his head and Ram

Singh has hit his left leg by a spear. Chhitaria and Phaguni have dealt lathi-blow on his head and on his legs. P.W. 13 Ramji, who is another eye-witness to the incident, was declared hostile as he gave a point-blank denial.

6. P.W. 15 is Dr. Radhey Behari Nigam, who performed the post-mortem examination on 23-9-1970. He found the following injuries:

1. Round punctured wound $3/4'$ on the middle side of the junction of upper-middle $1/3$ of left leg.

2. Round wound $1/2' \times 1/2'$ on the middle of the outer side of left leg. The wounds Nos. 1 and 2 are communicating with each other. There was fracture of tibia bone and laceration of muscles of this part. The wounds were caused by pointed and blunt object and were wounds of 20 hours duration.

3. Penetrating wound $3/4' \times 3/4' \times 3'$ deep on the back of lower $1/3$ of left arm.

4. Contused wound $1' \times 1/4' \times$ bone deep on the vertex of head towards left side.

5. Contused wound $1' \times 1/4' \times 1' \times 1/4'$ bone deep on the outer medial side of the middle of right leg.

The wound No. 3 was due to pointed and penetrating object and was of 20 hours duration.

7. He also found that the skull bone was fractured. It was a depressed fracture $1/2'$ long \times $1/2'$ wide on the left side of the frontal bone. There was lot of clotted blood under the scalp and under the bone on the membranes of head at the site of injury. According to this witness, Sumera had died of shock and severe haemorrhage due to head injury and penetrating injury of left leg which were caused by hard blunt object, and some penetrating object respectively. In the opinion of this witness, the person must have become unconscious on receiving these injuries. He has further stated that the nature of the injuries were such that the person must have immediately fallen down on the ground, and became unconscious.

8. P.W. 14 Ghamandi Singh is the SHO. On receiving the information he investigated the case, and put up the challan. He has further stated that previously a case was also going on between the parties. Only the accused Ram Singh could be arrested, and the other accused-persons are absconding. He has stated that Ramji had made the statements which he has later on resiled.

9. On behalf of the accused-appellant Ram Singh, it was contended that there is no evidence worth the name against him which can bring the guilt home to the accused. It was also contended that only three eye-witnesses were produced by the prosecution. Ramji P.W. 13 has been declared hostile, and has not supported the prosecution story. Raj Bahadur P.W. 9 is a child witness of 7 years. His statement cannot be relied upon in view of the fact that he has made material improvements as compared to his statement made before the police under Section 161, Criminal P.C. Even otherwise the statement of a child witness has to be judged with great caution. The third eye-witness Laxman P.W. 1, it was contended, is hardly worthy of any credence. The story given by him does not tally with what has been stated by Raj Bahadur P.W. 9, or by Mst. Chameli P.W. 8, or Mst. Harbheji P.W. 12.

Under these circumstances, it was contended that the accused-appellant Ram Singh deserves to be acquitted. It was further contended that the other three accused-persons are absconding and have not been apprehended, and that according to the prosecution story, the fatal assault by lathi on the head of Sumera is attributed to Nathi, The prosecution witnesses have also stated that lathi-blows were struck by Phaguni and Chhitaria. Under these circumstances, it was contended that no case is made out against the accused-appellant Ram Singh. In the alternative, it was also contended, as a last resort, that the case of the accused Ram Singh can at best fall under Section 325 or 326, I. P.C.

10. On behalf of the State, it was contended that the statement of Laxman P.W. 1 and Raj Bahadur P.W. 9 are enough for convicting the accused Ram Singh. It was also contended that the dying declaration of Sumera has been wrongly discarded by the learned Additional Sessions Judge, and that support could be drawn from the dying declaration also for upholding the conviction of the accused-appellant

Ram Singh.

11. We have carefully gone through the record of the case, and have considered the respective contentions of the learned Counsel for the parties. According to the statement of P.W. 15 Radhey Behari Nigam. Sumera must have fallen down on the ground immediately after receiving the injuries, and must have become unconscious. In view of this specific medical evidence, it is hard to believe that Sumera could say to Mst. Chameli that he was lying in the field there, and that the accused-persons had assaulted him in the manner detailed above. Even if this is believed for arguments' sake, then the version given by him to Mst. Chameli P.W. 8 is totally different from the version given by him to Mst. Harbheji P.W. 12.

