

Mahendra Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-20-2000

Reported in : 2000WLC(Raj)UC314; 2000(2)WLN83

Judge : N.N. Mathur and; S.C. Mital, JJ.

Appeal No. : D.B. Criminal Appeal No. 657 of 1980

Appellant : Mahendra Singh

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 11.9.1980 passed by the learned Additional Sessions Judge, Sirohi, in Sessions Case No. 64/1979 convicting the appellant of the offence under Section 302 IPC and sentencing him to imprisonment for life and to pay a fine of Rs. one hundred and in default of payment of fine to further undergo one month's rigorous imprisonment.

2. The prosecution case is that on 21.1.1975, on receiving information that four trucks bearing Nos. RSM 2340, RSM 2342, DHG 562 and PHJ 1169, loaded with rice, are proceeding towards Gujarat, the S.H.O., P.S., Sumerpur, directed the

Head Constable Kesu Khan, Sepoy Murad Khan and deceased Moti Singh to check the vehicles at Sumerpur Choraya. Accordingly, the said police officials arranged blockade at 3 P.M. They put a drum in the middle of the road in order to stop the vehicles so that they may check them. On 21.1.1975 at about 12 in the night, one truck bearing No. RSM 2342 arrived, which was stopped by Kesu Khan. The truck was occupied by two persons. On enquiry, the driver disclosed his name as Mahendra Singh and another person sitting beside him disclosed his name as Ramkishan. Kesu Khan took in his possession the ignition key. After sometime, truck No. RSM 2340 arrived. A signal was given to stop the said truck. The truck driver did not stop the truck and while passing through, asked Ramkishan that they are only 2-3 policemen and, as such, they should be crushed and killed. The driver of the said truck also hit the drum, which was lying in the middle of the road. Thereafter truck No. DHG 562 arrived. In the said truck also, two persons were sitting but driver of the said truck also asked to crush and kill the policemen. The said truck also did not stop and passed through. Both the trucks bearing No. RSM 2340 and No. DHG 562 were loaded. After passing of the said truck, Ramkishan, person sitting beside the driver of the truck No. RSM 2342 exhorted driver Mahendra Singh saying that they are only 2-3 policemen and so he should crush and kill them. Accused Mahendra Singh managed to start the truck No. RSM 2342. At that time, Constable Moti Singh was standing on the left side of the road. It is alleged that accused Mahendra Singh moved the truck No. RSM 2342 and crushed Constable Moti Singh and proceeded towards Sheoganj. Moti Singh became seriously injured. At that time, nearby hotel owners Preetam Singh and his son Kulwant Singh arrived. The Head Constable Kesu Khan asked Kulwant Singh to stay near Moti Singh and he proceeded to Police Station, Sumerpur. He lodged the F.I.R. of the incident at Police Station, Sumerpur. The police party reached on the spot and injured Moti Singh was immediately taken to the hospital for treatment. In the hospital, Moti Singh was declared dead. On the basis of the information of Kesu Khan, the F.I.R. was registered and police proceeded with the investigation. The inquest was prepared. The information was also given to nearby police stations. A blockade was arranged at Sheoganj by the police. P.W. 6 Shiv Ratan, S.H.O., P.S., Sheoganj, caught the truck No. RSM 2342 and arrested accused Mahendra Singh and Ramkishan. A case for the

offence under Section 3/7 of the Essential Commodities Act was registered at the Police Station. Sheoganj. After usual investigation, police laid a chargesheet against the accused Mahendra Singh, Ramkishan and Ummaid Singh. All the accused persons denied the charge and claimed trial. During trial, the accused appellant Mahendra Singh absconded and, as such, the sessions case continued against the accused Ramkishan and Ummaid Singh. Accused Ummaid Singh was acquitted of the charge for the offence under Section 302/109 IPC. However, accused Ramkishan was convicted of the offence under Section 302/109 IPC and sentenced to imprisonment for life by the judgment of the learned Addl. Sessions Judge, Sirohi, dated 26.11.1977. Accused Ramkishan preferred an appeal before this court, being D.B. Criminal Appeal No. 508/1977. which has been disposed of by the order of this court dated 13.12.1999. On being arrested, a separate Sessions Case being Sessions Case No. 64/97 was registered against the appellant Mahendra Singh.

