

Jodhan and ors. Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-07-1980

Reported in : 1980WLN(UC)144

Judge : Kanta Bhatnagar, J.

Appeal No. : S.B.Criminal Appeal No. 344 of 1975

Appellant : Jodhan and ors.

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

Kanta Bhatnagar, J.

1. This appeal is directed against the judgment passed by the learned Sessions Judge, Balotra dated 28th April, 1975 by which the learned trial judge convicted the appellants for the offences under Section 325/149 and 147 Indian Penal Code and sentenced them each to undergo three years rigorous imprisonment and a fine of Rs. 300/ in default to undergo three months (sic) rigorous (sic) imprisonment on the first count and one years rigorous imprisonment on the second count with a further order that the substantive sentences shall run concurrently.

2. Briefly stated the facts of the case giving rise to this appeal are that on 2-6-64 in the morning the five appellants gave a beating to Amrekhan in front of the house of Sona Sutbar at village Kesula Somu (PW 2) on seeing Amrekhan being beaten went to the Dhani of Mojikhan (PW 1) brother of Amrekhan and informed him about his brother being beaten. Mojikhan went to the house of Mehru (PW 3) and took him with him to the place of the incident Mojikhan and Mehru found Amrekhan in injured condition outside the home of Sona Suthar beneath a tree. They brought Amrekhan to his house, where his wife Mat, Asiyat (PW 4) fomented his injuries. Babulal (PW 14) the Vaidhya, Incharge of the Ayurvedic Hospital of village--Padam singh treated Amerkhen. On 9-6-74 Amerkhan expired. On the next day when he was being taken to the burial ground, Magharam (PW 9), Incharge of out-post Kasula stopped the people taking the dead body and obtained a report Ex.P. 1 from Mojikhan brother of the deceased. That report was sent to Police Station Gida through Amraram Head Constable Jetsingh (PW 10) registered a case under Section 302 Indian Penal Code, on the basis of the report Ex P.1. He proceeded for the site. In between Kesula and Gida he met the Station House Officer Dhiraram (PW 16), Incharge of the Police Station Gida and handed over the investigation to him. In the morning of 11-6-74 the Station House Officer went to the site and conducted the necessary investigation. Dr. Nembraj Tolaram Heerani (PW 13) conducted the autopsy on the dead body of Amrekhan on 12-6-74 at 7 00 a.m. at village-Kesula and prepared the post mortem examination report Ex P. 17. All the five appellants were arrested. Three of them viz Rewata, Dharma and Jodhan furnished information to the police for getting the lathies recovered and in pursuance of the information furnished by them the lathies were recovered.

3. After the completion of investigation the charge sheet against the five appellants was filed in the court of Munsif and Judicial Magistrate, Barmer under Section 302/147/148 and 149 Indian Penal Code. The learned Magistrate finding a prima facie case exclusively triable by the court of Sessions, committed all the appellants to the Court of Sessions Judge, Balotra to stand there trial. The learned Sessions Judge, charge sheeted the appellants for those offences and recorded their plea. All of them defied the charges and claimed to be tried. To substantiate its case prosecution examined 16 witnesses in all. The accused in their statements denied all the allegations levelled against them and raised the plea of alibi. They

examined four witnesses to substantiate their contention. The learned Sessions Judge placed reliance on the prosecution witnesses so far as the allegations about the appellants giving a beating to Amrekhan was concerned. He, however did not hold them guilty for the offence of murder. In view of his findings, he passed the judgment under appeal convicting and sentencing the appellants as stated earlier.

4. Mr. v. S. Dave, learned Counsel for the appellants; has assailed the Judgment of conviction on a number of grounds. It has been strenuously contended by him that no First Information Report was lodged till 10-674 when Mojikhan, lodged the report Ex P. 1 at the instance of Magheram Incharge Out-Post, Kesula. It has been urged that there is no explanation for the inordinate delay in filing the First Information Report nor is there any thing to suggest as to why the deceased was not taken to the hospital for treatment if he had sustained so many injuries.

