

Devendra @ Sonu and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-06-2005

Reported in : RLW2006(1)Raj407; 2006(1)WLC726

Judge : V.K. Bali and; Shashi Kant Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 376; ;Code of Criminal Procedure (CrPC) - Sections 107 and 151; ;[Evidence Act, 1872](#) - Sections 32; Probation of Offenders Act - Sections 6(2), 15, 16 and 20; ;Juvenile Justice (Care and Protection of Children) Act, 2000

Appeal No. : D.B. Criminal Appeal Nos. 418 and 419 of 2001

Appellant : Devendra @ Sonu and anr.

Respondent : State of Rajasthan

Advocate for Def. : Ashwani Sharma, Public Prosecutor

Advocate for Pet/Ap. : Kamlendra Sihag, Amicus Curiae in Appeal No. 419/2001; Suresh Sahni and;

Judgement :

V.K. Bali, J.

1. Shivraj and Devendra in a trial conducted against them for intentionally causing death of Tejprakash have since been held guilty under Section 302 IPC and sentenced to undergo R.I. for life and a fine of Rs. 1000/-, in default of payment of fine to further undergo one month's R.I., vide order of conviction and sentence recorded on 28.6.2001. Whereas challenging the said order, Devendra @ Sonu has filed Appeal No. 418/2001, Shivraj has filed Appeal No. 419/2001.

2. Occurrence leading to the death of Tejprakash, as per prosecution version, had taken place on 29.2.2000 at 8.10 p.m. FIR with regard to the incident was lodged on the same very day at 10.45 p.m. The first information was lodged by Ramesh (PW-4), brother of the deceased, who got recorded therein that on the eventful day at about 8 p.m. his younger brother had gone outside to take medicine from the doctor. Ten minutes thereafter, 10-12 persons of their colony came to them and Jhabar Choudhary of STD PCO told him that three boys after assaulting his brother Tejprakash by knives in Shriram Nagar had run away. He reached at the place of incident where his brother was lying drenched in blood. Residents of the colony were also, there. Somebody had already informed the police. The police reached there and while on the way to hospital, when he and police inspector asked his brother as to who assaulted him, then his brother revealed name of one boy i.e. Girraj amongst others and after that, he did not state anything further. This incident had been seen by some children residing in the neighbourhood. There were knife injuries on the buttock of his brother and large quantity of blood was oozing out. While on the way to hospital, near Collectorate, his brother became unconscious. Doctors in the hospital declared him dead when he was admitted in the emergency of SMS Hospital. The complainant went back home after placing the corpus in the mortuary. His brother had been murdered due to animosity.

3. During the course of trial, prosecution examined Dr. B.R. Bairwa as PW-16 who stated that on 1.3.2000 at 11.05 a.m. he had conducted post mortem on the dead body of Tejprakash and found following injuries on his dead body:

1. Swelling 4 x 3 cm (Lt.) front to temporal region of scalp lower and lowerly.

2. Swelling 4 x cm back of occipital region of scalp.

3. Abrasion 1 x 1/4 cm lateral on (Lt.) eye.
4. Bruise 4x3 cm below left eye over cheek with swelling bluish reddish in colour.
5. Abrasion 1/2 x 1/4 cm below (Lt.) nipple on front of chest.
6. Abrasion 1 x 1/4 cm (Rt.) coastal margin near and epigestrim.
7. Abrasion 1/2 x 1/2 cm lateral of (Lt.) elbow joint.
8. Abrasion 1 x 1/2 cm Dorsum of Lt. Hand.
9. Abrasion 1/2 x 1/2 cm lateral of (Lt.) buttock upper part.
10. Abrasion 1/4 x 1/4 cm Lt. Forearm laterally middle 1/3.
11. Abrasion 1/4 x 1/4 cm dorsum of Rt. Hand.
12. Abrasion 1/2 x 1/4 cm over tip of nose.
13. Incised wound 2 x 1/2 cm x muscle deep oblique anterior of lowerly Lt. Forearm.
14. Incised wound 3 x 1 cm x muscle deep Lt. Forearm lowerly dorsum laterally.
15. Incised wound 1/2 x 1/4 cm x skin deep (Rt.) coastal margin on the epigestrium.
16. Two incised wounds of size 4 x 2 cm and 2 x 1 cm with gap of 2-1/2 cm lateral of Lt. Elbow both are muscle deep.
17. Incised wound 2.-1/2 x 1 cm x muscle deep oblique over Lt. Forearm upperly Dorsal laterally.
18. Incised wound of size 2-1/2 x 1-1/2 cm x muscle deep oblique over back of buttock upper part.
19. Incised wound 2 x 1 cm x muscle deep oblique over Ltd. Buttock lower part posteriorly with reddish clotted blood present.

