

Om Singh Vs. State of Rajaslhan

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Court : Rajasthan

Decided On : Feb-14-1997

Reported in : 1997CriLJ2419

Judge : P.C. Jain and; Mohd. Yamin, JJ.

Acts : [Evidence Act, 1872](#) - Sections 6, 27, 110, 118 and 161; Indian Panel Code, 1860 - Sections 302 and 447; Criminal Petition Code - Sections 161, 302 and 313;

Appeal No. : D.B. Cri. J.A. No. 154 of 1993

Appellant : Om Singh

Respondent : State of Rajaslhan

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

Advocate for Pet/Ap. : Pradeep Shah, Adv.

Disposition : Appeal dismissed

Judgement :

P.C. Jain, J.

1. The learned Sessions Judge, Churu by his judgment dated 31-3-1993 has convicted the accused-appellant for the offence Under Section 302, IPC and sentenced him to imprisonment for life and to pay a fine of Rs. 200/-, in default

whereof to undergo rigorous imprisonment for three months.

2. The prosecution case, as revealed during the trial, may be stated as follows. On 19-7-1992, at about 5.30 p.m., Samundra Singh was ploughing his field situated in Jasrajsarohi. His mother Mst. Bhanwari (PW 1) and his son Babu Singh (PW 9) were also there. It is alleged that the accused, who is the younger brother of deceased Samundra Singh, came there and there was some altercation between the deceased and the accused-appellant with regard to the partition of the land. The accused got enraged and dealt a kassia blow on Samundra Singh's head followed by several blows on his body as a result of which Samundra Singh fell down. Mst. Bhanwari immediately came to the rescue of Samundra Singh and wrested kassia from the hands of the accused. The accused thereafter left the field after taking the kassia with him. Babu Singh immediately rushed to his uncle Bhopal Singh (PW 5) who was working in his field which was two fields away from the place of occurrence. Babu Singh informed Bhopal Singh that his father Samundra Singh is to be carried in a cart. Thereupon, Bhopal Singh (PW 5) along with Durga Singh, Thanaram and Hansraj reached the place of occurrence and saw Samundra Singh lying on the lap of his mother Bhanwari. Samundra Singh's head was bleeding profusely and he had several injuries on his person. He was also having laboured breathing. When Bhopal Singh asked Bhanwari as to what had happened, Bhanwari replied that Om Singh assaulted Samundra Singh on account of some dispute regarding partition of land. Bhopal Singh and other persons put Samundra Singh in a camel cart and brought him to the village. Samundra Singh expired after reaching the village. Bhopal Singh then went to the Police Station, Ratan Nagar and lodged the FIR Ex. P-5 on the same day at 10.30 p.m. The In charge, Police Station registered a case Under Section 302, I.P.C. and Section 447, I.P.C. and started investigation. Bhilaram(PW 16) reached the house of Samundra Singh and in the morning prepared the report Ex. P-7 and seized and scaled the blood stained clothes of deceased Samundra Singh and prepared seizure memo Ex. P. 18. He also sent a letter for conducting post-mortem on the dead body of Samundra Singh. Dr. Hanuman Singh Rathore(PW 15) conducted the post-mortem and found the injuries as mentioned in post-mortem report Ex. P-16. All the injuries were ante-mortem in nature and Samundra Singh was found to have died on account of shock and haemorrhage resulting from multiple injuries.

The dead body was handed over to the kith and kin of Samundra Singh. Lakhmir Singh inspected the site and prepared site plan Ex. P-13. The accused was arrested by him vide arrest memo Ex. P-10. While in police custody, She accused made a disclosure statement to the effect that he had buried kassia (iron portion) near the khejri tree in his field and the wooden part of kassia was also concealed there. The in formation is Ex. P-19. Pursuant to the above information Under Section 110 Evidence Act, the accused led the Investigating Officer to his field and got the kssia recovered from his field vide recovery memo Ex. P-14. The iron portion of the kassia was found to be stained with blood. The Investigating Officer sent the blood stained clothes of the deceased as also the kassia to the State Forensic Science Laboratory, Jaipur. Report Ex. P-20 was received from the State Forensic Science Laboratory, Jaipur. According to this report, all the blood stained clothes of the deceased and the kassia were found to be stained with human blood and the group of the blood of all the above articles was 'B'. The Investigating Officer also recorded the statements of the witnesses Under Section 161, Cr.P.C. After collecting the above incriminating evidence against the accused, a charge-sheet was laid before the learned Munsif Magistrate, Churu who committed the accused to the Court of learned Sessions Judge vide order dated 7-9-1992. The learned Sessions Judge, framed charges Under Sections 302 and 447, IPC. The accused pleaded not guilty to the above charges. The prosecution examined as many as 19 witnesses. In his statement Under Section 313, Cr.P.C., the accused denied to have committed the murder of his brother Sumundra Singh and alleged that at the alleged time he was at his house. No defence evidence was produced.

