

Ram Narain Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-24-1989

Reported in : 1989(2)WLN288

Judge : Kanta Bhatnagar and; R.S. Verma, JJ.

Appeal No. : D.B. Cr. Appeal No. 143 of 1983

Appellant : Ram Narain

Respondent : State of Rajasthan

Judgement :

R.S. Verma, J.

1. Appellants Ram Narain, Bhadar Ram, Sheopat Ram and Hukma Ram have been convicted and sentenced by learned Addl. Sessions Judge, Raisinghnagar, as noted below vide his judgment dated 6-4-83.

(1) Ram Narain (i) Under Section 302, IPC imprisonment for life and Rs. 100/-fine and in default one month's rigorous imprisonment;(ii) Under Section 447, IPC, rigorous imprisonment for threemonths;(iii) Under Section 323 read with Section 34, IPC, rigorousimprisonment for three months;(iv) Under Section 27, Arms Act, Two year's rigorousimprisonment.2. (i) Bhadar Ram (i) Under Section 302 read with 34, IPC Imprisonment for (ii) Sheopat Ram life and fine of Rs 100/and in

default one months(iii) Hukma Ram rigorous imprisonment;(ii) Under Section 447, IPC, Rigorous imprisonment for three months;(iii) Under Section 323, IPC, Rigorous imprisonment for three months;

All the substantive sentences have been ordered to run concurrently. Aggrieved they have come in appeal.

2. Briefly stated, the prosecution case is that PW 1 Darshan Singh and his brother Acchar Singh (deceased) were brothers and had a field bearing Square No. 10 on the outskirts of village 24 N.P. Adjoining this field on the North was a footway and further north lay the field of accused appellant Ram Narain. Six month's prior to the occurrence a verbal quarrel took place between Acchar Singh and Ram Narain at Mandi Raisinghnagar. Because of this, Ram Narain entertained a grudge against Acchar Singh. On 8-4-82 Acchar Singh and PW 1 Darshan Singh went to their aforesaid field to cut their gram crop. After cutting the crop. Acchar Singh was sitting in killa No. 10 of the field, while PW 1 Darshan Singh was making heaps of crop. At that time i.e. about 7 p.m. PW 2 Kehar Singh and his father Bachan Singh PW 3 were cutting the crop of 'Taramira' in the field of Ram Narain. All of a sudden appellant Ram Narain accompanied with appellant Hukma Ram came from towards village Jhandi, to which these parsons belonged. Ram Narain was carrying a rifle and Hukma Ram was carrying a lathi. Both of them came near Kehar Singh and Bachan Singh and Ram Narain paid the latter Rs. 50/- as wages. Thereafter, both these appellants went to the field of Acchar Singh and Darshan Singh. At the same time, appellants Sheopat and Bhadar came to the field of Acchar Singh and Darshan Singh from towards a bridge to the north. All the four simultaneously surrounded Acchar Singh and started belabouring him. At this Darshan Singh proceeded in the direction of his brother Acchar Singh upon which Ram Narain totted the gun towards him and threatened to shoot him. Thus deterred, Darshan Singh stopped. Kehar Singh and Bachan Singh also came near Acchar Singh and begged the appellants not to beat Acchar Singh, But the appellants did not pay any heed to them. The appellants then caught hold of Acchar Singh, Hukma Ram held him by his hair and Bhadar and Sheopat held him by his hands and they took him to some distance. At that time. Sheopat exhorted Ram Narain to shoot Acchar Singh, upon which Ram Narain fired his rifle at

