

**Radha Kishan Vs. State**

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**Court :** Rajasthan

**Decided On :** Mar-10-1972

**Reported in :** 1973CriLJ481; 1972()WLN309

**Judge :** L.S. Mehta, J.

**Appellant :** Radha Kishan

**Respondent :** State

**Judgement :**

**L.S. Mehta, J.**

1. The prosecution, story, in brief, is that somewhere in January 1970, one Sohan save Rs. 110/- to P.W. 10 Moju to be handed over to Mahadeo towards part payment of his debt of Rs. 400/-. Moju went to Mahadeo's house, but he could, not be found there. When Moju was returning home via Rampal's house, Radha Kishan and Rathoria (Rama Avtar) met him at about 8 P.M. Radha Kishan told Moju as to why he was flashing torch light. Moju denied to have done so. Soon after Rathoria caught hold of Moju. Radha Kishan took out his dagger and inflicted certain blows therewith to Moju 4 or 5 dagger blows were inflicted on his head. Moju attempted to take to his heels to save himself. He first tried to enter a Brahmin's house in the vicinity. Both Radha Kishan and Rathoria pursued him. They caught hold of him and dragged him. Radha Kishan wanted to inflict a dagger blow on his chest. But the same was averted as Moju had placed his

hands thereon. The dagger blows fell on his hands. Moju raised brawl, but none came forward to his rescue. He was again beaten mercilessly. He was dragged upto Mahabeer's house and then to a field where he was covered with a 'Chaddar' and was left. Next day one Bhaguta Mina arrived at the field. On his query he told him that Radha Kishan and Rathoria had given beating to him. After sometime his brother Madan P.W. 3 also reached the spot. Moju informed him that Rathoria and Radha Kishan had beaten him on the preceding day. First information report of the occurrence (Ex. P/4) was lodged with the police station Sardar, Sikar, by Madan. The police took over investigation. Dr. Bhagwati Prasad Medical Jurist S.K. Hospital, Sikar examined Moju on January 18, 1970. He noticed the following injuries on his person:

1. Incised wound 1' x ' on the right parietal region placed vertically.
2. Incised wound ' x ' x 1/8' on the middle of the scalp placed transversely;
3. Incised wound l' x ' x ' above the left eye-brow placed obliquely.
4. Incised wound 3' x ' x bone deep on the right knee joint placed transversely: the pabella bone underneath this injury was cut;
5. Incised wound 2' x ' x bone deep obliquely placed on the left pabella which was cut into two pieces;
6. Incised wound 1' x ' x ' on the front of the left leg in the middle transversely placed;
7. Incised wound 1' x ' x ' on the lateral side of the right thigh on the lower part transversely placed;
8. Incised wound 1' x ' on the nose; the nose was hanging on the left side;
9. Incised wound ' x ' x ' on the left parietal region placed obliquely:
10. Incised wound 2' x ' x ' on the back of the left hand below the thumb and index finger;

11. Incised wound 2' x ' x bone deep on the back of the left hand above the root of the fingers; the proximal phalanges of the middle and index fingers were cut;

12. Incised wound 2' x ' x bone deep on the back of the right hand above the roots of the fingers: the proximal phalanges of the right index finger was cut;

13. incised wound 2' x ' x ' on the front of the right les lower part: and

14. Incised wound 1' x ' x ' on the right ear on its pinna.

Injuries Nos. 1, 2, 3, 6, 7, 9, 10, 13 and 14 were simple in nature and the rest were grievous. All the injuries were caused by a sharp-edged weapon. Their duration was 12 hours. The Doctor opined that 'all the injuries combined could have caused death as a result of shock and haemorrhage.' After necessary investigation the police presented a challan to the court of Munsif-Magistrate, Sikar against accused Radha Kishan. Accused Rathoria alias Rama Avtar is alleged to have absconded, Preliminary inquiry in accordance with the provisions of Section 207-A Cr.P.C. was conducted by the said Munsif-Magistrate. He then committed accused Radha Kishan to the court of Additional Sessions J. Sikar to face trial under Sections 307 and 326, I.P.C. Accused Radha Kishan did not admit the guilt and claimed trial. In support of its case the prosecution examined 13 witnesses. In his statement recorded under Section 342 Cr.P.C. Moju (Radha Kishan) again denied the prosecution allegations. He examined two witnesses in his defence. The trial court, by its judgment, dated February 6, 1971, convicted him of the offence under Section 307 I.P.C. and sentenced him to five years' rigorous imprisonment. Radha Kishan appeals against that verdict.

