

Hanif Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-20-2005

Reported in : RLW2005(4)Raj2975; 2006(1)WLC75

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149, 302, 307, 323 and 447;
Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 1048 of 2002

Appellant : Hanif

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta,; Rinesh Gupta,; Biri Singh Sinsinwar and

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. The appellants were put to trial before the learned Additional Sessions Judge (Fast Track) Alwar, who vide Judgment dated August 5, 2002, convicted and sentenced them as under:--

Raju:

Under Section 148 IPC:

To suffer rigorous imprisonment one and a half year. Under Section 323/149 IPC:

To suffer rigorous imprisonment six months. Under Section 302 IPC:

To suffer life imprisonment and fine of Rs. 5000/-, in default to

further suffer one year rigorous imprisonment.

(2) Inder, (3) Harchandi, (4) Brijendra and (5) Hanif:

Under Section 148 IPC:

Each to suffer rigorous imprisonment one and a half year. Under Section 323/149 IPC:

Each to suffer rigorous imprisonment six months. Under Section 302/149 IPC:

Each to suffer life imprisonment and fine of Rs. 5000/-, in default

to further suffer one year rigorous imprisonment.

The substantive sentences were ordered to run concurrently.

2. The prosecution case is woven like this:--

Informant Mukesh (Pw. 1) handed over a written report to the SHO Police Station MIA Alwar at village Nangli Mega at 11.00 PM on July 30, 1998 to the effect that at 3.30 PM on the said day while Bhagwan Das (now deceased) and Chandrawati (Pw. 2) were ploughing the field, Harchandi, Inder, Raju and Brijendra (appellants) came over there. Inder and Raju, who were armed with Guns opened fire at Bhagwan Das and Hanif made attempt to crush Chandrawati under the Tractor but she escaped and sustained injury on her foot. On hearing the noise the informant, Phool Singh (PW. 4) and Birma (PW. 9) rushed to the spot. Harchandi and Brijendra then inflicted lathi blows on the person of Phool Singh and fled away.

Bhagwan Das was taken to the Hospital. Case under Sections 147, 148, 323 and 307/447 IPC was initially registered and investigation commenced. After the death of Bhagwan Das Section 302 IPC was added. The autopsy on the dead body was performed, accused were arrested, necessary recovery memos were drawn. 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) Alwar. Charges under Sections 147, 148, 149 and 302 were framed against appellant Raju, whereas charges under Sections 147, 148, 149, 302/149 and 323 IPC were framed against Inder, Harchandi, Brijendra and Hanif. The prosecution in support of its case examined as many as 14 witnesses. In the explanation under Section 313 Cr.P.C., the accused claimed innocence and in defence one witness was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions and scanned the material on record.

4. Death of Bhagwan Das was indisputably homicidal in nature. As per post mortem report (Ex.P-5) Bhagwan Das sustained following ante mortem injuries:--

'Multiple punctured lacerated wound oval to round to irregular Shape 1/2 x 1/2 to 1/2 x 1/4 with innerted edge and collar of abrasion around it. No signing no tattooing, no blackening of skin on Rt. elbow 12 x 12 cm area and Rt. frontal, Rt. parietal, left tempo parietal with Rt. eye black eye scrach reddish at places on head 20 x 8cm area is covered. Rt. side of parietal to Rt. frontal. Total area 65cm in length of area is covered. From scalp to elbow Rt.'

The cause of death was coma as a result of ante mortem skull and brain injuries.

5. The prosecution case reason the testimony of Mukesh (Pw.1), Chandrawati (Pw.2), Uganta (Pw.3), Phool Singh (Pw.4) and Brima (Pw.9) who were examined as eye witnesses of the occurrence. The informant Mukesh (Pw.1), as already noticed, in the written report categorically stated that she, her elder brother Phool singh and Birma reached at the spot on hearing the noise. As per written report she is not the eye witness of the occurrence, but at the trial Mukesh stated that she had seen Harchandi, Raju, Brijendra, Lala, Sibbo and Hanif entering the field

on a tractor, when Bhagwan and Chandrawati obstructed them from ploughing them from ploughing the field Raju and Inder opened fire with the guns, simultaneously that hit Bhagwan Singh on the forehead. As a result of gun shot injuries Bhagwan Singh fell down and other accused persons had given beating to him while he was lying down. Hanif pushed Chandrawati with tractor and caused injuries on her foot. In her cross examination she stated that the police arrived at the village around 11-12 in the night, where she handed over written report to SHO. She also stated that he house had no facility of electricity. She further stated that she and Chandrawati went to Hospital and came back to village around 11.30 in the night and after reaching at the village she wrote the report. She admitted in the cross examination that name of Uganta was not mentioned in the written report. She could see the pellets entering on to forehead. She could not see as to whether the gun was fired twice or once.

