Hakru Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-25-1994

Reported in : 1994CriLJ2141; 1994(1)WLN572

Judge : B.R. Arora and; V.G. Palshikar, JJ.

Acts : Indian Arms Act - Sections 3; Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : D.B. Criminal (Jail) Appeal No. 332 of 1993

Appellant : Hakru

Respondent : State of Rajasthan

Advocate for Def. : D.R. Bohra, P.P.

Advocate for Pet/Ap. : M.K. Garg, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 6-7-1993, passed by the Additional Sessions Judge, Banswara, by which the learned Additional Sessions Judge convicted and sentenced the accused-appellant Hakru for the offence

Under Section 302, I.P.C. and Section 3 of the Indian Arms Act.

2. The case of the prosecution is that on 22-6-1991, at about 7.00 p.m., Bhuria S/o Onkar was returning to his house along with his cattle from the water-pond after fetching water to the cattle. In the way, accused-appellant Hakru met him, who was abusing and blaming Bhuria that he had stolen seven of his sheep and was, also, challenging him that he would not spare him and will put him to death. Whereupon Bhuria asked Hakru why he was charging him as a thief. Thereupon Hakru, sitting on his Padsal (Chabutari) fired on Bhuria by his country-made gun with an intention to kill him. The fire hit Bhuria on his left side of body. Bhuria, after receiving the fire-arm injury, kept his hand on the chest and turned around. Hakru, along with his gun, proceeded towards Bhuria and hit on the head of Bhuria with the butt of his gun. Bhuria, after receiving the injuries.* died on the spot. Bhuria's wife Smt. Badi (Nagri), his son Kallu and Kallu's wife Smt. Kawdi were present at the scene of the occurrence while Khomji, Smt. Kesar, Poonja, Jeevan' and Dhanji, also, came at the scene of the? occurrence on hearing the altercations. When these persons reached at the place of the incident, Hakru ran away. According to the prosecution case, there was a dispute regarding a piece of land in between Hakru and Bhuria. The report of this incident was lodged at Police Station, Sadar Banswara by one Naniya, who was, also, present at the scene of the occurrence. The police, after necessary investigation, presented the challan against the accused and the accused was tried by the learned Additional Sessions Judge, Banswara. The prosecution, in support of its case, examined ten witnesses and produced certain documents, while the accused did not produce any evidence in his defence. The learned Additional Sessions Judge, after trial, by his judgment dated 6-7-1993 convicted the accused-appellant for the offences under Section 302, I.P.C. and Section 3 of the Indian Arms Act and sentenced him to imprisonment for life and a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of three months under Section 302, I.P.C, and for a term of three months' rigorous imprisonment with a fine of Rs. 250/- and in default of payment of fine to further undergo fifteen days' rigorous imprisonment under Section 3 of the Indian Arms Act. Aggrieved thereof, the appellant has preferred this appeal.

3. It is contended by the learned counsel for the appellant that there are material discrepancies in the statement of the prosecution witnesses regarding the place where the incident took place and the injuries inflicted to the deceased by the appellant. There are, also, material discrepancies between the statements of one witness and the another as well as in their own statements. It has, also, been contended by the learned counsel for the appellant that the independent eye-witnesses, viz., Mata Nagri, Bhomji and Bherji, who were admittedly present at the scene of the occurrence, have not been produced by the prosecution and though the articles were sent for chemical examination but neither the report of the State Forensic Science, aboratory nor the report of the Ballistic Expert has been produced by the prosecution and, therefore, an adverse inference may be drawn against the prosecution and the appellant should be acquitted. It has, also, been argued by the learned counsel for the appellant that Narain Singh, the Investigating Officer, as well as the Malkhana Incharge, under whose custody the articles were kept, have not been produced by the prosecution and their non-examination is a serious omission on the part of the prosecution and the appellant, therefore, deserves to be acquitted. In support of its contention, learned counsel for the appellant has placed reliance over, J.K. Devariya v. State of Coog. (AIR 1956 Mys 51), Harnam Singh v. The State (1982 Cri LJ 1818), Bhupal Singh v. The State of Rajasthan (1989 (1) RLR 492) and Chanan Ram v. State of Rajasthan (1992 Cr LR (Raj) 332). The learned Public Prosecutor, on the other hand, has supported the order passed by the learned trial Court and has submitted that the presence of the eye witnesses, produced by the prosecution, is most natural and they have given the true version of the case and there is no material discrepancy in their statements and they are reliable and truthful witnesses and they have rightly been relied upon by the Court below. So far as the non-production of Mata Nagri, Bhomji and Bherji is concerned, it is contended by the learned Public Prosecutor that these persons came at the scene of the occurrence immediately after the occurrence and there appears justification in not producing the witnesses who came at the scene of the occurrence after the incident was over particularly when there were sufficient number of eye-witnesses available with the prosecution and, therefore, the non-production of these three witnesses does not affect the prosecution case in any way. So far as the non-production of the reports