5. Another argument advanced by Mr. Dave is that the alleged eye witnesses have contradicted each other so far as the time of the occurrence is concerned. Criticizing the findings about the dying declaration of Amrekhan, it has been stressed that the witnesses have not stated so in their police statements and therefore this part of the statements is an after thought.

6. Controverting these arguments, Mr. N.M. Lodha learned Public Prosecutor submitted that the relatives of the deceased being villagers, might not have thought it proper to lodge the information. He referred to the statement of Maggi (PW 7), wife of Sona Carpenter and contended that she had deposed that Rewata and Dharma took Amrekhan out of her house and she had seen the other appellants standing at a little distance. According to the Public Prosecutor this (sic) clearly shows that the appellants had formed an unlawful assembly to give a beating to Amrekhan. Referring to the statements of the alleged eye witnesses Mr. Lodha alleged that the 'Dhanl' of Mojikhan being at a distance, he might have taken time to reach the site and that might be reason for inconsistency in his statement and that of some regarding the time of the occurrence.

7. I heard the rival contention and gave my anxious consideration to the material on record. So far as the statement of Maggi is concerned, it does not help the prosecution much because she has not seen the actual occurrence. Apart from it,

she had admitted that Amrekhan deceased had illicit relations with her and this shows her interest in the deceased. It is quite unnatural for a lady having relations with a person not to take care as to why the victim had been forcibly taken out of her house. She had also not stated as to what happened with Amrekhan after her seeing him in the company of the appellants. If the prosecution case that Amrekhan was given a beating outside the house of Sona Suthar and he remained lying there since morning till evening is true then the conduct of Mat. Maggl appears all the more unnatural for the reason that she had stated that she had not at all gone outside her house and had not seen anybody coming and going in the street after Amrekhan had been taken out. This witness has not been considered to be an eye witness by the trial court.

8. Prosecution has examined Mojikhan (PW 1), Somu (PW 2), Mheru (PW 3), Amraram (PW 8), Durgesingh (PW 12) as the eye witnesses. Somu (PW 2) is said to be the person who had reached the site first of all. He has stated that his 'Dhani' was at a distance of two miles from village-Kesula. On that day, he had gone to village in search of his sheep/goats which were missing. That, while on his way he stopped at the place of the occurrence and asked the assailants not to beat Amrekhan. He has named all the five appellants as the assailants. He had stated that near about the place of occurrence, there are the houses of Kesara, Gajia, Bharmal, Roopa, Sona and Gena but none of the inhabitants of the houses were seen by him at the time of the incident. The witness has stated that he then went to the 'Dhani' of Mojikhan which is at a distance of three miles and informed him about the incident. Attention of this witness was drawn to his police statement where he has stated that while passing that way he had seen Amrekhan groaning beneath 'Kejri' tree outside 'falsa' of the house of Sona. The witness disowned that statement. Amraram (PW 8) and Durgesingh (PW 12) Police Constables have not stated about the presence of Somu (PW 2) at the site. Somu is a chance witness who in the ordinary course of events had no occasion to go to village-Kesula that day. His police statement throws doubt on his actually seeing the beating given by the appellants to the victim.

9. Mojikhan is the brother of the deceased Amrekhan. According to him, he and Mehrukhan (PW 3) had reached the place where Amrekhan was at one 'gari' prior

to the sun-set. Mehrukhan has deposed that he and Mojikhan had reached the place of occurrence at sun-set. Both of them have professed to have seen the occurrence i.e. the actual beating given to Amrekhan. It appears strange that Somu had seen the appellants giving a beating to Amrekhan in the morning and Mojikhan and Mehru had also seen the beating in the evening. It is no where the case of the prosecution that there were two incidents of beating, one taking place in the morning and the other in the evening. Durgesingh and Amraram constables have also located the time of the incident at about 11 000 p.m. apart from the fact that all the five alleged eye witnesses have excluded the possibility of the presence of others, the important fact still remaining for consideration is whether the appellants had continued beating since morning till evening and still the victim could survive for ten days. It is also pertinent to note that if the beating would have been for the whole day there was no reason for Maggi not to have seen the occurrence from her house and gone out near the victim. The inhabitants of the area by vicinity or at least some of them must have come out of their houses in between morning and evening but none of them has been examined by the prosecution for the reasons best known to it. This being the position, I am not inclined to accept the version given by Mojikhan and Mehru that on being informed by Somu when they reached the site, the appellants were still giving a beating to Amrekhan.