We have given our most anxious consideration to this aspect of the case, and we are satisfied that Sumera fell down on the ground immediately, and became unconscious as pointed out by P.W. 15 Dr. Radhey Behari Nigam. Under such circumstances, there is no question of Sumera's crying that he is lying in a field, and of his telling to P.W. 8 Mst. Chameli and P.W. 12 Harbheji, the names of the persons who had assaulted him in the manner given in the statements of these two witnesses.

12. P.W. 1 Laxman is the elder brother of the deceased Sumera. He said that he had not conveyed anything about the 'marpeet' to P.W. 8 Mst. Chameli and P.W. 12 Harbheji. He has also stated that he was also dealt lathi-blows by these accused-persons, and that he had become unconscious. No injuries have been found on his body. The manner in which Laxman has narrated the facts seriously goes in conflict or contradicts the statements of Mst. Chameli and Mst. Harbheji. As a matter of fact, there are contradictions between the First Information Report lodged by him, and the statement given by him. He is a highly interested witness. P.W. 14 Ghamandi Singh. SHO has stated that previously also a case was pending between Nathi. Ram Singh, Sumera and Laxman.

P.W. 5 Surya Bhan has also stated that a report was lodged before him on 31-12-1969 regarding a 'marpeet' between Nathi, on the one side, and Laxman and Sumera on the other. In view of all these circumstances, the statement of Laxman P.W. 1 does not inspire any confidence of this Court, especially in view of the fact

that he did not convey any information of 'marpeet' with his brother Sumera by these accused persons even to Mst. Chameli P.W. 8, the widow of the deceased, and to P.W. 12 Harbheji, the daughter of the deceased.

13. The third eye-witness is Raj Bahadur P.W. 9, aged 7 years. Raj Bahadur has improved upon his statement which he made before the police, as detailed above. The improvements in the statement of this witness in our considered opinion, casts a doubt. The other three accused-persons were absconding, and were not apprehended by the police. When Ram Singh alone was apprehended the prosecution witnesses thought that at least Ram Singh should be so involved that he is convicted. Under these circumstances, the prosecution story was improved upon resulting in serious contradictions which were not capable of being reconciled.

14. In *B. Bhikha v. State of Gujarat* : 1971 CriLJ927 it was held that even if there are no infirmities in the evidence of a young boy, it is desirable to seek corroboration of his evidence in view of his tender age. The probative value of unsworn evidence of a child came for consideration in the case of *Director of Public Prosecutions v. Hester* (1972) 3 All ER 1056, wherein it was held that the accumulated experience of Courts of law, reflecting accepted general knowledge of the ways of the world, has shown that there are many circumstances and situations in which it is unwise to found settled conclusions on the testimony of one person alone. The reasons are diverse. All the rules which have been evolved are in accord with the central principle of our criminal law that a person should only be convicted of a crime if those in whose hands decision rests are sure that guilt has been established.

In England it has not been laid down that such certainty ought never to be reached in dependence on the testimony of but one witness. It has, however, been recognised that the risk or danger of a wrong decision being reached is greater in certain circumstances than in others. It is where those circumstances exist that rules based on experience, wisdom and commonsense have been introduced. Under such circumstances, it was held that it is true that from very many years the Courts have always wanted (warned ?) Juries that it is dangerous to convict on the

uncorroborated evidence of a child of tender age.

15. In *Ram Lai v. Delhi Administration* : 1973 CriLJ17 it was held that where the evidence clearly discloses that two lathi blows had been given on the head and there is no evidence which of those two was given by the accused, the benefit of doubt must go to him.

16. In view of these circumstances, we are unable to place any reliance on the testimony of Raj Bahadur P.W. 9 due to , improvements in his statement before the learned Sessions Judge, as against his statement before the police, and in view of his tender age of seven years. The weight of the prosecution evidence is that Nathi gave the fatal blow by the lathi on the head of Sumera. There is no clear, cogent and reliable evidence on the basis of which the conviction of the accused-appellant Ram Singh could be sustained. The prosecution has failed to bring the guilt home to the accused beyond all manner of doubt. Under these circumstances, the accused-appellant Ram Singh is entitled to the benefit of doubt.

17. In the face of this type of evidence we are unable to hold that the charge under Section 302, I. P.C. is proved against the accused appellant Ram Singh,

18. For the reasons stated above, the appeal filed by the accused-appellant Ram Singh is hereby allowed. His conviction and sentence under Section 302, I. P.C. are hereby set aside, and he is acquitted of the charge framed against him. The accused-appellant shall, therefore, be released from custody forthwith, if not required in any other case.