

Kripal Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-04-2008

Reported in : RLW2008(2)Raj1637

Judge : Shiv Kumar Sharma and; Guman Singh, JJ.

Appellant : Kripal Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Challenge in these appeals is to the judgment dated November 22, 2002 of the learned Additional Sessions Judge (Fast Track) No. 1 Jhalawar whereby accused Kripal Singh was convicted and sentenced under Sections 302, 394 and 324 IPC and co-accused Ramlal, Arjun Singh and Sultan Singh were acquitted of all the charges. Kripal Singh is the appellant in appeal No. 16/2003. Whereas Appeal No. 513/2003 has been filed by the State of Rajasthan.

2. It is the prosecution case that on July 28, 2001 at 9.15 PM informant Sunil Goyal (P.W. 13) submitted a written report (Ex. P 1) at Police Station Dug with the averments that on the said day around 6.30 PM he along with his elder brother

Yashwant and Paras Mai had gone on motor cycle RJ-20 8M-9309 to their agricultural farm situated at village Doodhlai and while they were returning back Kripal Singh, Ramlal, Arjun Singh and Sultan Singh met them near the house of Dhoole Singh. They were armed with axe, lathi, Dharia, sword and Pharsa. They surrounded the motor cycle and exhorted to kill Yashwant Singh. The informant and Paras Mai got down and distanced themselves but Yashwant could not and he was severely beaten up. All the assailants inflicted blows with axe, Dharia, Sword, Pharsa and Lathi on the person of Yashwant. The assailants made attempt to kill the informant and Paras Mai while they were running for their life. They were chased by Kripal Singh who gave a blow with axe on the left shoulder of Paras Mai. On that report case under Sections 302, 323, 394 and 34 IPC was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, accused were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast-Track) No. 1 Jhalawar. Charges under Sections 302, 394, 394/34, 324 or 324/34 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 24 witnesses. In the explanation under Section 313 Cr.P.C., the appellant claimed innocence. Three witnesses in support of defence were examined. Learned trial Judge on hearing final submissions, while acquitting co-accused persons, convicted and sentenced the appellant as indicated above.

3. Having given our anxious consideration to the rival submissions and on looking into the record we notice that death of Yashwant Singh was homicidal in nature. A look at Post Mortem Report (Ex. P-33) reveals that following ante mortem injuries were found on the dead body:

1. Incised wound 4' x 2' x cervical vertebrae deep ocropagus trachea & CS vertebrae tractmend present on the anterior side of neck at the level of thyroid region.
2. Incised wound 3' x 2' x muscle deep sustained on the right side of base of neck.
3. Incised wound 2 1/2' x 1' x muscle deep present on the right shoulder.

4. Incised wound 7' x 1' x muscle deep sustained on the front of neck just below the thyroid region.
5. Incised wound 6' x 1 1/2' x muscle deep sustained just below the ramus of left mandible.'
6. Incised wound 3' x 1' x brain deep sustained on the left side of forehead just above the left eye brow, bone cut and brain matter present.
7. Incised wound 4' x 1 1/2' x brain deep sustained on the left parietal region of the scalp, bone cut and brain matter present.
8. Incised wound 2 1/2' x 1' x bone deep sustained on the right temporal region of the scalp bone cut & brain matter present.
9. Incised wound 1 1/2' x 1/2' x brain deep sustained on the upper half of right ear pinna. Mastoid process cut and brain matter present.

In the opinion of Dr. Ramesh Chandra Khatik (P.W. 7) the cause of death was shock due to injuries to brain ocephagus trachea and other neck injuries.

4. We also find that Paras Mai (P.W. 21) vide injury report (Ex. P-34) received one Incised wound of 2' x 1/4' on Lt. shoulder region.

5. The allegation against the appellant was that he inflicted injuries on the person of Yashwant Kumar and Paras Mai (P.W. 1) and then took the Motor Cycle of Yashwant which got recovered in the presence of Jagdish (P.W. 8), Birdhi Chand (P.W. 20) and Hem Raj (P.W. 21). Paras Mai who sustained injury during the incident did not support the prosecution case and was declared hostile. Attempt is made to demolish the evidence of Sunil Kumar (P.W. 13) on the ground that his presence at the time of incident was not natural. Had he been there he would also have sustained injuries. It is also contended that Sunil Kumar being real brother of Yashwant was an interested witness and no reliance could be placed on his evidence.

6. Paras Mai (P.W. 1) although did not name assailants, he admitted to have gone to village Doodhlai on Motor cycle with Yashwant. According to him 15-20 persons

belaboured them near the pole of Doole Singh and somebody gave a blow on his left shoulder.

7. Learned Counsel for the appellant Kripal Singh while assailing the impugned judgment made following submissions:

(i) The incident occurred in the chowk of village, which was a place in which villagers always remain present, but no independent person was made a witness. The trial Court erred in convicting the appellant on the basis of testimony of Sunil Kumar (P.W. 13), who was not present when the incident occurred.

