

Raj Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-08-1985

Reported in : 1985WLN(UC)508

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

Appeal No. : D.B. Criminal Appeal No. 710 of 1980

Appellant : Raj Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. M. L. Garg, Mr. Garg

Disposition : Appeal dismissed

Judgement :

Milap Chand Jain, J.

1. This appeal is directed against the judgment of the learned Additional Sessions Judge No. 1, Hanumangarh dated October 23, 1980 whereby the appellant Rajasingh was convicted under Section 302 IPC and was sentenced to imprisonment for life.

2. The prosecution case in brief is that the father of the accused appellant Rajasingh viz., Karnailsingh was murdered and the charge was levelled against

Mithusingh. Bhupendrasingh. Jagdeosing and Grumailsingh. He was murdered on 24, 1968. On being prosecuted and tried, Mithusing and other accused persons were acquitted by the Sessions Judge, Sri Ganganagar on November 8, 1969. The accused appellant Rajsingh, therefore, harboured a grudge against Mithusingh. After that occurrence, another occurrence had taken place where in it is alleged that Jarnailsingh, the brother of the deceased Karnailsingh fired a shot at Mithusingh. In connection with that event, still the prosecution was pending and according to the version given by the SHO Bhimsingh (PW 7), a counter case was also registered and prosecution was pending thereafter, on March 24, 1978, Mithusingh had gone from his house to the house of Jawalasingh Carpenter to fetch him in connection with the repair of his cot at about 3.45 p.m. Jawalasingh was not at his house and Mithusingh sat outside the door of the house of Jawalasingh. It is alleged that while the deceased Mithusingh was sitting outside the door of the house of Jawalasingh the accused appellant Rajsingh came armed with Kasia and gave a 'Lalkera' to the deceased 'to be brave'. This Lalkera was then followed by Kasia blow on the head of Mithu Singh and thereafter, two further blows were inflicted on his head. Mithusingh lied down. According to the prosecution, the occurrence was witnessed by PW 4 Dilrajsingh, who was at his house which was situated at a distance of 198 ft. towards the north-west of the house of Jawalasingh. It is alleged that at that time, Dilrajsingh was giving fodder to the cattle. The wife of the deceased also appeared from towards the lane and the accused armed with Kasia met her and he exhorted Dilrajsingh and Mst. Kartarkaur, the wife of the deceased Mithusingh immediately rushed to the scene of occurrence. As per the FIR version, on being asked the deceased divulged that Rajsingh has beaten him. Soon there after the injured Mithusingh succumbed to his injuries. Dilrajsingh then proceeded to lodge the report of the incident on the tractor of Bhupendra Singh accompanied with Gulrajsingh and Gurcharansingh. On the way, the SHO Bhimsingh met them and he recorded the statement Ex. P. 23 at 4.05 p.m. The statement was sent by Bhimsingh through F.C. Karnisingh to the Police Station. Sangariya. Thereupon Mahendrasingh, ASI registered the case under ss. 302 & 120B.I.P.C. Bhimsingh proceeded to the spot after recording the FIR statement and started spot investigation. He prepared the site plan Ex. P. 1 and site notes Ex. P.

25. The sample of blood stained earth was taken by the SHO vide memo Ex. P. 2 Panchnama Ex. P. 3 and Inquest memo of the dead body Ex. P. 4 were got prepared. Autopsy of the dead body was got conducted. The photographs were taken. The clothes of the deceased were seized vide memo Ex. P.

5. The accused was arrested on March 29, 1978 vide memo Ex. P.

26. On March 31, 1978, the accused gave information in respect of his Kassia vide memo Ex. P.

27. He got Kassia recovered vide memo Ex. P.

28. The Kassia was found blood stained. It was parked and sealed. The statements of the witnesses were recorded. The blood stained articles were sent for chemical and serological examination. The blood was detected on Kassia and on serological examination. The Kassia was also found stained with human blood. The Chemical Examiners Report is Ex. P. 29 and the report of the Serological Examination is Ex. P. 30.