Acchar Singh, hitting him in the abdomen. Seeing this, Darshan Singh ran away towards his village 22 N P. Bachan Singh and Kehar Singh also ran away after him. Darshan Singh on reaching the village narrated the story to PW4 Jagtar Singh, PW 6 Harnam Singh and PW 7 Bhagat Singh. All these three witnesses accompanied with Darshan Singh, Bachan Singh Kehar Singh and some other villagers went to the scene of occurrence but they did not find Acchar Singh or the appellants there. Instead, they found some marks of dragging which also disappeared after some distance. Hence all of them went to the house of Ram Narain. They found Ram Narain and some other persons present there. On being questioned, first of all Ram Narain claimed ignorance but later on admitted that he and his companions had taken revenge and had left Acchar Singh in 'Kanak' field. Upon this, all these witnesses went in search of Acchar Singh, whom they found crying with agony in a 'Kanak' field. On being questioned by these witnesses, he stated that he had been shot at by Ram Narain and had been beaten by other appellants with lathis. The witnesses, then carried Acchar Singh to the village where he succumbed to his injuries and breathed his last. After this, PW 1 Darshan Singh accompanied with Jagtar Singh and Bachan Singh went to police station Raisinghnagar at a distance of eight miles and lodged a verbal report with SHO, Swaroop Singh at about 5.30 a.m. on 9-4-1982. Swaroop Singh got this report recorded (Ex. P 1).

3. Swaroop Singh recorded the statements of the first informant and the accompanying witnesses and proceeded to the spot. He left constable Ranjeet Singh to keep a watch over the site and went to the house of Acchar Singh in village 22 NP, where the dead body was lying. He got the dead body photographed from various angles, prepared memos Ex. P 2 and Ex. P 13 and got an autopsy conducted.

4. The autopsy was conducted by Dr. Surendra Mohan Sharma, who found the following injuries on the person of the deceased:

(1) Lacerated wound with inverted margins with color abrasion. 1/4 cm. x 1/4 cm. on right abdomen, 7 cm. above the umbilicus just lateral to midline. This was wound of entrance ;

(2) Lacerated wound- Wound of exit, with everted margins 1 cm. x 1 cm. just 5 cm. away from the 11th lumbar vertebrae back blood was coming out:

Both the injuries were by gun-shot wound.

(3) Bruise 5 cm. x 1.5 cm. on right thigh upper 1/2 laterally ;

(4) Bruise 11 cm. x 3 cm. over the right thigh antero-laterally middle 1/2;

(5) Bruise 5 cm. x 1 cm. over the lateral surface of right thigh ;

(6) Bruise 8 cm x 1.5 cm. posteriorly on right thigh upper 1/2 ;

(7) Bruise 7 cm. x 1 cm. anteriorly on left thigh middle 1/2 ;

(8) Bruise 2 cm. x 1/2 cm. on upper 1/2 anteriorly on left thigh ;

(9) Bruise 7 cm. x 1.5 cm. on left thigh upper 1/3 laterally ; (10) Bruise 6 cm. x 1/2 cm. on left leg anteriorly middle 1/2.

According to him injuries 1 and 2 had been caused by gun shot injury No. 1 being wound of entrance and injury No. 2 being wound of exit. Rest of the injuries were simple and had been caused by blunt objects. All the injuries were ante-mortem in nature. Injury numbers 1 and 2 were sufficient in the ordinary course of nature to cause death since under neath these injuries peritonium and small and large intestines were perforated at many places and there had been profuse bleeding resulting in the death of the deceased According to him, deceased must have consumed alcohol within four hours) of his death because the contents of his stomach having semi digested food smelt of alcohol. According to Dr. Sharma, the deceased must have died within one hour of infliction of injury No. 1 and 2 though he could have died immediately also after infliction of these injuries. Dr. Sharma prepared report Ex. P 18 in this regard.

5. After autopsy was over, Swaroop Singh recovered the blood stained wearing apparel of the deceased vide Ex. P 14 He also recovered a mattress on which the dead body of Acchar Singh had been laid vide Ex. P 15. Thereafter, he again went to spot and made certain recoveries including one blade of Kassia, one bundle of

bidis, one quarter of liquor and one handle of kassia and prepared Ex. P 4 to Ex. P 9 with regard to such spot recoveries. He prepared the site plan Ex. P 3 and its legend Ex. P 19. He made further investigation and during the course of this investigation Ram Narain and Bhadar Ram were arrested by Birbaldan vide Ex. P 20 and Ex. P 21 respectively. Sheopat Ram and Hukma Ram were arrested vide Ex. P 22 and Ex. P 23 respectively.

