

State of Rajasthan Vs. Attu Alias Attar Chand and ors.

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Court : Rajasthan

Decided On : Nov-20-1985

Reported in : 1985WLN(UC)494

Judge : Milap Chand Jain and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal Appeal No. 312 of 1975

Appellant : State of Rajasthan

Respondent : Attu Alias Attar Chand and ors.

Disposition : Appeal dismissed

Judgement :

Milap Chand Jain, J.

1. This is an appeal by the State against the judgment of acquittal dated November 30, 1974 recorded by the learned Sessions Judge, Alwar whereby the respondents were acquitted of the offence under Section 302/34, IPC.

2. The occurrence in this case is said to have taken place on 6-6-1974 at about 6-30 p.m. when the deceased Sidduram was returning from the fair of Lal Das which was held in the village Bagoli. It is alleged that the deceased Siddhu Ram along with his real brother-in-law (gainer and loser) Shri Simla Ram (PW 1) and two brothers of the deceased; namely PW 2 Bagghi Lal and PW 3 Khamisa Ram were

returning from the fair. When they were at a distance of 3 furlongs from the place of fair, it is alleged that Siddhu Ram was attacked by the four accused persons. Siddhu Ram was some steps behind the aforesaid three persons. According to the prosecution all the four accused persons inflicted blows on the deceased. The accused Attu was armed with farsi and the rest of the accused persons were armed with lathis. On seeing the accused persons, beating the deceased, the three witnesses tried to approach to save him but as they were threatened, they could not intervene. Thereafter, the accused persons ran away from the scene of occurrence. One Shyam Lal went for fetching water and water was arranged by Rehman PW 4. Some water was given to the deceased. The deceased was then removed to the hospital at Ramgarh, where he expired at about 10.30 p.m. A report of the incident was lodged by Simla Ram (PW 1), on which a case under Section 302, IPC was registered. The necessary investigation was conducted. The accused persons were arrested on 16-6-1974, and recoveries of the weapons were also effected on the information and at the instance of the accused. According to the prosecution, there was enmity between the deceased and the accused persons and some litigations were going on. After completion of the investigation, charge-sheet was presented against the accused persons in the court of Additional Munsif and Judicial Magistrate, No. 1, Alwar, who committed the case to the court of Sessions Judge, Alwar for trial. The learned Sessions Judge charged the accused for the offence under Section 302/34 I PC and recorded their pleas of not guilty. The accused persons however, claimed trial. At the trial, in all 9 witnesses were examined. After hearing the arguments, the learned Sessions Judge acquitted the accused persons of the offence under Section 302 IPC. The learned Sessions Judge did not believe the testimony of the three eye witnesses and had given the grounds for discrediting their testimony.

3. The most material question in the present appeal is as to whether the testimony of three eye-witnesses has been rightly disbelieved by the learned Sessions Judge. The learned Sessions Judge while considering the testimony of three eye-witnesses, no doubt, are relatives of the deceased but that is no reason for disbelieving their testimony. The principal ground for finding the testimony unreliable is that one of the witness Bagghilal has admitted in cross-examination that the information about the fight was given by Shyam Lal when they were in the

fair, i.e., Bagghi Lal and Khamisa Ram were also present at the time when Shyam Lal so informed. This statement of Bagghi Lal makes it amply clear that the occurrence did not take place in their presence, and they got the information of the occurrence from Shyamlal. It is really very strange that Shyam Lal has not been examined in the case. The Investigating Officer has clearly deposed that Shyam Lal was not even interrogated. In the light of the statement of Bagghi Lal, the testimony of the three alleged eye-witnesses has to be examined. To our mind the conclusion would be irresistible that all these three interested and relative-witnesses were not present at the scene of occurrence. The matter was also examined in the light of the statement of Rehman. Admittedly, it was Shyam Lal who went to fetch water and it was he who asked for arranging the water. Rehman has stated that he asked Shyam Lal what had happened. Then Shyam Lal first, did not give out any name of the accused. But on being questioned, by the court, Rehman answered that he had not seen the accused on his way to the scene of occurrence. On his questioning Simla Ram and others he was informed that the four accused had committed the crime. He was further cross-examined by the defence counsel and he was confronted with the police statement, then the witness answered that he did not state any name to the police, as to whether he was informed by any one about the accused persons who committed the crime. In his police statement, Rehman stated that only the name of Attu accused was disclosed to him. From the statement of Rehman, it would be clear that the name of the accused Attu was disclosed in the police statement but the witness Rehman is silent about the three accused persons in the police statement. As to what information was conveyed by Shyamlal to Rehman, cannot be said definitely as Shyamlal has not been examined in this case.

4. Besides viewing the case in the light of the statement of Bagghilal and Rehman, it has also weighed with the learned Sessions Judge, that if these three near relatives of the deceased would have been present at the scene of occurrence, they would have certainly intervened and would have sustained a stretch, which also indicate, that these three witnesses were not present at the scene of occurrence else their natural conduct would have been to intervene and rescue the deceased. This ground also appears to us to be a strong one and assumes importance if seen in the light of the statement of Bagghilal. At the trial, the three

witnesses have tried to make improvements upon the statement by saying that the deceased was at some paces behind them and it is only by the noise of the feet of the accused persons that they looked behind and saw the occurrence. At that time, the deceased was at a distance of 10-20 paces. A perusal of the FIR shows that all the four accused persons came from behind. In that situation, the natural conduct of the witnesses would have been to intervene but in fact they were not present, so, the question of intervention does not arise. Absence of injuries on the person of the witnesses is an important factor, which has been rightly taken note of by the learned Sessions Judge, while assessing the evidence of these witnesses. The learned Sessions Judge has taken note of the discrepancies regarding the number and size of the injuries. It may be stated that another material circumstance is that the Farsi was used by sharp-side, which was inflicted on the back of the head of the deceased but the medical evidence contradicts it. There is no farsi injury on the person of the deceased from the sharp side. This also shows that the occurrence was not witnessed by any of the witnesses. Had it been so, in the FIR this version would have appeared that the sharp weapon was not used from the sharp side on the back of the head. At the trial, Bagghilal and Simlaram stated that Attu accused had used the farsi from the sharp-side, which version does not get support from the medical evidence. We agree with the view of the learned Sessions Judge that the evidence of these three witnesses casts a serious doubt in the truthfulness, credibility and reliability of their testimony. We agree with this view of the learned Sessions Judge and if this evidence goes out of consideration, then there does not remain any evidence to connect the accused with the commission of the offence. In our opinion, the respondents have rightly been acquitted by the learned Sessions Judge, so, the order of acquittal calls for no interference.

5. In the result, there being no force in this appeal, so it is hereby dismissed.