3. After completion of the investigation, the charge-sheet was presented against the accused and the accused was ultimately committed for trial to the Court of Addl. Sessions Judge No. 1, Hanumangarh. The accused was charged of the offence under Section 302 IPC. He, however, pleaded not guilty to the charge and claimed to be tried. During the trial, the prosecution examined 8 witnesses. No evidence was led in defence. The statement of the accused was recorded under Section 313 Cr. PC, in which, he denied giving of any information and at his instance. The learned Sessions Judge, after hearing the arguments convicted and sentenced the accused-appellant as aforesaid. The learned Additional Sessions Judge relied on the testimony of P.W. 4 Dilrajsingh and PW 5 Mst. Kartar Kaur. Further corroboration was sought from the prompt FIR and also from the circumstance of recovery of Kassia on the information and at the instance of the accused, which was found to be stained with human blood.

4. We have heard Mr. M.L. Garg, learned counsel for the accused appellant and Mr. L.S. Udawat learned Public Prosecutor for the State.

5. Mr. M. L. Garg learned counsel for the appellant vehemently submitted that the learned Addl. Sessions Judge seriously erred in placing reliance on the testimony of PW 4 Dilrajsingh and PW 5 Mst. Kartar Kaur. Both these witnesses were not present at the scene of occurrence. Admittedly there was bad blood between the two families and both these witnesses were interested in the deceased one being the son and the other being the wife of the deceased. No independent witnesses have been produced by the prosecution although the occurrence is said to have taken place in the locality which is inhabited by the villagers. In the absence of independent evidence, Mr. Garg submitted that the testimony of the two eye witnesses should not be relied up on particularly when their presence is not established or in any case is rendered highly doubtful. In connection with the presence of Dilrajsingh Mr. Garg pointed out that the testimony of PW 1 Bhupendrasingh is material and if the cross-examination of Bhupendrasingh is looked in to, it would appear that there is Sampooransingh's house adjoining the house of Pritamsingh and then towards the south, there is the house of Mithusingh deceased. The Investigating Officer has not correctly prepared the plan. The house of Sampooransingh has not been shown in the plan Ex. P. 1 If the house of Sampooransingh would have been shown in the plan towards the south of the house of Pritamsingh, then in that situation, the house of Mithusingh would not have fallen in the line of the house of Jawalasingh and the house of Mithusingh would have been further in the south below the line of Jawalasingh's house and in that situation, Dilrajsingh could not have seen the deceased sitting outside the house of Jawalasingh. Bhupendrasingh has categorically stated that the houses of Mithusingh and Sampooransingh are in the same line and the main gates of the two houses are at a distance of 5-7' facing towards the east. Such being the situation of the two houses, it was not possible for Dilrajsingh to have seen the deceased outside the house of Jawalasingh. Mr. Garg pointed out that if the evidence of Bhupendrasingh is so considered then the testimony of Dilrajsingh, Kartarkaur and Bhimsingh can only be said to be untrue when they state that the house of Mithusingh is situated as is shown in Ex.P I and the version of Dilrajsingh and Mst. Kartarkaur is incorrect.

6. We have considered the above submissions of Mr. Garg but we are unable to agree with the above submissions. It may be mentioned that PW.4 Dilrajsingh and

PW 5 Mst Kartarkaur have very categorically stated about the situation of the houses of Sampooransingh and their own house. Bhimsingh has fully supported and proved the plan Ex. P 1. It is significant that measurement of 198' have been arrived at on the basis of the direction. The direction is not west. If the house of Mithusingh would have been below the line of Jawalasingh's house, the direction would have been south-west and not north-west. The very fact that measurement of 198' has been taken considering the houses in the north-west direction then it cannot be found that there was a deliberate omission on the part of SHO Bhimsingh in not showing the house of Sampooransingh at the particular point. The versions given by Dilrajsingh and Mst. Kartarkaur appear to be correct. It may be mentioned that the matter would have been clear if further cross-examination would have been directed to Bhopendrasingh. It has not been put to Bhupendra-Singh that the house of Mithusingh does not fall in line with Jawalasingh's house but it falls below the line of Jawalasingh's house. If such a question would have been put the matter would have been clear and the witnesses would have answered that the house of Mithusingh does not fall below the house of Jawalasingh and in such a circumstance, it cannot be said that it was not possible for Dilrajsingh to observe the occurrence. Thus, from whatever cross-examination has been directed, it is not possible to reach a conclusion that Dilrajsingh could not have observed the occurrence from his house.

