

Mohan Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Nov-03-1992

Reported in : 1993(1)WLC366; 1992(2)WLN437

Judge : Milap Chandra and; Y.R. Meena, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 11 of 1989

Appellant : Mohan Singh

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. A.K. Singh

Disposition : Appeal allowed

Judgement :

Y.R. Meena, J.

1. This jail appeal is directed against the judgment of the learned Sessions Judge, Bhilwara dated 30.11.1988, whereby the appellant has been convicted and sentenced for the offenses under Section 302 and 450 IPC.

2. The necessary facts to be noticed in short are that one Chatarsingh (PW 1) submitted a written report at the police station. Kareda to the effect that on the day before yesterday night, at about 4 A.M., while Pannasingh (deceased) was

sleeping in his house and the informant Chatarsingh was sleeping in the Chhatri, at that time the accused Mohan Singh came armed with Kulhari (axe) and gave Kulhari blow on the head of Pannasingh with intention to kill him. It is also alleged that sister of Pannasingh was sleeping beside him. She raised cry 'Mare re mare'. His sister's son Tarasingh was also sleeping nearby the deceased. Accused Mohansingh gave a kulhari blow on the parietal region of Pannasingh. PW 8 Tarasingh (nephew of the deceased) has also seen the accused Mohansingh at that time. The injured Pannasingh was, thereafter, taken to Bhim Hospital, in a bullock cart. At Bheem Hospital, the Doctor refused to treat him as he was serious. The injured was then taken to Beawar hospital. On this complaint a case was registered under Section 307 and 452, IPC.

3. In Beawar hospital, Pannasingh died. The case was converted under Section 302 and 450, IPC. The post mortem was got conducted. The site plan was prepared. The blood stained cloths of the deceased were seized and sent for chemical examination to the forensic laboratory, Jaipur. The accused was arrested on 16.6.87. At the instance of the accused, blood stained Kulhari was recovered. That was seized and sent for FSL report.

4. After due investigation, challan was put up in the court of Munsif & Judicial Magistrate, Gangapur, who in his turn, committed the case to the court of Sessions Judge, Bhilwara. The charges were framed under Section 302 and 449, IPC. The accused denied the charges and claimed for trial, as many as 17 witnesses were examined. The statement of the accused appellant was recorded under Section 313, Cr.P.C. Considering the entire material on record the learned Sessions Judge came to the conclusion that the accused appellant is guilty for the offenses under Section 302 and 450, IPC and sentenced him to undergo life imprisonment and 4 year R1 respectively for the offences.

5. Being dis satisfied with the Judgment of the learned Sessions Judge, Bhilwara, the accused preferred this appeal through Jail before this Court.

6. No counsel has been engaged by the accused appellant, therefore, this Court by order dated 3.7.92 has appointed Mr. Anil Kumar Singh as amicus curiae for the accused appellant.

7. Heard Mr. A.K. Singh, learned Counsel for the appellant and Mr. S.K. Vyas, learned Public Prosecutor.

8. Mr. A.K. Singh, learned Counsel for the appellant contended that presence of eye witnesses at the spot is not natural. The accused has been falsely implicated as there was enmity between the accused and the deceased. He further submitted that (sic) eye witnesses and the informant are the interested witnesses therefore, no reliance can be placed for conviction on the testimony of these eye witnesses namely PW 2 Tulsi and PW 8 Tarasingh. He also submitted that the incident take place at 4 A.M. and at that time, the condition of the deceased Pannasingh was serious. Why he kept in his house till 12 AM that is for about 8 hours. If somebody has seen the incident he could be taken immediately to the Hospital, but in fact, nobody has seen the incident and the deceased was all alone in his house. Much after the incident somebody has seen the dead body and then they implicated the accused Mohansingh.

9. PW 1 Chatarsingh (brother of the deceased) has filed the written report at the police station, Kareda on the next day of the incident, stating therein, that the accused has inflicted kulhari blows on the head of the deceased and that incident has been seen by Tulsi (PW 2) and Tarasingh (PW 8) and the informant. The deceased was taken to the Bhim hospital at about 12 AM as his condition was serious. As per advice the deceased Pannasingh was referred to the Beawar hospital for treatment where he expired. On the request of the police the post mortem was got conducted. On post mortem examination the doctor found the following injuries. (1) Lacerated wound 3' x 1 1/2' bone deep left side of forehead exposing bone with clotted blood. (2) Incised wound 2 1/2' x 1/4' bone deep above left eye under process of healing. (3) Incised wound 1' x 1/4' x 1/4' cutting pinna of left ear. (4) Black Eye Echymosis around right eye. (5) Abrasion 3/4' x 1/4' on right foot with scab formation. (6) Abrasion 3/4' x 3/4' on left medial malleolus with scab formation. (7) Abrasion 1' x 3/4' left lateral malleolus with scab formation. (8) Abrasion 1 1/2' x 3/4' on right wrist with scab formation. (9) Abrasion 1' x 1/4' on left forearm upper 1/3 rd.

