SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Kan Singh Vs. State of Rajasthan

Kan Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/758717

Court : Rajasthan

Decided On : Apr-26-2004

Reported in : 2004CriLJ3253; RLW2005(1)Raj90

Judge : N.N. Mathur and; Sunil Kumar Garg, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 120B and 300

Appeal No. : D.B. Crl. Appeal No. 240 of 2002

Appellant : Kan Singh

Respondent : State of Rajasthan

Advocate for Def. : Panney Singh, Public Prosecutor and; J.S. Choudhary, Adv.

Advocate for Pet/Ap. : B.S. Rathore,; Niranjan Gaur and; Doongar Singh, Adv

Disposition : Appeal dismissed

Judgement :

N.N. Mathur, J.

1. The appellants, in these appeals, arising from the judgment dated 17-1-2002 passed by Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Jodhpur convicting of offence under Section 302, I. P. C. and sentenced to imprisonment for life, nowhere else but in the open jail situated in Mandore, Jodhpur. Before

giving factual matrix of the case, it would be convenient to give a prepatory note about the place of occurrence i.e. Open Jail.

2. It is claimed that in the history of prison development in India, the establishment of open prison is the most remarkable innovation. It has opened a new vista in the realm of correctional treatment promising an offender greater freedom, natural surrounding and lesser tension which culminate in creating an atmosphere more conducive to reform himself and to achieve social, moral and economic rehabilitation in the society. The underlying philosophy of administration, mode of maintaining discipline and enforcement of orders and assessment of problems and methods of tackling them, being different from those of the closed prisons, instil a sense of self-esteem and social responsibility among prisoners and ease the pains of imprisonment to a greater extent. The Government of Rajasthan in exercise of powers conferred under clause (18) of Section 59 Prisons Act, 1894 has framed the Rules for sending convicts to open air camps. The preamble of the Rules as provided underlying object is as follows:--

'Preamble.-- Whereas it is necessary to frame rules for sending convicts to Open air camps with a view to encourage good conduct satisfactory performance of work and a life of self-discipline among the convicts of Rajasthan. and to provide these convicts with a pre-release, opportunity to learn social adjustment and economic self dependence.'

3. The Rules define, 'Open air camp' means the place which is declared to be an Open Camp for the detention of prisoners in pursuance of Clause (I) of Section 3 of the Prisons Act, 1894. The Rules provide eligibility and ineligibility for admission to open air camp. The convicts recommended by the committee constituted under the Rules are sent to the open air camp. They are supposed to do work assigned to them in the open air camp. Under Rule 8 such convicts are entitled to wages of earning as earned by them on being utilised their services for the use of themselves or their family. The prisoners, group of prisoners are allotted suitable residential accommodation. They are given opportunity to make their own cooking arrangement for their food from their own earnings, within the camp. The prisoners can keep their families in the open camp with the permission of the Inspector

General of Prisons. Internal management of the camp vests in the Prisoners' Panchayat and other committees. Panchas are elected by the prisoners. There are certain nominations by the Inspector General of Prisons. Prisoners' Panchayat is empowered to deal with minor acts of omission/commission/ misconduct of the prisoners. It has been vested with the power to impose penalty on the defaulters to certain extent. Prisoners are supposed to attend roll call each morning and evening at the time fixed by the Inspector General of Prisons. There is a prisoners open air advisory committee at the State level under the Director, Correctional Services.

4. The backdrop in which the alleged incident has taken place is traced to a land dispute between two fractions in which duo Bhanwar Singh and Inder Singh alleged to have been murdered at the hands of deceased Manak Ram and PW-3 Pokar Ram. Both of them were convicted and sentenced to imprisonment for life by the order of Sessions Judge, Jodhpur dated 17-10-1989. They were transferred to open air camp in July, 1996. Appellant Kan Singh, who was also on the charge murder undergoing imprisonment for life in another case, was already in the open air camp since June, 1995. Co-accused Bhim Singh (absconding) was also in the open air camp being life convict. He was released from the jail sometime prior to the present incident. It is alleged that sons of Bhanwar Singh namely Pratap Singh and Girdhari Singh and so as the son of Inder Singh namely Nakhat Singh (absconding) conspired with Kan Singh and Bhim Singh, and committed murder of Manak Ram. As per the prosecution case, on 16-1-1998 appellant Kan Singh, Bhim Singh (absconding) and four unknown persons committed the murder of Manak Ram while he was in the open air camp, The unknown persons have been, identified as Kirta Ram, Gyan Singh and Nakhat Singh. Seven persons were arraigned by the police, namely appellants Kan Singh, Kirta Ram, Gyan Chand, absconding accused Bhim Singh and Nakhat Singh. Against two persons namely Pratap Singh and Girdhari Singh charges framed by the trial Court came to be quashed by this Court.

5. Reverting to the factual matrix of the case, a First Information Report Exhibit P-47 was registered at Police Station, Mandore, Jodhpur on 17-1-1998 at 3.30 a.m. on the basis of parcha bayan Exhibit. P-1 of PW-3 Pokar Ram. He stated that he

