

Jogendrasingh Vs. the State

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Court : Rajasthan

Decided On : Feb-02-1975

Reported in : 1975WLN(UC)209

Judge : V.P. Tyagi and; S.N. Modi, JJ.

Appeal No. : D.B. Criminal Appeal No. 203 of 1972

Appellant : Jogendrasingh

Respondent : The State

Judgement :

S.N. Modi, J.

1. Appellant Jogendrasingh was tried and convicted for an offence under Section 302 IPC for the murder of Roopram and sentenced to imprisonment for life and a fine of Rs. 600/- by the Additional Sessions Judge No. 2, Sri Ganganagar. Co-accused Jaggasingh was, however, acquitted of the said charge. The appellant has come up in appeal challenging his conviction and sentence.

2. The incident to which this case relates took place on 21st July 1971 at about 8 a.m. at the but stand of village Nagrana, Police Station, Sangaria, district Ganganagar. The F.I.R. was lodged at 12.30 p.m. on the same day by FW 2 Banwarilal, a cousin of deceased Roopram. It was also signed by PW 3 Lalsingh,

a son or servant of deceased Roopram. He accompanied Banwarilal at the Police Station, Sangaria. The prosecution story as revealed from the F.I.R. is like this.

3. On 27-1-71 at about 7.30 a.m. Bsnwarilal PW 2, Lalsingh PW 3 and deceased Roopram left for village Narana from the field of Roopram as Roopram was to board the bus from the Bus stand, Nagrana. When they were about one killa, that is, 165 feet away Lalsingh left the company of deceased Roopram as both of them began talking with CW 1 Baldeo Singh regarding the canal water. Roopram alone proceeded to the bus stand. At the bus stand, appellant Jogendrasingh, his brother Jagga Singh and their sons Mithusingh and Karatarsingh respectively were present from before. Jogendrasingh and Jaggasingh were armed with pure guns and Kartarsingh and Mithusingh were having gandasis with them. On seeing Roopram, all these four persons attacked Roopram. Mithusingh and Kartarsingh dealt blows with gandasis on the head of Roopram, Jogendrasingh fired his gun at Roopram first and he was followed by Jaggasingh who fired next causing injuries on the abdomen of Roopram near (sic). On receiving the injuries, Roopram fell down on the ground. PW 2 Banwarilal and PW 3 Lalsingh should 'mar diya mar diya' Both of them rushed towards Roopram. Jogendrasingh fired another shot towards Banwarilal and Lalsingh to (sic) consequences if they came near Roopram. The assailants, however, fled away. The FIR further reveals that when Banwarilal and Lalsingh went near Roopram. The letter asked them to take him to the hospital. Meanwhile, the bus bound for Hanumangarh arrived there and Roopram was carried in the bus but he expired on reaching the hospital at Hanumangarh. The first report also reveals that the assailants had old enmity with Roopram and they attacked him in furtherance of common intention in the presence of Banwarilal PW 2 and Lalsingh PW. 3

4. The SHO, Sangaria, after taking down the aforesaid verbal first report commenced investigation. The post mortem examination of the corpse was performed by Dr. Roopsingh PW 1. He found multiple injuries on the dead body. Injuries Nos. 6, 7 and 8 were gun-shot injuries which, according to the doctor, were the result of two shots. Injuries Nos. 1, 3, 4, 5, 9, 10 and 11 were caused by a blunt weapon. Injury No. 2 was described as incised wound but the doctor in his statement admitted that this injury might have been caused by a blunt

weapon. The fatal injury, according to the doctor, was gun-shot injury No. 6 on the abdomen near umbilicus. During the course of investigation, it came to the light that there were some more persons who were present at the bus stand and had witnessed the incident. One of them was Gangaram CW 2 The. SHO interrogated all of them.

5. Jogendrasingh was arrested on 25-7-71. On being interrogated, the SHO discovered one broken double barrel 12 bore licenced gun at the instance and in pursuance of the information given by Jogendrasingh on 30th July, 1971.

6. After usual investigation. Jogendra Singh and Jaggasingh were challaned under Section 302 IPC to the Court of First Class Magistrate, Hanumamgarh. No charge-sheet was presented by the police against Mithusingh and Kartarsingh. The learned Magistrate after due enquiry committed both Jogendrasingh and Jaggasingh to the Court of Sessions to stand trial for the offence under Section 302, Penal Code.

