

Jeewla Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-10-1989

Reported in : 1989(2)WLN516

Judge : Kishore Singh Lodha and; R.S. Verma, JJ.

Appeal No. : D.B. Cr. Appeal No. 211 of 1983

Appellant : Jeewla

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Kishore Singh Lodha, J.

1. Deceased Punja had two wives--Harki and Rakma. From Harki he had five sons including accused Jeewla, PW 8 Dhiria, PW 10 Bhemji, PW 11 Walia is son-in-law of deceased Punja. Accused Jeewla appears to be separate from his father and was cultivating his land separately where as Punja and some other sons were joint. It is alleged by the prosecution that on the mid night between November 16 and 17, 1982, Punja who was sleeping at his well raised hue and cry which attracted his sons Dhiriya and Bhemji as also his son-in-law Waliya and his second wife Smt. Rakmi, who were said to be at their house at a distance of about

200 yards. These persons rushed to the well. Dhiria, Bhemji and Waliya were a little ahead where as Rakma was a little behind. The first three witnesses-Dhiria, Bhemji and Walia saw the accused belabouring his father Punja with an axe and when these persons reached near Punja, accused Jeewla took to his heels throwing his axe on the spot. Then, PW 5 Thawra, who had also heard the cries, reached the spot and he was informed by Dhiria, Bhemji and Walia about this incident. He, then, went call Vesta (PW 2), and Vesta came to the place of occurrence. These persons also informed him of this incident. Later some more persons also gathered there and then, it was decided that a report of this incident may be made to the police. On this PW 8 Dhiria along with PW 2. Vesta went to the Police Station, Peepalkhunt and lodged an oral report there at about 11.00 A.M. The Police Station is about 10 Kms. away from the place of this incident viz Bansdikeda. PW 14 Mustak Ahmed recorded the FIR vide Ex. P 12 and then he proceeded to the spot, where he inspected the dead-body of Punja and prepared a Panchnama (Ex. P 1). He also inspected the site and prepared a site plan and site inspection note Ex.P 13 and Ex.P 14 respectively. He also took in his possession the axe. which was lying on the spot as also the 'Goodari', Chadar and cot vide Ex P 15 He also collected the blood stained as also control soil from the spot vide this memo. Then, he arrested accused Jeewla on 18-11-82 vide Ex.P 16. Before this date, the dead body had already been sent for post-mortem examination. Dr. P.L. Bhardwaj (PW 4) performed the post-mortem examination and found the following injuries on the person of the deceased:

- (1) Incised wound 1' x 0.2' x 0.2' on occipital region.
- (2) Incised wound 1/2' x 0.2' x 0.1' on right parietal region.
- (3) Abrasion 1/2' x 1/2' on face left side.
- (4) Abrasion 2' x 2' on right parietal region.
- (5) Incised wound 1' x 0.2' x 0.2' on below right eye.
- (6) Extensive contusion over and on right eye 1.2' x 2.' The eye was depressed in the socket and also frontal bone;

(7) Incised wound on upper lip mid line through and through 1' x 1/2'. There was fracture of maxilla in mid line;

(8) Contusion 2' x 2' on left modibular region. There was extensive haemotoma in soft tissue internal;

(9) Scalp haematoma occipital region frontal region over and around right eye, eye ball, damaged crushed and pushed inside, with fracture frontal bone maxillary bone and lacrimal crest and ethmoid in multiple pieces and projective in brain after tearing of dura subdural and extral dural haemorrhage and tear of brain frontal lobe by projecting bone pieces.

According to him, all these injuries were anti mortem. The incised wounds were caused by a sharp edged weapon whereas the other injuries were by blunt weapon It appears that according to him, the multiple fractures leading to intracranial haemorrhage and injury to brain tissue was cause of death, but unfortunately, the sentence in this respect has been left incomplete while recording the statement of Dr. Bhardwaj. He has, of course, stated that these injuries were sufficient in the ordinary course of nature to cause death. He was also of the opinion that these injuries could be caused by an axe: the incised wounds from the sharp side and the other injuries from the blunt side of the axe.

