

Than Singh Vs. State

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Court : Rajasthan

Decided On : Mar-01-2006

Reported in : RLW2006(3)Raj2178; 2006(3)WLC716

Judge : Shiv Kumar Sharma and; R.S. Chauhan, JJ.

Acts : Indian Penal Code (IPC) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : D.B. Criminal Appeal No. 682 of 2003

Appellant : Than Singh

Respondent : State

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : Sangram Singh, Adv.

Disposition : Appeal allowed

Judgement :

R.S. Chauhan, J.

1. Murder of Kishna, in dead of the night, three alleged eye-witnesses and recovery of 'Kulhari' (axe) forms the backdrop of this case. The appellant has challenged the order dated 22.3.2003 passed by the learned Addl. Sessions

Judge (Fast Track), Laxmangarh, District Alwar whereby he has been convicted for the offence Under Section 302 IPC and was sentenced to undergo life imprisonment and was imposed with a fine of Rs. 500/-.

2. The brief facts are that on 18.10.2000, one Shri Hariom Saini (P.W. 3) submitted a written report (Ex.P/1) to the Station House Officer, Police Station, Kherli wherein he claimed that 'in the night of 17.10.2000, his brother Kishna was sleeping outside the flour mill on a raised platform ('Chabutari'). He further alleged that Mohan Singh, Pooran and he had gone to the house of Gujarmal Saini for watching films on VCR. In the morning around 4' O clock, when they were coming back, after watching the films, as soon as they came near the Panchayat building suddenly they heard a scream. They saw that Mahaveer and Than Singh were assaulting his brother Kishna with Kulhari (axe) and knife. The moment these two assailants saw the complainant and his companions, they ran away towards their neighbourhood, he further alleged that he and his companions ran after the assailments, but the assailants made good their escape. According to him, they came back to Kishna and saw that he sustained certain injuries on his neck. He expired without speaking a word to them. Lastly, he claimed that after consulting the family members and the villagers, he came to the Police Station to lodge the said report.'

3. On the basis of said report, the police registered a formal First Information Report, FIR No. 323/2000 (Ex.P/12) for the offences Under Section 302 and 34 IPC and started investigation. After investigation, the police submitted challan only against Than Singh, the present appellant, but did not submit any challan against Mahaveer. In order to prove its case, the prosecution examined 20 witnesses and submitted 18 exhibits and five articles. Although the defence did not examine any witness, it submitted two documents, in his examination Under Section 313 Cr PC the appellant denied the said incidence. The appellant claimed that in fact Kishna who was unmarried and had illicit relation with Hariom's wife - his Bhabhi. Therefore, Hariom had killed Kishna. However, as there is animosity between Hariom and the appellant, therefore he has been falsely implicated in the present case. After going through the oral and documentary evidences, the learned trial Court was¹ pleased to convict and sentence the appellant as aforementioned.

Hence, this appeal before us.

4. Mr. Sangram Singh, the learned Counsel for the appellant, has argued that it is a case of blind murder where the deceased was killed indeed of the night. There was no eye-witness to the alleged murder. However, as there was already animosity and litigation between the complainant and the appellant, the complainant has falsely implicated the appellant in this case. In order to prove the case, the prosecution has created three eye- witnesses. However, Mohan Singh P.W. 5, who was examined as eye- witness, has not supported the case of the prosecution, he has been declared as hostile witness. According to the learned Counsel, complainant, Hariom (P.W. 3) and Pooran (P.W. 10) have been examined as eye-witnesses. However, both of them are thoroughly unreliable witnesses. In the FIR, the complainant claimed that he had seen two assailants at the scene of the crime. However, in his testimony, he denied the involvement of Mahaveer. Similarly, Pooran is a chance witness who has been contradicted on material points. Therefore, these witnesses are untrustworthy witnesses, he has further argued that although the Kulhari has allegedly been recovered at the instance of the appellant, there was no blood which was discovered on the Kulhari. As such, there is no FSL Report. Therefore, even the recovery of Kulhari does not connect the appellant with the alleged crime. According to him, the alleged murder of Kishna was first discovered by Shankutala and Laxmi. However, these two ladies have not been examined as witnesses. Therefore, the prosecution has intentionally withheld two material witnesses.

5. On the other hand, Mr. R.P. Kuldeep, learned Public Prosecutor, has argued that this is a case of direct evidence. Hariom and Pooran have given consistent testimony about the fact that they saw the appellant hitting the deceased with Kulhari. The post-mortem report as well as statement of Dr. Dayal Ram Nagoriya (P.W. 12) have established that Kishna's death was homicidal. Therefore, he has supported the impugned judgment.