7. The accused pleaded not guilty and denied having committed the murder of Roopram. The prosecution in support of its case examined five witnesses PW 1 is the doctor who performed postmortem examination on the dead body of Roopram. PW 1 Hanumandatt is the SHO, Police station, Sangaria, who investigated the case PW 2 Banwarilal and PW 3 Lal singh were the alleged eye-witnesses PW 4 Chunnilal is said to be the person who arrived at the bus stand after the incident and in whose presence PW 2 and PW 3 took away Roopram to the hospital ID the bus The learned Public Prosecutor, who conducted the case in the trial court, did not examine other eyewitnesses cited in the charge-sheet presented by the police on the ground that all of them had colluded with the accused. After close of the trial, the learned trial Judge thought it expedient to examine Baldeo Singh and Gangaram as court witnesses. They were, therefore, summoned and examined as CW 1 and CW 2 respectively.

8. The case against the appellant entirely rests on the oral testimony of PW 2 Banwarilal, PW 3 Lalsingh, CW 1 Baldeosingh and CW 2 Gangaram. There is no circumstantial evidence to connect the appellant with the crime or to corroborate the oral testimony of the alleged aforesaid eyewitnesses. The prosecution

adduced no evidence to connect with the crime the broken double barrel licenced gun discovered on the information of Jogendrasingh.

9. Arguing the appeal, the learned Counsel for the appellant has strongly criticised the evidence of all these four witnesses. According to the learned Counsel, none of these witnesses was present at the scene of the occurrence and even if their presence may be assumed, none of them is a witness on whose testimony implicit credence can be placed. The main question therefore that arises for determination in this appeal is whether there exists any reliable evidence to prove the charge against the appellant beyond a reasonable manner of the doubt. We first take up the evidence of two eye-witnesses examined on behalf of the prosecution. They are PW 2 Banwarilal and PW 3 Lalsingh. We shall take the statement of PW 2 Banwarilal first.

10. It is admitted by the witness that Roopram was the son of his mother's brother. He is thus a close relative of the deceased. He has deposed that on the date of the incident he along with Roopram and Lalsingh left for the Bus Stand, Nagrana, from the field of Roopram. He and Lalsingh stayed at a distance of one killa from the bus stand as Baldeosingh CW 1 met them there Roopram did not stop there and went alone towards the bus stand. He further says that after five to seven minutes when Roopram reached the bus stand. Jogendrasingh cautioned Roopram and fired at him causing injuries on the right side of the chest. On receiving the injuries, Roopram took a turn. Jaggasingh then fired another shot which hit him on the hip (gluteal region). Roopram fell down on the ground. Kartarsingh then dealt blows with gandasi to Roopram. The witness further says that when he shouted for help, Jogendra singh fired at him, but no one was injured. The assailants thereafter ran away towards the village. He further says that at the bus stand he met Chunnilal PW 4 to whom he informed that Roopram had been injured by Jogendrasingh Jaggasingh, Mithusingh and Kartarsingh. The witness has also stated that he and Lalsingh carried Roopram from the place where he was lying injured to a place near the water-hut located on the other side of the road. According to this witness, Roopram remained lying near the water hut for about ten minutes before he was carried lying near the water-hut for about ten minutes before he was carried in the bus. He denied the presence of any person at the bus stand including Gangaram

CW 2.

11. The statement of PW 3 Lalsingh is to the same effect. This witness is said to have witness incident along with PW 2 from a distance of Ikilla opened the attack. According to him Jogendrasingh who was armed with a double barrel gun, he first fired his gun causing injury to Roopram on the right side of the abdomen. On receiving the injury, Roopram on the right side of the abdomen. On receiving the injury, Roopram took a turn, whereupon, Jaggasingh fired another shot which hit him on the hip. Mitu singh and Kartar singh thereafter dealt blows with gandas to Roopram. He admitted that on the date of incident he was an employee of deceased Roopram. He also admitted that Kartarsingh had filed a complaint against him and Roopram under Section 107 Cr.P.C. before the incident. He denied the presence of any other person at the bus stand at the time of the incident.

12. Although both these witnesses are signatories in the first report, the story told by them at the trial as to the manner in which the incident occurred is materially different from that narrated by them in the first report. According to the FIR the attack was opened by Kartarsingh and Mithusnigh who dealt gandasi blows to Roopram and Jogendrasingh and Jaggasingh fired their guns at Roopram after Kartarsingh and Mithusingh had hit Roopram But at the trial they changed the sequence. Again, in the F.I.R. the fatal gun-shot injury on the abdomen near umblicus was attributed to Jaggasingh whereas, at the trial, both Bonwarilal and Lalsingh attributed this fatal injury to Jogendrasingh. That apart, the evidence of these witnesses is not corroborated by the medical evidence. According to both these witnesses, Kartarsingh and Mithusingh dealt gundasi blows to Roopram but the doctor found no injury caused by a sharp edged weapon like gandasi on the body of Roopram which were caused by a blunt weapon These witnesses have not given any explanation as to how the deceased received injuries from the blunt weapon. Again, PW3 Lalsingh in his earlier statement Ex. D/2 before the police stated that Jogendrasingh fired two shots causing injuries to Roomram. And Jagga singh inflicted injuries to Roopram with a lathi. He also admitted in his earlier statement Ex. D/2 that he falsely implicated Kartarsingh and Mithusingh. When confronted with this earlier statement. PW 3 Lalsing said, as usual, that he