2. After completion of the investigations, challan was put up against the accused Jeewla and he was committed to the court of Sessions, Banswara Charge under Section 302, IPC was framed against him. He pleaded not guilty. The prosecution, thereupon, examined 14 witnesses and produced 16 documents. In his statement under Section 313, Cr.PC the accused maintained his denial of the prosecution story, but did not produce any evidence in defence. After hearing the learned Public Prosecutor and the learned Counsel for the accused, the learned Sessions Judge committed Jeewla under Section 302, IPC and sentenced him to imprisonment for life vide his judgment dated 21-5-83. Being aggrieved of this, Jeewla has come up in appeal.

3. We have heard learned Counsel for the appellant and the learned Public Prosecutor and have gone through the record.

4. It may be stated at the very outset that the learned Sessions Judge has relied upon the direct testimony of PW 8 Dhiria, PW 10 Bhemji and PW 11 Walia, as also the corroborative evidence of PW 5 Thawra, PW 2 Vesta and PW 9 Rakma. So far as the recovery of the axe etc. is concerned, it is immaterial because in the first place, the axe was found lying at the spot itself and in the second place, the chemical and the serologist reports in respect of this axe are not available. Therefore, the case depends upon the evidence of these eye-witnesses and the corroborative evidence of other three witnesses. Learned Counsel for the appellant was attacked this evidence on various counts and had urged that this evidence was not at all believable and the learned Sessions Judge should not have relied upon it. Learned Public Prosecutor, on the other hand, urged that the evidence is wholly reliable and has rightly been acted upon by the learned Sessions Judge. The offence has clearly been brought home to the accused and, therefore, the conviction of the accused is proper.

5. We shall now deal with the contentions raised by the learned' counsel for the appellant in order to show that the evidence is not reliable and the offence has not been brought home to the accused.

6. The first and foremost contention of the learned Counsel for the appellant is that the FIR in this case is belated and had been lodged after consultations, which goes to show that as a matter of fact, the real culprit was cot known and the alleged eye-witnesses had not seen the incident, but later on with the connivance of the witnesses and other people who had collected there, a false case has been made out against the accused. He has further urged that the very fact that this FIR reached the court as late as on 18-11-82 at 12 00 A.M. further goes to suggest that this FIR was not recorded even at 11.00 A.M. on 17-11-82, as alleged by the prosecution, but must have been later fabricated. We have bestowed our careful consideration on this question and have examined evidence in this respect. The incident had taken place at about mid night between 16th and 17th November, 1982 and PW 8 Dhiria, PW 10 Bhemji and PW 11 Walia are alleged to have first reached the spot and seen the accused inflicting blows on Jeewla and then taking to his heels. Thereafter, Thawra also reached the spot and the story was narrated to him and then he went to call Vesta. Again, the story was repeated before Vesta.

It also appears from the evidence of Thawra that later other people also collected and the story was again repeated to them and it was morning by that time when it was decided that the matter may be reported to the police and, therefore, Dhiria & Vesta left for the police station, which is at a distance of about 10 kms. They reached there and lodged the FIR which was taken down by Mustak Ahmed at about 11.00 A.M. Thus, it clearly appears that no unusual time was taken by Dhiria etc. in reporting the matter to the police. It is common knowledge that when incident like this happens, the near and dear of the deceased are called and first the injured or the deceased has to be looked after and then the report is lodged before the police; it cannot be expected that immediately as soon as the incident is over,' the eye-witnesses should first run to the police station. PW 11 Walia, of course, states that after the other people had collected at the spot and it was decided in the meeting that Jeewla was the assailant and a report to this effect may be made to the police. So also is the statement of PW 10 Bhemji and PW 2 Vesta, and on the basis of evidence, the learned Counsel for the appellant urged that the story was thus cooked up in the meeting and then, the report was lodged, but we are unable to accept this contention. The evidence of these witnesses is straight-forward to the effect that the first eyewitnesses reached the spot and had seen Jeewla delivering blows on the person of Punja and then when Thawra came, they narrated this story to him and it was Thawra, who had gone to Vesta and narrated the incident to him and again the incident was repeated before Vesta by the eye-witnesses and it was on the basis of this that it was decided by the people to lodge the report before the police. It is important to note that the deceased was father and the assailant was son and, therefore, people may have taken sometime to decide whether in thesis circumstances, the report should be made to the police or not at all and that is why the meeting was held. Nothing has been suggested in the cross-examination of any of these witnesses to show that there was any other assailant or that as a matter of fact, the eye-witnesses had not seen the incident. Learned Counsel for the appellant cited *State of Punjab v. Tarlok Singh* : 1971 CriLJ1063 and *Balaka Singh v. State of Punjab* : 1975 CriLJ1734 . In *State of Punjab's* case (supra), Hon'ble the Supreme Court observed that the High Court had noticed the suspicion created by the circumstance that the copy of the First Information Report purported to have been