3. During trial, the prosecution examined seven witnesses. In his statement under Section 313 Cr. PC, the appellant admitted, that he was in the truck No. RSM 2342 but he denied all the other evidence against him. He stated that on 21.1.1975, he boarded the truck on the octroi outpost at Ajmer as a passenger for going to Ahmedabad. In the morning, when he got up, he found the truck parked on the road. Some policemen arrived there. They made an enquiry about the driver of the truck. He stated that the truck belonged to Ramkishan. He also stated that he was taken to the Police Station. Sheoganj. The truck was parked outside the Police Station. On enquiry, he disclosed his name as Mahendra Singh. He found Ramkishan in the lock up. He was given beating by the Deputy S.P. On 23.1.1975 he was produced before the learned Judicial Magistrate, Bali and remand was obtained. While returning from Bali, he was taken to the Police Station, Sumerpur. At the Police Station, the S.P. called Kulwant Singh, Murad Khan and Kesu Khan and asked them that they should see the accused as they may be required to identify them. Thereafter, he was taken to the Police Station, Sheoganj. He also stated that he had made a complaint to the Magistrate during the identification parade that he was shown to Murad Khan, Kesu Khan and Kulwant Singh at the Police Station, Sumerpur. He also stated that when he was taken to Sirohi for identification, the witnesses were also with him in the same

vehicle. The learned trial Court relying on the testimony of P.W. 5 Murad Khan convicted the appellant of the offence under Section 302 IPC and sentenced him as stated above.

4. Assailing the judgment, it is contended by Shri S.R. Singhi, learned Counsel appearing for the accused appellant, that the entire case rests on the evidence of P.W. 5 Murad Khan as the other eye witness Kesu Khan has not been produced as he died during the pendency of the trial and another eye witness P.W. 2 Kulwant Singh has not supported the prosecution case and, as such, he has not been held reliable by the Trial Court. Learned counsel for the appellant has severely criticised the identification proceedings. It is submitted that the prosecution has not led any evidence to prove that the appellant was kept Baparda. In absence of such evidence, the test identification parade was of no consequence. It is also submitted that the accused appellant was arrested on 21. 1. 1975 itself but he was put to identification as late as on 7. 2. 1975. No explanation has been given for the delay in arranging the identification parade. This makes the identification parade suspicious. It is also submitted that it has been admitted by P.W. 3 Ramesh Chandra, Munsif Magistrate, Sirohi, that Kesu Khan had wrongly identified one Balwant Singh as against Mahendra Singh. Learned Public Prosecutor has supported the judgment of the trial court.

5. We have scanned the prosecution evidence carefully, P.W. 1 Dr. Anand Kumar Purohit stated that on 22. 1. 1975, he conducted the post mortem of the body of deceased Moti Singh. He found the following injuries on his person:

1. Abrasion 1/2' x 1/4' on the left cheek, 1-1/4' below the left eye;
2. Abrasion 1/4' x 1/4' on the middle of chin, 1' below lower lip;
3. Fracture and dislocation of lower 1/3 of left humerus 4' above left elbow joint;
4. Abrasion 1/2' x 1/4' on left upper arm posteriorly 5' above left elbow;
5. Abrasion 2' x 1' left forearm; posteriorly 1/2' below the olecranon process;