20. Incised stab wound of size 3-1/2 x 2 cm x abdomen and chest cavity deep obliquely placed over Lt. Side back of chest lower part over 13 cm level Lt. Side from mid line over 8th to 9th inter coastal space with fresh clotted reddish blood.

21. Incised stab wound of size 3-1/2 x 2 cm x abdominal cavity deep oblique size (3-1/2 x 2 cm) reddish clotted blood placed over back of chest (Rt. Side lower part over mid line and 2-1/2 cm from mid line Rt. Side over 11th and 12th Inter coastal space.

4. In the opinion of doctor, the cause of death was shock and hemorrhage which was caused on account of injuries sustained by him on vital parts of the body. The same were sufficient in the ordinary course of nature to cause death. Doctor proved post mortem report Ex.P/26.

5. Rajasthan Sharma (PW-15) Investigation Officer of the case proved complaint under Section 107/151, Cr.P.C. (Ex.P/25) which proves that the appellant Devendra and family members of the deceased were proceeded in cross security proceedings. Prosecution also relied upon statements made by PW-3 Bunty @ Ajay, a friend of appellant Devendra, Ramesh Chand Kumawat (PW- 4), Maliram (PW-5), Suresh Kumar (PW-9) and Jhabar Mal (PW-10).

6. Bunty @ Ajay (PW-3) proved Ex.P/3 recovery memo of shirt belonging to him (Bunty) which Devendra @ Sonu was wearing when he had gone, he further stated that the shirt which was recovered vide Ex.P/4 from the cooler in the house perhaps belonged to Shivraj. In his cross-examination, he stated that the police had taken him at the police station on first of the month. He again stated that the policy had actually taken him to the police station on 29th of the month. He was detained at the police station for a day but he was released by the police on 2nd of the month. Police personnel had told him that they would come to his house. However, they did not tell as to why they would come to his house. Police and Devendra @ Sonu had come to his house in the morning at 5. It was on that day that the police had taken him and the shirt. They had taken only one shirt. The shirt that was taken by the police was kept by it. He had given the shirt to the police. It was of pink colour and had small flowers embossed on it. The shirt was lying with him in many-folds shape (Gud Mud). He had given the shirt to the police

in the same condition.

7. Ramesh (PW-4) stated that on 29.2.2000 at 6.30 in the evening, he had come to his house from the shop. His younger brothers Tej Prakash and Suresh were in the take medicine. Fifteen-twenty minutes thereafter, Jhabar Mal Choudhary and 3-4 other persons came to their house and told them that three persons had given knife blows to Tej Prakash. Jhabar Mal Choudhary had first disclosed injuries sustained by Tej Prakash, to Suresh (elder brother of witness Ramesh). It was thereafter that Jhabar Mal had come to give information to him. His brother Suresh had gone to Tejprakash prior in point of time and when he received information, he also sent at the spot where police had already arrived. Tejprakash was put in a Jeep by the police and they all boarded the Jeep. When Tej Prakash was being taken to hospital, he enquired as to who had beaten him, upon which he (Tej Prakash) could only speak 'Shivraj'. His brother had disclosed name of only Shivraj to him and then became unconscious. Tejprakash had disclosed name of his three assailants to his brother Suresh also who in turn told it to him when he had gone to his house after taking his injured brother to hospital. The names disclosed were Shivraj Meena, Raju Meena and Sonu Nai. In the cross-examination, he stated that his house was at a distance of 3-4 kms, from the place of occurrence. When he reached at the spot, his brother Suresh had already come back to the house and, therefore, he did not meet him at the spot. When the enquired from Tejprakash as to who were his assailants, he was conscious. He also stated that his statement was recorded by the police at about 12.30 at night.