along with his deceased brother Manak Ram along with their families was undergoing the sentence in open air camp at Mandore, Jodhpur. They were living in separate quarters. At about 11.00 a.m. on 16-1-1998, on being summoned by Head Constable through Mana Ram and Jagmal Ram, he reached near the quarter of his deceased brother Manak Ram and the appellant Kan Singh. The Head Constable gave him shocking news that his brother was killed by someone. Wife of his brother was weeping outside the quarter. She disclosed that while she along with her husband was sleeping in the quarter, appellant Kan Singh gave a call from outside and asked her husband Manak Ram to come out. He was also accompanied with Bhim Singh who also asked him to come out. After sometime, the gate was opened by her husband Manak Ram. Kan Singh and Bhim Singh along with four unidentified persons mounted attack on him. On intervention by her son PW-1 Mangilal, sword blows were given to him as well on account of which his palm of one hand was chopped off. She also stated that her son Mangilal could identify those persons. Police registered a case for offence under Sections 302, 303, 307, 147, 148, 149, 458 I.P.C. and under Section 3 (1)(v) of SC/ST (Prevention of Atrocities) Act and proceeded with investigation. DW-7 Bal Singh who was posted at the open air camp informed the authorities of Central Jail, Jodhpur as well as to the police. PW-8 Nand Singh, Jailor of Central Jail, Jodhpur on receiving the information, after further informing the higher authorities, sent the jail security staff at open air camp, Mandore. PW-23 Chandan Singh, S.H.O. Police Station Mandore on receiving the telephonic message at 12.50 a.m. on 17-1-1998, reached on the spot after making entry in the rojnamcha register vide Exhibit P-55. He recorded the statement of PW-3 Pokar Ram vide Exhibit P-1. On the basis of said parcha bayan, he registered the First Information Report. PW-21 Jagdish Chandra, Deputy Superintendent of Police, City (East) also reached on the spot. He prepared the site plan Exhibit P-3. He also found that PW-1 Mangilal was lying in seriously wounded condition. He immediately removed him to Mahatma Gandhi Hospital at Jodhpur for treatment. After completing the formalities, dead body of deceased Manak Ram was sent for post mortem. Autopsy was conducted by PW-7 Dr. N. S. Kothari. He prepared the Post Mortem Report Exhibit P-26 and noticed following injuries :--

'1. Incised wound : 5.0 cm x 1.0 cm x scalp deep on the left frontal region on the scalp (vertical).

2. Incised wound : 6.0 cm. x 03 x skin deep on the left forehead and eyebrow.

3. Incised wound : 7.0 cm. x 3.0 x bone deep on the upper 1/3 left side of neck posteriolaterally behind left ear.

4. Incised wound (cut throat): 10.0 cm x 5.0 cm (transverse) on the upper 1/3 part neck below chin with cutting of trachea and blood vessel (carotid artery and jugular veins) on the left side and muscles on the both side of neck antero-laterally.

5. Incised wound (flap): 7.0 cm x 4.0 cm x muscles deep on the right shoulder anteriorly.

6. Incised wound : 15.0 cm x 5. 0 x bone deep lower 1/3 right forearm with trans-mature amputation of right hand at the level of right wrist.

7. Incised wound: 50.0 cm x 5.5 cm (flap) with cutting of muscle, head of humerus (halfing) and lower part of left humerus and lethal condyle of humerus with exposure of upper end of radius and ulna with dislocation of elbow. The cut wound extending from the back of left shoulder to elbow and upper 1/3 forearm.

8. Incised wound : 14.0 cm x 12.0 cm x bone deep (flap) on the back of chest and upper part of the right side near mid line lethal to scapula with cutting of ribs (four) and dorsal vertebrae 2, 3rd with spinal cord injury and there is cutting of right lung under the fractured rib with haemochiral abons (sic) 500 ml. The wound extending from lower part of back foreneck to upper chest right side.

9. Incised wound : 4.0 cm x 1.0 cm x muscle deep back of upper part of neck (transverse).

10. Incised wound : 4.5 cm x 1.0 cm x muscle deep on the 1/3 part neck (transverse) .

11. Incised wound : 3.0 cm x 1.0 cm x muscle deep back of lower part of chest (transverse).

12. Incised wound : 4.0 cm x 1.0 cm x muscle deep back of lower chest mid line (transverse).

13. Incised wound : 5.0 cm x 1.0 cm x muscle deep mid lumbar region.

14. Incised wound : 6.0 cm x 1.0 cm x bone deep on the right side occipital region of the scalp.'

In the opinion of Doctor, the cause of death was shock and haemorrhage due to multiple sharp cutting wounds. On the same day, appellant Kan Singh was arrested. After usual investigation, police laid charge-sheet against the appellants for offence under Sections 148, 460, 302, 307/149, 120-B I.P.C. and 3 (2)(v) SC/ST (Prevention of Atrocities) Act. Appellants denied the charges levelled against them and claimed trial. Prosecution adduced oral and documentary evidence. Appellants in their statement under Section 313 of the Code of Criminal Procedure, denied the correctness of the prosecution evidence appearing against them. Appellant Kan Singh stated that from the moment police arrived on the place of occurrence, he was through out in his quarter. On the next day, in the afternoon at about 2:00 p.m., he was arrested, till then, none of the jail authorities knew at to who had committed the murder. Other appellants Kirta Ram and Gyan Chand pleaded alibi. They stated that they were at their place of business Ahmedabad at the time of incident. Appellants examined seven witnesses in support of their plea namely DW-1 Mobata Ram, DW-2 Jagmal Singh, DW-3 Kirta Ram, DW-4 Dalji, DW-5 Govind, DW-6 Mana Ram and DW-7 Bal Singh. Trial Court relying on the testimony of eye witnesses and other circumstantial evidence, found the prosecution case proved beyond reasonable doubt against the appellants. Accordingly, the learned Judge convicted and sentenced the appellants in the manner already noticed.

