

Shrawan Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-07-1993

Reported in : 1994CriLJ314

Judge : B.R. Arora and; N.K. Jain, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 450

Appeal No. : D.B. Criminal (Jail) Appeal No. 109 of 1990

Appellant : Shrawan Kumar

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, P.P.

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated March 16, 1990, passed by the Additional Sessions Judge No. 2, Hanumangarh (Camp Suratgarh), by which the learned Additional Sessions Judge convicted the appellant for the offences

under Sections 302 and 450, I.P.C. and sentenced him to undergo imprisonment for life and a fine of Rs. 200/- and in default of ; payment of fine further to undergo two months' rigorous imprisonment for the of-fence under Section 302, I.P.C. five years' rigorous imprisonment and a fine of Rs. 200/- and in default of payment of fine further to undergo two months' rigorous imprisonment for the offence under Section 450, I.P.C.

2. The incident, which led to the prosecution of the accused-appellant, took place on 30-4-87 in village Sangita, where Jagdish was murdered in his own house at about 2.00/2.30 a.m. in the intervening night of April 29/30, 1987. The case of the prosecution is that deceased Jagdish, his wife P.W. 2 Krishna and sister P.W. 4 Vimla were sleeping in the court-yard of his house. Accused Shrawan Kumar came there, inflicted injury with a Sabble (a pointed iron-rod) on his chest and on receiving this injury when Jagdish got up, he grappled with the accused. The accused gave another Sabble blow on the eye of Jagdish. In the meanwhile, P.W. 2 Krishna and P.W. 4 Vimla, also, got up on hearing the cries of Jagdish, whereupon the accused ran away. Jagdish scaled over the wall of the house of Jagu Kumhar, which was about three to four feet high, crossed the Bara and lay down on a cot lying in the Bara of Jagga Kumhar. There the villagers collected. Dana Ram (P.W. 3) --the Sarpanch of the village -- was called, who along with other villagers, went to lodge the First Information Report at Police Station, Suratgarh immediately after the occurrence. The entry in the Roznamch was made at about 6.30 a.m. Thereafter the police came at the place of the occurrence, recorded the statement of Jagdish and sent Pyara Singh Constable along with the statement of injured Jagdish for recording the FIR and Jagdish was taken to the hospital, where he died. The prosecution, in support of its case, examined ten witnesses. P.W. 2 Smt. Krishna and P.W. 4 Vimla are the two eyewitnesses of the occurrence. The statements are sought to be corroborated by the state-merit of P.W. 3 Dana Ram -- the Sarpanch of the village -- who immediately after the occurrence came to the place of incident, went to the Police Station, gave information regarding the incident, came to the village along with police, the statement Ex. P. 13 of Jagdish was recorded in his presence on the basis of which the FIR Ex. P. 14 was recorded. P.W. 1 Dr. Sahi Ram was the Incharge, Government Hospital, Suratgarh, who attended the deceased Jagdish when he

was brought to the hospital, and conducted the post-mortem on the deadbody of Jagdish. P.W. 5 Abdul Aziz, P.W. 6 Pyare Singh, P.W. 7 Trilok Chand, P.W. 8 Sri Krishna Sharma, P.W. 9 Heera Lal and P.W. 10 Bhanwar Singh are the six police witnesses. P.W. 5 Abdul Aziz is the Station House Officer, who took over the charge of the Police Station, Suratgarh, on 3-4-87 and arrested the accused, who was produced before him at the Police Station. The accused gave information under Section 27 of the Evidence Act (marked Ex. P.6) and got recovered the Sabble -- the weapon of offence -- in pursuance of this information. He also, recovered the clothes from the person of the accused vide Ex. P. 18. P.W. 6 Pyare Singh, Foot Constable, was posted at the Police Station, Suratgarh, who along with Trilok Chand A.S.I. Police, went at the place of the occurrence, where the statement of Jagdish was recorded by Trilok Chand A.S.I. Pyare Singh brought this statement Ex. P. 13 recorded by Trilok Chand A.S.I. and on the basis of which the FIR Ex. P. 14 was recorded at Police Station, Suratgarh, Trilok Chand A.S.I., on the relevant day, was posted at Police Station, Suratgarh, to whom the investigation was handed over by Sri Krishna Sharma -- the Station House Officer, Police Station, Suratgarh. Trilok Chand went to the place of the occurrence, recorded the statement of Jagdish Ex. P. 3, sent this statement through Pyare Singh and thereafter took injured Jagdish to the hospital along with his family members and conducted the investigation. P.W. 8 Sri Krishna Sharma, Station House Officer, Police Station, Suratgarh, has stated that he was the Incharge of Police Station, Suratgarh, before whom Pyare Singh presented the statement of Jagdish Ex. P. 13 and on the basis of which he ordered for registration of the First Information Report and the FIR Ex. P. 14 was registered. P.W. 9 Heera Lal was the Head Constable Police posted at Police Station, Suratgarh, in whose custody the sealed articles remained in the sealed condition since the time they were deposited till they were sent for FSL examination to the State Forensic Science Laboratory, Jaipur. P.W. 10 Bhanwar Singh took the sample packets for FSL examination and handed them over to the State Forensic Science Laboratory, Jaipur. He has stated that during the period the sample remained with him, they remained in sealed condition and the seals were not tampered with.

