

Saddiq and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-03-1991

Reported in : 1991WLN(UC)549

Judge : Mohini Kapur and; Kanta Bhatnagr, JJ.

Appeal No. : D.B. Cr. Appeal No. 66 of 1988

Appellant : Saddiq and ors.

Respondent : State of Rajasthan

Judgement :

Mohini Kapur, J.

1. This appeal has been preferred by the three accused appellants, namely, Saddiq, Ayub and Nasru, who have been convicted by the Additional Sessions Judge, No. 1, Alwar, by his judgment dated 23rd Dec. 1987 for the offence under Section 302 IPC. They were tried for the offences under Sections 148, 307, 379, 302, 302/149 IPC and 3/25 of the Arms Act. The accused appellants were acquitted for the offences under Sections 148, 307, 379 IPC and Sections 3/25 of the Arms Act. Along with the appellants five other persons were also tried for all the offences but as the case against them was not proved they were acquitted.

2. The appellants have been sentenced to imprisonment for life and a fine of Rs. 500/- each and in default of payment of fine to further undergo rigorous imprisonment for three months each and against this they have preferred this appeal.

3. The manner in which the incident took place may be looked into. It may be stated that three persons died as a result of gun shots and these persons are, Sherkhan Mst. Hanna and Mst. Nijri, while one Amar Singh received gun shot injuries. It cannot be said that the incident was one in which all these persons received injuries, hence it is to be seen how and where the incident in respect of the injured and the deceased persons took place. On 9th njan. 1986 one constable of Police Station Laxmangarh came to know that there was firing in the hills of Salampur. Hence he came to the police station laxmangarh, made an entry in the Rojnamcha and the SHO Ramswaroop proceeded towards the site. There he met the injured Amarsingh and he recorded his parchabayan and on the basis of this the AIR was registered. The story as given out by Amarsingh is that he was transporting stones from the Salampur Hills in his tractor and at about 8.00 in the morning he was coming down from the mines with his tractor. In his tractor were Malkhan and Chatru. Another tractor of Roshan was also coming along with his tractor, and Rahmat and Heera were in that tractor alongwith Roshan. While they were coming down the Hills there was firing from behind and at first he thought that the tire had burst. Then he turned around and saw Ayub Saddiq. Saffi Yakub and Leela were firing with 12 bore guns, katta, and topidar guns at them. Some pellets hit him out the back, then he fell doen and saved himself. He was taken to the room to Nikka Member and the accused could not trace him there. He further stated that he learnt that in his village Hijri, Sherkhan and Hanna who belonged to the same family had also been murdered. How the incident occurred in respect of these three deceased persons was not known to him and the details about the same were not disclosed to the SHO on 9.1.1986 when the incident took place.

4. During investigation, the dead-bodies of Nijri, Hanna and Sherkhan were recovered, panchayatnamas and site plan were prepared and postmortem on the bodies was conducted Blood stained earth was collected from three sites. Amar Singh was sent for treatment. From the site where Amarsingh was attacked two

empty cart idges of twelve bore gun were recovered. The accused persons were arrested and different weapons were recovered on the basis of information given by them. These weapons were sent to the Forensic Lab for tests etc. and then challan was presented before the Court. During investigation, it was found that in the year 1984 the family of Amarsingh had killed six persons in the family of the accused and a case under Section 302 IPC and other offences was pending against 16 persons. Out of them 13 persons were released on bail and this caused dis-satisfaction in the minds of the accused and they committed murder of three persons and injured Amarsingh.

5. The learned Additional Sessions Judge on the basis of the evidence produced before him did not believe the statements of Amarsingh and other witnesses in respect of the incident which took place in the Hills of Salampur, in which Amarsingh was injured. Amar Singh had pellet injuries and on X-ray several radio opoque substances were found in the chest and abdomen. But the witnesses in respect of this incident were not believed, as there were contradictions in the statements of the witnesses. It is not necessary to look into this part of the evidence as the appeal filed by the State against the five persons who have been acquitted by the Additional Sessions Judge No. 1 Alwar being D.B. Cr. Appeal No. 350 of 1988, was dismissed by this Court on 22nd Sept. 1988 for non-prosecution.