6. Chandrawati (Pw.2) deposed that Inder and Raju were having guns and other accused were having lathis. When Bhagwan asked the accused not to plough the land Raju and Inder both fired at Bhagwan that hit on his hand and head, but she could not see as to whose fire hit Bhagwan. She further stated that Hanif pushed her with tractor and caused injury on her right leg. On hearing the noise Mukesh, Phool Singh, Chironja and Birma reached there. Phool Singh was also beaten up by the accused with lathi but she could not see as to who gave lathi blows. Even though she had shown her injuries to Doctor but injuries were. She stated that Bhagwan was referred to Jaipur, and she came back to village, where police arrived and Mukesh handed over report to police. In her cross examination she admitted that Bhagwan was not his real son but he was her nephew. She stated that Hanif was having lathi, but he did not beat anybody. She also deposed that even after having pushed by the tractor she remained standing and could only received minor injuries over her toe and knee. She also stated that the police had not enquired from her about the place where she was standing and she did not tell this fact to police. She admitted that when the police reached in the village she did not meet the police. She also stated that when Mukesh was writing the report she was not with Mukesh.

7. Uganta (Pw.3), Phool Singh (Pw.4) and Birma (Pw.9) became eye witnesses at the trial and deposed against the appellant.

8. The factual situation emerges from the material on record may be summarised thus:--

(i) As per the written report (Ex.P-1) Mukesh (Pw.1), Uganta (Pw.3), Phool Singh (Pw.4) and Birma (Pw.9) were not the eye witnesses and they reached at the spot after the incident had occurred.

(ii) Chandrawati (Pw. 2), the star witness of the prosecution, although stated that she received injuries by a push of Tractor but as per her injury report (Ex.P-33) she sustained two abrasions over her left knee and right foot. Even though she met the Doctor on the date of incident but strangely the injury report was drawn on August 3, 1998 and the doctor who examined her was not produced at the trial. From her testimony it is evident that when the guns were fired she was standing near Bhagwan Singh, but strangely she did not receive any gun shot injury. When the police arrived she was very much in the village, but she did not choose to meet the police. Even when Mukesh wrote the report she was not with Mukesh.

(iii) Firing was an integral part of the prosecution case but the witnesses were not sure as to whether it was accused Inder or Raju whose fire hit the deceased.

(iv) Two 12-bore country made SBBL Guns Marked W/1 and W/2 were recovered at the instance of accused Raju and Inder. Six lead pellets (marked 'D') found in the dead body of Bhagwan Singh and one 12-bore K.F. Special cartridge case, were sent for FSL examination. As per FSL reports Ex.P-27 and Ex.P-28, the 12-bore country made Guns were serviceable fire arms but the definite time of their last fire could not be ascertained. It was also opined that one 12-bore K.P. Special Cartridge Case (C/1) was not fired from 12-bore country made SBBL guns (W/1 and W/2). On physical and chemical examination of six lead pellets (marked D) it was opined that those pellets were normally used in 12-bore ammunition but it could not be ascertained that those pellets were fired from the Guns (W/1 and W/2).

(v) The injuries sustained by Chandrawati and Phool Singh were not explained by the Doctors at the trial.

(vi) Bhagwan Das, I.O. (Pw.13) deposed that written report (Ex.P-1) was handed over to him by Mukesh when he arrived at the village. A look at the written report (Ex.P-1) demonstrates that initially 11.30 PM was mentioned on it, but by making over writing the time was subsequently changed as 11 PM.

(vii) Even the Rojnamcha number was changed by over writing in the FIR (Ex.P-15).

(viii) Mukesh in her deposition stated that there was no light facility in her house, whereas Bhagwan Das I.O. (Pw.13) in his cross examination deposed that in the village Nangla Megha there was light in the room where Mukesh was sitting.