10. In the opinion of the doctor, the death of the deceased was due to shock on account, of head injury. All the injuries are ante mortem in nature. Considering the post mortem report and injury report, no doubt is left that it is a case of homicide and not of natural death.

11. On the information the police proceeded for investigation on 11.6.87. The site plan (Ex. P/2) was prepared. The blood stained cloths of the deceased were seized and sealed. The accused Mohan singh was arrested on 15.6.87 vide arrest memo Ex. P/5. At the instance of the accused, blood stained Kulhari was recovered and the same was sent FSL Jaipur. A perusal of the record it reveals that the FSL has not been placed before the trial court. These evidence only show that Pannasingh has been murdered but evidence is not enough to connect with the crime.

12. According to the prosecution PW 1 Chatarsingh is an information, who lodged the written report at the police station, Kareda (Bhilwara) on 10.6.87 at 9.00 p.m. while the incident took place, at 4 or 4.30 a.m. on 9.6.87, Admittedly the condition of the deceased was serious but they kept the injured Pannasingh in the village upto 12.00 a.m. as per the statement of PW 2 Tulsi. No explanation has been given with regard to taking the injured to the hospital after 8 hours. It is stated that the informant PW 1 Chatarsingh accompanied with the injured Pannasingh till Bheem Hospital. As the doctor of Bheem Hospital advised the condition of the injured is serious he should be taken to Beawar Hospital. Thereafter, the injured was taken to the Beawar Hospital. PW 1 Chatarsingh has dis associated the injured at the Bheem Hospital and went to the police station. Kareda. That means he left the injured in the Bheem Hospital on 9.6.87 but he reported the matter in the police station at 9.00 p.m. on 10.6.87. What he has done from 12 a.m. of 9.6.87 to 9.00 p.m. of 10.6.87, while the report was prepared in the village itself no explanation was offered.

13. PW 1 Chatarsingh, in his examination in chief has deposed that he witnessed the scene, while the accused Mohansingh was inflicting kulhari blows to the deceased Pannasingh. As per his statement he was sleeping in Chhatri which was situated at a distance of 30 yards from the place of incident. A perusal of the site

plan (Ex. P/2) reveals that Chhatri has not been shown in the site plan. Pannasingh was sleeping in front of his room, therefore, it is impossible to see the accused while the kulhari blows were given. PW 2 Tulsi stated that Chatarsingh has not seen the incident but he saw the accused while he was running away. Not only that PW 1 Chatarsingh has improved his statement given in the trial court and added that there was quarrel between the deceased and the accused at about 8 or 9 p.m. on 8.8.1987 i.e. just before 8 hours of the incident. That fact has not been disclosed to the police nor found place in the FIR therefore this witness is not trustworthy, especially, he is interested witness being real brother of the deceased.

14. The prosecution has examined PW 3 Dausingh and PW 4 Chainsingh. They support the prosecution case to the extent that in their presence the police has recovered white shirt, yellow safa, bed roll and one Jute bag from the place of incident. They were blood stained PW 5 Jeevansingh is not an eye witness. He is so of the deceased. He only deposed that he has been informed at the mines that his father Pannasingh has been murdered by Mohansingh accused. PW 6 Hamirsingh is the real brother of the deceased. PW 11, Babu Singh is the father of the deceased. They deposed that they have seen Mohansingh running after committing the offence. They are interested witnesses, even they were not found reliable by the trial court. The material on the record also reveals that they have not seen the accused running, therefore, no reliance can be placed on their statements for conviction of the accused. PW 13 Bashir Mohd., SHO is a formal witness. After lodging the report, the SHO undertook investigation, prepared site plan seized blood stained Cudri, safa, shirt etc. and sent them to the FSL for Chemical examination. During investigation, he recorded the statements of the witnesses. The SHO arrested the accused and recovered kulhari at the instance of the accused. As per his statement, the kulhari was blood stained. Neither the kulhari produced before the trial court nor the FSL report in respect of kulhari was produced in the court. PW 14 Prem Singh who is a recovery witness of kulhari has deposed that the kulhari was not seized in his presence and there was no blood on that kulhari. In these circumstances, the accused can not be connected with this crime. It raises considerable doubt in the prosecution case.

15. The prosecution has also brought some material which supports the motive behind the murder. As per prosecution case there was enmity between the accused and the deceased. Even the criminal cases were registered against each others. The FIR lodged by these parties, are placed on the record, PW 1 Chatarsingh has lodged the FIR against Mohansingh on 9.6.87, Pannasingh has lodge the FIR against Mohansingh and Arjunsingh on 24.2.86. Babusingh father of the deceased has also lodged the FIR against Mohansingh, Bheresingh, Premsingh and Kesarsingh on 1.6.84. The statements of PW 1 Chatarsingh, PW 3 Bashir Mohd. and PW 16 Ajmalsingh also support the case of the prosecution on this point that there was enmity between the deceased and the accused party.