6. Ram Narain while under police custody got a rifle and licence recovered on the basis of his information Ex. P 24 recorded by Swaroop Singh vide Ex. P 16. Rest of the appellants got one lathi each recovered. They were not, however, sent to Forensic Laboratory for examination, though other articles were so sent. A report Ex. 31 was received in this regard.

7. Upon such investigation, all the appellants were challaned before Munsif and Judl. Magistrate, RaiSinghnagar, for offences under Sections 302 342, 447/34, IPC and for offence under Section 27, Arms Act. Learned Munsif and Judl. Magistrate committed the appellants to the court of Sessions for taking trial for offences under Section 320/447/34, IPC and for offence under Section 27, Arms Act vide his order dated 5-6-1982.

8. Learned trial Judge framed appropriate charges against the appellants, who pleaded not guilty and claimed trial. The prosecution examined as many as 15 witnesses in support of its story. The accused appellants maintained their denial of the prosecution story. They, however, did not lead any defence. After hearing both the sides, learned Additional Sessions Judge convicted and sentenced the appellants as noticed already. Aggrieved, they have come to this Court.

9. Learned Counsel for the does not challenge the finding of the trial court that Acchar Singh died a homicidal death due to gun shot injuries, already noticed above. He also does not dispute the fact that deceased might have been assaulted by some assailants by blunt objects. He however, strenuously contended that the testimony of alleged eye witnesses Darshan Singh, Bachan and Kehar Singh is highly partisan in character it is discrepant, unnatural and unreliable. The recovery of weapons is not connected with the crime in any way. The evidence pertaining to alleged extra judicial confession made by the

appellants is again highly unnatural and artificial. So also the evidence pertaining to alleged dying declaration of deceased is discrepant, unnatural and unworthy of credence. The FIR appears to be post investigative and most probably was not recorded at the time, it is alleged to have been recorded. Hence, the prosecution story is not proved and deserves to be rejected and the appellants ought to be acquitted of all the charges. As against this learned P.P. supports the judgment of learned trial Judge and contends that the appellants were rightly convicted and sentenced and the judgment under appeal calls for no interference.

10. We have given our earnest consideration to the contentions raised before us and have carefully perused. We have no hesitation in holding that Acchar Singh died on 8-4-1982 due to a gunshot wound and also sustained simple injuries by blunt object or objects. The medical evidence on this point is unassailable and we hold, accordingly.

11. Now, we have to examine the contention that the evidence of alleged eye witnesses Darshan Singh, Bachan Singh and Kehar Singh is unnatural, discrepant and unreliable and should not have been acted upon by the learned trial Judge. The first thing that has been pointed out in this connection is that though Darshan Singh and deceased Acchar Singh were related to PW 2 Kehar Singh PW 3 Bachan Singh, yet Darshan Singh has deliberately tried to conceal this relationship and thus Darshan Singh is partly untruthful witness. We find that there is a good deal of substance in this contention. Darshan Singh has categorically stated that PW 2 Kehar Singh and Bachan Singh were not related to him. His statement is belied by a positive admission of Kehar Singh that Darshan Singh was his maternal uncle he being grandson of Mazhar Singh and Mazhar Singh being brother of Harnam Singh, father of Darshan Singh. This attempt to conceal true relationship between Darshan Singh and the deceased on one hand and PW 2 Kehar Singh & PW 3 Bachan Singh on part of Darshan Singh is a crude attempt to project Kehar Singh & Bachan Singh as independent witnesses, when they were actually not so. Here, we may readily point out that relationship by itself is not a good ground to reject testimony of a witness. However, when an attempt is made to conceal true relationship, by a witness his testimony becomes suspect and needs a closer scrutiny. However, no more of this at this stage.