6. We can come to the murders of Mst. Hanna, Mst. Nijri and Sherkhan and look to the witnesses who have been examined to prove this part of the incident.

7. The post mortem of these three deceased persons showed the following position:

Ekq- futjh%

Ckkgjh pksVs %& 1-xu 'kkV ow UM vk WQ ,UVsUI 3&1@2 xq.kk 1&1@2 lseh- vku ysV isjkbVy jhtu vk WQ LdsYi ekftZu buojVsM] ysljsVsM+] Mk;jsDVSM+ Qksjok VZ feMh;Yyh A

2- xu'kkV ow UM= vkQ ,sfXtV 5 xq.kk 3 lseh- vku ysV isjkbVy jhtu vk WQ LdsYi] ekftZu ,oVs ZM] czsu esVj dsfuax vkmV A

3- ysljsVsM ow UM 1lseh xq.kk 1@2 lseh- vku ysV lkbM vkQ Qsl t LV fcysk Vw ysV ikbZ A

vUn:uh pksVs%& 1- eIVhiy QzsDplZ vkQ ysV isjkbVy ,aM QzsaVy vksu vk WQ Ldy

2- jsEcj vk WQ esustht fcuks; xu 'kkV ow UM

3- ysV isjkbVh QzsUVy ik VZ vkQ czsu ysljsM

'ksj[kku %

1- xu 'kkV ow UM ,sUVsUI vk WQ 2&@2 xq.kk 1&1@2 lseh- vku ysV isjkbVy jhtu vkQ LdsYij Mk;js DV QkjoM+Z ,m fefM;yh ekftZUI ysljsVsM ,aM buojVsM A

2- xu'kkV ow UM+ vk WQ ,sfXtV 4 xq.kk 2&1@2 xq.kk 1&1@2 lseh- vku fefM+y vk WQ Qksj gsM ekftZu buojVsM czsu dfeax vkmV ;w bu A

3- xu'kkV ow UM+ vkQ ,UVs UM 4 xq.kk lseh- vku fefMy vkQ vuykbd jhtu vkQ ,asVhfj;j ,scMksfuey oky ,.M 3 lseh- vckso Vw veyk bady Mk;jsDVsM iksLVhfj;j yks ,aM ysVjyks ekftZUI buojVsM ysljs VM ,aM Cysd UM A

4- xu'kkV cq UM vkQ ,UVsUI 4&1 xq.kk 4 ,s- eh- vku gkbiksiLVh;e jskt vkQ ,asVhfj;j ,scksfeuy oky ekftZUI buoj VM ysljsVsM ,aM Cysd UM eYVhij xu'kkV ow UM+ vckso 25 uEcj lkbT 1@2 xq.kk 1@2 lseh- osfj;sfcy bu MsFk vjkm UM fnl foax lw UM bu nh ,fj;k vkQ 6 xq.kk 6 lseh-

5- ysljsVsM ow UM 1&1@2 xq.kk 1@2 lseh- vku ysVjsy iks VZ vkQ ysQFk vkbZ czks A

6- ysljs VM ow UM 2 xq.kk 1@2 lseh- vku vkmVh vklis DV vkQ ysV lkbM vkQ yksvj fei A

7- eYVhiy ,czst vku ysV lkbM vkQ Qsy A

vUn:uh pksVs %&

1- eYVhiy QSDplZ vkQ ysV isjkbVy ,aM QszVy cksu A

2- esusftUI jloM+Z fcuhFk xu'kkV ow UM A

3- ysljsUI vkQ isjkbVy ,aM QzaVu jhtu vkQ czsu A

4- isjksVksfu;e jhtu isjhVksfu;e jloM+Z fcuhFk xu'kkV isjksVksfu;e dsfoVks vUVs UM CyM QtwA

5- Leky bUVsLVkbUI ysljsVsM A

6- Liyhu oky ysljsVsM] isysVI ,sfEcMsm bu bM ,aM Vsdu vkmV A

7- fdMuh ysV lkb ZM ysljsVsM Fkzks 2 xq.kk 1 lseh- A

eq- gUuk%

ckgjh pksVs%&

1- xu'kkV ow UM vkQ ,sUMsUI 3 xq.kk 2 lseh- vku ysV 6 QzaVy jhtu vkQ LdYi ekftZu buojVsM ysljsVsM ,aM+ Cysd UM+] Mk;jsDVsM csdokM+Z ,aM ehMh;syh A