9. From the evidence discussed herein above it is apparent that Bhagwan Das I.O. has not taken any care and caution in recording the statements of Chandrawati immediately. It also appears that in order to establish the presence of Chandrawati (Pw.2) and Phool Singh (Pw.4) at the time of occurrence, their injury reports were some how managed but the said reports could not be proved at the trial by the doctors. If the injuries were actually received by Chandrawati and Phool Singh, why their injury reports were drawn on August 3, 1998 and August 7, 1998. Even as per the injury reports the injuries were superficial. Their Lordships of Supreme Court commented on the conduct of the investigating officer in *Jamuna Chaudhary v. State of Bihar* : 1974 CriLJ890 and indicated that it should not be forgotten that the duty of the investigating officers is not merely to bolster up a prosecution case with such evidence as may enable the court to record convicted but to bring out the real unvarnished truth. In *Kishore Chand v. State of H.P.* : 1990 CriLJ2289 , their Lordships of Supreme Court in para 12 observed thus:--

'Indulging in free fabrication of the record is a deplorable conduct on the part of an investigating officer which undermines the public confidence reposed in the investigating agency. Therefore, greater care and circumspection are needed by the investigating agency in this regard. It is time that the investigating agencies, evolve new and scientific investigating methods, taking aid of rapid scientific

development in the field of investigation. It is also the duty of the State i.e., Central or State Government to organise periodical refresher courses for the investigating officers to keep them abreast of the latest scientific development in the art of investigation and the march of law so that the real offender would be brought to book and the innocent would not be exposed to prosecution.'

10. There are certain broad incongruities starting at the prosecution version against the appellants. They can be narrated below:--

(i) Even from the written report it is evident that Mukesh, Phool Singh and Birma were not present at the time of the incident. Uganta too was not named as witness in the said report.

(ii) The only witness named in the FIR was Chandrawati (Pw.2), but her evidence regarding involvement of appellants is doubtful. Upon examination of her testimony from the point of view of trustworthiness, we find her version untruthful. The reasons are:--

(a) It is highly unlikely that even after pushed by tractor she did receive only superficial injuries.

(b) When the SHO arrived at the village she did not choose to meet him and her statement was recorded on the next day of the incident. It is inexplicable that when Mukesh wrote the report she was not with Mukesh.

(c) The evidence of Chandrawati does not bear a close scrutiny. She although stated that accused Raju and Inder both opened fire but she could not see as to whose fire hit Bhagwan. She also stated that Phool Singh was beaten up by the accused but she could not see as to who gave lathi blows. According to her statement accused Hanif was having lathi but he did not beat anybody. Conduct of Chandrawati in not appearing before the Investigating Officer when he arrived at the village on the date of incident is also quite unnatural. Her testimony that Raju and Inder both caused gun shot injuries to the deceased does not get corroboration from autopsy surgeon (Pw.6), who deposed that the injuries sustained by the deceased could be caused by one fire. Having considered her

evidence we are convinced that this witness is not worthy of belief and stands thoroughly discredited. Her assertions further demonstrate that she has no regard for truth.

(iii) The prosecution could not establish that the pellets recovered from the dead body were fired from the guns W/1 and W/2 allegedly recovered at the instance of accused Raju and Inder.

11. In *Hajari Singh v. State of Jammu and Kashmir*, AIR 1981 SC 451. Their Lordships of Supreme Court indicated that it was highly unlikely that that after the first shot the prosecution witnesses who claim to have been present on the spot and witnessed the occurrence, would have observed the second shot being fired. The inference is reinforced by the admission of the prosecution witnesses that they did not see any of the accused persons ejecting or taking out the fired cartridges from the single barrel gun or reloading it. In the facts and circumstances of the case it is difficult to link the guns recovered at the instance of the appellants Inder and Raju with the actual weapon with which the murder was committed.

12. This possibility cannot be ruled out that when the incident occurred deceased Bhagwan Singh was all alone and Chandrawati, Mukesh, Birma, Phool Singh and Uganta being near relatives of Bhagwan Singh were introduced as witnesses by the Investigating Officer. The prosecution in our opinion fails to establish the charges against the appellants beyond reasonable doubt. Learned trial Judge in the impugned judgment has not taken into consideration the aforequoted infirmities and committed illegality in convicting and sentencing the appellants.

13. For these reasons, we allow the appeals and set aside the impugned judgment of conviction of the appellants. We acquit the appellant Raju of the charges under Sections 302, 148 and 323/149 IPC. The appellants Inder, Harchandi, Brijendra and Hanif stand acquitted of the charges under Sections 302/149, 148 and 323/149 IPC. They are on bail, they need not surrender and their bail bonds stand discharged. The appellant Raju, who is in custody, shall be set at liberty forthwith if not required to be detained in any other case.

14. The impugned judgment of trial Judge stands modified as indicated above.

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