

Vishal Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-10-2001

Reported in : 2002(5)WLC416; 2002(2)WLN42

Judge : N.N. Mathur and Jagat Singh, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 374(2); ;Indian Penal Code (IPC) - Sections 300, 302 and 304

Appeal No. : D.B. Criminal Appeal No. 596 of 1997

Appellant : Vishal Singh

Respondent : State of Rajasthan

Advocate for Def. : I.S. Pareek, Adv.

Advocate for Pet/Ap. : J.S. Choudhary, Adv.

Disposition : Appeal dismissed

Judgement :

Singh, J.

1. This appeal has been filed Under Section 374(2) Cr.P.C. by accused appellant Vishal Singh against the judgment dated 25.10.1997 passed by learned Special Judge, SC/ST Act Cases, Jodhpur in Sessions case No. 11/97 by which he has

been convicted Under Section 302 1PC and sentenced to life imprisonment with a fine of Rs. 5,000/- and in default to further undergo two years' simple imprisonment. He has also been convicted under Section 341 IPC and sentenced to one month's simple imprisonment with a fine of Rs. 100/- and in default to further undergo seven days' simple imprisonment. Both the sentences were ordered to run concurrently.

2. The prosecution story as unfolded in the trial court is that at 8.00 P.M. on 5.12.1996 in the city of Jodhpur PW6 Mukesh with his uncle PW 7 Chetan Prakash as also his father Kaluram (since deceased) went to Railway Stadium on bicycles to bring waste meals discarded by the marriage party for their pigs. At about 10.15 P.M. they were coming back from the Railway Stadium alongwith two cycles and the waste meals near S.P.S. School. By the side of the road five persons were standing with a scooter and a Hero Puch. They stopped the complainant party and asked wherefrom they are coming and called them thieves and wanted to take their personal search. When Kaluram (since deceased) as also PW 7 Chetan Prakash refused to give their personal search Vishal Singh, accused appellant herein, took out a knife from his pocket and inflicted the fatal blow on the chest of Kaluram. Co-accused Manoj Kumar (acquitted by the trial Court) inflicted a stone blow on the head of Kaluram. The remaining three persons started beating by fists. When PW-6 Mukesh and PW-7 Chetan Prakash intervened, all the assailants made good their escape.

3. After walking few steps Kaluram became unconscious and fell down. Thereafter injured Kaluram was taken to Railway Hospital through a taxi from where he was referred to Mahatma Gandhi Hospital for treatment where Kaluram passed away at 1.30 A.M. At the hospital itself PW-6 Mukesh at 2.15 A.M. gave a parcha bayan Ex.P/7 to PW 3 Girija Shankar, S.I. who sent the same to police station Sardarpura where FIR Ex. P/24 was recorded at 2.30 A.M. Immediately thereafter all the five accused persons were put under arrest. Knife Article 1 was recovered on the voluntary disclosure statement given by Vishal Singh accused appellant which was seized, sealed and sent to the FSL where it was found stained with human blood.

4. After usual investigation five persons were challaned and charged in the trial court for offence under Sections 147, 323, 341, 302, 302/149 IPC as also Under Section 3(2)(5) of SC/ST Act. Upon pleading not guilty and claiming trial prosecution examined 17 witnesses and exhibited 33 documents. In statements given under Section 313 Cr.P.C. accused persons denied all the averments appearing against them and pleaded false implication and alibi. In defence DW-1 Nishant Gaur was examined and photos Ex.D/3 and D/4 were exhibited. Therefore the learned trial court after threadbare discussion of evidence available on record acquitted Manoj Kumar from all the offences. Shaitan Singh, Suchi Singh and Narendra Singh were convicted Under Sections 323, 341 and were released on probation. However, Vishal Singh accused appellant was convicted and sentenced as stated above.

5. Learned counsel for the appellant has raised manifold contentions to bring home that the accused appellant has been falsely implicated. He was not known to the prosecution witnesses nor was there any intention to cause murder and that at the time and date of occurrence he was attending a marriage party of Ramesh Gaur where photographs Ex.D/3 and D/4 were snapped. That there were significant improvements and contradictions in the prosecution evidence. Lastly it was submitted that there was only single injury and that too in a sudden quarrel and sudden fight and without premeditation, therefore, at the most the offence may fall Under Section 304 Part-II IPC.