12. One thing which impresses us is that all these three alleged eye witnesses : viz. Darshan Singh, Kehar Singh have tried to bolster up their alleged eye witness testimony by deposing that the deceased had made an oral dying declaration implicating the accused persons. The learned trial Judge has found this story of alleged dying declaration doubtful for cogent reasons mentioned by him and on this aspect of the matter learned Public Prosecutor has not assailed the finding to the learned trial Judge and rightly So. Darshan Singh has deposed that when he and his companions met Acchar Singh in the 'Kanak' field, they enquired of Accharsingh as to who had assaulted him upon which he informed them that Ramnarain had shot him and others had beaten him. Kehar Singh is positive that when these witnesses enquired of Acchar Singh, he did not gave any reply because he could not do so. Bachan Singh also states likewise but later on adds that when Acchar Singh had been taken home, Acchar Singh informed these witnesses that Ramnarain had shot at him by a rifle and Sheopat, Hukma Ram and Bhadar bad beaten him. This witness is positive that Acchar Singh did not make any such disclouse either at the place where he was lying or on the way but stated on only after he had been laid on the cot. It is significant that this story was not given out by this witness when the Investigating Officer recorded his statement Ex. D 2. The witness has, thus, made improvement in his story and the improvement is unreliable. We, therefore, in agreement with the learned trial Court find that both Darshan Singh and Bachan Singh have falsely stated that the deceased made a dying declaration in their presence, implicating the appellants. This attempt on their part further renders their testimony infirm.

13. It has appeared in the prosecution evidence that Darshan Singh, Kehar Singh, Bachan Singh and others has gone to the house of Ramnarain in search of Acchar Singh. These prosecution witnesses have come out with a story that upon enquires from Ramnarain, he made an extra-judicial confession of the crime. The learned trial Judge has found that it is doubtful if Ramnarain had confessed that he had shot Acchar Singh. Yet, he found that Ramanarain made a confession that Acchar Singh had been left in a Kanak field after he was given a beating. He has recorded this finding even though he found the testimony of these witnesses and also testimony of Harnam Singh and Bhagat Singh discrepant on the point. The learned Judge has observed:

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14. Here, we may state that evidence of extra-judicial confession is by its very nature a weak evidence. It has not been shown that any of these witnesses had any closeness with Ramnarain. It is difficult to believe that Ramnarain would have made any confession before these witnesses. We have taken into account the discrepancies in the statements of the witnesses noticed by the learned trial Judge on this aspect of the matter and find that the story of alleged extra-judicial confession is not reliable.

15. One argument of the defence before the learned trial court was that if Darshan Singh, Bachan Singh and Kehar Singh would have really seen the Acchar Singh, as claimed by them, they would not have asked Acchar Singh as to who had assaulted him. Learned trial Judge has negatived this contention by saying that Darshan Singh did not claim that he had made enquiries of Acchar Singh and it must have been the persons accompanying Darshan Singh, who had made such enquiries of Acchar Singh. We find that this was a weighty argument raised by the defence and the learned Judge negatived it on a sheer misreading of evidence. Darshan Singh has admitted expressly'

eSus vPNjfalag ls iwNk fd rqEgs fdlus ekjk gS rks mlus dgk fd jke ukjk;.k us eq>s xksyh ekjh gS rFkk Hknj] ';ksir o gqdeijke us eq>s ykfB;ks ls ekjk A

This statement of Darshan Singh clearly shows that it was Darshan Singh himself who had made enquires from Acchar Singh about the assault.

16. No explanation is forth coming from the prosecution side as to what prompted Darshan Singh to make such enquiries from Acchar Singh, when he had himself along with Bachan Singh and Kehar Singh, seen the assault. There appears to be good deal of substance in the contention of the learned Counsel for the appellants that Darshan Singh, Kehar Singh and Bachan Singh might not have really have been the assault and it is because of this that enquiries might have been made from Acchar Singh regarding the assault. Suffice it to say that the attempt on the part of the prosecution witnesses does create doubt the veracity of the claims of

Darshan Singh, Bachan Singh and Kehar Singh that they had, in fact witnessed the assault.