8. Maliram (PW-5) stated that on 29.2.2000 he was working on the post of A.S.I. and on that day, at about 8 p.m. he was present in the police station. He got a telephonic call from Jhabar Mal that in Shriram Nagar, one person had been stabbed by three persons and those three persons had run away. He along with Rajendra Sharma Incharge, Narendra Sharma, Sub-Inspector, Bhanwar Singh, Driver and 4-5 Constables reached at the spot. They found one person lying in a pool of blood. He was semi-conscious and was lying on the side of the road. A lot of blood had collected there. They immediately put him in the jeep and brought him to the hospital. People who had collected there told them that the injured person was Tejprakash. Ramesh, brother of the injured was also in the jeep with

them. In the running jeep, they asked the injured and after sufficient shaking him, he stated that 'Shivraj' had done it. The injured could state only this much and thereafter; stopped speaking. In Emergency Ward, doctors in the SMS Hospital declared him dead. In the cross- examination, the witness stated that SMS Hospital was about 12-13 kms. from the spot. He had made enquiries from the injured 4-5 times as to who had stabbed him. the moment, they reached Collectorate circle the injured stopped speaking. Before reaching Collectorate Circle, however, the injured had told them only once the name of 'Shivraj'. Brother of injured Ramesh had also enquired from him as to who had given the injuries. They had reached Emergency Ward at about 9 p.m.

9. Suresh Kumar (PW-9) stated that Tej Prakash was his younger brother. On 29.2.2000 he died. He was stabbed by three persons. On that day, at about 7.45 p.m. he was standing outside his house. Tejprakash told him that he was not well and, therefore, he was going to fetch medicine. Fifteen-twenty minutes thereafter, Jhabar Mal came there with 3-4 persons and told him that three boys had stabbed his brother in Shriram Nagar and then ran away. He ran towards the place of occurrence and found that Tejprakash was lying on the ground and was crying. Blood was oozing from his body. Under a low voice he told him that Sonu Nai @ Devendra and Shivraj Meena had given him blows with knife whereas Raj Meena had caught hold of him. He (the witness) told people of the colony to take his brother to hospital but nobody acceded to his request. He ran towards his house from the back side where his father met him, to whom he told that Tejprakash, had been injured. He again reached the place of occurrence on scooter but found that Tejprakash was not there. Police people were standing there who told him that his brother Ramesh had taken Tejprakash to hospital. The witness further stated that telephone wires in front of the house of Devendra @ Sonu had broken. Tejprakash had gone to repair the same. Father of Devendra @ Sonu was drunk. They took Jaiprakash in their house and gave him beatings. In this fight, mother of Devendra received small injury from Tejprakash for which she remained admitted in the hospital. The family members of Devendra got a report lodged against Tejprakash. There was enmity because of this reason. Sonu had threatened Tejprakash on number of occasions. In the cross- examination, he stated that he would not know if there was any enmity between them, Shivraj and Raju Meena. He admitted that

when he made statement he was being prosecuted for offence under Section 376 IPC. He stated that he had told the police that whereas two persons had knived his brother Tejprakash, third one had caught hold of him. He would not know as to how police did not record the same. He would also not remember persons to whom he had requested to take his brother Tejprakash to hospital. He did not disclose names of the assailments to his father but he did so at 12 at night when his brother had come at house. He admitted that he had not got recorded to the police the incident pertaining to fight where mother of Devendra was hit by Tejprakash. He also stated that names of the accused disclosed by Tejprakash were heard by him with case.