6. We have heard learned counsel Shri B. S. Rathore, Shri Niranjan Gaur and Shri Doongar Singh for the appellants Kan Singh, Kirta Ram and Gyan Chand respectively. It is contended that it was a blind murder and since none of the alleged eye witnesses had actually seen the occurrence, they have roped in the appellants only on account of previous enmity on mere suspicion. It is further submitted that Exhibit P-1 parcha bayan on the basis of which First Information

Report Exhibit P-17 has been registered is spurious document as it finds the names of accused persons while as per the prosecution witnesses PW-3 Pokar Ram was not knowing the names of assailants. It is further submitted that Incharge of the open air camp who received the information of the incident at the earliest namely Head-Constable Bal Singh who is a material witness has not been produced by the prosecution. He has been produced by the defence as DW-7. He has not supported the prosecution case. As per his version, names of assailants were not known. Number of contradictions and embellishment in the statement of prosecution witnesses have been pointed out by the learned counsel. Mr. Niranjan Gaur and Doongar Singh have severely criticised the identification parade. It is also submitted that prosecution has concocted the evidence of conspiracy. On the other hand, learned Public Prosecutor assisted by Shri J. S. Choudhary, learned counsel for the complainant has supported the judgment of the trial Court.

7. Before averting to the rival contentions, it would be convenient to survey the oral evidence adduced by the prosecution and defence.

8. PW-1 Mangilal aged 15 years is the son of deceased Manak Ram. He is most material witness in the case being injured eyewitness. He deposed that on 16-1-1998, he also with his father, mother and younger sister after taking the dinner, had retired for sleeping. They closed the gate of quarter. At about 10.30 p.m. somebody gave a call to his deceased father Manak to come out. He further stated that said call was of Kan Singh. Thereafter, the call was given by Bhim Singh to his deceased father Manak on the pretext that he had met with an accident. Witness stated that he knew Bhim Singh and Kan Singh as they used to often visit their quarter. Thereafter Kan Singh assured his father that he should not worry as he was with them. Both of them persisted for opening the gate of quarter. After sometime, his deceased father opened the gate. The moment the gate was opened, Kan Singh and Bhim Singh pin down his deceased father and mounted attack by sword. He tried to cover his father. Bhim Singh gave a sword blow on him cutting the palm. Thereafter, Bhim Singh attacked on him twice. He further stated that Bhim Singh and Kan Singh were accompanied by four unidentified persons. He could identify on seeing them. All the accused persons dragged his deceased father Manak. He further stated that hearing the cries, his mother also

came out of the quarter. His mother covered him with a mattress. His father succumbed to the injuries on the spot. He was removed to the hospital by the police. Nothing substantial could be brought in the cross-examination to shake the version given by this witness. His statement finds corroboration from the evidence of PW-2 Radha, PW-3 Pokar Ram and other witnesses. It further finds corroboration from the medical evidence. It is stated by PW-7 Dr. N. S. Kothari that he examined Mangilal on 17-1-1998 at 2.10 a.m. in the Emergency Ward and prepared the Injury Report vide Exhibit P-27. He noticed following injuries :--

'1. Incised wound 9.0 x 7.0 x bone deep on the left temporal region and part of left ear about (flap) with bleeding.

2. Incised wound with transversive amputation of left hand at the level of wrist with missing of hand.

3. Incised wound 15.0 cm x 2.5 cm x bone deep back of right shoulder and scapular region.'

The injury No. 2 was found to be grievous in nature caused by sharp edged weapon. As per X-Ray report Exhibit P-18, injuries No. 1 and 3 were found to be grievous. He has also proved the Post Mortem Report of the deceased Manak Ram vide Exhibit P-26. PW-6 Dr. A. L. Chouhan has stated that on 22-1-1998, he was posted as Assistant Professor in the Radiology Department of Mahatma Gandhi Hospital, Jodhpur. It is not in dispute that deceased Manak Ram was living in the quarter of open air camp along with his family. Thus, the presence of this witness at the time of incident is quite natural. He himself has sustained severe injuries for which he had to remain in the hospital for more than a month. There is no reason to disbelieve the testimony of this witness.

9. PW-2 Smt. Radha is the wife of deceased Manak Ram. She was also staying with her husband in the quarter of open air camp along with her husband deceased Manak Ram. She was accompanied by his son PW-1 Mangilal and a minor daughter aged three years. It is deposed by her that on the date of incident while she along with her husband and other family members were sleeping in the quarter, appellant Kan Singh gave a call to her husband Manak and asked him to

come out. He was accompanied by Bhim Singh who also asked her husband to come out as he has met with an accident. At the first instance, he did not open the gate. Thereafter on assurance given by appellant Kan Singh, her husband opened the gate. As soon as the gate was open, appellant Kan Singh dragged her husband out and absconding accused Bhim Singh mounted attack on his head by sword. Appellant Kan Singh and absconding accused Bhim Singh were accompanied with four other unnamed accused persons. Her son Mangilal intervened to rescue her husband. Appellants inflicted injuries to Mangilal as well. Accused persons dragged her husband Manak Ram in front of the quarter of Kan Singh. She further stated that apart from Kan Singh and Bhim Singh, other four accused persons were armed with swords. Her husband was crying but all the accused persons caused merciless injuries to him. Her husband received injuries on the head, neck and other vital parts of the body. One hand of the deceased was completely chopped off. He succumbed to the injuries on the spot. She covered her son and brought him inside the quarter. In the cross-examination, it was admitted by her that she did not disclose the names of assailants to Jagmala, Mobta. She explained that Jagmala, Mogta and Mana had not come out of the quarter and as such there was no question of disclosing the names of assailants to them. She stated that names of assailants were disclosed by her to Pokar Ram. She further stated that names of assailants were disclosed by her to the police. It was further stated by her that police did not inquire about the names of assailants during the night. The main criticism against this witness is that she did not disclose the names of assailants at the first instance. Learned counsel has invited our attention to the statement of PW-8 Nand Singh, Jailor, Central Jail, Jodhpur. He has admitted in the cross-examination that in the morning of 17-1-1998 at about 8.00 a.m., he along with Shri B. K. Mathur, Jail Superintendent visited the site. In his presence, Jail Superintendent inquired from Pokar Ram about the names of assailants but he pleaded ignorance. It is submitted that if PW-2 Radha would have witnessed the incident, there was no reason not to disclose the names of assailants to her brother-in-law PW-3 Pokar Ram. In the same sequence, if PW-3 Pokar Ram would have known the names of assailants, he would not have pleaded ignorance about the assailants when he was inquired by the Jailor and the Jail Superintendent. We shall deal with this aspect of the case when we deal

with the evidence of PW-3 Pokar Ram and other witnesses. Suffice it to say that presence of this witness on the place of incident is quite natural. Her statement also finds corroboration with the medical evidence and the statement of other witnesses. There is no reason to discredit the testimony of this witness.