lodged at 3.45 P.M. did not reach the Magistrate at Dasuya till 8.00 A.M. the next day, even though it was sent through a special messenger. The distance between scene of occurrence and Dasuya was only 15 or 16 miles. The inference sought to be drawn was that in fact the report was not lodged at 3.45 P.M. but at a much later hour. It further noticed that apart from this ground alone, there were other circumstances on account of which the High Court found prosecution story unbelievable and in the totality of the circumstances acquitted the accused and in an appeal against the acquittal, the Hon'ble Supreme Court did not deem it proper to interfere. The case is, thus, clearly distinguishable from the present the in as much as, here the delay has been explained as already stated above. In the second place, the consideration of a fact as one of the many grounds for disbelieving the prosecution story is quite different from coming to the conclusion that the prosecution story is liable to be thrown out only on that count and it has never been held that mere delay in the FIR reaching the court is a ground to throw out the prosecution story altogether. In Balka Singh's case (supra) it appears that the prosecution case was found to be wholly doubtful on account of the fact that in the inquest memo, the names of four accused had been inserted and thereafter the FIR appeared to have been lodged and while arriving at this finding that the FIR had not been lodged at the time alleged by the prosecution, i.e. at 10.00 P.M., it had been later recorded after the preparation of the inquest memo in which four more accused were introduced, the Hon'ble Supreme Court took into account the fact that the FIR did not reach the Ilaka-Magistrate till about 11.00 A.M. on the next day, i.e. more than 12 Hrs. after the FIR was lodged at the Police Station. Thus, in this case also, the mere delay in the report reaching the court was not the ground to discard the prosecution story. Apart from this delay, there were other grounds which made the prosecution story wholly doubtful and the lodging of the FIR at the time alleged itself is not free from doubt. Therefore, this authority also does not apply to the facts of this case. In these circumstances, the FIR in the present case cannot be said to have been lodged with undue delay or that it was after due consultation.

7. Our attention was also drawn to some discrepancies about time as to when Dhiria and Vesta had gone to lodge the report at the Police Station PW 8 Dhiria states that he had left for the Police Station at about 6.00 am. and it took him

about an hour in reaching the police station and he left it at about 8. a.m after lodging the report, where as PW 2 Vesta states that it was about 10-11 a.m when they left for the police station and reached the police station at about 12 00 noon. According to him, it took about 2 hrs. to reach the police station. This clearly goes to show that these witnesses are not quite sure about the time they left for the police station and the time they took in reaching the same, but when PW 14 Mustak Ahmed states that they reached the police station at about 11 00 a.m we have no reason to doubt this statement and his statement gets support from the statement of Vesta also.

8. The witnesses are illiterate coming from a tribal area and, therefore they cannot be expected to have a proper estimate of time.

9. The contention that the FIR reached the court late is also not of much substance in the circumstances of this case. The FIR was lodged at 11.00a.m. on 17-11-1982. Thereafter, ASI, Shri Mustak Ahmed left for the spot for investigation. There was no other senior officer at the police station and it appears that the constable took the report from the police station to the court on the next day i.e. 18-11-1982 and lodged the same there. In the circumstances of the case, it cannot be said that it was a belated report to the court. Further the delay in sending the report to the court by itself is no ground to throw out the prosecution story unless are other circumstances to point cut that the story may have teen concocted or the FIR may have been fabricated later. In the present case, no such circumstances are available and the only doubt which the learned Counsel for the appellant casts on the prosecution in this respect has already been dispelled above.