17. Now, we may examine the testimony of alleged eye witnesses Darshan Singh, Bachan Singh and Kehar Singh regarding the actual assault to see if it inspires confidence. We have already noticed the injuries found on the person of the deceased. If beating was given to deceased by blunt weapons by all the accused persons, then it must not have taken more than few minutes because there were three assailants armed with blunt objects and only eight injuries has been caused. But Darshan Singh has admitted in his cross-examination that the appellants kept Acchar Singh beating for half an hour to three fourth of an hour. Kehar Singh has claimed similarly and has stated that the appellants kept beating Acchar Singh for half an hour Bachan Singh of course states that beating by lathis was given for 5-7 minutes only. The claim of Darshan Singh and Kehar Singh that assault continued on Acchar Singh for half an hour or so militates against the theory that they might have actually witnessed the assault Now, it is significant that Darshan Singh, Kehar Singh and Bachan Singh have come out with the unanimous story that Hukma Ram caught hold to Acchar Singh by him hair; Sheopat and Bhadar caught hold of Acchar Singh by his hands and then Ramnarain shot at him. Significantly enough this story does not find any mention in FIR which was recorded at the instance of no less than Darshan Singh and Bachan Singh themselves, It is significant that according to Darshan Singh, Ramnarain placed the mouth of the barrel of the gun on the person of Acchar Singh and then fired the same. According to Kehar Singh, the barrel of the gun was at a distance of 2-3 feet from the person of Acchar Singh, when it was fired by Ramnarain. Similar is the statement of Bachan Singh. These discrepancies though minor, do affect the veracity of these witnesses,

18. Now, the infirmity from which the testimony of Darshan Singh suffers, to which we have already alluded to in paras 15 and 16 is also present in the testimony of Bachan Singh and has admitted in his cross examination that when the deceased had been taken to latter's house, he enquired of the deceased as to who had assaulted him, upon which the deceased narrated the whole story. Now, we are left guessing as to why Bachan Singh, who on his own claim had witnessed the

entire incident, asked. Acchar Singh as to who had assaulted him. This aspect of his evidence renders his claim doubtful that he had at all witnessed the occurrence, as claimed.

19. There is one more aspect, which though minor in itself, assumes importance in this case. Bachan Singh and Kehar Singh had no field in the vicinity of the field of deceased, where the occurrence is said to have taken place. They claim that they had been hired by Ramnarain to cut his crop of Taramira. We have to see if this theory is at all natural and reliable. Bachan Singh and Kehar Singh are father and son respectively. We have already pointed out that Darshan Singh made a crude attempt to project both these witnesses as independent witnesses, even though they were not. Bachan Singh has admitted that he has 1-1/2 murabbas of land which he cultivates. It is rather surprising that a big cultivator like Bachan Singh would go to work on party daily wage of Rs. 50/- per day to field of Ram Narain. Bachan Singh has stated that he had worked as a labour with Ramnarain for many years and so also Kehar Singh had worked as a labour with Ramnarain for quite a few years. According to him, that year he had been engaged by Ramnarain 4-5 days prior to the incident. As against this, Kehar Singh states that he had worked as a labour with Ramnarain only on the day of the incident and never earlier he had been so engaged by Ram Narain. This discredits the testimony of these witnesses that they had been at all engaged by Ramnarain to cut his crop. When it is so, their presence at the scene of occurrence, becomes highly doubtful and we can not place any reliance on their testimony.