6. On the contrary learned Public Prosecutor has supported the impugned judgment and conviction.

7. We have carefully considered the rival contentions.

8. So far as plea of alibi is concerned, no such suggestion was put to PW-6 Mukesh who was an eye witness and son of deceased though he has been put to lengthy cross examination. However, PW- 7 Chetan Prakash has denied a suggestion that accused Vishal Singh alongwith Shaitan Singh were attending the marriage of Ramesh from 8:00 P.M. to 11:00 P.M. This witness has also been shown photographs Ex.D/3 and D/4 in which at mark 'x' Vishal Singh has been identified by him. In defence also DW-1 Nishant Gaur was examined to prove that

on 5.12.1996 Aashirwad Samaroh of his elder brother Ramesh was celebrated from 8:00 P.M. onwards in which Vishal Singh and Shaitan Singh were invited. The invitation card Ex. D/5 was also exhibited and photos Ex.D/3 and D/4 were also allegedly snapped in which Vishal Singh is also seen enjoying buffet. It is an admitted fact that so called Aashirwad Samaroh was also not far off from the place of occurrence and the photos so exhibited does not indicate that Vishal Singh was present at the Aashirwad Samaroh right from 8:00 P.M. to 11:00 P.M. It is just possible that after attending the Aashirwad Samaroh accused appellant alongwith his friends may be coming back and at that time have committed this crime. Be that as it may, the plea of alibi has rightly been discarded by the trial court which we also uphold.

9. Learned counsel for the appellant contended that when injured Kaluram was admitted in Railway Hospital and from there he was shifted to Mahatma Gandhi Hospital and his treatment continued till 1.30 A.M. and one police person was also available in the hospital, why the parcha bayan Ex. P/7 was not lodged immediately after the occurrence. Had the identity of the assailants known to PW-6 Mukesh or PW-7 Chetan Prakash the FIR could have been lodged immediately after the occurrence. It seems that the names of the assailants were not known, therefore, lodging of the FIR was delayed. We have carefully considered this aspect of the matter also.

10. PW-6 Mukesh has stated in the trial Court that his father passed away at 1.30 A.M. and at the time he was donating his blood to the blood bank as required by the doctor. At that time police came and recorded his statement Ex.P/7. In cross examination also this witness has stated that when his father was shifted to Mahatma Gandhi Hospital at that time police person was not there. However, it is admitted that about one hour and half before death of his father police personnels were in the hospital. The witness has deposed that he was busy in the treatment of his seriously injured father whose life was in peril. He has also deposed that he was donating his own blood to get the blood group of his father in lieu thereof. PW-7 Chetan Prakash has also admitted that from the place of occurrence police station Sardarpura is about a kilometer and half away and that he or his nephew Mukesh did not try to inform the police either through phone or otherwise.

Admittedly this witness was also accompanying and helping Mukesh to be available for the emergency duties of seriously injured Kaluram.

11. PW-3 Girija Shankar, S.I. of police station, has deposed that he was on checking duty and as soon received a message from the control room straightway reached to the hospital at 12.05 A.M. where Mukesh Harijan alongwith Chetan Prakash was present and Kaluram was under treatment. The witness again stated that at 2.15 A.M. Ex. P/7 parcha bayan of Mukesh was recorded by him and immediately sent to the police station for registering the FIR. The witness has stated that he did not inquire about the occurrence from Mukesh or Chetan Prakash because they were busy in the treatment of seriously injured Kaluram. Therefore, the trial court has rightly discarded this plea that the FIR is belated one. According to us also when seriously injured and unconscious Kaluram was admitted in the hospital and when his son Mukesh as also brother Chetan Prakash were also involved in the treatment of Kaluram, Mukesh was donating his blood to get the blood group of his father in exchange and in sundry other matters relating to the treatment. The first priority naturally shall be to save the life of seriously injured Kaluram. Had police personnel interrogated earlier, the FIR Ex.P/7 may have been lodged immediately thereafter. However, the occurrence took place at 10.15 P.M. and seriously injured Kaluram was shifted to Mahatma Gandhi Hospital where he passed away at 1.30A.M. and FIR was lodged immediately thereafter at 2.15 A.M. Hence it cannot be said that it is belated one.