2- xu'kkV ,aM+ vkQ ,sfXtV 5 xq.kk 3 lseh- vku fefMy vkQ isjkbVks buojVsM ,aM czsu esVj dfcazx vkmV dzksbx A

3- xu'kkV ow UM vkQ ,sUVsUI 3 xq.kk 2 lseh- vku ysIFk lkbM vkQ QksjMsM ekftZu buojVsM Cysd UM ,saM+ ysljsVsM] Mk;jsDVsM+ csdokM+Z A

vUn:uh pksVs %&

1- eYVhiy QzsDpj vkQ QzaVy jkbV] ysIFk isjkbVe ,.M jkbV ,.M ysIFk vkDIhivVy vksuA

2- QzsDpj vkQ esuksftal cksfuFk xu'kkV ow UM+ A

3- QzaVy ,.M isjkbVy ,.M vkDIhivVy jhtu vkQ czsu ysljsVsM A

Thus it will be seen that Nijri died as a result of one gun short wound, which left an entry and exit mark on the parietal region. It can be said that two or three bullets hit Sherkhan, which caused his death and two bullets hit Mst. Hanna, as a result of

which she died. It may be said here that all the three deceased were not found dead at the same place and how they came to be shot by guns will have to be seen from the evidence of the witnesses PW. 4 Basan, PW 5, Assen, PW 6 Roojdar, PW 7 Sheosing and PW 8 Asarkhan.

8. The learned Counsel for the appellants has vcontended that all the witnesses are interested witnesses as they are relatives of the deceased and all of them are on inimical terms with the accused party. It is also contended that the witnesses have been dis-believed for some purpose, but still they have been believed as far as three appellants and their role is concerned and this cannot be said to be correct. According to him the evidence is of similar nature and when there are several contradictions and omissions then the witnesses should not be believed in respect of some accused. According to the learned Counsel for the appellants the murders took place at some other place where there were no witnesses and now efforts have been made to shift the scene near village and produce the eye witnesses.

9. With these arguments in the background-we may look at the evidence in the case.

10. PW. 4 Basan has stated that on the day of the incident at morning time she had gone to her well when she heard noises and saw that Ayub, Saddiq, Saffi & Yakub were chasing her brother Sherkhan. These persons had guns and kattas and when they reached near the house of Safeda they fired and killed him. Then she stated that Hanna wife of Assarkhan, who is another brother of Mst. Basan, was surrounded by Ayub, Saddiq, Nasru and Harun in the field of Hurmat. Hanna begged to be excused but then these persons fired at her and left her dead. Then her aunt Nijri wife of Sheosingh came out of the haveli of Amarsing. Saddiq Kamalkhan, Daud and Leela fired at her. Juhru gave a lathi blow to her. She also bvegged to be excused but to no avail. She went on to state that ornaments of these ladies were removed, but then this part has not been believed. She has stated that she had pointed out to the police the place from where she saw the incident, but it has not been mentioned in the site plan. There are other omissions in her statement Ex. D/4 as the names of Yakub and Ismile do not find place in the

same. In this Ex. D/4 she had stated that Ismile gave farsi blow in the abdomen of Sherkhan and now same has been denied. Who fired the gun shots on Nijri does not find place in Ex. D/4.

11. The next witness in this connection is PW. 5 Mst. Asin wife of PW. 6 Roojdar. She has repeated the version of Mst. Basan PW. 4. As regards Sherkhan, Nijri and Hanna it is stated that they came from their house on hearing the noises and they were also chased to the field and murdered. There are many omissions in her police statement and she has been confronted by the same. It may also be mentioned that she has not been believed by the learned Addl. Sessions Judge. She is the wife of Amar Singh, and is therefore an interested relative.