(ii) Shiv Singh (Dw. 2) and Bhagwan Singh (Dw. 1) categorically stated that Sunil Kumar (P.W. 13) was sitting in the shop, when they went to bring Khad and to meet Yashwant and in the meantime Paras came to shop and informed that Yashwant was given beating in village Dudhlai.

(iii) Nathu Singh (Dw. 3) ruled out the presence of Sunil Kumar (P.W. 13) at the time when Yashwant came riding on motor cycle and was given beating. If Sunil Kumar (P.W. 13) would have been present at the place of occurrence he could have positively made attempt to rescue his brother and could have sustained injuries. Nathu Singh also ruled out the presence of any one of the accused.

(iv) Paras Mai (P.W. 1) did not support the prosecution story and the conviction of appellant is wholly unfounded.

(v) FIR (Ex. P-1) was lodged after an inordinate delay of one hour forty five minutes. The incident alleged to have taken place at 7.30 PM, whereas the report was lodged at 9.15 PM, which cast doubt on the veracity of prosecution version and conviction of appellant is wholly illegal.

(vi) Learned Lower Court has wrongly taken the motor cycle to have been recovered from the appellant, solely on the basis of testimony of Jagdish (P.W. 8), Birdhichand (P.W. 20) and Hemraj (P.W. 21). No independent witness was associated when the motor cycle was recovered vide memo Ex. P-51.

(vii) It has not been proved that human blood was found on the Kulhari, motor cycle and Dhoti of appellant and the same resembled the blood group of the deceased.

(viii) No independent witness was associated at the time of alleged recovery of Kulhari at the instance of appellant.

(ix) Learned lower Court has acquitted other accused persons, whereas on the same piece of evidence the appellant has been convicted.

8. We have closely scrutinised the testimony of Sunil Kumar. Although there are contradictions and embellishments in the evidence, we find it consistent and trustworthy qua appellant Kripal Singh. It is well settled that when ocular evidence is cogent, credible and trustworthy, minor variance, if any, is not of any consequence. Eye witnesses account would require a careful independent assessment and evaluation for its credibility. The evidence must be tested for its inherent consistency and inherent probability of the story. The evidence of relative witness is not liable to be rejected on the ground that he is interested witness.

9. In *Krishna Ram v. State of Rajasthan* : 1993 CriLJ1056 the Hon'ble Supreme Court held as under: (Para 4)

We have gone through the evidence of the eye witnesses. No doubt Pws 1, 2, 3 and 6 are kith and kin of the deceased but they have given a truthful version of the whole occurrence. Even Ex. P1 all the material particulars are mentioned particularly the fact that the deceased was dragged to the house of A-1 and that there he was tied and beaten. As noted already even A-1 admitted that the deceased was tied in his house but added that because of the scuffle between PW.6 and the deceased, latter was tied. Immediately after registering the crime, the SHO went to the house of A-1 and found the deceased tied and he was having bleeding injuries. Thus the time, place of occurrence and the cause of death are established beyond doubt. So far as the presence and participation of the appellants are concerned there are statements of the eye-witnesses consistently to this effect. Both the Courts below have given cogent and convincing reasons for accepting the evidence of the eye witnesses. The evidence adduced in defence is

not at all material and the Courts below have rightly rejected the same. The trial Court acquitted Keshra Ram A-6 giving the benefit of doubt. In our view the same in any manner does not affect the evidence of eye witnesses who are the most natural witnesses. We see absolutely no merits in these appeals. The appeals are dismissed accordingly.

10. In *Ram Lakhan v. State of U.P.* : 1996 CriLJ3496 held that the evidence of close relatives of deceased is not liable to be rejected on the ground that they were interested witnesses. What is necessary is that Court should scrutinise evidence of such witness carefully. In *Baitullah v. State of UP* : AIR 1997 SC3946 Hon'ble Supreme Court held that evidence of interested witness cannot be discarded merely on ground that he is interested. It is normally expected that witness would not leave out real culprits and rope in innocent persons. In *Tapubha Bhagwanji v. State of Gujarat* : 2002 CriLJ3733 the Apex Court held as under: (Para 12)

The witnesses examined on behalf of the prosecution are witnesses who in normal course of event are expected to know about the incident. Their deposition do not reveal any good reason for rejecting their evidence as untrustworthy or unreliable. Nothing has been brought on record either in cross examination of the witnesses concerned or in any other evidence to show any good reason as to why they should falsely implicate the accused in the case. Thus rejection of their testimony on ground that they are interested witnesses being 1 in relation of deceased, not proper.

11. In *Angnoo v. State of UP* : 1971 CriLJ285 the Apex Court held that the fact of relationship would add to value of his evidence because he would be interested in getting the real culprit, rather than innocent persons, punished.