2. The contentions of learned Counsel for the appellant are:

1. that the first information report filed by Madan states that a Pharsi was used by two persons. Moju on the other hand, had stated before the committing court that a knife was the weapon of the offence. But before the trial court he said that the injuries were caused with a dagger: this incongruity is destructive:

2. that the weapon of the offence has not been recovered: this enfeebles the prosecution case;

3. that the trial court erroneously relied on the solitary testimony of injured Moju;
4. that the prosecution failed to produce independent witnesses of the locality and, therefore, adverse inference should be drawn against it;
5. that according to the prosecution evidence there were two assailants, It cannot, therefore, be inferred safely that all the injuries on the person of Moju were caused by the appellant alone; he has, therefore, wrongly been convicted under Section 307 I.P.C.
6. that the prosecution has also not established the motive for the crime. Learned Deputy Government Advocate has supported the judgment of the court below.

3. As regards point No. 1 it may be stated that in the first information report (Ex. P/4) Madan stated that Radha Kishan and Rathoria had caused Pharsi blows to Moju. In the committing court's statement Moju introduced knife and before the trial court he said that accused Radha Kishan gave dagger injuries to him. First information report was lodged by Madan who had information from another. In such a case sometimes a fact gets omitted, which should have been mentioned and sometimes the facts are confused. In that view of the matter, no suspicion can be attached to such a statement because of this: vide *State of Rajasthan v. Kartar Singh* : 1970 CriLJ1144 . The injured Moju had no doubt, said in the committing court's statement that knife was used by Radha Kishan but in the trial court he substituted a dagger. There is not much difference between a knife and a dagger in common parlance. Both have edged blades. When a man is assaulted and a number of injuries are inflicted with outrageous exhibition of intimidation and violence, the victim loses the balance of his mind and it would be difficult for him to judge precisely whether the weapon of offence was a knife or a dagger. Be that as it may the alleged discrepancy is of a minor character. The prosecution has succeeded in proving to the hilt that a sharp-edged weapon was used by Radha Kishan as a result of which Moju sustained not less than 14 incised injuries. The first point raised on behalf of the appellant, therefore, is of no substance.

4. Coming now to the recovery of the weapon of offence, suffice it to say that the act of the accused as distinguished from his statement in pointing out the property

connected with crime, is admissible under Section 8. Evidence Act as evidence of conduct. But want of recovery would not materially affect the account of the incident. The recovery simply furnishes a corroborative piece of evidence and, where, as here, there is other direct and substantial evidence on the record, want of such corroboration would not weaken the prosecution, narration.

5. I now switch over to point No. 3. I have looked into the statement of Moju with meticulous care. He supports the entire prosecution story in his evidence-in-chief. In the cross-examination he was confronted with portion marked A to B in the committing court's statement (Ex. D/2) wherein he had stated that Radha Kishan had given a knife blow on his head. His reply was that he does not remember to have made such a statement. Again he was confronted with the portion marked C to D in Ex. D/2: wherein he had deposed that Mahaveer was called out and got the door of his house opened. He was asked to give 3 'Biris' and a sword. He declined to give his sword. He was then confronted with the portion marked E to F in Ex. D. 2, in which he had said that the accused and Rama Avtar had taken him to jungle and had been thrown there, with a 'chaddar' on his body. He was again confronted with the portion marked G to H in Ex. D. 2, which reads that he was conscious at the time when 'Chaddar' had been spread over him. The witness replied to all these alleged inconsistencies that he does not remember to have made such statements. The witness was also confronted with the portion marked A to B, in the police statement Ex. D. 1 wherein he had said that he had been thrown on a field and had been beaten, causing dagger injuries on his hands and head. Rathoria caught hold of his hand. Thereafter he became unconscious. The witness was also confronted with portion marked C to D in Ex. D/1 in which he had deposed that Radha Kishan felled him down and took out a dagger from his belt and gave an injury on his nose. The witness said that he does not remember to have made the above statements. A careful perusal of the particular portions of the statements of the witness, recorded by the committing court as also by the police, shows that the above specified portions are not mutually opposed or inconsistent.

6. Moju's evidence is corroborated by his brother Madan (P.W. 3). He says that on receiving information he went to the spot where his brother was lying. He lifted the

'Chaddar' and found his brother badly injured. On his query Moju told him that he had been beaten by Radha Kishan and Rathoria. Soon after he went to the police station and submitted first information report Ex. P/4. In order that a former statement be admissible under Section 157, Evidence Act it is not necessary that the witness sought to be corroborated must also say in the court in his testimony that he had made the former statement: See *Ram Ratan v. State of Rajasthan* : [1962]3SCR590 . Here Moju has said that he had narrated the incident to his brother. That adds to the weight of the testimony of the person, who gave evidence in corroboration. Besides the evidence of Madan there is also the medical evidence given by Dr. Bhagwati Prasad. He testifies that Moju sustained as many as 14 injuries. The injuries could have in the opinion of the Doctor, cumulatively caused the death of the victim as a result of shock and haemorrhage.