10. Learned Counsel for the appellant also submitted that the name of the accused does to' find place in the Panchnama Ex P/I, prepared at the spot on the inspection of the dead-body and therefore, it appears that the assailant was not named or known till that time, but we are not in a position; to accept this contention either because it is not always necessary that the name of the assailant should find place in the Panchnama. The FIR had already been lodged by that time and the number of the FIR is quoted in Panchnama Ex.P/1. In this Ex.P/1, the Investigating Officer has noted only those facts which he had observed himself on

the examination of the dead body and, therefore, if he did not narrate the name of the accused or even the name of the eye-witnesses in the Panchnama, no adverse inference can be drawn. Learned Counsel for the appellant has placed reliance on Banwari and Ors. v. State of Rajasthan 1978 R Cr. Cases 401 in which the non-disclosure of the name of the eye-witnesses in the inquest report was taken to be suggestive of the fact that till the time this document was prepared, it was not known to the police or to any other person present on the spot that so and so had actually seen the incident and on this connection, reliance was placed upon Gurdevsingh and Ors. v. The State (1963) 65 Pun. LR 409 The case before the Punjab High Court was one in which the FIR was much belated and entry about it under Section 154, Cr. PC had not been made disclosing the names of the assailants and, therefore, the FIR was not found to have disclosed the name of the accused. It was further found that the names of the eyewitnesses were not disclosed even in the inquest report and, therefore, it may be that till then, it was not known to any one of them that the alleged eyewitness was there. In the Rajasthan High Court's case the facts were still different. In that case, the investigations had started in pursuance of the First Information Report Ex. P/1. While the Investigating Officer was proceeding with the investigations in that matter, he also came to know that one Ratansingh was murdered by the very culprits who had assaulted Mansingh and Shiv Prasad (regarding) whom FIR Ex.P/1 had been made and that his dead-body was lying near the well of Tara Chand. On receipt of that information he went at the site, where the dead body of Ratansingh was lying and prepared an inquest report Ex. P/4. No first information regarding the murder of Ratansingh was lodged with the police and later Jeevansingh appeared as eye-witness and in these circumstances, non-disclosure of the names of the eye-witness Jeevansingh was eye-witness of the occurrence in the inquest memo was taken to be suggestive of the fact that till the time that inquest report was prepared, it was not known to the police or any other person present on the spot that eye-witnesses had actually seen the occurrence. The present case is not of that type Here, the FIR was lodged in time and the prosecution story had been disclosed. In these circumstances no adverse inference can be drawn against the prosecution.

12. The next ground of attack by the learned Counsel for the appellant on the prosecution evidence is that although according to the FIR, which was lodged on 17-11-1982, the accused had been named and it is also shown from the evidence that he was present in the village, he was not arrested on that day, but was arrested on 18-11-1982 at about 9 30 a m. and this had not been named by the time, as alleged by the prosecution. The answer to this is furnished by the evidence on PW 14 Mustak Ahmed. He says that he had sent 4-5 persons at the house of the accused on 17-11-1982 itself to keep a watch on him and to see that he does not abscond. Then, after carrying out the other investigations, when he came back to the Police Station, he brought the accused with him on that very night, but effected his formal arrest only on 18-11-1982. The fact that some persons had been seen at the house of the accused, is corroborated by the evidence of PW 12 Khumji and PW 13 Dhiria. According to Khurji be Nariya, Onkariya, Dhiria and Kaliya had gone to the house of the accused on 17-11-1982 at the instance of the ASI. Therefore, the late arrest of the accused is no ground to discard the testimony of the prosecution, witness. In this connection Id. counsel states that Dhiria does not say that he or any other person had gone to the house of the accused to keep watch on him, but had gone there because the accused had not come to the spot) and they had gone to acquire from him as to how Punja had died. This contention is a little far-fetched. If the accused had not been named as assailant, then, there was no ground for the Investigating Officer to send these persons to him in order to find out as to how his father died and, therefore, the only inference is that they had been sent to the accused because he had been named and the purpose could be two-fold of making enquiry from him ;, and also to keep a watch on him so that he does not run away.

13. Then the learned Counsel for the appellant urged that the medical evidence suggests that there must have been more than one assailant looking to the injuries on the person of the deceased Punja, but the eye-witnesses state that accused Jeewla was the only assailant and, therefore, according to him, the direct evidence is in conflict with the medical evidence. The contention does not hold any water in as much as although at one stage the doctor has stated that the assailant must have been more than one, but later he had clarified that even one person could have inflicted the injuries found on the person of the deceased. He had further

clarified that the incised wounds could have been caused with the sharp side of the axe and the other injuries with the blunt side thereof, as has already been stated above while describing the injuries.