10. PW-3 Pokar Ram is the brother of deceased Manak Ram. He was also undergoing sentence of imprisonment in the open air camp. He stated that on 16-1-1998, he was summoned by the Head Constable from his quarter. When he proceeded towards the quarter of his brother Manak Ram, he found that Manak Ram was lying unconscious outside the quarter of appellant Kan Singh. There was large number of wounds caused by sharp edged weapon on his body. His wife was weeping sitting beside him. It was disclosed by Mst. Radha that she along with her husband Manak Ram and son Mangilal was in quarter. Accused Kan Singh, Bhim Singh and four others called Manak Ram outside the quarter. She asked her husband not to go out but he opened the gate of quarter. He was caught by appellant Kan Singh. Absconding accused Bhim Singh gave a sword blow. Other accused persons also gave sword blows. She further stated that on intervention by Mangilal, he was also seriously wounded by the assailants. Manak Ram was being dragged towards the quarter of Kan Singh. He also went inside the quarter of his deceased brother Manak Ram and found PW-1 Mangilal in seriously wounded condition. He further stated that on 2-1-1998, absconding accused Bhim Singh along with two others visited the quarter of appellant Kan Singh. They again visited on 15-1-1998 i.e. a day before the incident. According to him, Bhim Singh was a resident of village Solankiya Tala and the family members of the deceased Inder Singh and Bhim Singh namely Nakhat Singh, Pratap Singh and Girdhari Singh were friendly to the absconding appellant Bhim Singh. He identified appellants in the identification parade as well as before the Court. In the cross-examination, he admitted that when he reached on the spot, Head-Constable Bal Singh, Mobata Ram, Mana Ram and Jagmal Singh were not present. He further asserted that before Mangilal was taken to the hospital, he had disclosed the names of assailants to the police. Except this aspect of the case, in the lengthy cross-examination, nothing substantial has been elicited to discredit the testimony of this witness. PW-3 Pokar Ram is not an eye witness. However, his statement is relevant to the extent that eye-witness PW-2 Mst. Radha

disclosed the names of assailants to him just after the incident. His statement also proves the fact that Bhim Singh and other assailants had visited open air camp on 2-1-1998 and 15-1-1998.

11. PW-4 Jabar Singh and PW-5 Jugal Kishore are the formal witnesses of recovery of incriminating articles. The evidence of PW-6 Dr. A. L. Chouhan and PW-7 Dr. N. S. Kothari has already been referred.

12. PW-8 Nand Singh was Jailor, Central Jail, Jodhpur at the relevant time. He has stated that on 17-1-1998, he received a telephonic message from Head-Constable Bal Singh to the effect that convict Manak Ram has been wounded by some unknown assailants. He immediately informed to Shri B. K. Mathur, Jail Superintendent about the incident. Under the instructions of Jail Superintendent, he sent the police guard to Mandore Farm. He has also produced the jail warrant Exhibit P-28 of PW-3 Pokar Ram. He further proved the jail warrant Exhibit P-29 of appellant Kan Singh. He further stated that by the order of Inspector General of Police (Prisons) dated 8-7-1996, deceased Manak Ram was shifted to the open jail. He has also produced the document whereby PW-3 Pokar Ram and the appellant Kan Singh were transferred to the open air camp. Nothing substantial has been elicited in the cross-examination to discredit the testimony of this witness. PW-9 Nar Singh Ram, PW-10 Chhagna Ram and PW-12 Prithvi Raj are formal witnesses of memo of arrest and recovery.

13. PW-11 Girish Kumar is the owner of Shyam Hotel. He has produced the guest register Article-1. He has proved the entry of guest during the period 2-1-1998 to 4-1-1998. Names of Nakhat Singh, absconding accused Bhim Singh, Kirta Ram, appellant Gyan Chand and Nihal Chand finds place in the register.

14. PW-13 Virendra Singh, PW-14 Indra Singh, PW-15 Poonam Chand and PW-16 Ram Ratan Bhati are the formal police witnesses. They have proved the link evidence. PW-17 Vinod is photographer. PW-18 Himmat Singh was A.S.I., Police Station, Mandore at the relevant time. He has stated that he reached to the place of occurrence at 1.45 a.m. along with Circle Inspector. He has stated that PW-3 Pokar Ram was found at the place of incident. His statement was recorded by the Circle Inspector.

15. PW-19 Madan Kumar was Head Constable at Police Station, Mandore at the relevant time. He is a formal witness. His evidence shall be referred while dealing with link evidence. PW-20 Nathu Lal is Proprietor of M/s. Laxmi Narayan Kirpan Works, Ada Bazar, Jodhpur. He has stated that he runs a shop of selling weapons like sword with sheath, knife, chhuri etc. He stated that four to five persons visited his shop on 5-1-1998 with a view to purchase sword. He sold two swords with sheath. Purchasers paid the cost of sword i.e. Rs. 1,232/-. He issued a bill for the said amount to them. Bill Exhibit P-51 was issued in the name of absconding accused Nakhat Singh. He has identified the sword and sheath present in the Court which was sold by him to absconding accused Nakhat Singh and party.