3. It is contended by the learned Counsel for the appellant that the alleged dying declaration (Ex. P. 13), on the basis of which the FIR was recorded, cannot be

relied upon because it is not supported by the medical evidence. His further case is that the deceased was not in a position to make the statement when the police reached at the place of the occurrence and even P.W. 3 Dana Ram -- the Sarpanch of the village -- has not supported the making of statement Ex. P. 13 by Jagdish before the police. The dying declaration has, therefore, been falsely prepared. His further submission is that the alleged two eyewitnesses, viz., P.W. 2 Krishna and P.W. 4 Vimla, are not the eye-witnesses of the occurrence and they have actually not seen the occurrence. There are material contradictions in their statements. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned lower Court.

4. We have considered the rival submissions made by the learned Counsel for the parties.

5. The prosecution case mainly rests upon the statement of two eye-witnesses, viz., P.W. 2 Krishna and P.W. 4 Vimla, and the dying declaration Ex. P. 13 made by the deceased Jagdish. This statement is sought to be corroborated by the medical evidence of P.W. 1 Dr. Sahi Ram and the statement of P.W. 3 Dana Ram -- the Sarpanch of the village. We would first like to consider the evidence of the two eye-witnesses, viz., P.W. 2 Krishna and P.W. 4 Vimla.

6. P.W. 2 Krishna is the widow of deceased Jagdish and the sister of the accused-appellant Shrawan Kumar. She has stated that about six months before, she along with her sister-in-law P.W. 4 Vimla and her husband Jagdish, was sleeping in the courtyard of her house. At about 2.00 a.m., she heard the cries of her husband Jagdish. She and her sister-in-law Vimla got up. Her husband was standing at a distance of about two to three feet from her cot and the accused was, also, standing armed with a Sabble. The accused inflicted injury with the Sabble on the chest of her husband. Her husband thereafter stood up. The accused thereafter inflicted second injury with the Sabble on his eye. She tried to caught her brother (the accused) in order to intervene but the accused ran away. Thereafter Jagdish scaled over the wall which is about three to four feet in height and went to the Bara of Jagu Kumhar and lay down on a cot. She and her sister-in-law thereafter went to her husband. At that time he was speaking. At about 7.00 a.m., the police came