14. It was, then, contended by the learned Counsel for the appellant that the prosecution witnesses have motive to falsely implicate the accused in as much as PW 8 Dhiria and PW 10 Bhemji, brothers of accused Jeewla wanted to garb share of the land of Jeewla. Jeewla was not given any share of land belonging to Punja and he was cultivating his own and therefore, in order to eliminate the possibility of his claiming the share from Punja's land, they have involved Jeewla in this case. We are unable to accept this contention. The contention is farfetched. If these witnesses had a motive to falsely implicate) the accused, the accused could also have a motive to kill his father who had not given him his share of the land and even refused to land a 'Hamada' of wood to him.

15. It was contended by the learned Counsel for the appellant that PW 9 Rakma does not corroborate the evidence of the eye-witnesses PW 8 Dhiria, PW 10 Bhemji and PW 11 Walia and she does not state that when she reached the spot, she had seen accused Jeewla running of that these eyewitnesses had (old her then that they had seen the accused delivering blows on the persons of the deceased and then running away. It is true that Smt. Rakma had not gone to chat extent to support the evidence of these witnesses and the reason is not far to seek. The accused is her son, though step-son, as the prosecution witnesses Dhiria and Bhemji are. She had already lost her husband Punja and was, therefore, not inclined to see that her son also goes behind the bars. This also be possible that the eye-witnesses may have been under the impression that since she had also come running there, she herself may have seen the accused either inflicting blows or running away. Therefore, they may not have stated to her that it was accused Jeewla, who was culprit.

16. The next contention raised by the learned Counsel for the appellant was that it was a dark night and it is admitted by the prosecution witnesses that it was only in the light of the fire burning near the place where Punja was lying that they could recognise the accused end that if the fire had not been there, they would not have

been in a position to recognise the accused. However it has been stated by PW 5 Thawra that Dhiria and Bhemi had told him that they had lit the fire. This, according to the learned Counsel, goes to suggest that as a matter of fact, the fire was not burning at the time the incident took place and those witnesses reached the spot, but it was lit later on by Dhiria and Bhemi. In our opinion, learned Counsel for (be appellant is stretching the statement of PW 5 Thawra, a little too far. A reading of the statement of Thawra nowhere indicates that the fire was not really burning at the time of the accident and the witnesses reached there and was, lit only afterwards by Dhiria and Bhemi. What Dhiria and Bhemi and stated may mean that they may have added some fuel to the fire, which was later dying out. The suggestion put to the witness was only half-hearted suggestion. It was not put that as a matter of fact, the fire was not burning when they reached the spot.

17. The last contention raised by the learned Counsel for the appellant was that having seen the accused inflicting the blows on the deceased and (then taking to his heels, the eye-witnesses did not try to pursue him or apprehend him and this, according to the learned Counsel, is wholly unnatural and makes their evidence unreliable. He further added that Jeewla is alleged to have gone to his house, which was 200 yards away from the spot and still the witnesses did not try to capture him. The contention cannot be said to be devoid of force altogether, but here an explanation has been given by the witnesses in this respect, which cannot be said to be altogether improper or unreliable PW 10 Bhemi states that as they had seen their father dead, they were unnerved and, therefore, it did not occur to him to pursue the accused. It may be stated that the persons who immediately reached the spot were two sons and a son-in-law and later the wife of the deceased and the person who had attacked the deceased was younger son of the deceased and, therefore, the conduct of the witnesses in not running after or capturing the accused, cannot be said to be unnatural.

18. Thus, in our opinion, none of the grounds raised by the learned Counsel for the appellant, makes the prosecution story unbelievable or doubtful. Some small doubts here and there may be created by defence, but it is not every doubt which may lead to the conclusion that the prosecution evidence may not be true. It is only a reasonable doubt, of which the accused can take advantage. Here, the

prosecution has clearly brought home to the accused by reliable and convincing evidence. The conviction of the appellant, thus, appears to be well-founded and we do not see any reason to interfere with the same.

19. The result, therefore, is that the appeal is, here by, dismissed.

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