10. Jhabar Mal, examined as PW-10, stated that on 29.2.2000 at about 7.30-8.00 p.m. he was at his house; 4-5 persons came to use his telephone to make a call and told him that a person had become unconscious and, therefore, they wanted to ring up at the police station, he telephoned at the Police Station and after ten minutes, the police came at the spot. In his cross-examination, he stated that when the police came, he had gone to the spot. In his cross-examination, he stated that when the police came, he had gone to the spot. The injured was lying unconscious. He was not in a position to speak. He stated that the police had sent 2- 3 persons standing at the spot, to the house of injured and that at that time, Suresh and Ramesh, brothers of the injured, had come at the spot. One out of them had gone to hospital Whereas the other had gone to house.

11. Chander Singh examined as PW-14 and who proved recovery memo Ex.P/17, stated that a year ago, in front of Sindhi Camp, close to the temple of Shanishcharji, police had come. It has recovered one dagger and a shirt on the information given by Shivraj, who was present with the police. He had got the dagger and the shirt recovered from underneath stone slabs outside the room.

12. Rajendra Sharma, Police Incharge examined as PW-15 deposed with regard to the steps that he had taken while investigating the case inclusive of recoveries made from the appellants.

13. Learned Counsel representing Devendra @ Sonu vehemently contends that there is no eye-witness in the case. The prosecution in order to secure conviction

against the appellants relied upon the oral dying declaration made by Tejprakash before his brothers PW-4 Ramesh and PW-9 Suresh, and Mali Ram, ASI (PW- 5). These witnesses and in particular the first informant Ramesh who took his injured brother Tejprakash to hospital, were informed only of one accused namely 'Girraj' whereas the name of appellant is Shivraj. Once the name of assailant as disclosed by Tejprakash was that of 'Girraj' and further when the statement made by PW-4 Ramesh Chand, PW-5 Maliram and PW-9 Suresh are discrepant as the witnesses have given different versions of material particulars of the prosecution case, appellant Shivraj ought to have been given benefit of doubt and acquitted of the charges framed against him. Learned Counsel also contends that the recoveries got effected from the appellant pursuant to his disclosure statement are all a made up affair.

14. Mr. Sahni, learned Counsel who represents Devendra @ Sonu in addition to what has been urged by the learned Counsel representing Shivraj, contends that the most important witness in this case was the first informant Ramesh in whose presence, Tejprakash had disclosed the name of his assailants. Tejprakash had disclosed only one name and that was of Girraj. Even if the first informant had misunderstood the name as Girraj instead of Shivraj, in so far as appellant Devendra, in concerned, he was not named by him at all. Maliram (PW-5) likewise was also told one name of 'Shivraj' and not of Devendra. In so far as statement made by Suresh (PW-9) other brother of the deceased is concerned, the same cannot be believed as there was no question for him to have come back to his house after seeing his brother lying in a pool of blood. If he was actually present or was attracted to the scene of occurrence on information received by him, his first anxiety would have been to take his brother to hospital. The very fact that he came back to his house would show that he had not gone to the scene of occurrence at all.

15. Mr. Sahni also contends that even if appellant Devendra is held guilty for committing the crime he being juvenile could not have been sent to serve the term of jail.

16. We have heard learned Counsel appearing for the parties and with their assistance examined records of the case.

17. In the context of facts and circumstances of the present case, we however, do not find any merit in any of the contention of the learned Counsel, as noted above but for the last contention of Mr. Sahni that appellant Devendra being a juvenile could not be sent to serve the term of jail if any conviction was to be recorded against him.