12. Informant Sunil Kumar attributed specific overt act to appellant Kripal Singh and overt act gets corroboration from circumstantial evidence. Motor cycle belonging to deceased got recovered from appellant Kripal Singh in the presence of Jagdish (P.W. 8), Birdhi Chand (P.W. 20) and Hem Raj (P.W. 21). In *Bolineedi Venkataramaiah v. State of Andhra Pradesh* : 1994 CriLJ61 the Apex Court considered the case where there was bitter enmity between prosecution party and

accused party, group of persons chased deceased and inflicted injuries. The presence of witnesses at place of occurrence was not found doubtful. It was held that being interested witnesses their evidence was subjected to greater scrutiny. Specific overt acts attributed to accused. Corroboration of overt acts by medical and circumstantial evidence was found. Only those accused to whom specific overt acts had been attributed consistently by all witnesses were convicted. The plea that some of the accused were acquitted, the same evidence cannot be accepted against other accused, was not found tenable.

13. In *Suraj Pal v. State of UP* : 1994 CriLJ928 the Apex Court found that the medical evidence fully establish the injury to eye witnesses, eye witnesses gave consistent version and it was held that their evidence cannot be discarded on ground that they were interested witnesses or that co-accused was acquitted on self-same evidence or that there were minor variations.

14. In *Kartik Malhar v. State of Bihar* : 1996 CriLJ889 , the Apex Court held that 'we may also observe that the ground that the witness being a close relative and consequently being partisan witness should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh's case* AIR 1953 SC 364 in which this Court expressed its surprise over the impression which prevailed in the minds of the members of the bar that relatives were not independent witness Speaking through VIVIAN BOSE J., the Court observed para 25 of AIR 1953 SC:

We are unable to agree with the learned Judges of the High Court that the testimony of the two eye witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur.

15. Even truthful version of occurrence given by kith and kin of the deceased may be relied upon as was held in *Krishna Ram v. State of Rajasthan* : 1993 CriLJ1056 (Supra) by the Hon'ble Supreme Court: (Para 4)

We have gone through the evidence of the eye witnesses. No doubt Pws 1, 2, 3 and 6 are kith and kin of the deceased but they have given a truthful version of the whole occurrence. Even Ex. P1 all the material particulars are mentioned particularly the fact that the deceased was dragged to the house of A-1 and that there he was tied and beaten. As noted already even A-1 admitted that the deceased was tied in his house but added that because of the scuffle between PW. 6 and the deceased, latter was tied. Immediately after registering the crime, the SHO went to the house of A-1 and found the deceased tied and he was having bleeding injuries. Thus the time, place of occurrence and the cause of death are established beyond doubt. So far as the presence and participation of the appellants are concerned there are statements of the eye-witnesses consistently to this effect. Both the Courts below have given cogent and convincing reasons for accepting the evidence of the eye witnesses. The evidence adduced in defence is not at all material and the Courts below have rightly rejected the same. The trial Court acquitted Keshra Ram A-6 giving the benefit of doubt. In our view the same in any manner does not affect the evidence of eye witnesses who are the most natural witnesses. We see absolutely no merits in these appeals. The appeals are dismissed accordingly.

16. On analysing the evidence of Sunil Kumar from the point of view of trustworthiness we find that truth and falsehood are mixed in it. We therefore have to disengage the truth from the falsehood and to sift the grain from the chaff. It is now well settled that principle of *falsus in uno falsus in omnibus* (false in one thing, false in everything) does not apply to criminal trials and the evidence cannot be rejected in its entirety merely on the basis of few infirmities. The approach of the Court must be whether the evidence of the witnesses read as a whole appears to have a ring of truth. Once that impression is formed it is necessary for the Court to scrutinise the evidence more particularly keeping in view of the deficiencies, draw backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. It is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In *Arjun v. State of Rajasthan* :

1995 CriLJ410 the Apex Court indicated that consistent evidence of eye witnesses cannot be rejected merely on the ground that their evidence has not been accepted with regard to some other accused.

17. In the case on hand we find testimony of prosecution witnesses consistent qua Kripal Singh only. The guilt of Kripal Singh is established from the direct evidence of Sunil Kumar, circumstantial evidence of recovery of Motor cycle as well as weapon of offence and blood stained clothes of Kripal Singh on the basis of his disclosure statement. The delay of two hours in lodging the report in the facts and circumstances of the case is not fatal. In so far as participation of other accused persons are concerned, their presence at the time of incident could not be established beyond a reasonable doubt. Possibility of over implication of co-accused Ram Lal, Arjun Singh and Sultan Singh cannot be ruled out.

18. For these reasons, we find no merit in the appeal of Kripal Singh and it accordingly stands dismissed. Conviction and sentence of appellant Kripal Singh under Sections 302, 394 and 324 IPC are maintained.

We find no merit in the appeal preferred by the State of Rajasthan and the same accordingly stands dismissed. Finding of acquittal of accused respondents Ramlal, Arjun Singh and Sultan Singh is confirmed.

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