3. The learned Sessions Judge, after considering the prosecution evidence, held that the death of Samundra Singh was homicidal in nature and from the statements of the witnesses it was proved beyond all reasonable doubts that the accused inflicted the injuries as mentioned in the postmortem report Ex. P-16 and the above injuries were sufficient in the ordinary course of nature to cause death. The learned Sessions Judge discussed the evidence of the hostile witnesses and came to the conclusion that they are not telling the truth. Bhanwari in particular was attempting to save his another son, the accused-appellant. Bhopal Singh also turned hostile as he is the real uncle of the accused-appellant and the deceased. Learned Sessions Judge found the statement of child witness Babulal son of the

deceased trustworthy. He observed that his statement stood corroborated by the statements of other prosecution witnesses. The recovery of kassia along with wooden portion of it was held to be proved which was made in pursuance of the information furnished by the accused Under Section 27 Evidence Act. The report of the Forensic Science Laboratory Ex. P.20 also corroborated the prosecution case. He, however, did not find the offence Under Section 447, IPC to be proved against the accused. He, therefore, held the accused guilty for the offence Under Section 302, IPC and sentenced as above.

We have heard Shri Pradeep Shah, learned Amicus Curiae for the accused-appellant and the learned P.P. for the State. Learned Amicus Curie has challenged the conviction and sentence of the accused on the ground that the learned Sessions Judge has not correctly appreciated the testimony of the prosecution witnesses. He has submitted that all the material witnesses viz., Bhanwari (PW 1), Rukmani (PW 2), Prem Kanwar (PW 3), Mal Singh (PW 4), Bhopal Singh (PW 5) and Durga Singh (PW 6) have turned hostile and they have not supported the prosecution case. According to the statements of Bhanwari and Bhopal Singh, the accused, at the relevant time, was at his house busy in his tailoring work. The learned Sessions Judge committed a serious error in relying on Babu Singh who is a child witness. In order to test the competency of Babu Singh, the learned Sessions Judge definitely put certain questions but the nature of questions suggests that they were not sufficient to elicit the competency of the witness, his intelligence and capacity to understand and give rational replies to the questions asked. He further submitted that the testimony of a child witness is to be accepted with great care and caution and should not have been acted upon unless it was corroborated by some other evidence. A child witness is always vulnerable to tutoring and coaching and when he happens to be very interested witness on account of relation with the deceased, the testimony of such witness should not have been accepted. In the instant case the statement of Babu Singh has not been corroborated by other material witnesses who have all turned hostile to the prosecution. The evidence was not sufficient to have persuaded the learned Sessions Judge to consider the offence Under Section 302, IPC proved against the accused appellant.

4. Learned P.P. has fully supported the judgment of the learned Sessions Judge. He submitted that though a few material witnesses have turned hostile but their testimony, if analysed properly, as has been done by the learned Sessions Judge, truth can be disengaged from the falsehood. The witnesses are relatives of the deceased, Bhanwari (PW 1) is mother of the deceased and the accused-appellant and she clearly conceded that she wants to save his son the accused appellant. Hence, it is natural for her to indulge in falsehood but it is not difficult to separate the falsehood from truth after analysing her statement. Similarly, Bhopal Singh, being uncle of the deceased and the accused-appellant, also wants to save the accused-appellant. He lodged FIR and he has admitted to have lodged the same. The FIR contains the full prosecution version. Learned P.P. has also submitted that the testimony of these witnesses relating to that part which was narrated by Bhanwari to them when they reached the place of occurrence immediately after the assault of Samundra Singh is admissible in evidence. The statements of Prakash Kanwar (PW 10), Patha Ram (PW 7) and Chhatu Singh (PW 11) support the prosecution case fully.

5. We have considered the rival contentions. At the very outset, we may state that the learned Amiens Curiae has not challenged the fact that the death of Samundra Singh was homicidal. It is, therefore, not in dispute that Samundra Singh died as a result of the multiple injuries as mentioned in the post-mortem report Ex. P.16 which led to profuse bleeding and shock.

6. Now the question that arises for determination is whether the accused-appellant caused the above injuries which resulted in Samundra Singh's death?