18. Prosecution endeavoured to bring home offence against the appellants on the basis of statements made by PW-3 Bunt, PW-4 Ramesh Chand, PW-5 Maliram, PW-9 Suresh Kumar and PW-10 Jhabar Mal. Prosecution also relied upon the recoveries of various articles as fully detailed above from the appellants for the said recoveries were made on disclosure statement made by the appellants. We are of the considered view that even if recoveries of articles made from the appellants are not taken into consideration, prosecution would still succeed on the strength of statements made by the witnesses mentioned above. We may, however, hasten to mention here that whereas there appears to be some doubt with regard to the recoveries made from Devendra @ Sonu, there appears to be no doubt in so far as recovery having been made from appellant Shivraj is concerned, recovery of dagger and shirt was made from Shivraj vide recovery memo Ex.P/17. Chander Singh (PW-14) who proved these recoveries is an independent witness.

19. Adverting now to the contention of the learned Counsel, we may mention that Section 32 of the Evidence Act is an exception to relevancy and admissibility of hearsay evidence. The statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found or who had become incapable of giving evidence, are admissible that may relate to the cause of death, Section 32 and Clause (1) thereof reads as under:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.--Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of

delay of expense which, under the circumstances, of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) When it relates to cause of death.--When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons' death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceedings in which the cause of his death comes into question.

(2) to (8)

20. A perusal of Clause (1) of Section 32 of the Act would manifest that statement of relevant fact by a person who is dead, when it may pertain to cause of death, or as to any other circumstance of the transaction which resulted into his death, is relevant. Statement of such a person who later dies is admissible, be it written or verbal. An oral statement by a person who later dies would be thus relevant under Section 32 of the Act. Ramesh (PW-4) and Maliram (PW-5), it is proved to the hilt, were attracted at the scene of occurrence. Whereas Ramesh (PW-4) went to the scene of occurrence on information of his brother being injured. Maliram ASI reached there on receiving telephonic message that a person had been injured and was lying on the ground. Ramesh and Maliram it is further proved, had taken injured Tejprakash to the Hospital. It was natural for both of them, one being the real brother of the injured and the other being custodian of law and order, to enquire from the injured as to who had committed the crime. It is further proved from the records of the case that Tejprakash even though in a precarious condition was in a position to speak somewhat and further that he died when they reached the hospital. With great deal of difficulty, he could name only one person which was correctly heard by Maliram, ASI as 'Shivraj' but misunderstood by PW-4 Ramesh, brother of the injured, as 'Girraj'. It is significant to mention here that Maliram ASI in the context of the facts and circumstances of the case is absolutely an independent witness. He had no animosity against the appellants nor he was

interested in supporting a false case of the complainant party. He had correctly heard and name of Shivraj, which was misunderstood by the first informant as 'Girraj'. Tejprakash was in a precarious condition, he was given as many as 21 blows with knife on almost all parts of his body. A dying person knowing that in all probability he will not survive, normally speaks the truth. Tejprakash could name only one person which alone could be heard by PW-4 Ramesh and PW-5 Maliram. The very fact that PW-4 Ramesh and Pw-4 Maliram, and in particular PW-5 Maliram who is an independent witness, have not named other two, which could have very easily been done if a case was to be planted against the appellants, speaks volumes of the truthfulness of the oral dying declaration made by Tejprakash as also truthfulness in the statements made by those who heard it. In so far as statement made by Suresh PW-4, other brother of the deceased, is concerned, at first blush, it appeared that the same might not be true but once Jhabar Mal (PW-10), who is an independent witness, confirmed that he had informed both the brothers of the injured and both of them had indeed come at the scene of occurrence, the same has to be believed as true. It is significant to mention that even though Jhabar Mal (PW-10) did not state in his examination-in-chief that brothers of Tejprakash had come at the scene of occurrence, although he had informed them of the incident but the defence questioned him on such aspect of the matter and he confirmed the suggestion given to him that 2-3 persons out of the persons standing there, were sent by the police to the house of injured and his brothers Suresh and Ramesh had come at the spot out of whom whereas one had gone to hospital, the other had gone back to his house. This is precisely what has been stated by Suresh whose presence at the scene of occurrence had been questioned by the learned Counsel representing the appellants. In our view, number of injuries i.e. 21 which were sustained by Tejprakash were caused by more than one person as a single person in a short span of time could not have caused so many injuries at a place where number of persons were present. It is thus clear that the injured Tejprakash could name only one assailant even though there were more than one, for he simple reason that after taking only one name he became unconscious and that is what has also been stated by PW-4 Ramesh and PW-5 Maliram.