16. PW-21 Jagdish Chandra was Deputy Superintendent of Police, Jodhpur City (East). He has given complete details of investigation including recovery of incriminating articles from the possession of accused persons. PW-22 Hari Vallabh Khatri was Judicial Magistrate No. 6 at Jodhpur at the relevant time. He has proved identification proceedings of person and property conducted before him. PW-23 Chandan Singh was Incharge of Police Station Mandore. He recorded the statement of PW-3 Pokar Ram on the basis of which First Information Report was registered.

17. We may also deal with the evidence of witness produced by the defence. DW-1 Mobta Ram is a life convict undergoing sentence. He was also in the open air camp living in the allotted quarter. He stated that on the date of Incident, DW-2 Jagmal Singh informed him that Head-Constable is to be called as marpeet has taken place at the quarter of Manak. Jagmal Singh also called Kan Singh from his quarter. Thereafter, he along with Jagmal Singh and Kan Singh went to the quarter of Manak Ram. They found the wife of Manak Ram sitting outside the quarter. They inquired from her the names of assailants but she did not disclose. She asked her to call PW-3 Pokar Ram. Pokar also asked her to disclose the names of assailants but she pleaded ignorance. He further stated that entire staff of the farm which included Mana Ram and Gordhan etc. were present on the spot. They remained at the place of occurrence throughout night. In the cross-examination, he has admitted that there was none near the dead body except PW-3 Pokar Ram and the Head-Constable.

18. DW-2 Jagmal Singh is also a life convict undergoing sentence in the open air camp. He was also living in the allotted quarter. He has stated that wife of deceased Manak at about 10.30 p.m. on the date of incident, came to his quarter. She was weeping. Quarter of Manak was close to his quarter. He inquired about the identity of assailants but she did not disclose their names. She simply stated that Mangllal and his father were being assaulted. He found the dead body of Manak lying outside the quarter of Kan Singh. Thereafter, he went to Mobta Ram and Mana Ram and thereafter to the quarter of Kan Singh. Thereafter, he sent Mobta Ram and Mana Ram to call Head Constable. Head Constable inquired from the wife of deceased Manak about the names of assailants but she pleaded ignorance. After sometime PW-3 Pokar Ram also arrived at the place of incident. He has further stated that Pokar Ram Inquired the names of assailants from the wife of deceased Manak in his presence but she again pleaded ignorance. He further stated that Head Constable sent to the Police Station for lodging First Information Report. Police also arrived at the spot and inquired the names of assailants from the wife of deceased Manak but she again pleaded ignorance. In the cross-examination he has denied the suggestion that wife of deceased Manak had disclosed the names of assailants as Kan Singh and 3-4 others. He also denied the suggestion that he was giving a false statement at the instance of appellant Kan Singh.

19. DW-6 Mana Ram was also in the open air camp undergoing the sentence of life imprisonment. He has stated that in the night of the date of incident, he heard the cries. DW-2 Jagmal Singh also came to his house and informed that marpeet has taken place at the quarter of Manak. Thereafter, he came out of the quarter and found the dead body of Manak Ram lying outside the quarter. He further stated that he along with Jagmal Singh went to the quarter of Kan Singh. They also inquired from the wife of deceased Manak Ram about the names of assailants. She stated that she could not identify the assailants. As per her version they were muffled faces. Head Constable also inquired the names of assailants from the wife of deceased Manak Ram. For the whole night they could not know the name of persons who committed murder of Manak Ram. Wife of deceased Manak Ram did not disclose the names of assailants even before the police. In the cross-examination, he has stated that wife of Manak Ram was weeping inside the

quarter. He admitted that when Head Constable Bal Singh arrived, wife of deceased Manak Ram was weeping inside the house. He denied the suggestion that he was giving a false statement at the instance of appellant Kan Singh.

20. DW-7 Bal Singh has stated that he was posted as Hawaldar in the open air camp at the relevant time. On the date of incident Mobta Ram and Kan Singh informed him that marpeet has taken place at the quarter of Manak. He reached on the place of occurrence along with them. He also inquired from the wife of deceased Manak the names of assailants, but she pleaded ignorance. Thereafter, he went to inform the authorities of Central Jail, Jodhpur and police. He did not give any report in writing. He has admitted in the cross-examination that he did not inquire about the incident from anybody at the place of incident.

21. On appreciation of evidence of three witnesses, it clearly appears that all the three witnesses have given three different versions as to how they came to know about the incident and reached at the place of occurrence. DW-1 Mobta Ram has stated that DW-2 Jagmal Singh came to his quarter and informed about the incident. Thereafter, they went to the quarter of Head Constable Bal Singh. Wife of deceased Manak Ram was sitting near the dead body. On enquiry, she did not disclose the names of assailants. DW-2 Jagmal Singh has stated that wife of Manak Ram came to his quarter. She was weeping. She disclosed that her son Mangilal and husband has been assaulted. He came out and found the dead body of Manak lying outside the quarter. He further stated that he collected Mobta Ram and Kan Singh and then went to inform Head Constable Bal Singh. DW-6 Mana Ram has stated that he reached on the spot hearing the cries. He was also called by Jagmal Singh. He has stated that when they inquired from the wife of deceased Manak Ram about the identify of assailants. She stated that they were muffled faces and as such, she could not identify them. PW-2 Mst. Radha, wife of deceased Manak Ram stated that none of them approached to her after the occurrence. Therefore, there was no question of disclosing the names of assailants to Mobta Ram, Jagmal Singh and Bal Singh. On careful consideration of evidence, we are of the view that trial Court rightly disbelieved the testimony of defence witnesses namely DW-1 Mobta Ram, DW-2 Jagmal Singh, DW-6 Mana Ram and DW-7 Bal Singh.