to the village and recorded the statement of Jagdish. Thereafter Jagdish was taken to the hospital where he succumbed to the injuries. She has, also, stated that in the night, Dana Ram Sarpanch, also, came there, who saw the injured and thereafter went to the Police Station to lodge the report. In the cross-examination she has stated that when she got up, her husband was crying that he has been injured. She has also, stated that when she and Vimla got up, they saw Jagdish lying on the cot. She has, also, stated that the first injury was inflicted by the accused while her husband Jagdish was lying on the cot and the second injury was inflicted when Jagdish was in standing position. She has, also, admitted that when Dana Ram Sarpanch came, at that time Jagdish was conscious and he narrated the whole incident to Dana Ram and after getting necessary information from Jagdish, Dana Ram went to the Police Station to lodge the report. Dana Ram Sarpanch came with the police in the morning at about 7.00 a.m. and at that time the accused Shrawan Kumar was, also, with them. The site plan and other recovery memos were prepared in her presence and at that time accused Shrawan Kumar was, also, present there. She has, also, admitted that accused Shrawan Kumar accompanied them to the hospital, from where he was taken to the Police Station and when he was taken to the Police Station, the police, also, recovered the Sabble from him and sealed it. She has, also, admitted that they did not narrate the incident to anyone that accused Shrawan Kumar has inflicted injuries to Jagdish. This witness, though is the widow of the deceased Jagdish and her presence at the place of the occurrence was most natural as the incident took place at the dead of the night in her house, but the question is : whether she had at all seen the occurrence? It is true that she is the sister of the accused and would not have falsely implicated the accused in such a heinous crime if she had actually seen the occurrence and the accused would have been the person who had inflicted the injuries to the deceased. According to this witness, after inflicting the injuries to Jagdish, the accused ran away but in the cross-examination she has admitted that the accused was throughout present in the village when the police came there. P.W. 3 Dama -- the Sarpanch of the village -- has even stated that the accused went to the Police Station along with him to lodge the report. The accused even accompanied the injured and the other witnesses to the hospital and as per the statement of this witness he was taken to the Police Station by the

police immediately after they reached the hospital. The weapon of offence, i.e., the Sabble, was, also, recovered, which was seized and sealed. Though this witness has stated that the accused was arrested at that very time but P.W. 5 Abdul Aziz, S.H.O., states that the accused was arrested vide arrest memo Ex. P. 5 on 4-5-87, when he was produced by P.W. 7 Trilok Chand, A.S.I. When the accused was already present at the time when the police arrived to the village and accompanied Dana to the Police Station then there was no question of re-arresting the accused. This raises a suspicion in the prosecution case. Even P.W. 4 Vimla states that. Jagdish narrated the whole incident to P.W. 3 Dana before he went to lodge the report, but in the report lodged by Dana Ram, the name of the accused does not find place. The Rapat-Roznamcha only shows that somebody inflicted to Jagdish who is lying in the Bara of Jaggu Kumhar in village Sangita. After the incident, several persons collected there but this witness has stated that they did not tell to anyone of the villagers present there that her brother accused Shrawan Kumar has inflicted injuries to Jagdish. A close scrutiny of the statement of this witness clearly shows that probably this witness has not seen the occurrence and got up after the incident was over and saw her husband in the injured condition. No cot, on which this witness alleges to have slept over, was found at the place of the occurrence when the police arrived there. In the site plan only one cot, on which deceased Jagdish was sleeping, has been shown while the other two cots, on which P.W. 2 Krishna and P.W. 4 Vimla are said to have slept, have not been shown. Even otherwise, if the witness had seen the occurrence then the injured would have been immediately taken to the hospital or at least would have been provided First Aid Treatment then and there, but it was not done. This, also, raises a suspicion regarding witnessing of the incident by this witness.

7. P.W. 4 Vimla, who is the sister of the deceased and the sister-in-law of the accused, has stated that on the fateful night, she was sleeping in the court-yard of her brother's house on a cot. Her brother Jagdish and sister-in-law Smt. Krishna were also, sleeping on their cots. At about 2.00 a.m. she heard the out-cries of her brother and saw accused Shrawan Kumar inflicting injury by a Sabble on the chest of her brother and inflicted the second injury on his left eye. Her brother Jagdish got-up and the accused and the deceased, both, grappled each other. Thereafter accused Shrawan Kumar ran away. Her brother, after scaling over the wall, went

