

Kevji Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-10-2003

Reported in : RLW2004(1)Raj233; 2003(4)WLC540

Judge : N.N. Mathur and; K.K. Acharya, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 256 of 2002

Appellant : Kevji

Respondent : State of Rajasthan

Advocate for Def. : K.R. Bishnoi, Public Prosecutor

Advocate for Pet/Ap. : A.K. Rajwanshi, Adv.

Disposition : Appeal allowed

Judgement :

Mathur, J.

1. Instant appeal is directed against the judgment dated 25.07.2001 passed by the Sessions Judge, Udaipur convicting the appellant of offence under Section 302 I.P.C., and sentenced to imprisonment for life and to pay a fine of Rs. 2000/-, in default of payment further undergone simple imprisonment of three months.

2. The appellant Kevji stood trial for the charge of the murder of one Naru along with two lady accused namely Smt. Bhulki and Smt. Meera, The prosecution case as projected during the trial is that on receiving a telephonic message about the death of a person, police reached to the hospital at Dhariawad and recorded the statement Ex. P-1 of PW-1 Narayan. He stated inter alia that on the preceding day at about 7:00 PM the appellant Kevji armed with kulhari and two other accused Smt. Bhulki and Smt. Meera (since acquitted) armed with lathies mounted attack on his father Naru on the way near his house, Kevji gave a kulhari blow on the head of his father. After he had fallen Smt. Bhulki and Smt. Meera inflicted lathi blows on his back. He took his father to the Primary Health Center at Mungana. As the doctor was not available he was taken to the hospital at Dhariawad in a jeep where he succumbed to the injuries. Watercourse was attributed the cause of dispute between the parties. On this information Police registered a case for offence under Sections 302, 301 and 341 I.P.C., and triggered the investigation. The Police prepared the site plan and inquest report, blood smeared soil and control soil was collected and packed on the spot. Post-mortem of the dead body was conducted on the spot. The accused persons were arrested and the recoveries were made. After usual investigation Police laid charge-sheet against the three accused persons for offence under Sections 302, 302/34 and 341 I.P.C.

3, The accused persons denied the charges levelled against them and claimed trial. The prosecution in support of the case examined as many as eight witnesses. In statement under Section 313 of the Code of Criminal Procedure, the appellant denied the correctness of the prosecution evidence appearing against him. Trial Court found the charges as against Smt. Bhulki and Smt. Meera not proved and as such acquitted them. However, he found the charge proved against the appellant as such convicted and sentenced in the manner as already noticed.

4. With the assistance of the learned counsel for the appellant and the learned Public Prosecutor, we have perused and critically scrutinized the entire evidence on record. The learned counsel has dealt with the evidence almost threat bare in his endeavor to show that the witnesses examined by the prosecution as eye witnesses have not given truthful version of the incident. It is also argued that the recovery of the kulhari cannot be used as a incriminating circumstance against the

appellant as it has been admitted by the Investigating Officer PW-6 Gordhan Singh that it was recovered from open place.

5. Before we deal with the evidence of the eye witnesses it will be convenient to refer the medical evidence. Doctor Prahalad Singh PW-3 has stated that he conducted post-mortem of the dead body of deceased Naru vide post-mortem report Ex. P-8. He noticed following antemortem injuries on his person:-

'5 and 1/2 cm by bone deep and 1/2 cm. on scalp placed antero posteriorly area (left side).'

He found no ligature marks on neck. He also did not see any external injuries. In his opinion the death resulted due to coma following injury to vital parts of Brain.

6. Adverting to ocular evidence, prosecution has examined PW-1 Narayan and PW-4 Bapuda as eye witnesses of the occurrence. Main criticism levelled against PW-1 Narayan is that he did not witness the occurrence as he reached on the spot after the incident was over. He being the son of the deceased, a highly interested witness was making false statement to secure the conviction of the appellant. The similar criticism has been made against the testimony of PW-4 Bapuda. It is well settled that the evidence of witnesses of occurrence cannot be thrown over-board merely because they are interested and partisan witnesses. However, it is necessary to evaluate such evidence with more care and caution. Thus, we have scanned the testimony of PW-1 Narayan and PW-4 Bapuda with great circumspection. PW-1 Narayan is the son of the deceased Naru. He has stated that on the date of the incident at about 7:00 PM he along with his mother and PW-4 Bapuda was at his residence. His father was cutting crop of maize at a distance of 10 yards from the residence. The appellant Kevji along Smt. Bhulki and Smt. Meera landed in the field armed with kulhari and lathies, they caught hold his father and took him to the field of Rama. The appellant Kevji was armed with kulhari whereas the other two accused persons were carrying lathies in their hands. Hearing the cries he along with PW-4 Bapuda rushed to the scene of occurrence. His mother Mst. Chhagan followed them. The appellant Kevji dealt a kulhari blow on the head whereas the other two accused persons on the back of his father by lathies. When he along with PW-4 Bapuda reached on the scene of occurrence,

found his father lying unconscious and the blood oozing out from the body. The assailants had escaped. This shows that by the time PW-1 Narayan and PW-4 Bapuda reached on the scene of occurrence, the assailants had escaped. He admitted in the cross-examination that there was no light either at his residence or at the place of occurrence. With respect to the place of incident he admitted in the cross-examination that incident had not taken place on the public road. He also admitted in the cross-examination that when he reached on the place of incident, entire body of the deceased was necked.