22. Defence has also examined appellant DW-3 Kirta Ram himself, DW-4 Dalji and DW-5 Govind in support of plea of alibi. It is stated by DW-3 Kirta Ram that since 1981, he was residing at Delhi Darwaza outside Dudeshwar Road, Ahmedabad. He was working with Brahmani Winding Works at Mahalaxmi Complex, Ghee Kanta Road, Ahmedabad. He used to do the job of motor winding in his own shop. He further stated that on 16-1-1998, he had done the job for his customers namely Atul Bhai, Dalji and Ramesh Bhai. In support of it, he has produced bill book Article-E Exhibit A-7. It contains receipts at Serial Number 181 to 185. It is also stated that his neighbours were Govindji and Kamal Bhai. He was arrested on 4-2-1998 from the shop at Ahmedabad. In the cross-examination, he admitted that he does not remember the amount charged from the customers for motor repairing. He also admitted that he is original resident of village Charni Bhandu, Tehsil Shergarh, District Jodhpur. He denied the suggestion that he was in Jodhpur on 16-1-1998. He also admitted that bills do not bear his signature. DW-4 Dalji has stated that he has been carrying business in Ahmedabad for last 10-12 years. He knew Kirta Ram engaged in motor winding work. He also stated that Kirta Ram had given a receipt for the work done. In the cross-examination, he failed to produce the receipt given to him by Kirta Ram. DW-5 Govind Bhai is also a resident of Ahmedabad. He has stated that Kirta Ram was settled in Ahmedabad for last 22-23 years. He further stated that in January, 1998 Kirta Ram was in Ahmedabad. In the cross-examination he admitted that he was not aware as to how many times Kirta Ram has been visiting Jodhpur in a month. We have considered the evidence of all the three witnesses. It is admitted by the witnesses that bill book does not bear signatures of Kirta Ram. Thus, simply because certain bills were issued, it cannot be said that Kirta Ram was in Ahmedabad on 16-1-1998. It has been admitted that he is a resident of Tehsil Shergarh, District Jodhpur, the place from where the deceased belongs. In preference to the injured eye witness PW-1 Mangilal, the statement of DW-3 Kirta Ram cannot be preferred. Thus, in our opinion, trial Court has rightly rejected the defence evidence of DW-3 Kirta Ram, DW-4 Dalji and DW-5 Govind Bhai.

23. In the instant case, appellants apart from substantive offence under Section 302, have also been convicted for offence under Section 302 read with Section 120-B I.P.C. The conspiracy part of the case is also of significance. Conspiracy

consists not in the intention but in the agreement of two or more persons to do an unlawful act or lawful act by unlawful means. To bring home the charge of conspiracy within the ambit of Section 120-B, I.P.C., it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is no doubt true that it is difficult to establish conspiracy by direct evidence and, therefore, from the established facts an inference can be drawn but there must be some material from which it would be reasonable to establish a connection between the alleged conspiracy and the act done pursuant to the said conspiracy. In E. K. Chandrasenan v. State of Karala reported in AIR 1995 SC 1066 : (1995 Cri LJ 1445) the Apex Court dealing with the appreciation of evidence in the matter of charge of conspiracy, observed as follows :--

'As to when conspiracy can be taken as established, it has been accepted in various decisions that there can hardly be direct evidence on this, for the simple reason that conspiracies are not hatched in open; by their very nature they are secretly planned; and so, lack of direct evidence relating to conspiracy has no significance. This is not material because conspiracy can be proved even by circumstantial evidence; and it is really this type of evidence which is normally available to prove conspiracy.'

24. To establish a connection with the alleged conspiracy and the act pursuant to the said conspiracy, the prosecution has relied upon certain piece of circumstances. In the parcha bayan Exhibit P-1, at the earliest PW-3 Pokar Ram expressed his suspicion that family members of the person in whose case they were suffering sentence got the Manak Ram murdered. Deceased Manak Ram, PW-3 Pokar Ram, absconding accused Nakhat Singh, the son of deceased Inder Singh and two other accused persons namely Pratap Singh and Girdhari Singh (since discharged), sons of deceased Bhanwar Singh and another absconding accused Bhim Singh are the residents of village Solankiya Tala, Tehsil Shergarh. Appellant Kirta Ram is also a resident of same village and close friend of Bhim Singh and Nakhat Singh. Appellant Kan Singh, absconding accused Bhim Singh, star witness PW-3 Pokar Ram and deceased Manak Ram lived together in the open air camp at Mandore wherein alleged incident took place. Thus, there is reasonable connection between all the accused persons and the deceased. There

is also a motive for committing the alleged crime. The another piece of circumstance against the appellants is that prior to the incident they had visited appellant Kan Singh in the open air camp on more than one occasion. PW-3 Pokar Ram has stated that on 2-1-1998 Bhim Singh with two other persons was seen at the quarter of appellant Kan Singh in the open air camp. He also stated that Bhim Singh and said two other accused persons on many occasions visited the quarter of appellant Kan Singh. They have been seen at the quarter of appellant Kan Singh on 15-1-1998 as well. During the identification parade and in the Court, he identified the said two other accused persons as appellants Kirta Ram and Gyan Chand. There is also evidence to show that during the period 2-1-1998 to 4-1-1998 absconding accused persons Bhim Singh and Nakhat Singh, Kirta Ram and Gyan Chand had stayed together in a hotel. PW-11 Girish Kumar has stated that in his residential house, he runs a hotel in the name of Shyam Hotel. He produced the register Article-1 and the bill book Article-2. In the register Article-1 at Exhibit P-35 names of all the four accused persons are entered at serial number 10579. They checked-in in the hotel on 2-1-1998 and checked-out on 4-1-1998. The receipts have been issued in the name of Nakhat Singh. A carbon copy of the receipt has been placed on record as Exhibit P-36. This fact has further been verified by PW-21 Jagdish Chandra, Investigating Officer. He has stated that all the four accused persons viz., Nakhat Singh, Bhim Singh, Kirta Ram and Gyan Chand checked out the hotel on 4-1-1998 at 7.00 a.m. He further stated that record shows that they stayed in room No. 8 and paid the rent of Rs. 120/-. Another incriminating circumstance against the appellants is that all the four accused persons had purchased swords alleged to have been used in the crime. PW-20 Nathu Lal has stated that he runs a shop of selling weapons like sword, knife etc. in the name of M/s. Laxmi Narayan Kirpan Works, Ada Bazar, Jodhpur. He further stated that on 5-1-1998 four persons visited his shop for purchase of swords. Accordingly, swords were displayed and they selected two swords with sheath. They paid the cost of both the swords at Rs. 1,232/-. He issued a bill of two swords in the name of Nakhat Singh. Police seized the carbon copy of the bill as Exhibit P-51 and the bill book as Exhibit P-15. Witness identified the sheath and swords as Articles Ex. A-4 and Ex. A-5 respectively produced in the Court. He stated that swords shown to him in the Court were purchased by the appellants