towards Jaggu Kumhar's house and lay on a cot lying there. She and her sister-in-law went to Jaggu Kumhar's house and saw Jagdish lying there. There was some enmity between the accused and the deceased on account of some money transaction. The police came in the morning and made enquiry from her brother. She also, narrated this incident to the police. At about 9-30 a.m., her brother Jagdish was taken to the hospital and died there during the medical examination. In the cross-examination she stated that first her sister-in-law got-up and thereafter she got-up after hearing the cries of her brother Jagdish. When they tried to get-up from the cot, the accused and the deceased were grappling and during this scuffle, accused Shrawan Kumar inflicted Sabble blows on the chest of her brother and thereafter he inflicted the injury on his eye and after inflicting these two injuries, the accused ran away. According to her, both these injuries were inflicted to Jagdish by the accused-appellant when Jagdish was in standing-position. She has, also, stated that she and her nephew Mr. Manju tried to catch-hold the accused but they were fallen down on the ground by the accused. Her brother thereafter scaled-over the wall and went into the house of Jaggu Kumhar. According to her, the wall is about four to five feet in height. She and her nephew Mr. Manju, also, crossed the wall and her sister-in-law came through the door to the house of Jaggu Kumhar, where her brother Jagdish was lying. They raised cries and when the villagers came near then Dama Ram was called, who was accompanied with several villagers and Dana Ram, along with other villagers, went to the Police Station on a motor-cycle to lodge the report. These persons went on two motor-cycles to lodge the report. She has, also, stated that her brother gave statement before the police in the village as well as before the doctor. She has, also, admitted that when Jagdish was brought to the hospital, she, her nephew Mr. Manju, two nieces and Shrawan Kumar was, also, in the field. Blood-stained clothes from the person of the accused as well as the Sabble were got recovered by the accused on that very moment. This witness is the sister of the deceased and naturally there is every possibility of her being called by her brother, but she has stated that for the first time she came to her brother's house only ten days before the incident. The version of the incident, given by this witness, is in contradiction to the statement given by PW 2 Krishna regarding infliction of the injuries by the accused. Though this witness has stated that she and her sister-in-law got-up after hearing the cries

of her brother Jagdish and her brother cried when he had already received the injuries and as such this witness or PW 2 Krishna could not have seen the accused inflicting injuries to Jagdish. Moreover, the cot on which it is stated that they were sleeping, were not found at the place of the occurrence when the police inspected the site as they have not been shown in the site plan, wherein only one cot has been shown. If this witness or PW 2 Krishna would have seen the incident then they should have taken some care of the injured and should have given some First Aid or at least should have tried to stop the bleeding, but no efforts of any kind was made by these two witnesses, which, also, shows that they have not seen the occurrence. Neither these two witnesses nor any of the villagers tried to take the injured to the hospital so that the proper medical treatment may be given to Jagdish and he could have been saved by the doctor, and Jagdish remained lying down in the court-yard for about five hours till the police came and recorded the alleged dying declaration. A close reading of the statement of this witness, also, raises a suspicion whether she had at all seen the occurrence or not

8. The next evidence on which the reliance has been placed is the alleged dying declaration made by the deceased Jagdish, which was recorded by PW 7 Trilok Chand, A.S.I. Police. Though a great weight should be attached to a dying declaration recorded immediately after the occurrence and shortly before the death because it is expected that a dying person does not tell a lie and conviction can be based on the solitary evidence of dying declaration, but before convicting a person only on the basis of the dying declaration, it has to be seen whether the dying declaration made by the deceased was actually made by the deceased and whether he was in a position to give statement and was in the state of consciousness? In the present case the dying declaration has been recorded by the investigating officer and no other person has supported the making of dying declaration by Jagdish. The investigating officer is naturally interested in the success of the investigation and, therefore, the practice of recording dying declaration by the police should be deprecated. The incident took place at about 2.00/2.30 a.m. and as per the prosecution case the accused scaled-over the wall and went to the house of Jaggu Kumhar and fell down there. Though as per the statement of PW 1 Dr. Sahi Ram, after receiving such injury the injured could not have travelled beyond five, seven or ten steps but Jagdish, in the present case, is