12. The Apex Court in Ramamurti v. State of Haryana (1) and Aprin Joseph v. State of Kerala (2), among others has held that even if the delay in lodging FIR is not explained satisfactorily that by itself cannot be a ground for disbelieving the prosecution evidence. In the matter at hand neither there was delay in lodging FIR nor it has remained unexplained, therefore, this plea of the learned counsel has also rightly been discarded by the trial court.

13.. Another submission of the learned counsel was that the FIR so recorded was not sent to the concerned Magistrate immediately. It was delayed by ten hours. Learned trial court has also not found this objection valid because the FIR was recorded at 2.15 A.M. and it was not expected on unearthly hour to have sent the

same at the residence of the concerned Magistrate. Next day at 12.10 noon, the FIR Ex.P/7 was received by the concerned Magistrate. Therefore, there was no delay in dispatch of the FIR to the Magistrate as such. In Shaikh Ayub v. State of Maharashtra (3), where the FIR reached to the concerned Magistrate three days after the occurrence, the Apex Court was of the view that mere delayed dispatch of the FIR without any other infirmity going to the root of the case is not sufficient to throw the prosecution case. Therefore, this plea of the learned counsel is also not tenable.

14. Learned counsel submitted before us that the accused appellant was not previously known to PW-6 Mukesh and PW-7 Chetan Prakash and, therefore, he has been falsely implicated in Ex.P/7. In this respect PW-6 Mukesh and PW-7 Chetan Prakash have been cross examined at length and they have stated in tandem that though they were not knowing Vishal Singh or his father prior to the occurrence yet they have seen Vishal Singh prior to the occurrence standing near S.P.S. School. They have also stated that co-accused Narendra Singh was residing in the mohalla of the complainant and only 3-4 lanes away from the house of these witnesses. They have again stated that Vishal Singh was seen by them near about the house of co-accused Narendra and, therefore, they were knowing Vishal Singh by name and face from prior to the occurrence. A suggestion made to them in the cross examination was admitted that the complainant party has no enmity against the accused appellant. Needless to mention that enmity plea is a double edged weapon. If due to enmity accused can be falsely implicated similarly if there is no enmity nobody shall be implicated falsely. In the matter at hand the accused appellant alongwith his friends unnecessarily stopped complainant party and wanted to take their personal search calling them thieves which was objected to by the deceased being the eldest and self-respect man which in turn offended the accused appellant and his friends and they started giving beating to them. Not rest content with that the accused appellant gave a knife injury on the vital part of the deceased. Had Vishal Singh and Narendra Singh not known to PW-6 Mukesh and PW-7 Chetan Prakash how could they have been named immediately after the occurrence in FIR Ex.P/7. Had they been falsely named they may have been exonerated in the trial court as was done in the case of Manoj Kumar. If the accused appellant alongwith his friends have not participated in the crime, they

could not have been arrested immediately after the occurrence.

15. According to PW-16 Pratap Singh in the night of the occurrence Vishal Singh was arrested vide Ex. P/25 and the remaining co-accused persons vide Ex. P/26 to P/29. All of them were together in a house. Not much cross examination was done on this witness on the above point. No suggestion worth the name was given that the accused persons were not arrested simultaneously or at one place. No suggestion was given to this witness that the accused appellant alongwith Narendra Singh was attending Aashirwad Samaroh of Ramesh at some other place at the time of occurrence. Therefore, this plea of the accused appellant is also untenable and has rightly been turned down by the trial Court.

16. Yet another submission of the learned counsel was that PW-6 Mukesh was son of deceased and PW-7 Chetan Prakash was his brother and being relative witnesses implicit reliance cannot be placed upon them. The Apex Court in State of Rajasthan v. Hanuman (4) and Hukam Singh v. State of Rajasthan (5), among others has held that the testimony of an eye witness cannot be discarded merely on the ground that he is relative of the deceased. It is not a law that the evidence of a relative witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. Though the evidence of a relative witness should be scrutinised with care and caution but they cannot be discarded altogether. Once that approach is made and the court is satisfied that the evidence of a relative witness have a ring of truth, his testimony can be relied upon without corroboration.