20. According to the prosecution case, the incident took place at about 7 p.m. while Darshan Singh and others found Acchar Singh lying injured in a Kanak field near about after 11.30 p.m. or so. It was after this that alleged declarations are said to have been made by Acchar Singh. The story of alleged dying declarations is falsified by the medical evidence because Dr. Surendra Mohan Sharma is categorical that death must have occurred within one to two hours of infliction of injuries No. 1 and 2 on the person of Acchar Singh. The prosecution has not challenged this version of Dr. Surendra Mohan. This supports our finding recorded earlier that the alleged eye witnesses have falsely tried to introduce the story of dying declarations by Acchar Singh and that their evidence is infirm.

21. Now, we may consider that the FIR was not recorded at the 'dole', it is claimed to have been recorded and is post-investigative in nature. The FIR purports to have been recorded on 9-4-1982 at 5.30 am. It was produced before the learned Magistrate the same day at 9.20 pm. even though the Police Station was only at a distance of 100-150 feet from the court of the Magistrate. No satisfactory explanation of this undue delay is available on the record. Dharshan Singh has admitted in cross-examination that the police remained at his village for investigation till 4 p.m. and then he returned to Police Station with the police. He has admitted that then he remained at Police Station for about 1 or 1-1/2 hours and during this period police kept on interrogating him and he was made to affix thumb impressions on some papers. Swaroop Singh has categorically denied that Darshan Singh came back to police station that day. This denial is at complete variance with the statement of Darshan Singh and it appears that Swaroop Singh is interested in denying this second visit of Darshan Singh to the police station. This creates a suspicion that the FIR might not have been written at 5 a.m. and might have been written when Darshan Singh revisited the Police Station.

22. There is a good deal of discrepancy in the prosecution evidence about the time when the statements of material witnesses were recorded. According to PW 2 Kehar Singh, he along with Bachan Singh, Jagtar Singh, Darshan Singh and Harnam Singh went to Police Station on the day next to the day the murder was committed, it was at about 11 am. when the statements of all these witnesses were recorded and it was after this that the police went to the village at about 5.30 p.m. According to Bachan Singh, when he went to Police Station for lodging the FIR, his statement was not recorded at the Police Station but was so recorded at Cue village at about 2.30 p.m. As already stated Darshan Singh was further interrogated at about 5 pm at the police station, Jagtar Singh also gives the story then that he along with other witnesses and the police had revisited the police station. Now, this state of affairs is affairs and does not redound to the credit of the Investigation Agency. We find good deal of substance in the contention that the FIR might not have been recorded at the time, it is claimed to have been written.

23. We may here point out that the learned trial court has not attached any importance to the alleged recoveries made from the accused-appellants. He has

given cogent reasons for this. The prosecution has not been able to assail the correctness of the view of the learned trial Judge on this aspect of the matter. We agree with the learned trial Judge that none of the recoveries made at the instance of the accused-appellants is any use to the prosecution since no human blood was found on the lathis recovered in this case, nor connection of rifle has been established with the crime.

24. In view of what we have stated above, we find that prosecution has not succeed in establishing its case beyond reasonable doubt. It is hazardous to upon either the alleged eye witness account given by Darshan Singh, Bachan Singh and Kehar Singh or upon the story of alleged extra judicial confession of Ramnarain or even upon the evidence pertaining to alleged dying declaration of the deceased, We do not give any credence to the aforesaid pieces of evidence. We regret that a human life has been lost and perpetrators of crime cannot be punished There is a lurking doubt that the murder might have been committed unseen by some other persons and after the dead body of Acchar Singh had been found, a story was developed to tops in the present appellants.

25. The result is that this appeal must succeed. We accept the same and set aside the convictions, sentences and judgment rendered by the learned trial Judge and acquit appellants Ramnarain, Bhadar Ram and Sheopat Ram of all the charges enumerated in para 1 of this judgment. Hukma Ram is said to have died and to this extent this extent the appeal abates. The gun and licence of Ramnarain should be returned to him. Ramnarain is stated to be in jail. He shall be set free forthwith, if not required in any other case. Other appellants are stated to be on bail and need not surrender. Their personal and surety bonds shall stand cancelled.