

Varis Ali Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-17-1990

Reported in : 1992CriLJ1249; 1990(1)WLN276

Judge : N.C. Sharma, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307 and 324

Appeal No. : S.B. Criminal Appeal No. 369/1982

Appellant : Varis Ali

Respondent : The State of Rajasthan

Advocate for Def. : S.K. Sharma, Public Prosecutor

Advocate for Pet/Ap. : Marampal Singh, Adv.

Disposition : Appeal allowed

Judgement :

N.C. Sharma, J.

1. The prosecution came with a case that on April 6, 1981 at about 11 or 11.30 p.m. Mohd. Rafique P.W. 1 after taking his meals, had gone to the shop of Ilias to purchase beetle and while he was returning after taking beetle to his house through a lane behind the house of Valiulla-khan, two persons were sitting upon a

chabutra to whom he could not identify. He had proceeded about 3-4 steps forward that the two persons came on his back side and caught hold of him by their hands. They dragged Mohd. Rafique in the darkness in the lane. He gave kicks to release his both hands and kicked one of the persons and that person fell down. The other person thereupon inflicted injury on the neck of Mohd. Rafique by a dagger. He fell down. In the meanwhile wife of Bhoora Mistri and several other persons reached on the spot. The injured Mohd. Rafique identified the appellant as the assailant and when the women-folk reached at the place of the incident, these three assailants took to their heels. The injured Mohd. Rafique was shifted to Government Hospital where he was given treatment. It was as late as on April 10, 1981 that the Investigating Officer recorded the statement of Mohd. Rafique and on that basis registered a case under Section 307, I.P.C.

2. The case was committed by the Court of Chief Judicial Magistrate, Tonk to the Court of learned Sessions Judge. The learned Sessions Judge, Tonk, after trial, decided the case on August 11, 1982 and held the appellant guilty for the offence under Section 324, I.P.C. and sentenced him to 6 months rigorous imprisonment and a fine of Rupees 500/ -. The convict Varis Ali has come on an appeal to this Court.

3. In para 13 of the judgment of the Sessions Judge, Tonk, has mentioned that the Investigating Officer did not show any interest in the investigation of the case and was not responsible towards performance of his duties as a Police Officer to properly investigate the crime. He has deplored the tendency of the Investigating Officer to remain quiet and inactive in such serious offences and that he even did not attempt to recover the weapon from the possession of the appellant. The Investigating Officer also did not get the appellant identified in any identification proceedings. It is this attitude of the Investigating Officers and this height of irresponsibility, which results in the giving of benefit of doubt to the appellant. The investigation of the crime as well as its prosecution are wholly tainted.

4. It is clear from the evidence that the injured did not know the assailants from before. Two of the culprits had come from behind and one of them fell down as a result of the kick given by the appellant. One of the assailants, namely, the

appellant inflicted dagger blow on the body of Mohd. Rafique. The prosecution did not examine Ilias shop-owner from where the injured had taken the beetle. It was mere conjecture and speculation of the Sessions Judge that the assailant was the appellant. Admittedly the assailant had covered his mouth by a piece of cloth. There was no past enmity between the appellant and the injured. The woman-folk said to have assembled were not the least examined by the prosecution. As already stated, no identification proceedings were held. The Investigating Officer did not make any attempt whatsoever to recover the weapon of offence and to get chemical examination report about the presence of the blood of the injured on it and nor of the bloodstains on the dagger were got chemically examined. Even if none else was present at the time of the incident, the prosecution should have adduced corroborative evidence which was available to it like the testimony of Ilias, the holding of identification proceedings of the appellant and the recovery of the weapon of offence and sending it for chemical examination. Are these Station House Officers of Police Stations in this State paid their salary from the exchequer only for such hopeless investigation of a criminal case where a person going to his house is attacked by dagger on his neck. Is that, how the State prevents the occurrence of crimes or by such inaction it only encourages crimes in the State. It is for the State to realise and deprecate the hopelessness of the investigation in this case. It was after 4 days of the incident that the 'parcha bayan' of the injured Exhibit P1 was recorded and on that basis a case under Section 307, IPC was registered by the police.

5. Dr. R. K. Malik (P.W. 6) has deposed that the injury was simple and caused by a sharp weapon. He has also deposed that neither the injury was sufficient in the ordinary course of nature to cause the death nor it was dangerous to the life of the injured. He has also stated that if the victim would have fallen by his neck on a tin, this type of injury could be sustained by him.

6. I am left with the solitary statement of Mohd. Rafique. He was the injured and he admitted that the person who assaulted him had his mouth covered by cloth. He could not see his face as he had come from back side. Mere identification from voice is insufficient to convict the appellant of the offence. The prosecution has totally failed to prove beyond reasonable doubt that it was the appellant who

inflicted injury on the neck of Mohd. Rafique. That being so, the conviction and sentence awarded to the appellant by the impugned judgment by Sessions Judge cannot be sustained.

7. Consequently, I allow this appeal and set aside the conviction and sentence awarded by the learned Sessions Judge, Tonk by his judgment dated August 11, 1982 and acquit the appellant of the charge under Section 324, IPC. The appellant is on bail. His personal bond and surety bonds are cancelled and he need not surrender. Let a copy of this judgment be sent to the Home Secretary to the Government of Rajasthan for his information.

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