of State Forensic Science Laboratory and he Ballistic Expert are concerned, it is contended by the learned Public Prosecutor that their non-production can, at the best, be taken to the extent that the recoveries made in this case, ; will not be read against the accused-appellant but so far as the evidence of the eye witnesses, is concerned, that cannot be discarded merely on account of non-production of the P.S.L. and Ballistic Expert's reports. So far as rion-production of Narain Singh, Investigating Officer, and the Malkhana Incharge, is concerned, it is contended by the learned Public Prosecutor that though the non-production of these two witnesses is a serious omission on the part of the prosecution but the evidence of the eye-witnesses cannot be thrown-away on this count alone, particularly when the statements of these witnesses, recorded by the investigating officer, has either been denied by these eye witnesses nor these witnesses have been confronted with their statements recorded under Section 161, Cr. P.C. by the Investigating Officer. In support of its contention, the learned Public Prosecutor has placed reliance over: Basant Singh v. State of Bihar (1985 Cri LJ 1406), Fahim Henson v. The State of Uttar Pradesh (1984 Cri LJ NOC 154) and Avdeshwar Singh v. State of Bihar (1989 Crimes 89).

4. We have considered the submissions made by the learned counsel for the parties and perused the record of the case.

5. Before dealing with the contentions, raised by the learned counsel for the parties, we would like to see the nature of the evidence produced by the prosecution. The prosecution has examined ten witnesses, out of which PW 1 Nania, PW 2 Smt. Kesar, PW 3 Khomji, PW 4 Kallu, PW 5 Badi (Widow of deceased Bhuria) and PW 8 Smt. Kawdi (wife of Kallu) are the six eye-witnesses of the occurrence. Out of these six eye-witnesses, PW 1 Nania, PW 2 Smt. Kesar and PW 3 Khomji have not supported the prosecution case during trial and they have been declared hostile. Though PW 1 Nania has been declared hostile and he did not support the prosecution case in the examination-in-chief but in the cross-examination he admitted the lodging of the F.I.R. Ex. P 2 and Ex. P. 3 by him. He has, also, admitted the preparation of various documents, i.e., site inspection note Ex. P. 4, Panchanama Ex. P. 5, recovery of the gun vide memo Ex. P. 6, the recovery of blood-smeared soil and plain , vide Ex. P. 7 and the recovery of the

clothes from the deadbody of Bhuria vide Ex. P. 8. He has, also, admitted that the report lodged by him was correct. So far as the statement of PW 2 Smt. Kesar and PW 3 Khomji are concerned, however, they are of no avail to the prosecution as in the cross-examination they have denied the incident making the statements Under Section 161, Cr P.C. before the Investigating Officer. PW 4 Kallu has stated that when his father was returning along with the cattle from the cattle-pond after fetching water to the catties and when he reached near the house of accused Hakru, Hakru hurled abuses to deceased, Hakru had stated that Bhuria had stolen seven of his sheep, upon which Bhuria asked Hakru why he was accusing him as a thief. At that time, he, his mother Smt. Badi and his wife Smt. Kawdi were at a distance of about three hundred yards. They proceeded towards their father, and the accused, and tried to pacify them and when they, along with Bhuria, were proceeding towards their house, the accused asked Bhuria not to go ahead and thrusted upon him the oath of 'Baran-Beech', but Bhuria, ignoring this, proceeded ahead, whereupon Hakru fired the gun, on Bhuria. The fire hit on the left side of Bhuria and upon receiving the fire-arm injury, his father Bhuria turned down. Accused Hakru thereafter hit on the head of Bhuria by the butt of the gun and upon receiving that injury, his father died at the spot and thereafter Hakru tried to manhandle him, also, whereupon they raised an alarm and on hearing the alram, Khomji, Smt. Kesar and Nania came there. Similar are the statements made by PW 5 Smt. Badi (widow of the deceased) as well as PW 8 Smt. Kawdi (wife of PW 4 Kallu). A detailed cross-examination has been conducted upon all these witnesses but nothing could be elicited from the statements which may make the evidence of these witnesses as unreliable. These witnesses have specifically stated the participation of accused-appellant Hakru and inflicting injury by him to deceased Bhuria first by fire-arm and thereafter by using the butt of the gun for inflicting injury on the head of deceased Bhuria. This evidence is further corroborated by the evidence of Dr. R.C. Goyal - the Medical Jurist in Government Hospital, Banswara - who conducted the autopsy on the dead body of Bhuria. These witnesses have stated that the fire was made from the distance of fifteen feet and the doctor, in his statement, has stated that as there were charring and blackening on the clothes and body of the deceased, therefore, the fire was made from a distance in between six to twelve feet. The barrel of the gun is of about