21. In so far as contention of Mr. Sahni that Devendra @ Sonu was a juvenile is concerned, learned trial court while giving findings with regard to his age has held as follows:

This Court got examined the age of Devendra @ Sonu through medical board and the medical board in its report has opined the age of accused Devendra @ Sonu between 15 to 17 years. The date of the another son of Mohan Lal as per the birth register of female hospital is 14.12.1983 and this date is in tune with the opinion of medical board for medical board has opined the age of accused Devendra @ Sonu 15 to 17 years and the date recorded in the birth register i.e. 14.12.1983 also indicates the age of Devendra @ Sonu about 16 and half years. Whereas the mark sheet of 8th class submitted by the accused which shows his date of birth 14.12.1986 does not match with the opinion of medical board for the age as per mark sheet works out to 13-1/2 years whereas medical board has opined the age between 15 to 17 years. Beside this, in the memo of arrest the date has been shown as 17 years. I, therefore, in view of the birth register, the birth certificate of Municipal Corporation and the opinion of medical board find that the age of accused Devendra @ Sonu as on 29.9.2000 on the date of incident was above 16 years.

22. On the basis of Sections 6(2), 15, 16 & 20 of the Probation of Offenders Act, learned Counsel appearing for the parties and we may mention here the complainant in the present case represented by Mr. Naqvi, are ad idem that Devendra @ Sonu could not have been sent to jail even though at the time when order of conviction and sentence was recorded the position might have been different. In Devendra @ Sonu to jail were made effect from 1.4.2001 i.e. after the judgment was pronounced, it is also conceded position that the amendment made in the Act and particularly with regard to not sending a juvenile to jail term shall apply to cases pending in appeal. Appellant Devendra @ Sonu has already served term of more than five years. Interest or justice demands that he should be released from jail.

23. In view of the discussion made above, whereas Appeal No. 419/2001 preferred by Shivraj is dismissed being devoid of any merit, Appeal No. 418/2001

preferred by Devendra @ Sonu is however, accepted to the extent that whereas order of conviction recorded against him shall be maintained, sentence served out by him would be held to be sufficient and he, as mentioned above, would be released forthwith if not required in any other case.

D.B. Criminal Appeal No. 418/2001

D.B. Criminal Appeal No. 419/2001

07.12.2005

Hon'ble Mr. Justice V.K. Bali

Hon'ble Mr. Justice Shashi Kant Sharma

It has been brought to our notice by the Court Master that while deciding D.B. Criminal Appeals No. 418/2001 and No. 419/2001 on 6.12.2005, we had made a mention of Sections 6(2), 15, 16 and 20 of the Probation of Offenders act at page 20 of the judgment whereas Sections 6(2), 15, 16 and 20 are of Juvenile Justice (Care and Protection of Children) Act, 2000.

The word 'Probation of Offenders Act' appearing at page 20 of the judgment would be substituted with the words 'Juvenile Justice (Care and Protection of Children) Act, 2000'.

A copy of this order be appended with the order dated 6.12.2005.

While issuing certified copy of the order dated 6.12.2005, copy of this order be also supplied therewith. If the certified copy of the order dated 6.12.2005 has already been obtained, applicant thereof be sent a copy of this order as well.

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