7. Turning to the testimony of PW-4 Bapuda, he is the cousin of the deceased. He has stated that at the time of incident he was sitting alongwith Narayan at his resident. The cries of Narayan's father attracted them to the scene of occurrence. He along with Narayan rushed to the field of Rama and found deceased lying unconscious. He has also stated that in his presence appellant Kevji dealt a kulhari blow and two other accused persons namely Smt. Bhulki and Smt. Meera inflicted lathy blows on the deceased. When they were only at a distance of about 10 to 15 yards the accused persons armed with their respective weapons, escaped from the scene of occurrence. In the cross-examination he pleaded ignorance to the fact as to how deceased reached to the field of Rama. This aspect is significant for the reason that if he was sitting with PW-1 Narayan then he must have also seen the deceased being picked up from the field and taken to the field of Rama by the assailants. It appears from the evidence that on being called by PW-1 Narayan, he accompanied him to the place of occurrence.

8. It is contended by the learned counsel that prosecution has suppressed the material document pertaining to occurrence. PW-1 Narayan has stated that leaving the PW-4 Bapuda on the spot he along with Bharta, Lalji and Ravji went to the Police Station Parsola and lodged a oral First Information Report, He reached at Police Station at Parsola at 6:00 PM. His statement was recorded by the Head Constable, vide Ex. P-1. However, the Investigation has commenced on the basis of the statement of PW-1 Narayan recorded at Hospital at Dhariawad. PW-6 Gordhan Singh Incharge of the Police Station has stated that on receiving a telephonic message he reached at hospital and recorded the statement of Narayan vide Ex. P-1. In the cross-examination he has admitted that the report Ex.

P-I was prepared as per the dictation given by him to the Head Constable Dhanpuri. PW-1 Narayan has admitted that his father died in the hospital at Dhariawad at 2:00 PM, thereafter Police arrived and recorded his statement in the hospital. The prosecution has neither produced the statement of Narayan which was recorded by the Head Constable at Parsola at 6:00 AM nor examined the Head Constable namely Dhanpuri who recorded such statement on the dictation of the PW-6 Gordhan Singh. Thus, the prosecution is guilty of suppression of first version of the incident. This casts a serious doubt as to the correctness of the prosecution case.

9. This brings us to the question of recovery of incriminating article from the possession of the appellant. This important piece of evidence providing corroboration to the statement of eye witnesses PW-1 Narayan and PW-4 Bapuda has to be discarded as it has been admitted by the Investigating Officer PW-6 Gordhan Singh that it was made from the open place.

10. On careful consideration of the evidence we have a reason to believe that the witnesses are lying on material points. They have not only changed the manner of incident but also the place of incident. The circumstances suggest that they had no occasion to witness the incident. As per the account of incident given by PW-1 Naryana in the First Information Report the incident had taken place on the public road abuted to his residence. He has admitted in the cross-examination that the incident did not take place on the public road. He has stated that his father was taken to the field of Rama. He has further stated that the incident took place in the said field i.e. field of Rama. Thus, it is evident that he has changed the place of incident. As regard the earliest version of the incident given by the PW-1 is that the accused persons suddenly appeared and started beating his father. The appellant Kevji dealt with a kulhari blows on the head whereas the two other lady accused persons inflicted injuries from lathies. In the court he has stated that three accused persons landed in the field and took his father to the field of Rama. The assault was mounted on him in the said field. The prosecution case to the extent of participation of the two lady accused persons has been found to be false by the trial court. Thus, apparently both the witnesses are lieing on the point of manner of incident. It has also been admitted by both the witnesses that by the time they

reached the assailants took their heels and escaped from the place of occurrence. It has been admitted by Investigating Officer PW-6 Gordhan Singh that house of PW-1 Narayan is not within the radius of 100 steps from the place of occurrence. Thus, it clearly shows that both the eye witnesses had no occasion to witness the occurrence. The prosecution is guilty of falsely implicating two accused persons namely Bhulki and Meera. It is alleged that they dealt lathy blows on the back of Naru but his part of the statement does not find corroboration from the medical evidence. What to talk of injury on the back no external injury has been found on the body except the single injury on the head. The prosecution has created a false statement of recovery of two blood stained lathies from the said two accused persons. In view of the doubtful and suspect nature of evidence sought to be relied upon by the prosecution, we do not consider it safe to uphold the conviction of the appellant Kevji. He is entitled to the benefit of doubt.

11. In view of the aforesaid discussion, we allow the appeal and set aside the judgment of the learned Sessions Judge, Udaipur dated 25.07.2001. The appellant Kevji is acquitted of offence under Section 302 I.P.C. He is in jail, he shall be released forthwith, if not required in any other case.