three feet and, therefore, if we exclude the length of the barrel of the gun then the distance, from which the fire was made, comes to about twelve feet, as stated by the prosecution witnesses and the exactness of the distance cannot be expected from such rustic villagers. The prosecution has, also, produced PW 7 Dhanji, who reached at the place of the incident immediately on hearing the alarm. PW 10 Ashok Kumar, Constable has been produced by the prosecution, who had taken the sealed articles for examination to the State Forensic Science Laboratory.

6. The first contention, raised by the learned counsel for the appellant is that there are discrepancies in the statements of the prosecution witnesses regarding the place of the incident and the distance from which the fire was made and on other material aspects of the case, also. So far as the distance, from which the fire was made, is concerned, the prosecution witnesses have stated that the fire was made from a distance of fifteen feet while as per the statement of PW 9 Dr. R.C. Goyal, the presence of charring and blackening on the clothes and person of the deceased suggest that the fire could have been made from the distance of about six to twelve feet and if we exclude the length of the barrel of the gun, which is three feet then this distance comes to twelve feet and the exactness about the distance cannot be expected from such witnesses who are rustic villagers. As such no capital can be made out from these minor discrepancies.

7. So far as the other evidence is concerned, there is no material discrepancies between the statements of one witnessed the other witnesses and/ or in the statement of the witneses themselves. A lengthy cross-examination was conducted by the learned counsel for the accused-appellant from these witnesses but nothing could be elicited from their testimony which may be sufficient for discarding their statements. The learned trial Court was, therefore, justified in placing reliance over the testimony of these witnesses.

8. The next contention, raised by the learned counsel for the appellant is that the independent witnesses viz., Madan Nagri, Bhomji and Bherji, who were present at the place of the incident, were not produced by the prosecution and, therefore, an adverse inference should be drawn for non-production of these independent eye witnesses. The prosecution produced six eye witnesses and admittedly these

three witnesses were not present at the scene of the occurrence when the quarrel started and they reached at the place of incident on hearing the alarm raised by PW 4 Kallu, PW 5 Smt. Badi and PW 8 Smt. Kawdi, who were present at the scene of the occurrence as such there was no necessity to multiply the evidence by producing the aforesaid three persons particularly when they were not presence since the initiation of the quarrel and, therefore, no adverse inference can be drawn against the prosecution for non-production of Madan Nagri, Bhomji and Bherji.

9. The next contention, raised by the learned counsel for the appellant is that the reports of the State Forensic Science Laboratory and the Ballistic Expert have not been produced by the prosecution which is fatal to the prosecution case and the prosecution case should be disbelieved and the appellant should be acquitted. We have considered this aspect of the case, also. The non-production of the reports of the State Forensic Science Laboratory and the Ballistic Expert can only suggest that the recoveries of the articles cannot be read against the appellant and at the most they can be said to be negative, but the whole of the prosecution case cannot be thrown away on this count, particularly when there are three eye witnesses of the occurrence who were present at the scene of the occurrence since the initiation of the quarrel and who had seen the incident with their naked eyes and the presence of these three eye witnesses were believed and their presence was the most natural because their houses are situated only at the distance of about 400 yards from the place of the incident.

10. The next contention raised by the learned counsel for the appellant is that Narain Singh, the Investigating Officer, and the Malkhana in charge have not been produced by the prosecution in the evidence. So far as non-production of Malkhana in charge is concerned, the inference that can be drawn against the prosecution for his non-production is that the recovery of the articles, which remained in his custody cannot be read against the appellant but the whole prosecution case cannot be thrown away only on this infirmity or omission on the part of the prosecution. But so far as the non-production of Narain Singh - the Investigating Officer - is concerned, that is a serious omission on the part of the prosecution. When the whole investigation was conducted by him, it was