present in the Court from his shop. There is another incriminating circumstance against the appellant Kirta Ram that at the time of arrest, a visiting card of M/s. Laxmi Narayan Kirpan Works, Ada Bazar, Jodhpur was recovered . from his pocket. In our view the evidence produced by the prosecution is of clinching nature pointing positive towards the common evil design constituting criminal conspiracy, furtherance of which the appellants committed the murder of Manak Ram.

25. Dealing with the direct evidence, we have referred to the statement of PW-1 Mangilal and PW-2 Mst. Radha. PW-1 Mangilal is the injured eye witness. He has stated that on 16-1-1998 he along with his deceased father Manak Ram, mother PW-2 Mst. Radha and younger sister was sleeping. At about 10.30 p.m. somebody gave a call from outside asking his deceased father Manak Ram to come out. The call was given by the appellant Kan Singh. Thereafter, Bhim Singh also gave a call to his deceased father and stated that he has met with an accident. Witness stated that he knew Bhim Singh and Kan Singh as they were frequent visitors of their quarter. An assurance of safety was given by the appellant Kan Singh. As soon as his deceased father Manak Ram opened the gate, appellants Kan Singh and Bhim Singh caught him and mounted attack on him by swords. On his intervention Bhim Singh gave a sword blow to him. He warded off the blow. There was amputation of left hand at the level of writs. The amputated part fell down on the earth. Bhim Singh gave two more sword blows on his head. Third blow was given causing injuries on the shoulder. Kan Singh and Bhim Singh were accompanied by two more accused persons. They were also armed with swords. His deceased father Manak Ram was dragged. All the four accused persons gave sword blows to deceased Manak Ram causing injuries on the various parts of his body. There is lengthy cross-examination but nothing has been elicited to discredit his testimony. The main criticism against the testimony of this witness is that if he would have seen the incident, then there was absolutely no difficulty in arresting the accused Kan Singh on the spot itself. In the same line, the contention has been raised that First Information Report is a spurious document, inasmuch as, when the Jailor PW-8 Nand Singh Shekhawat visited the jail in the morning at about 8.00 a.m. Nobody knew as to who were actual assailants. If PW-1 Mangilal or PW-3 Mst. Radha would have witnessed the incident, they would have definitely disclosed the names of assailants to DW-7 Bal

Singh and other witnesses. The fact that names of assailants find place in the parcha bayan Exhibit P-1 of PW-3 Pokar Ram which was recorded at 3.00 a.m. clearly shows that it is an antetime document, as such spurious. We are unable to agree with the submission of the learned counsel. PW-1 Mangilal was seriously wounded and he was shifted to the hospital. The names of assailants were disclosed by him. Statement of PW-1 Mangilal finds corroboration from the medical evidence i.e. Post Mortem Report Exhibit P-26 and Injury Report Exhibit P-27. He is a natural witness. His presence cannot be doubted. In the same incident he has sustained injuries. He knew Kan Singh and Bhim Singh as they were frequent visitors of their quarter and were also confined in the open air camp. He has also identified two other accused persons namely Kirta Ram and Gyan Chand in the Court. Thus, we are of the view that PW-1 Mangilal is a credit worthy witness and there is absolutely no reason to discard his testimony.

26. PW-2 Mst. Radha is the wife of deceased Manak Ram. She has stated that she was staying in the open air camp along with her husband, one son and a daughter for last more than 11/2 years. We have discussed her statement in the earlier part of the judgment. It is submitted by the learned counsel that her statement to the effect that she disclosed the names of assailants to her brother-in-law. PW-3 Pokar Ram, does not find corroboration from the statement of other witnesses. Much emphasis has been laid on the statement of DW-7 Bal Singh who was Incharge of open air camp. According to him, Mst. Radha pleaded ignorance about the identity of the assailants. On the basis of the narration given by her, PW-3 Pokar Ram gave statement Exhibit P-1 wherein the names of assailants have been given. We do not find any justified reason to discredit her testimony. Her statement finds corroboration from the medical evidence and the statement of PW-1 Mangilal and PW-3 Pokar Ram.

27. PW-3 Pokar Ram reached on the spot just after the incident. Thus, he is not an eye witness but his statement is relevant to the extent that names as assailants were disclosed to him by PW-2 Mst. Radha. He has also identified the appellants Kan Singh, Kirta Ram and Gyan Chand. His statement finds corroboration from the medical evidence and the statement of other relevant witnesses.

28. Presence of appellants Kirta Ram and Gyan Chand is established by the statement of PW-2 Mst. Radha and PW-3 Pokar Ram. PW-22 Hari Vallabh Khatri has stated that on 25-2-1998 he was posted as Judicial Magistrate No. 6, Jodhpur. He conducted the identification parade of the appellants Kirta Ram and Gyan Chand vide Exhibit P-9 and Exhibit P-10 respectively. He stated that he conducted the identification parade as per the prescribed norms wherein PW 2 Mst. Radha and PW-3 Pokar Ram identified the appellants Kirta Ram and Gyan Chand. It is further stated that he had arranged the identification parade in the Central Jail, Jodhpur under the instructions of Chief Judicial Magistrate. Nothing has been elicited in the cross-examination to discredit the testimony of this witness.