alleged to have travelled a considerable distance and that too after scaling over the wall which was about four to five feet in height. When the accused had already gone away after inflicting these injuries then there was no necessity of scaling over the wall and going to the house of Jaggu Kumhar by Jagdish. The going of deceased Jagdish to the house of Jaggu Kumhar, also, raises a suspicion regarding the place of the incident. Though some blood was, also, found at the alleged place of the incident, but the cot, on which the deceased was sleeping and where he got the injuries, does not contain any blood. It, therefore, appears that the prosecution has tried to shift the place of the occurrence from Jaggu Kumhar's house to that of the house of deceased Jagdish. Even otherwise, if the witnesses had seen the occurrence then the injured would have immediately been taken to the hospital or some First Aid could have been given to him. According to the prosecution, PW 3 Dana Ram Sarpanch was called immediately after the occurrence and they immediately went to lodge the report at Police Station, Suratgarh. They went on motorcycles. The distance between the place of the occurrence and the Police Station is only about twenty-five kilometres and on motorcycles, this distance could have been easily covered within about half an hour. But in the Roznamcha, the entry has been made at 6.30 a.m. and in that report, also, the name of the accused was not mentioned, though as per the prosecution witnesses PW 2 Krishna, Jagdish as well as she narrated the whole incident to Dana Ram Sarpanch and, also, informed him that it was the accused Shrawan Kumar who inflicted injuries to Jagdish, but still the name of Shrawan Kumar does not find mention in the information given by Dana Ram Sarpanch to the police. Even Dana Ram has admitted that the accused accompanied him to the Police Station. PW2 Krishna and PW4 Vimla have, also, admitted that the accused was present at the place of the occurrence when the police came there and accompanied them to the police station, also. The time-lag between the incident and the recording of the statement of Jagdish by Trilok Chand A.S.I. Police, also, shows that the deceased Jagdish was not in a position to make any statement and probably he had not made the alleged dying declaration, According to Dr. Sahi Ram (PW 1), the deceased, after receiving injury No. 1, could maintain himself and could speak upto two to four hours and not beyond that. Admittedly, the police came there after about four to five hours and naturally the injured

Jagdish was not in a position to make any statement. The condition of the deceased Jagdish and the injuries received by him raise a suspicion regarding making of the statement by him before the police. If Jagdish would have been in the know of the thing that it was the accused who inflicted injuries upon him then he would have certainly disclosed this name to Dana Ram Sarpanch who, immediately after the occurrence, visited there and as per PW 2 Krishna, the deceased informed Dana Ram regarding the incident. The absence of the name of the accused-appellant in the information given by PW 3 Dana Ram Sarpanch, thus, clearly shows that since the time of lodging the report, the name of the accused was not known and it was only after the police came there that the accused has been involved in this case. The alleged dying declaration made by the deceased Jagdish, thus, does not appear to have been made by him and raises a suspicion and no conviction can be based on the evidence of this dying declaration.

9. So far as the recoveries are concerned, they also, do not connect the accused with the crime because the report of the State Forensic Science Laboratory, Jaipur, has not been produced by the prosecution. Whether the report was not received before the trial was concluded or it was deliberately withheld because it might not have supported the prosecution case and may be negative, is not made clear.

10. So far as the question of motive is concerned, that was not initially given by the prosecution, but later on, the motive that has been given is that there was a money transaction between the accused and the deceased and on account of that money transaction the accused murdered the deceased Jagdish. The money transaction relates only to Rs. 1200/-The accused and the deceased were the close relatives and are brother-in-law. This trivial transaction could not give any motive to the accused to kill his own brother-in-law (gainer). This motive, in our view, does not give rise to such a heinous crime and we are not inclined to believe this motive.

11. The learned Additional Sessions Judge has convicted and sentenced the appellant for the offence under Section 450, IPC also. As discussed above, we have found that the prosecution has failed to prove the case against the accused-

appellant beyond a reasonable manner of doubt so far as offence under Section 302, is concerned and, therefore, when the case against the accused-appellant for inflicting the injuries on the person of Jagdish, as alleged by the prosecution witnesses has been found to be unreliable, as such the committing of the trespass by the accused-appellant in the house of the deceased in order to commit any offence punishable with the imprisonment of life, also, does not arise, We are, therefore, of the opinion that the prosecution has failed to prove the offence under Section 450, IPC against the accused-appellant and the accused-appellant deserves to be acquitted of this offence, also, as no offence under Section 450, IPC is made-out against the accused-appellant.

12. In the result, the appeal, filed by the accused-appellant Shrawan Kumar, is allowed. The judgment dated March 16, 1990, passed by the learned Additional Sessions Judge No. 2, Hanumangarh (Camp Suratgarh), convicting and sentencing the accused-appellant is set aside and the accused-appellant is acquitted of all the offences he was charged with. He is in jail. He may be released forthwith if not required in any other case.