incumbent upon the prosecution to produce him in evidence and the non-production of Narain Singh - the Investigating Officer - may prove to be fatal in certain circumstances as has been held in various judgments of this Court as well as of other Courts on which reliance has been placed by the learned counsel for the appellant. In J.K. Devariya v. The State of Coog, AIR 1956 Mys 51 : (1956 Cri LJ 904), a single Bench of Mysore High Court held that the accused is entitled to know from the investigating officer what witnesses have been examined by him during the course of investigation. Whether the witnesses examined in the Court were examined by him or not and what story they gave and whether the same is consistent with the evidence produced in the Court. The Court further held that in this case the non-examination of the investigating officer is a serious omission on the part of the prosecution. In Harnam Singh v. The State, 1982 Cri LJ 1818, two witnesses, viz. Chet Ram and Mukut Singh were confronted with their earlier statements recorded during the investigation by the Investigating Officer and the Investigating Officer was not examined. The single Bench of Allahabad High Court held that as the statements of the witnesses were recorded by the Investigating Officer during the investigation, it was, therefore, necessary on the part of the prosecution to have examined the Investigating Officer. By not examining the Investigating Officer concerned, the prosecution has clearly prejudiced the case of the appellant in as much as they have denied the opportunity of proving the statements of Chet Ram and Mukut Singh recorded by the Investigating Officer to prove whether the same were made by them or not. In the present case, the prosecution witnesses have not been confronted with their statements recorded under Section 161, Cr.P.C. by the Investigating Officer and, therefore, his judgment, on which reliance has been placed by the learned counsel for the appellant is of no avail to the appellant. In Bhopal Singh v. The State of Rajasthan, 1989 (1) RLR 492, a single Bench of this Court has taken the view that the Investigating Officer is a very important witness and if he is not examined and does not prove the case, the entire case of the prosecution falls on this ground. The learned single Judge of this Court held that had the Investigating Officer been examined, there could be chances for the accused to show that the entire prosecution story was a concocted one. He could be put to cross-examination and some material aspect could have come out from his evidence and the non-

examination of the Investigating Officer is fatal to the prosecution case which goes to the root of the case. We do not wholly subscribe to the view taken by the learned single Judge of this Court that in all the cases the non-examination of the Investigating Officer is fatal to the prosecution case even where the witnesses produced during the trial have admitted their statement made by them and they have not been confronted by their earlier statements. In Chanan Ram v. The State of Rajasthan, 1992 Cri LR (Raj) 332, the Division Bench of this Court (in which one of us was a member), the Investigating Officer, who conducted the investigation and filed the challan was not examined by the prosecution in the Court to explain the infirmity put to the witnesses in the cross-examination regarding lodging of the report by the informant and delay in reaching the First Information Report to the Court, which was held to be a serious infirmity which remained unexplained and which resulted in raising a suspicion regarding the institution of the report at the time and the date when it was shown to be registered.

11. In the present case, the prosecution witnesses, examined during the trial, have admitted the statements made by them under Section 161, Cr.P.C, before the Investigating Officer. They have not been confronted with their earlier statements recorded by the Investigating Officer. Though the non-examination of the Investigating Officer, who conducted the investigation and present the challan is a serious infirmity as the examination of the Investigating Officer is essential and it may prove fatal to the prosecution in the case where the prosecution witnesses gave the contradictory statements in the Court from the statements recorded by the Investigating Officer during investigation, but where there is no such contradictions in the statements of the prosecution witnesses given in the Court from their earlier statements, the non-examination of the Investigating Officer like other witnesses cannot be said to be fatal to the prosecution as the defence cannot be said to have been prejudiced by non-examination of the Investigating Officer. The examination of the Investigating Officer like any other witness to unfold the prosecution case is essential but if he is not easily available for his examination then the whole of the prosecution case cannot be thrown away and the prosecution cannot be condemned for this. Sufficient time was granted to the prosecution to produce the Investigating Officer but the Investigating Officer was not available for his examination and the trial was delayed for want the

examination of the Investigating Officer Narain Singh. This non-examination of the Investigating Officer shows the non-cooperation on the part of the Police Admin istration of the State. It is unfortunate that in spite of several opportunities afforded to the prosecution, the Investigating Officer was not examined and the justice may have suffered on that account and his non-examination could have been fatal to the prosecution if the prosecution witnesses would have been cross-examined regarding their earlier statements. The non-examination of the Investigating Officer, thus, will not make the place of occurrence or the presence of the eye-witnesses and their having seen the occurrence vague and doubtful because the evidence of these witnesses are sufficient to fix the place of the occurrence, the participation of the accused-appellant in the crime etc.

12. In this view of the matter, we are of the opinion that the prosecution has proved the case against the accused-appellant beyond a reasonable manner of doubt and the judgment dated 6-7-93, passed by the learned Additional Sessions Judge, Bikaner, convicting and sentencing the appellant for the offences under Section 302, I.P.C. and Section 3 of the Indian Arms Act, does not require any interference.

13. In the result, we do not find any merit in this appeal, filed by the accused-appellant, and the same is hereby dismissed.