10. So far as Amraram and Durgesingh is concerned, their conduct is very unnatural and strange. Both of them were constables posted at Kesula. If a police constable sees anybody being beaten it is incumbent upon him to rescue the victim and bring the matter to the notice of the police by lodging the report. About the actual occurrence, the two constables are not supporting each other regarding Amrekhan being beaten by the lathi by the appellants. The statement of Durgesingh is that when he and Amraram reached the site of occurrence no body inflicted any (sic) lathi blow on Amrekhan, rather he was given a beating with slaps and fists blows. Both of them have admitted that they have not reported the matter to the police. The reason given by Amraram for not doing so is that he had gone out in connection with service of process and Amrekhan did not desire the filing of any report. The witness also admitted that he had not made any entry about his departure from the out post and the reason given by him is that he was illiterate.

Durgsingh has not given any explanation about his not lodging the report nor has he deposed that Amraram did not want any report to be lodged. Maggaram Incharge of the out post Kesula has stated that on 6-6-74 when he reached the police out post Kesula, he had met Amraram constable of out post but the latter did not inform him about the beating given to Amrekhan. It is also relevant to note that in view of their police statements to which their attention was drawn, learned trial judge had also not believed that Amraram and Durgsingh had actually seen Amrekhan being beaten.

11. This being the position, I am inclined to say that there is no witness who can be believed to have seen the actual beating.

12 The next point emerging for consideration is about the dying declaration by Amrekhan. Mojikhan and Mehru had deposed that Amrekhan had named all the five appellants as the assailants. If these witnesses had seen the appellant giving a beating to Amrekhan then where was the question of Amrekhan telling them that he had been beaten by such and such persons. Apart from it, these two witnesses had not deposed so in their police statements. Their attention was drawn to the omission there and the only explanation given was that police might not have written it.

13. Another witness about the alleged dying declaration is (sic)Asiyat, wife of the deceased. She in the examination in chief has deposed that her husband had told her that Jodhan had caused head injury to him. In her cross examination she had admitted that when Amrekhan was brought to the house, he was unconscious and remained so till his death. She had further stated that since the time Amrekhan was brought to the 'Dhani' till the time of his death she had not talked with him. This contention of (sic)Asiya falsifies the statements of Nooru (PW 5) and Ladekhan (PW 6) on the point that when they reached the house of Amrekhan and saw him in injured condition, he told them the names of the five assailants. The peculiar circumstances of the case i.e. the brothers of the deceased remaining silent all the time till the death of Amrekhan and Magharam (PW 9) stopping the dead body in the way when being taken to the (sic)burral ground and no body taking case for proper treatment is also a factor to be noted in the case. Babulal Vaidh has stated that on 9-6-74 he was taken by Mojikhan to the house of

Amrekhan because his brother was feeling pain in the chest. The witness has been declared hostile by the prosecution as he has not supported the prosecution case about the injuries on the person of Amrekhan. The type of the evidence stated above viewed together with the inordinate, unexplained delay in filing the First Information Report and the attempt of the relatives in taking the dead body to the burial ground without filing any report, throws a doubt on the prosecution case and lend support to the arguments of the learned Counsel that the allegations against the appellants and the insertion of the alleged eye witnesses was an after thought. The inconsistent statements about the time of the actual occurrence incapable of being reconciled also throws doubt on the truthfulness of the prosecution case, I, therefore, find no justification in the conviction of the appellants for any offence.

14. Consequently, the appeal is accepted. The convictions and sentences passed against the appellants are set aside. They are already on bail, Their bail bonds stand discharged.

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