7. Before we advert to the assessment of the prosecution evidence, we may state that the majority of the material witnesses of the prosecution have turned hostile. Bhanwari (PW 1), Rukmani (PW 2), Prem Kanwar (PW 3), Mal Singh (PW 4), Bhopal Singh (PW 5) and Durga Singh (PW 6) have turned hostile to the prosecution. We will examine the probative value of the statements given by these witnesses after examining the testimony of other material witnesses. Petha Ram (PW 7) has stated that at the relevant time he was busy in his field along with his younger brother Hansraj. Bhopal Singh took him to the field of Samundra Singh

where they saw Samundra Singh lying on the lap of his mother. Blood was coming out from the injuries sustained by Samundra Singh from his head. When Bhopal Singh asked as to what had happened, Bhanwari (PW 1) replied that there was some quarrel between Samundra Singh and Om Singh regarding the partition of the land and when Samundra Singh was going, Om Singh assaulted with kassia on the head of Samundra Singh from behind. After sustaining the head injury Samundra Singh fell down. Thereafter also Om Singh continued assaulting Samundra Singh with his kassia. Durga Singh also reached there. He then states that he and others shifted Samundra Singh to his house where he died as a result of the above injuries. The statements of Hansraj (PW 8) is identical with the statement of PW 7. Prakash Kanwar(PW 10) is the wife of deceased Samundra Singh. She has stated that at the relevant time she was in her field along with daughter Suman. Her husband and Babu Singh was in another field. At about 5.00 p.m. Prem Kanwar came to summon her and told that Om Singh had assaulted Samundra Singh with kassia. Prem Kanwar further informed that as a result of the above beating Samundra Singh had become unconscious. She then reached the place of occurrence and found her husband injured and unconscious. She has also stated that she saw the accused coming towards the village along with the kassia. The accused told her that he had finished Samundra Singh and if she dared reach near him he would also finish her. Chhata Singh (PW 11) has stated that Bhopal Singh's son Pratap came along with Madan Singh and informed him that Om Singh had killed Samundra Singh. These witnesses have given a consistent version about the incident. It cannot be gainsaid that these witnesses were not present at the place of occurrence when the occurrence occurred but they reached there immediately and Bhanwari (PW 1) who witnessed the actual occurrence told them that the accused had killed Samundra Singh. The statements of these witnesses, in our opinion, are relevant Under Section 6 of the Evidence Act. Section 6 of the Evidence Act says that facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Illustration (a), appended to Section 6 of the Evidence Act is as follows:--

A' is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after is as to form part of the transaction, is a relevant fact.

8. This section enacts the law that acts, declarations and incidents which constitute or accompany and explain the facts or transaction in issue, are admissible for or against either party as forming parts of the *res gestae*. This section requires that the statements sought to be admitted must have been made contemporaneously with the act or immediately after it and not at such interval of time as to allow any fabrication or to reduce the statement to a mere narrative of past events. In the instant case admittedly, Bhanwari (PW 1) was present when the actual incident occurred. She is, therefore, an eye witness. The mother witnesses viz., Bhopal Singh, Hansraj, Petharam and Prakash Kanwar reached the place of occurrence immediately after the incident because they were working in the near vicinity of the place of occurrence. The word 'by standards' in Illustration (a) means the person who was present at the time of occurrence. This statement made by Bhanwari (PW 1) was the result of her involvement in the incident and she stated the above words spontaneously as a result of excitement or emotion generated by the above incident. Hence the statements of these witnesses who derived the material knowledge about the event from Bhanwari immediately after the occurrence are relevant Under Section 6 of the Evidence Act as forming parts of the *res gestae*. Hence we hold the statements of these witnesses admissible for proving the above incident. The testimony of the witnesses aforesaid, are in our opinion consistent and trustworthy. They have not been shaken in cross-examination.

9. Now we deal with the statement of other material witnesses who have turned hostile to the prosecution. We have already stated that the FIR Ex. P-5 was lodged by Bhopal Singh (PW 5). Ex. P-5 contains all the material particulars of the event which the prosecution has sought to prove against the accused for proving the charge Under Section 302, IPC. Bhopal Singh (PW 5) has resiled from the statement made in Ex. P-5 while giving the statement in the Court. He has stated that Prem Kanwar came to summon him for removing Samundra Singh in a cart. When he reached Bhanwari (PW 1), he found Bhanwari weeping. Samundra

Singh in an injured and unconscious state was lying in her lap. The head injuries of Samundra Singh were bleeding profusely. When he asked Bhanwari about the incident, the latter told that she did not know. He further stated he did not see Om Singh there. Similarly, Bhanwari (PW 1) has stated that the quarrel took place before six months. Om Singh was at his house and Samundra Singh was ploughing the field. When Samundra Singh was hit he cried and she rushed to help but her spectacle fell thereby obstructing her vision to have a clear view of what happened. She only saw Samundra Singh in injured condition. She categorically stated that she does not know as to who hit Samundra Singh. In cross-examination she resiled from her statement Ex. D-1 recorded Under Section 161, Cr.P.C. She, however, agreed with the suggestion of the prosecution that she wants to save her son, the accused-appellant. Rukmani (PW 2) has also turned hostile. Prem Kanwar (PW 3) has stated not to have seen anything. She has denied the statements Ex. P-3 made Under Section 161, Cr.P.C. Mal Singh (PW 9) is the father of the appellant. He has also denied that his wife Bhanwari (PW 1) told about the incident to him. He has admitted that he and Bhanwari (PW 1) reside with accused-appellant. He further stated that no partition had taken place and the land was cultivated by Samundra Singh.