17. In the matter at hand both these witnesses have been put to lengthy and unnecessary fishing cross examination yet nothing substantial affecting their veracity adversely could be elicited out of it. They have neither been contradicted by their previous statements in material particulars nor have they made any significant improvement during the trial. Even material inter se contradictions between the testimonies of these two witnesses have not been pointed out. The only contradiction confronted to PW-6 Mukesh from his parcha bayan Ex.P/7 and police statement Ex. D/1 is that factum of available of light at the place of occurrence was not mentioned by this witness in the previous statement.

However, available of enough light at the site is proved by site plan map Ex.P/2 which was prepared by PW-16 Pratap Singh, Station House Officer. An electric pole near about the place of occurrence has been shown in Ex. P/2 which corroborates the testimonies of PW-6 Mukesh and PW-7 Chetan Prakash who have deposed in the court that there was enough light from a electric pole available near the place of occurrence. Therefore, this omission in the previous statement Ex.P/7 and Ex. D17 was not material.

18. The other improvements pointed out by the learned counsel were also not significant because they related to the very insignificant facts. In the Court PW-6 Mukesh deposed that the accused said 'SAALO YOU ARE THIEVES, GIVE US YOUR SEARCH' whereas in the previous statement word 'SAALO' was missing. In the court this witness stated that the accused appellant inflicted knife injury on the left side of stomach. In the previous statement 'left side' was missing. Such improvements was not with regard to the material particulars and the prosecution version germane to the charge. The Apex Court has in a catina of judgments held that the evidence of prosecution witnesses can be rejected if it suffers from any serious infirmity or thereis any inherent inconsistency in the testimony. If there is intrinsic merit in the evidence of a witness, same cannot be rejected. Minor embellishments and trifle discrepancies do not by themselves render the evidence of an eye witness unbelievable. The hairsplitting of the prosecution witness ought not to be undertaken. Instead, totality of the circumstances ought to have been reviewed. In this respect among others Leela Ram v. State of Haryana (6) and State of Himachal Pradesh v. Lekhraj (7), can be referred to. Therefore, this plea of the learned counsel is also not tenable.

19. Lastly, the learned counsel submitted that there was only single injury and that too caused in a sudden fight and unpremeditated, the offence falls under Section 304 Part-II IPC. We have carefully considered this aspect of the matter also.

20. PW-15 Dr. Dharmendra Sharma, who conducted the postmortem on the dead body and prepared autopsy report Ex. P/23, has found following ante mortem injuries:-

1. Lacerated wound 5x 1 cm x muscle deep on the right side of frontal region.

2. Stab incised wound 2x1 cm x 8 deep placed 10-1/2 cm below the left nipple on the left side of chest interior aspect. On dissection there is corresponding incised stab wound over the chest wall pleura left and lower lobe of lung through and through and stab incised wound over the apex of the left ventricle of heart. The wound is 1-1/2 x 0.2 cm x left ventricle cavity deep. There is corresponding cut in the pericardium and collection of blood in the pericardium. There is also 300 C.C. of blood in the thoracic cavity.

21. According to PW-15 Dr. Dharmendra Sharma injury No. 2 was in ordinary course of nature sufficient to cause death. In cross examination though this witness was shown knife Article 1 allegedly recovered at the instance of the accused appellant and also found stained with human blood by the FSL report Ex. P/33, yet this witness has deposed that injury No. 2 may not be caused by Article 1 because its blade is only 1.5 cm in size whereas the size of the injury is 2x1 cm. Like the trial court we are also not convinced with the logic and reasoning advanced by this witness because testimony of a doctor is an opinion evidence and even if there is some inconsistency between the medical evidence and evidence of eye witnesses it is they duty of the court to give due weight to the evidence available on the file and reach to a correct conclusion. In *Bajwa and Others v. State of U.P.* (8), there was inconsistency between the medical evidence and the direct evidence and the Apex Court was of the view that that by itself will not render the eye witnesses unreliable. Similarly, the Apex Court has held in *Kartare v. State U.P.* (9). Therefore, simply because PW-15 Dr. Dharmendra Sharma after observing Article 1 knife has opined that fatal injury may not be caused by it, cannot be held to be truthful when he has not measured the depth of injury No. 2 and has only marked '?' for the depth of this injury.