16. It is true that motive is an important factor, which is to be considered in criminal case but it is a double edged weapon. The offence can be committed for the reason of enmity but due to enmity, one can also implicate falsely his enemy. Thus, only on the reason that there was enmity between the accused and the deceased it is difficult to come at the conclusion that the offence has been committed by Mohansingh. Motive can be used for corroboration. If some independent witnesses support the case of prosecution then the motive can be used for corroboration. In the case in hand, there is no independent witness. In our opinion mere enmity between the accused and the deceased is not enough for conviction of the accused in this case.

17. The trial court has heavily relied upon the statements of PW 2 Tulsi and PW 8 Tarasingh. PW 2 Tulsi is the real sister of the deceased and PW 8 Tarasingh aged 8 years is nephew of the deceased (sister's son of the deceased). Thus, they are interested witnesses. Merely they are interested witnesses their evidence cannot to thrown over the board but it requires close scrutiny of their version put forth before the police and in court.

18. The prosecution case is that PW 2 Tulsi and PW 8 Tarasingh both were sleeping beside the deceased as has been shown in the site plan Ex. P. 2 at place 'A'. The deceased was sleeping on a cot at place 'C'. Tarasingh was sleeping at place 'D'. PW 2 Tulsi was sleeping at place 'B' in the site plan. PW 2 Tulsi is married and lives in different village at a distance of 6 kms. from the village of the

deceased. She stated that she came about 15 days back from her in laws' house and was living with the deceased. PW 11 Balusingh father of the deceased has stated that PW 2 Tulsi came to the house of the deceased about a month back from the date of the incident. PW 3 Dausingh who is from the same Village Neembia. He also stated that he has not seen Tulsi in the village, If we read these statements coupled with the fact that the incident took place at 4 a.m. and he was taken to Bheem Hospital at 12 O'clock i.e. after 8 hours. 8 hours are enough to inform PW 2 Tulsi at her in laws' house which is at a distance of 6 kms. She could come and then she can accompany with the deceased to Bheem Hospital and then to Beawar Hospital therefore, here mere presence in the Bheem Hospital as well as in the Beawar Hospital is not enough to prove her presence on 9.6.87 at 4 a.m. As such her presence in the house of Pannasingh is doubtful. Not only that she improved her version in the trial court. In the trial court, she deposed that Mohansingh came on that night at 12 along with Rodsingh and asked Pannasingh to come along with them to choraya. Pannasingh refused then in the morning at about 4 a.m., Mohansingh came again and gave kulhari blows. Whether Mohansingh came at 12 in the night was not stated by Tulsi before the Police. Why she has not disclosed this fact This improvement in her version before the trial court further creates doubt in her trustworthiness. Not only that no specific reason has been given why she came to Pannasingh and was living with him and left her children at the in laws house. A close scrutiny of the statement of this witness reveals that she is not trustworthy. Unless her statement is corroborated by independent witness, no reliance can be placed on her statement.

19. The condition of the deceased was serious. He was injured at 4a.m. and was kept in village Neembia for 8 hours. In the natural course, if the condition of the injured was serious the first step would have been that he should have been given medical treatment as early as possible. No explanation has been by the prosecution to keep the injured for 8 hours in village Neembia at the place of incident.

20. The next eye witness which is relied upon by the trial court is Tarasingh, nephew of the deceased. The prosecution case is that Tarasingh came to the village Neembia about 3-4 days before. He was sleeping near the deceased in the

house of Pannasingh. He is a boy of 8 years. No reason is given why he came to his maternal uncle's house from his village. Not only that in his statement he deposed that he came from his village about 2-3 days before the incident and living with his Nana (maternal grand father). While he was living with his Nana how and why he was sleeping on that night with Pannasingh, who lived in a separate house, no explanation and reason have been given by the prosecution. He is also interested witness. He has stated that his Mausi Tulsi has tried to catch Mohansingh but he ran away but Tulsi has not said so before the police. In the trial she improved her version and stated that she has challenged Mohansingh while he was giving kulhari blows but she never said it before. This type of contradiction in the statement of the interested witnesses creates more and more doubt in the prosecution story. Even the presence of Tarasingh is also doubtful. There is no corroboration of the statement of PW 2 Tulsi and PW 8 Tarasingh, by independent witnesses.

21. Considering the facts discussed above, in our opinion, the prosecution has failed to prove its case beyond the shadow of reasonable doubt.

22. In the result, the appeal is allowed. The conviction and sentence awarded to the accused appellant by the trial court are set aside. The appellant is acquitted from the charges levelled against him. The accused appellants in jail. He shall be released forthwith if not required in any other case.