7. The trial Judge, who recorded the statement of Moju, has relied upon his version. The appellate court should not ordinarily interfere with the trial court's opinion as to the credibility of a witness as the trial Judge alone knows the demeanour of the witness; he alone can appreciate the manner in which the questions are answered, and he alone can form a reliable opinion as to whether the witness had emerged with credit from a cross-examination: see *Valarshak v. Standard Coal Co.* AIR 1943 P.C. 159. The evidence of Moju appears to me to be of sterling worth and conviction can safely be based upon his version coupled with the aforesaid corroboration.

8. Coming now to the fourth point, it may be said that the prosecution is not bound to produce all the witnesses. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary and redundant multiplication of witnesses. It is everyday experience that there is general reluctance on the Part of an average villager to appear as a witness and get himself involved in cases of rival village factions: see *Raghubir Singh v. The State of U.P.* AIR 1970 S.C. 2156 : (1971) Cri.L.J. 1468. It is not on the record that such and such witnesses of the town of Sikar were present at the place of the occurrence. The prosecution has, no doubt, examined Jag-dish Brahman (P.W. 6) and Mahadeo (P.W. 9) but they did not give any evidence useful to it as they probably did not like to get themselves involved. That does not

mean that the prosecution story is a concoction. The most important witnesses in this case are the injured and Madan, to whom Moju related the whole incident at the earliest opportunity as also the medical evidence given by Dr. Bhagwati Prasad. In that context non-production of the persons of the locality, to my mind, does not injuriously affect the account given of the incident.

9. Now coming to the point of there being two assailants, it is in the evidence of Moju that a vital part in causing injuries to him was played by Radha Kishan. It is true that a common intention should be anterior in time to the commission of the crime, showing a prearranged plan and a prior concert and though, it is difficult in most cases to prove the intention of an individual, it has to be inferred from the act or conduct or relative circumstances of the case. Such an inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and the concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence and other acts would help in determining the common intention: vide *Ram Tahal v. State of U.P.* : 1972 CriLJ227 . In the present case both Rathoria and Radha Kishan came together. Radha Kishan was armed with a formidable weapon like a dagger. They both jointly assaulted Moju. It is also in the evidence of injured that Radha Kishan wanted to pierce his dagger into his body but the same was warded off by him with the help of his hands. Thereafter thinking that Moju was dead, both the accused left together. The totality of these circumstances demonstrates that the accused had a common intention to commit the offence of murder. Somehow Moju escaped death, Dr. Bhagwati Prasad has pointedly said that all the injuries combined could have caused the death of Moju as a result of shock and haemorrhage. Under these circumstances Radha Kishan could have well been convicted under Section 307/34 I.P.C. To fortify this proposition, I would like to quote a passage from Mayne's Criminal Law of India, Fourth Edition page 239. It runs as below:

If those who entered the house had arms and were known by others to have them, such an inference (common intention) would be legitimate.... The inference would, of course, be still stronger against those who were actually present when the

violence was committed, though themselves unarmed....so, on the other hand, the fact that they were present and did nothing to dissuade the others from their violent conduct, might very properly lead to the inference that they were all assenting parties and acting in concert, and that the beating was in furtherance of the common design.

10. Coming now to the last point regarding motive, it is a settled law that, When the prosecution' has succeeded in proving by direct evidence that the accused has committed crime, the court need not consider the question of motive: vide N.N. Naik v. State of Maharashtra : [1971]1SCR133 Motive assumes importance only where direct and credible evidence is not available and the case rests upon circumstantial evidence. Where the circumstances can lead but to one conclusion of guilt, non-establishment of motive is not crucial. Here I may also cite a useful passage occurring in Mayne's Criminal Law of India Fourth Edition Page 11. It reads as under:

If the act intended is absolutely illegal, it cannot become lawful by being done for an excellent motive. A man who steals the goods or takes the life of another in order to save himself starving, is not the less committing a criminal offence. A man who libels another i from the loftiest motive is just a criminal as if he had so done for spite.

In Halsbury's Laws of England 3rd Edition Vol. 10, Page 283, it is given:

The prosecution may prove, but is not bound to prove the motive for a crime.

In this case the prosecution has succeeded in proving by direct evidence that the appellant did commit the crime in question. Absence of motive, therefore is of no consequence. Thus the last point is also devoid of substance.

11. In the result Radha Kishans' appeal having no force stands dismissed, subject to the modification that he stands convicted under Section 307/34, I.P.C. Looking to the heinousness of the crime and the fact that it imports a deliberate design of cruel character, I do not think that a sentence of five years' rigorous imprisonment is severe.