22. It is proved on the record that there were two injuries on the person of deceased one was lacerated wound on the right frontal region and another was stab wound on the left side chest injuring not only the lower lobe of lung but also left ventricle of heart and proved fatal. Learned counsel relied upon a number of authorities to press upon us that this case falls under Section 304 Part-II IPC.

23. In *Masumsha Hasanasha Musalman v. State of Maharashtra* (10), there was scuffle between the deceased and the accused and in those circumstances it was reasonable to infer that fatal injury may have been caused during the scuffle. The blow was given according to PW-4 wife of the deceased from the back side of the deceased and, therefore, the chances of not inflicting particular injury on the deceased person were there and in such circumstances conviction from Section 302 was converted to Section 304 Part-II IPC.

24. In *Hari Ram v. State of Haryana*, (11), a fight followed between the appellant and his comrades on one side and a number of persons who came in aid of Ran Singh deceased on the other side in which Hari Ram appellant thrust the prongs of a jelli into Ran Singh's chest who later succumbed to the injuries. In the above circumstances the intention to kill was absent and it was proved that the appellant had intention to chastise the deceased in the heat of moment thrusting jelli into his chest causing death. Therefore, his conviction was converted to 304 Part-11 IPC.

25. In *Jagtar Singh v. State of Punjab* (12), a quarrel took place on the spur of moment when deceased was passing by road in front of the house of the appellant, his forehead dashed with parnala of the house of the appellant which provoked the deceased to remonstrate the appellant and to some extent on deceased provocation in a sudden and chance quarrel on a trivial issue appellant gave one knife blow which landed on the chest of the deceased. In the above circumstances the conviction was converted from 302 to 304 Part-11 IPC.

26. In *Jawaharlal and another v. State of Punjab* (13), sequel to the occurrence a trivial dispute with the deceased and his friend took place. Subsequently on the day of occurrence at 10.00 P.M. in the night when deceased alongwith 'A' and another person came out of the house the accused who was near his shop gave a knife blow to the deceased which hit on his chest resulting in death. There was dim light coming from a electric lamp post and in the above circumstances it was found that the appellant never intended to cause that particular injury and, therefore, conviction was altered from 302 to 304 Part-11 IPC.

27. The other two decisions were of Division Bench of our own High Court viz. *Kala v. State of Rajasthan* (14) and *Sabalsingh and Ors. v. State of Rajasthan*

(15). In both these matters the doctor conducting autopsy on the dead bodies was of the view that the injuries were not sufficient in ordinary course of nature to cause death and the facts and circumstances so proved therein the learned Division Bench was of the view that the offence was under Section 304 Part-II IPC.

28. In the matter at hand though there was single stab wound caused by accused appellant on left side chest by which Kaluram died immediately thereafter. There was no enmity between the parties yet the accused appellant without any cause stopped the complainant party and abused them and called them thieves and wanted to take their personal search without any authority. When deceased Kaluram objected to it he was not only given beating by the accused appellant and his friends but was also given a fatal stab wound on his chest. There is not an iota of suggestion to any of the prosecution witnesses either to PW-6 Mukesh and PW-7 Chetan Prakash or to Investigating Officer PW-16 Pratap Singh that any quarrel or any fight as such took place. The deceased and his son Mukesh and brother Chetan Prakash were Harijans and had gone to Railway Stadium to bring discarded food for their pigs and when these poor persons were coming, they were without any cause accosted and given beatings.

29. The Apex Court in *State of Karnataka v. Vaidyangyam* (16), has held that it is fallacious to contend that whenever there is single injury only a case of culpable homicide not amounting to murder is made out irrespective of other circumstances.