7. It is next contended by Mr. Garg that Dilrajsingh could not have seen his father sitting and could not have observed the occurrence as he was inside the house. Fodder 'Than' was inside the house and it was not outside the house. In the FIR version, Dilrajsingh clearly stated that he was in the house. Bhimsingh too has stated that there was in the house. Bhimsingh too has stated that there was no 'Than' outside the house. Dilrajsingh is false when he states that 'Than' is outside the house where he was supplying fodder to the cattle. According to Bhimsingh 'Than' was outside the house. Dilrajsingh has improved his statement at the trial and the improvement is nothing out false. If the 'Than' was situated inside the house and as per the FIR version, if Dilrajsingh was inside his house then too, he could have observed the occurrence. In Ex. P. 23, Dilrajsingh stated that he was giving green grass to buffaloes in his house. It is true that in the FIR statement, Dilrajsingh stated that he was giving fodder to buffalo in the house and at the trial,

he prevaricated in his statement that adjoining to the main entrance there is a 'Baithak' of the house and the 'Than' exists outside this 'Baithak'. This 'Baithak' is also towards the east. Bhimsingh has clearly stated that there was no 'Than' outside the Baithak or the house of the deceased Mithusingh. It has come that Dilrajsingh had shown himself at point G and the distance between point G to D is 198'. Point 'C' is at the main entrance of the house of deceased Mithusingh. point C to D was marked by the Court with red ink at the trial. Otherwise in the plan, at point C, the nohara of Pritmasingh is shown and at point 'D' the house of Pritamsingh is shown. How far this falsity on the part of Dilrajsingh would affect his testimony. It is undoubtedly a prevaricating and deliberate improvement. If Dilrajsingh was not outside the house and was at the entrance of the house, still it would not make any difference as it cannot be said that the visibility in any way be affected. From the main entrance as well, the door of the house of Jawalasingh is visible, so such improvement on the part of Dilrajsingh in the circumstances of the case is of no consequence.

8. It is further urged by Mr. Garg that Dilraj Singh in his FIR version has stated that the deceased was in the door of the house of Jawala Singh. In such a position as well, it was not possible for Dilraj Singh to have observed the deceased. This submission too, in our opinion, is devoid of any substance. Dilraj Singh has categorically stated that he had seen his father sitting at the door. It cannot be taken that he was sitting inside the door. Photographs have been taken where in the position of the door and the place where the deceased was lying are shown. Mithu Singh was lying outside the door. If the deceased would have been inside the door, he could not have fallen outside the door. Photographs further show that the door was closed. It may be that the deceased might be waiting for Jawala Singh and so, he sat there. Simply because Dilraj Singh has stated in the FIR that the deceased was sitting in the door, it cannot be taken that he was so sitting so as to render his visibility impossible. If that would have been the case, the witness could not have observed him sitting at the door. It is note worthy that the occurrence took place at the door of the house of Jawala Singh where the deceased was sitting and soon after sustaining the injuries, the deceased lied down. That shows that the deceased was sitting outside the door in the lane where the occurrence took place. The version given in the FIR almost remains intact at

the trial. What the witness stated was that the deceased was sitting at the door of Jawala Singh and it is in that situation that he had sustained injuries.