had never made such a statement. We are unable to understand why Lalsingh should have prevaricated in this Manner, if it is true that he witnessed the occurrence.

13. It has been argued on behalf of the State that PW 2 and PW 3 lodged the FIR as eye witnesses to the incident. That is undoubtedly true, but because a person lodges the FIR posing to be an eye-witness to the incident, it does not follow that we are bound to accept his testimony even though we are not satisfied about his presence on the spot when his evidence is other wise found unreliable.

14. It has been next argued that PW 3 Lalsingh was fully justified in disowning his earlier statement Ex. D/2, for, he in fact, never made that statement. According to the learned Public Prosecutor and Mr. Bajwa, the learned Counsel for the complaint, the statement Ex. D/2 was drawn up without examining PW 3 Lalsingh as a result of oblique motive on the part of the investigating officer who wanted to favour the assailant. It therefore cannot be said on the basis of Ex. D/2 that DW 3 Lalsingh went back on his earlier statement. In he circumstances, it was urged that there was no justification for discarding the testimony of PW 3 Lalsingh Reliance was placed on Baladin and Ors. v. State of U.P. : 1956 CriLJ345 , and State of U.P. v. Parasnathsingh and Ors. 1973 CLR (SC) 186. It is true that if on a proper evaluation of the various facts and Circumstances, it transpires that the apparent discrepancies and inconsistencies in the prosecution case or in the testimony of the prosecution witnesses are solely the result of remissness on the putt of investigation and not or account of any improvement or provocation on the part of the prosecution witnesses, there would rot be any justification for discarding the prosecution case or the testimony of (he prosecution witnesses But that is not the case here In the present case, there is not an iota of evidence, nor even a suggestion on the record, that the investigating officer wanted to favour the assailants and be with that oblique motive introduced facts on examined certain witnesses or placed statements of the witnesses on the investigating file without examining them. In the absence of some material suggesting remissness or oblique motive on the part of the investigating agency, the benefit of infirmities in the statements of the prosecution witnesses roust go to the accused. As already pointed out above, the prosecution story narrated by PW 2 and PW 3 at the trial as

also in the FIR is apparently not in conformity with the medical evidence. Not only that, it suffers from serious infirmities such as over-implication, exaggeration, discrepancies etc.

15. The learned trial Judge too, it seems, did not place reliance on the testimony of these witnesses That would be clear from the following observation of the learned Judge in his judgment:

As already stated above, I have not based my findings on the testimony of the prosecution witnesses Banwarilal and Lalsingh. My finding is based on the evidence of two court witnesses who are neither related nor interested one and who have not implicated deliberately any body.

The learned Counsel for the appellant has suggested that PW 2 and PW 3 came forward to give false evidence at the trial either on account of their relationship with the deceased or on account of enmity with the accused. Be that as it may, we are not satisfied that these two witnesses had really witness the incident. We are also not satisfied that they are reliable witnesses, considering the nature of their evidence.

16. We now come to the evidence of the two court-witnesses, namely, CW 1 Baldeosingh and CW 2 Gangaram. The story told by them is different from that narrated by PW 2 and PW 3 According to them, Jogendrasingh alone was armed with a gun and Jaggasingb, who accompanied him was armed with a lathi. The gun which was possessed by Jogendrasingh was a double barrel 12 bore gun and according to these witnesses, both the shots which caused gun shot injuries to Roopram were fired by Jogendrasingh. Another important fact which they have stated is about the absence of Kartarsingh and Mithusingh on the sponce of the occurrence at the time of she incident. The question that now arises before us is whether the testimony of these to witnesses, is reliable and can safely be acted upon.