30. In *Mahesh Balmiki @ Manna v. State of Madhya Pradesh* (17), the appellant asked the deceased to come to a particular place to receive his watch where three associates of appellant caught hold of him and gave a fatal blow with knife. In such circumstances the Apex Court was of the view that the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single blow yet a fatal blow on the interior aspect of the chest on left border of sternum causing the wound to anterior and posterior wall of right vertical dome of diaphragm, left lobe of liver cardiac and of stomach which was sufficient to cause death and, therefore, offence did not fall under Clause (4) of Section 304 IPC.

31. In *Gopal v. State of U.P.* (18), two injuries on the deceased were found fatal. Both were individually sufficient to cause death. Main accused inflicted only one blow and the remaining accused inflicted other injuries. But it was difficult to pin point who inflicted the other fatal blow. In such circumstances main accused was convicted under Section 302 and rest of them were convicted under Section 304 Part - II IPC.

32. In *Bhagwan Pujari v. State of Maharashtra* (19), though the quarrel had broken out suddenly but there was no sudden fight or fight as such because the deceased was unarmed. There was no exchange of blows. Deceased did not cause any injury. In such circumstances accused was not entitled to exception 2 or 4 of Section 300 IPC.

33. In *Morchha v. State of Rajasthan* (20), the accused went armed with a dagger and inflicted two injuries on the person of his wife one of which was sufficient to cause death. In the facts and circumstances it was held that whole affair appeared to be preplanned and premeditated and the offence fell under Section 302 IPC.

34. In *Jagroop Singh v. State of Haryana* (21), the Apex Court held that there is no justification for the assertions that solitary blow on vital part of body resulting into death must always necessarily reduce the offence to culpable homicide not amounting to murder. If a man deliberately strikes another on head with heavy log of wood or iron rod or even a lathi so as to cause fracture of skull, he must in absence of circumstances negating the presumption, be deemed to have intended to cause death of victim. The nature of intention must be gathered from the kind of weapon used or part of body hit and the amount of force employed and the circumstances attended upon it.

35. Without multiplying the authorities it can be safely said that unless and until act of the accused falls under Exception 4 of Section 300 IPC his conviction from 302 IPC cannot be altered to 304 Part - II IPC. Exception 4 is as under:-

'Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.'

36. A plain reading of Exception 4 shows that it can be involved only if culpable homicide is committed (1) without premeditation in a sudden fight; (2) in the heat of passion upon a sudden quarrel; and (3) without the offender's having taken undue advantage or acted in a cruel or unusual manner.

37. In the matter at hand the accused appellant was already armed with a knife and was standing with his friends. They seemed to the roaming romeos in search of prowling on some passer-by else where was the necessity to intercept and accost the deceased and PW-6 Mukesh and PW-7 Chetan Prakash. They were labelled thieves and after abusing them the search of their persons was ordered by the accused appellant and when deceased being the eldest member of the party resisted he was not only be thrashed but also given a fatal injury on his left chest with such a force that it could penetrate upto lower lobe of lung as also pericardium resulting which he succumbed to his injuries within few hours. There was not an iota of suggestion to any of the witnesses in cross examination that accused appellant intended to cause some other injury on some non vital part and during scuffle it fell on the chest. No suggestion was made that there was sudden fight or sudden quarrel or even altercation between the two groups. It was their right to resist the personal search. Admittedly deceased and the eye witnesses were unarmed. They were down trodden daily wagers and were bringing discarded food for their pigs, yet were branded by the accused as thieves. In such circumstances none of the ingredients of exception 4 of Section 300 IPC are found in the present case. The pronouncements relied upon by the learned counsel were not applicable in the present case being distinguishable on facts and circumstances. Therefore, this last contention of the learned counsel also fails.

38. Learned trial court has candidly and cautiously analysed and assessed the prosecution evidence and has reached to a correct conclusion. The judicious approach adopted by the trial court was not only cautious and careful but also properkeeping in view the totality of situation and circumstances involved therein. The discrepancies and contradictions pointed out by the learned counsel in the testimony were neither material nor substantial and also were not in respect of vitally relevant aspects of facts and, therefore, were not capable of discarding the intrinsic value of the prosecution witnesses.

39. Consequently, we do not find any merit in this appeal and dismiss the same. The conviction and sentence awarded by the trial court are upheld. The accused appellant is in jail. He shall serve out the remaining part of sentence.

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