6. We have heard the learned Counsels for both the parties, have critically examined the record available before us and have perused the impugned judgment.

7. The testimony of the complainant Hariom (P.W. 3) is replete with contradictions. In the written report (Ex.P/1) submitted by him at the police station, he claims the incident occurred at 4.00 a.m. Yet, in his testimony he says it occurred at 5.00 a.m. Likewise, in Ex.P/1 he had clearly stated that he and his two companions had seen Mahaveer and the appellant assaulting the deceased. Yet, in his examination-in-chief he states that there was 'no one along with the appellant Than Singh at the scene of the crime'. In his cross-examination, he claims that he did not write the name of Mahaveer. Similarly, in the written report, he claimed that he and his companions had pursued the assailants, but this fact, he denies in his cross-examination. He claims that they did not pursue the assailants. Moreover, he claims that he had himself gone to police station where he had submitted a written report, yet, Ajiram (P.W. 8) and Nihal Singh (P.W.15), the Investigating Officer, clearly state that Hariom had submitted this written report at the scene of the crime and not in the police station. Furthermore, he claims that he had gone to the house of Gujarmal Saini but he does not remember the names of any of the three films which were screened. Interestingly, none of the prosecution witnesses remember the names of the picture which were screened in the night of 17.10.2000. Ajiram (P.W. 8) tells us that winter had started setting in and it was cold at night. According to him, the deceased had even covered himself with a 'Rajai' (quilt). Therefore, it is difficult to believe that Hariom and Pooran and Mohan Singh had watched three films in one night from 8 p.m. till 5 a.m. and then had decided to walk to their respective homes in cold weather. Thus, it seems that Hariom, Pooran and Mohan Singh have been created as chance witnesses in order to bolster the case of the prosecution. Considering the fact that Hariom changes the time of occurrence, changes the number of assailants, changes the place where the alleged written report was given to the police. His credibility is highly doubtful.

8. P.W. 2, Pooran is the other alleged eye-witness in this case. Initially, in his examination-in-chief he merely states that Than Singh had Kulhari in his hand. According to note appended to his testimony, it is only after the Assistant Public Prosecutor sought the permission to confront him with the statement Under Section 161 Cr PC and permission was granted to do so, does this witness claim that he saw the appellant assaulting the deceased. Like Hariom, this witness does not remember the names of three films which they saw. He also changes the time

of occurrence from 4'o clock to 5'o clock. Although the site plan does not show the existence of Neem tree on which bulb was hanging, in order to concertize his story. he claims that light bulb was burning on the Neem tree when the occurrence took place. Although, he claimed that he had seen the body, but according to him there was only one injury on the neck of the deceased. This statement is contrary to the medical evidence on record. According to the Post Mortem Report (Ex.P/11), the deceased had suffered five incised wounds around his neck. Thus, even this witness appears to be a chance witness who has been foisted in order to lend credence to the prosecution story. He is unworthy of any credence.

9. According to Nihal Singh (P.W.I5), a Kulhari (axe) was recovered at the instance of the accused. The recovery of the said Kulhari is Ex.P/15. Even the recovery memo does not indicate that any blood was found on the said Kulhari. The two recovered witnesses of the said Kulhari, Ghanshyam (P.W.I8) and Balveer (P.W. 20) have turned hostile and have not supported the prosecution case. Since no blood was found on the Kulhari, no FSL report exists. Therefore, the alleged recovery does not connect the appellant to the crime, for, it is common practice in villages for people to keep Kulhari in their houses. The discovery of Kulhari in the appellant's house, hence is nothing unusual. Therefore, such discovery is not an incriminating piece of evidence against the appellant.

10. It is unfortunately that a person has lost his life and has been killed in the dead of the night. However, the prosecution, has to cover the distance from 'may be true' to 'must be true'. It is incumbent upon prosecution to prove the case beyond shadow of doubt. In the present case, there is neither direct evidence nor any circumstantial evidence to connect the appellant to the alleged crime. Hence, the prosecution has failed to prove the case beyond a reasonable doubt.

As a result of the above discussion, we allow the appeal and set aside the impugned judgment dated March 22, 2003 rendered by learned Additional Sessions Judge (Fast Track), Laxmangarh, District Alwar, We acquit the appellant of the charges Under Section 302 IPC. Appellant Than Singh, who is in jail shall be set at liberty forthwith if not required to be detained in any other case.