17. CW 1 Baldeosingh hss deposed that at the time of the incident be was ploughing his field which is situate at a distance of three to four killas from the bus stand. Ht has further deposed that he left ploughing his field after Roopram

received gun shot injuries. It follows from his ploughing his field after Roopram received gun shot injuries. It follows from his statement that doubt very much if he could recognize the assailants and notice their actions to Baldeosingh, Jogendrasingh fired at Roopram from a distance of four or five kadams, that is, from a distance of 10 to 12 feet. The medical evidence, post-mortem report Ex. P. 1 shows that six punctured gun-shot wounds near umbilicus mentioned in injury No. 6 had blackening around them, Ex. P. 1 further shows that date and paper were found present in injury No. 7, namely, gun-shot wound 2 1/2' in diameter on the right gluteal region. The presence of date and paper in injury No. 7 and blackening around the gun-shot wounds mentioned in injury No. 6 definitely lead to the conclusion that the two shots were fired from a close range. The statement of the witness that Jogendra aingh fired the two shots from a distance of ten to twelve feet cannot be taken to be true. A further perusal of the statement of CW 1 Baldeosingh shows that having seen the incident, he fled away to the nearby fields and did not disclose the incident to any person even after he returned to his village. This is again an impossible conduct. Above all, he is not a disinterested witness. He admitted criminal litigation having taken place between him and the accused under Section 107 Cr.P.C. wherein he was bound down to furnish surety bend in the amount of Rs. 10,000/-. In the circumstances, we do not consider it safe to place reliance on the evidence of such a witness.

18. This brings us to the last witness CW 2 Gangaram. He is an old man of 74 years. During the relevant period, it seems that he was employed at the water hut located at the bus stand. He has deposed that he was present at the water hut at the time of the incident He has also showed the presence of Devsi and Maniram at the bus stand besides that of the deceased Roopram and the accused Jogendrasingh and Jaggasingh. His version is that there were some altercation followed by an abuse to Jaggasingh by Roopram, by who, according to the witness, was a man of quarrelsome nature Jogendera singh warned Roopram not to hurl abuses. He also asked Roopram to withdraw from that place. Roopram did not withdraw inspite of the warning and instead proceeded forward towards Jaggasingh after telling him that he would beat him. Jagendrsing then fired at Roopram causing injury on his hips that is, gluteal region. The witness further says that thereafter he heard another shot of gun but he closed his eyes out of fear and

fled away. He admitted his inability to see beyond ten to fifteen pawandas. He also admitted that he was hard of hearingh.

19. The statement of CW 2 Gangaram does not show who caused the fatal gun-shot injury No. 6 to the deceased. He avoided to point out the name of the author of fatal injury by saying that he closed his eyes and fled away when the second shot was fired. The statement of PW 2 is also silent on the point as to who was the author of the various injuries caused by the blunt weapon and found on the dead body of Roopram. His statement shows that he either deliberately suppressed to tell the whole story or he on account of old age or lack of visibility and hearing did not witness the entire incident. Whatever may be the reason, the fact remains that the prosecution did not place reliance on his testimony and therefore did not examine him as prosecution witness at the trial. Not only that, even at the stage of investigation the police was doubtful that he would stick to his statement at the trial. It was due to this reason that his statement was got recorded by the investigating officer under the provisions of Section 164 Cr.P.C. It is true that the mere fact that the statement of a witness is previously recorded under Section 164 Cr.P.C. or that the prosecution does not consider it proper to examine him at the trial, or that the prosecution does not consider it proper to examine him at the trial, will not be sufficient to discard his testimony, but the court ought to receive evidence of such a witness with caution and it should be acted upon only if there is other evidence, direct or circumstantial, to lend support to its truth. See AIR 1968 Supreme Court 1270. In the present case, there is no other evidence which lends support to the evidence of CW 2 Gangaram.

20. It was contended on behalf of the State and on behalf of the complaint that the testimony of this witness can be acted upon to conviction the appellant to the extent it is corroborated by the FIR and the evidence of CW 1 Baldeosingh. It was argued that, according to the FIR as also according to the statement of CW 1, the gun-shot injury No. 7 on the region of deceased Roopram was attributed to Jogendrasing and therefore the appellant could be held responsible for offence under Section 324 IPC. We do not find any substance in the above contention. The FIR cannot be used as a substantive piece of evidence. It can be used to corroborate or discredit the information only and not other witness. No

corroboration therefore can be sought from the FIR not other witnesses. No corroboration therefore can be sought from the FIR. Again, having come to the conclusion that CW 1 Baldeo Singh was not a reliable witness, no portion of his statement can be relied upon merely because some portion of his testimony accords with the testimony of other witness. In the absence of any corroborative evidence, we are left with no alternative but to extend the benefit of doubt to the accused appellant. We accordingly give the benefit of doubt to the appellant and acquit him of the charge under Section 302 IPC.

21. In the result, the appeal is allowed and the conviction of the appellant under Section 302 IPC and the sentence awarded thereunder are set aside. He is in jail. He shall be set at liberty at once if not required in any other case.

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