12. P.W. 6 Roojdar, returned to his village from his field and near the thadi he saw the accused with guns and kattas. On seeing them Sherkhan ran from his room and these accused fired on him. Hanna and Nijri came from their house on hearing this and they were also gunned and killed. As for this witness he kept hiding behind the thadi and saw the whole incident. This witness has admitted the enmity between the parties and also the fact that his father and he are accused in a case in which six persons were murdered. He did not mention the name of Daud accused in the statement under Section 161 Cr.P.C. His earlier version was that Sherkhan was dragged out of his father's house but he has resiled from the same. He did not mention the names of Yukub and Shaffi in his police statement. He had also stated in Ex. D/6 that Shaffi gave a farsi blow in the stomach of Sherkhan, but he then resiled from the same before the Court. In Ex. D/6 he did not state as to who were the persons who fired at Nijri. Similarly there is discrepancy as to how Hanna came from her field and killed by the accused. P.W. 7 Sheosing is the husband of Nijri. He stated that the accused came with guns and kattas and on seeing them Sherkhan tried to escape but the accused surrounded him and shot him dead. As for Nijri and Hanna his statement is similar to that of other witnesses. His omissions and contradictions from the statement under Section 161 Cr.P.C. are similar to that of the other witnesses and need not be repeated. Assarkhan is P.W. 8. His statement can be said to be contradictory to the statements of the other witnesses so far as the names of the accused are concerned.

13. From the versions of these witnesses, it can be said that the dead-bodies of Sherkhan, Hanna and Nijri should have been found near the house of Safeda and the blood stained earth should have also been found at the same place. However, Ex. P/19 site plan about dead body of Sherkhan does not show the presence of any blood-stained earth. At the same time, the thadi behind which the witness Rijka took shelter to watch the incident has also not been shown. The dead, bodies of Hanna and Nijri ought to have been quite close to the place where the body of Sherkhan was found but they have been shown in the fields and the distance from the dead-body of Sherkhan has also not been shown. In Ex. P/21 and P/23, it has not been shown that blood stained earth was found at that place. The recovery memos of blood stained soil have been prepared without actually describing the place from where the same was recovered. It is just mentioned that recovered from the site. At the time of site inspection, the investigating officer does not find any pellet marks on the house, which are on both sides of lane where Sherkhan was shot. It can be said that the witnesses to the incident are all relations and who can be said to be interested witnesses and at the same time they are on inimical terms with the accused party. It can also be said that male witnesses of the incident were examined after four days of the incident, which makes their presence suspicious. These relatives of the deceased do not come forward at the time of site inspection and preparation of site plans so as to tell the police that they had seen the incident.

14. A reading of the judgment shows that the learned Additional Sessions Judge has observed while discussing the evidence that some witnesses can be disbelieved in respect of some accused, but the same witnesses can be believed in respect of other accused. We may say that normally a witness can be believed to some extent and dis-believed for some purpose, but then there should be some corroboration from the other witnesses and there should be some specific reason for dis-believing him in part and finding him a truthful witness as far as some other aspect is concerned. We have seen above the statements of the witnesses and the omissions made in their police statements and the contradictions. The witnesses resiled from the statements wherein they had stated that a farsa blow was given to the deceased Sherkhan and it is clear that this has been shown because there was no injury by sharp weapon on his body. When it can be said

that the witnesses are trying to implicate more persons than the persons who were actually participants in the incident, then it becomes necessary to examine their testimonies with caution and if it is found that they are not witnesses whose inspire confidence taking into consideration the surrounding circumstances, then they cannot be relied upon for basing the conviction of the accused. In the present case the learned Additional Sessions Judge has found Ayub and Saddiq liable for the death of Sherkhan and Nasru for the of Hanna. But no one for the death of Nijri. When there were number of persons, according to the witnesses and they are not consistent in knowing so to who was the one who fired and even the presence of these witnesses is doubtful at the scene of incident, then the appellants cannot be said to the persons who committed the murder of three persons.

15. The evidence in the case is not consistent. It appears that the witnesses are all relations and interested persons, even they became witnesses as a later stage, the evidence in this cannot be said to be sufficient to base the conviction of the appellants.

16. In view of what has been discussed above, the appellants are entitled to be acquitted for the offence under Section 302 IPC.

17. This appeal is accepted. The conviction and sentence of the appellants for the offence under Section 302 IPC is set aside. They shall be released forthwith, if not wanted in any other case.