10. For the law as regards the testimony of hostile witness we may refer to the observations made by the apex Court in *Sat Pal v. Delhi Administration* (AIR 1976 SC 294) : (1976 Cri LJ 295) at page 308; of AIR:

From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned and in the process the witness stands squarely and totally

discredited, the Judge should, as matter of prudence, discard his evidence in toto.

Hence, the testimony of the above material witnesses, who have turned hostile to the prosecution, cannot be discarded altogether. It is the duty of the Court to scrutinise the rest of their evidence with care and caution. If the remaining evidence is trustworthy and the substratum of the prosecution case remains intact, the Court should uphold the prosecution case to the extent it is considered safe and trustworthy.

11. If we consider the statement of Bhopal Singh (PW 5) it becomes still clear that he is making an attempt not to come out with truth for the simple reason that he is keen to save accused-appellant who is his real nephew. The important point to be noticed while appreciating his statement is that he had admitted to have lodged FIR Ex. P.15. If the witnesses admitted to have lodged FIR, it can be safely stated that whatever was stated by him in Ex. P-5 was correct and the statement which he is making before the Court in contrast with the facts stated in the FIR must be rejected. We are, therefore, convinced that from the statement of these hostile witnesses it can be gathered that when they reached the place of occurrence Bhanwari (PW 1) spontaneously stated about the incident in simple words to these witnesses immediately after occurrence.

12. Now we consider the statement of Babu Singh (PW 9). Admittedly Babu Singh is a child witness aged 7 years at the time of his examination by the Court. Before starting his examination-in-chief, the learned Sessions Judge put a few questions to Babu Singh in order to test his veracity and extent of his faculty of understanding and replying to the questions. After scrutinising the demeanour of the witness, the learned Sessions Judge opined that the witness was competent and was capable of giving rational answers to the questions asked to him. He however did not think it proper to administer oath to him. His statement was, therefore, examined without oath. He has stated that he was present near his father Samundra Singh who was ploughing the field. The accused came and struck kassia blow on his father's head. As soon as Samundra Singh received the above blow he fell down. Om Singh did not stop there and continued to shower blows with his kassia on the body of Samundra Singh. His grand-mother Bhanwari

came and snatched the kassia from Om Singh. He was asked by Bhanwari to immediately bring Bhopal Singh who was present in the nearby field. He ran to Bhopal Singh and asked him to come immediately to shift Samundra Singh in a cart. Bhopal Singh, Petharam, Hansraj etc. came there and removed Samundra Singh on a camel cart to his house. The testimony of a child witness is admissible Under Section 118 of the Evidence Act. The only requirement of law is that before exhibiting the testimony of a child witness, the rule of caution is that it is unsafe to rely on such testimony unless corroborated by other evidence. The reliability of a child witness has to be judged in the light of the circumstances in each case. The real tests for either accepting or rejecting the testimony of the child witness are how sustained the relatedis with itself and how far it fits in with the rest of the evidence and circumstances of the case.

13. If we examine the probative value of the statement of Babu Singh (PW 9) on the anvil of the above principles we find that he has given simple and straight forward version of the whole incident. There are no inconsistencies or contradictions in his statement and the cross-examination has not been able to assail the truthfulness and reliability of this witness. His presence at the place of occurence is an admitted fact. We, therefore, taking all the circumstances in to consideration rely on his statement. It has been corroborated by the material witnesses mentioned above who have supported the prosecution case as also by the statement of the witnesses who have turned hostile to the prosecution.

14. The other corroborative piece of evidence is the report of the Forensic Science Laboratory, Jaipur. According to this report the blood stained clothes of the deceased and the kassia that was recovered from the possession of the accused at his instance and in pursuance of the information furnished by him Under Section 27 of the Evidence Act contained human blood and the group of the above articles was 'B'.

15. For the above reasons we are disposed to hold that the prosecution was successful in proving the offence Under Section 302, Cr.P.C. against the accused. The learned Sessions Judge has rightly convicted him.

16. There is no force in the appeal and it is hereby dismissed.