6. Four small abrasions 1/8' x 1/8' size each 1' apart on the lower end of left forearm posteriorly just above wrist joint, due to pressure on the wrist watch;
7. Abrasion 1/2' x 1/8' on left side of chest anteriorly 1-1/2' below left 5th rib;
8. Abrasion 1/4' x 1/4' on left 6th rib at anterior axillary line;
9. Abrasion 1/4' x 1/4' on 7th rib at mid axillary line;
10. Abrasion 1/2' x 1/4' on 10th rib at posterior axillary line;
11. Fracture of 4th to 10th ribs on left side in 2 to 3 pieces;
12. Surgical anphysema on left side of chest in the lower lateral and posterior portions;
13. Abrasion 2-1/2' x 1/2' oblique at left groin, 1/2' below left anterior superior iliac spine;
14. Abrasion 2' x 1-1/2' on the medial side of right knee joint;
15. Abrasion 3/4' x 1/2' just medial to right patela of the right knee joint;
16. Abrasion 1/2'x 1/2' on right knee. 1-1/2' elbow injury No. 15.

6. He proved the post mortem report Ex. P. 1. In his opinion, the cause of death was snycope occurring due to internal haemorrhage caused by rupture of left lung, spleen, stomach and left ventrical due to fracture of left 4th to 10th ribs by the truck passing over the left side of the body.

7. P.W. 2 Kulwant Singh and P.W. 5 Murad Khan have stated that Moti Singh, constable, was standing on the road and a truck crushed and killed him. Thus, the prosecution has proved that the deceased Moti Singh died of homicidal death. P.W. 2 Kulwant Singh stated that at 11.45, he arrived at the hotel. He saw the police party consisting of Kesu Khan, Murad Khan and Moti Singh stopping and thereafter checking the trucks. There was tubelight outside the hotel. He had seen the accused Mahendra Singh driving the truck No. 2342. The truck driven by Mahendra Singh was being stopped by Kesu Khan. Murad Khan went to the

Police Station. Accused Mahendra Singh moved the truck. Deceased Moti Singh wanted to stop. The truck driver hit the truck against Moti Singh on account of which he fell down and became unconscious. He also stated that his father Preetam Singh used to be in the night on the hotel. After his marriage, he used to be at the hotel in the day hours only. This witness was declared hostile by the prosecution. On careful consideration of the evidence of Kulwant Singh, we find that he was been rightly not relied upon by the trial court.

8. P.W. 4 Maganlal has also not supported the prosecution case and has been declared hostile.

9. P.W. 5 Murad Khan has stated that he was posted as Constable at the Police Outpost, Jawai Dam. Kesu Khan was posted at the Police Outpost, Palri as Head Constable. On receiving the information from the Superintendent of Police, Pali, to the effect that four trucks carrying prohibited article rice, are proceeding towards Gujarat, the S.H.O., Police Station, Sumerpur, accordingly, arranged a blockade. The police party consisted of Kesu Khan, deceased Moti Singh and himself was directed to stop the trucks and check them. They were armed with rifles. On the choraya, there is a hotel of Preetam Singh. He has given all the details with regard to the movement of the trucks as given in the F.I.R. In view of this, it is not considered appropriate to repeat the same. suffice it to say that he has stated that the appellant Mahendra Singh was the driver on the truck No. RSM 2342, which crushed and killed Moti Singh. He went to the Police Station for filing the F.I.R. He has also stated that he had identified the appellant Mahendra Singh in identification parade arranged at Sub Jail, Sirohi.

10. P.W. 6 Shiv Ratan, S.H.O. Police Station, Sheoganj has given all the details with respect to apprehending the accused appellant and other accused persons on receiving the information from the S.H.O., P.S. Sumerpur. He has also stated that he had registered a case against the accused appellants for the offence under the Essential Commodities Act and 307 IPC.

11. P.W. 7 Kan Singh, S.H.O.. P.S., Sumerpur, has given all the details with respect to arranging the blockade on receiving the information from the S.P., Pali. He has also stated about receiving the information from Murad Khan about the

killing of Moti Singh by the appellant Mahendra Singh. He has given all other details of the investigation.