29. It is vigorously argued by Mr. Niranjan Gaur, learned counsel for the appellant Kirta Ram that proceedings of identification parade cannot be relied upon as it has become suspicions on account of unexplained delay. Appellant Kirta Ram was arrested on 6-2-1998 vide Exhibit P-33 and appellant Gyan Chand was arrested on 11-2-1998 vide Exhibit P-16 but the identification parade was arranged as late as on 25-2-1998. In support of the contention learned counsel has placed reliance on the decisions of this Court in State of Rajasthan v. Babu reported in 1986 Cr LR (Raj) 277, Dhonkal Singh v. State reported in ILR (1953) Rajasthan 762, Chothmal v. State of Rajasthan reported in 1980 Raj Cri C 248 and Hazari v. State of Rajasthan reported in 1979 Raj Cri C 48. The contention raised by the learned counsel deserves to be rejected for the simple reason that no question has been put to investigating Officer at the cross-examination for delay in arranging the identification parades Record shows that accused persons were arrested in a serious crime. There was an anxiety to arrest other absconding accused persons. Witnesses were required to be summoned from a far distance village. Be that as it may, if a question would have been put to the Investigating Officer in this regard, he could have explained the cause of delay. It may further be stated that PW-5 Jugal Kishore has stated that vide Exhibit P-13 in case of Kirta Ram and vide Exhibit P-17 in case of Gyan Chand, the directions were given to keep them baparda. It has also been stated by the Investigating Officer that both the accused persons were kept baparda throughout. It is next submitted that PW-1 Mangilal who is the star eye witness as per the prosecution, was not called in the identification parade. It is stated that PW-1 Mangilal was seriously wounded and

he remained in the hospital for a long period, as such he was not in a position to attend the identification parade on 25-2-1998. Thus, this contention also deserves to be rejected. PW-2 Mst. Radha has identified appellants Kirta Ram and Gyan Chand as the persons who were with Kan Singh and Bhim Singh. She has stated in her statement that Kan Singh and Bhim Singh were accompanied by two unidentified persons whom she could identify if they were brought before her and she actually identified them. She further stated that all the four accused persons mounted attack on her husband Manak Ram by swords. Thus, the prosecution has succeeded in establishing the identity of Kirta Ram and Gyan Chand as two unnamed assailants along with Kan Singh and Bhim Singh.

30. Another important incriminating circumstance against the appellant Kirta Ram is that he was arrested vide Exhibit P-33 on 6-2-1998. At the time of arrest visiting card of M/s. Laxmi Narayan Kirpan Works was recovered. It may be recalled that there is evidence to show that recovered swords were purchased from the shop of M/s. Laxmi Narayan Kirpan Works, Jodhpur. On the same day, Kirta Ram made a discloser statement vide Exhibit P-51 leading to recovery of blood stained sword and sheath. The sword was seized and packed on the spot. As per F.S.L. Report Exhibit P-54 the blood stains on the sword are of human origin. Appellant Kirta Ram has failed to give any explanation as to the presence of human blood on the sword recovered in pursuance of the information given by him.

31. As far as link evidence is concerned, no serious argument in this regard has been advanced. PW-19 Madan Kumar has stated that at the Police Station, Mandore, he was Incharge of Malkhana on 17-1-1998. The S.H.O. Shri Chandan Singh deposited the articles in First Information Report case No. 5/1998 in sealed condition which included two swords with sheaths. He made an entry in the malkhana register. He sent the articles along with Constable Ram Ratan to the Office of Superintendent of Police, Jodhpur for sending to the Forensic Science Laboratory. PW-16 Ram Ratan Bhati has stated that on 9-3-1998, he took the articles in F.I.R. Case No. 5/1998 in sealed condition from the Police Station Mandore. He went to the Office of Superintendent of Police, Jodhpur and entrusted the articles to Head Constable Virendra Singh in sealed condition. PW-15 Poonam Chand has stated that on 9-3-1998, he received the articles in F.I.R.

Case No. 5/1998 in the Office of Superintendent of Police, Jodhpur. He delivered the said articles to Head Constable Virendra Singh along with letter for delivery in Forensic Science Laboratory. PW-13 Virendra Singh has stated that he had taken the articles from the Office of Superintendent of Police, Jodhpur in the F.I.R. Case No. 5/1998 in sealed condition and delivered the same in the Forensic Science Laboratory, Jaipur and obtained the receipt Exhibit P-37. The receipt of the articles shows that articles were received in sealed and intact condition.

32. On careful consideration of the entire evidence on record, we are of the view that the occurrence spoken by the injured eye witness PW-1 Mangilal implicating appellant Kan Singh and two unidentified persons, appellants herein Kirta Ram and Gyan Chand is clinching. It is supported by the other evidence particularly the testimony of PW-2 Mst. Radha and PW-3 Pokar Ram and the medical evidence. There is neither any inconsistency or such improbability which may discredit their testimony. Assurance is also lent to ocular account from the evidence of identification, recovery of incriminating articles like blood stained sword and not the least evidence or evil design and accomplishment of the object in furtherance thereof. The defence has been found to be false and fabricated. Thus, taking in view totality of entire evidence, we are of the view that prosecution has succeeded in bringing home the guilt of the appellants beyond any manner of doubt.

33. Consequently, all the three appeals filed by appellants Kan Singh, Kirta Ram and Gyan Chand stands dismissed. They are in Jail. They will serve out the remaining part of the sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com