12. P.W. 3 Ramesh Chandra Dadhich has stated that on 7. 2.1975, he was posted as Munsif Magistrate, Sirohi. He conducted the identification parade of Mahendra Singh on the said date in Sub Jail, Sirohi. He has proved the proceedings of the identification Ex. P. 2. He has also stated that Kesu Khan could not identify Mahendra Singh and in his place, he identified one Balwant Singh. However, he was identified by P.W. 2 Kulwant Singh and P.W. 5 Murad Khan. He also stated that the accused Mahendra Singh was admitted to Sub Jail, Sirohi, on the same day i.e. on 7. 2. 1975. He also admitted that during the time of identification parade, Mahendra Singh told him that he was shown to the witnesses earlier. He also admitted that P.W. 5 Murad Khan and P.W. 2 Kulwant Singh had not given the description of appellant Mahendra Singh.

13. The entire case rests on the testimony of P.W. 5 Murad Khan. The crucial question which arises for consideration is whether reliance can be placed on the identification parade or not? We are not much impressed with the contention of the learned Counsel for the appellant that the prosecution has not led any evidence to prove that the appellant was kept Baparda till he was put to the identification. We are unable to accept the contention in view of the Full Bench decision of this court in State of Rajasthan v. Ranjita reported in , wherein the Court held that it is not necessary that entry should be made in Police record or Jail record or in the warrant of commitment that accused be kept Baparda, till identification parade is arranged. This decision has been approved by the Apex Court in Ramnathan v. State of Tamil Nadu reported in : 1978 CriLJ1137 .

14. However, we find substance in the second limb of the argument that the prosecution has not explained the delay of fifteen days in arranging the identification parade. Appellant Mahendra Singh was arrested on 22.1.1975. He was produced before the Munsif Magistrate, Bali on 23.1.1975. It is admitted by P.W. 6, 'Shiv Ratan, S.H.O., P.S., Sheoganj as well as P.W. 7 Kan Singh, S.H.O., P.S., Sumerpur that while on return, appellant Mahendra Singh was brought at the Police Station, Sumerpur. This fact has also been admitted by P.W. 5 Murad

Khan. He has, however, stated that he was standing outside the Police Station. He has subsequently stated that on the said day, he had gone to Beawar. He has not given any reason why he had gone to Beawar. If he had gone to Beawar, how could he know that appellant Mahendra Singh was brought at the Police Station on 23.1.1975. P.W. 5 Murad Khan is a police constable. The evidence shows that on 23.1.1975, he was at Police Station, when the accused was brought there. It is contended by the learned Public Prosecutor that the accused was arrested on 22.1.1975 by the S.H.O., P.S., Sheoganj in connection with a case registered under the Essential Commodities Act and for the offence under Section 307 IPC. He was sent to Sub Jail, Sirohi only on 7.2.1975 and on the same day, the identification parade was arranged. A formal arrest memo was prepared in FIR No. 1/75 at Police Station, Sumerpur on 8.2.1975 vide Ex. P. 18. There is either negligence on the part of the Investigation Officer and other officers supervising the investigation in F.I.R. Case No. 1/75 or the police was deliberately avoiding the identification parade for the reasons best known to them. The entire case hinges on the identification by single witness P.W. 5 Murad Khan. In the facts of the case, the delay of 15 days in arranging the identification parade casts a serious doubt on the prosecution case.

15. In absence of identification, the evidence of Murad Khan is of no assistance to the prosecution. In our view, the learned Judge has committed error in convicting the appellant solely on the testimony of P.W. 5 Murad Khan overlooking the glaring infirmity in the identification parade. The appellant Mahendra Singh is entitled to benefit of doubt.

16. Consequently, we allow this appeal and set aside the judgment dated 11.9.1980 passed by the learned Additional Sessions Judge, Sirohi and acquit the accused appellant Mahendra Singh of the offence under Section 302 IPC. The appellant is on bail. His bail bonds stand discharged.