9. Mr. Garg further submitted that Dilraj Singh and Mst. Kartarkaur both have posed themselves to be the eye witnesses of the occurrence and according to both of them the entire occurrence was witnessed by them i.e. they had seen the accused wielding Kassa blow on the deceased. Earlier version of Mst. Kartar Kaur was different. In her earlier version given to the police, she did not come out with the statement that she had seen the accused inflicting Kassa blow on the head of the accused. If her statement is viewed in the light of her earlier police version then it would be clear that she did not witness that part of the occurrence in which injuries have been caused to the deceased. If such is the statement of Mst. Kartarkaur then there remains only the solitary statement of Dilraj Singh and Dilraj Singh's statement should further be viewed in the light that in his FIR statement he clearly stated that on being asked, the deceased divulged that 'RAJ SINGH NE MAAR DIYA'. Similar was the statement of Mst. Kartarkaur before the police in portion A to B. Both these witnesses have disowned their earlier versions and have stated that they did not state before the police that on being asked, the deceased divulged that fact of beating by Rajsingh. It is urged by Mr. Garg that if the statements of these two witnesses are viewed in the light of their earlier versions given to the police, it would appear that they had not witnessed the occurrence. If they had witnessed the occurrence, then there was no need for these witnesses to have asked the deceased as to who had beaten him. The very fact a query was made or the deceased was questioned shows that both these witnesses had not seen the assailant inflicting blows on the deceased. Mr. Garg relied on a decision of the Supreme Court in *Amrithalingam v. State of Tamil Nadu* : 1976 CriLJ848 . It may be mentioned that the FIR version of the witness Dilraj Singh may be correct. It may be that the question might have been put by Kartarkaur as she had not witnessed the actual inflicting of blows. She no doubt has made improvement in her statement at the trial and has posed herself the witness who had observed the inflicting of blows by the accused. But in her police statement Ex. D.1, such was not her version. She had simply stated that she had seen the accused coming in the lane when he was returning from the house of Mahendra Singh. It appears that on being asked by Kartarkaur, the deceased

divulged that Raj Singh has dealt with him. It may be stated that the occurrence had taken place just near to the house of deceased Mithu Singh. The presence of Dilraj Singh at his house is natural and he would have certainly attracted to the scene of occurrence, seeing the accused going in the direction and on account of giving Lalkara by him to the deceased. At times when such a question is put to the deceased, it may be that the witness may not have seen the occurrence himself also. Where is the necessity of putting the question. Besides that it cannot also be ignored that in the FIR version, there is nothing as to what question was put to the deceased. It is not necessary that the question put to the deceased. It is not necessary that the question put was the question as to who beat him. The question may be as to how he is. Something could be asked other than as to who beat the deceased Looking from that point of view as well, nothing would turn on such a narration made in the police version, although such an explanation has not been given by the two witnesses. They have simply disowned the version given to the police. On account of wrong or false explanation given by the witnesses, whole of their testimony does not lose their probative value.

10. It is further urged by Mr. Garg, learned counsel for the appellant that the FIR in this case reached the Court on March 30, 1978 and according to Mr. Garg, the FIR must have been recorded after the arrest of the accused on March 29, 1978 or in any case not on March 24, 1978 but much thereafter. Kami Singh has not been examined. FIR number was not sent to the SHO. If FIR number would have been sent, in the papers relating to the spot investigation, FIR number would have appeared but in the site plan, site notes and other documents prepared at the spot, FIR number has not been given. Thus, the whole story has been concocted that while proceeding to the police station, the SHO met on the way and the statement of Dilraj Singh was recorded by him at a distance of hardly 2-3 kilometers from village Hirasingshwala, where the occurrence took place. According to Mr. Garg, the delay in sending the FIR to the court has not been explained by the prosecution. Bhim Singh has simply stated that the FIR was sent by Head Constable to the Magistrate and he denied the suggestion that the FIR was registered on March 30, 1978 and till then, the accused was unknown. It is true that FIR in this case reached the Court on March 30, 1978. March 24, 25 and 26 were holidays on account of holi. Still from March 27 to 29. the FIR had not

reached the Magistrate. This delay has not been explained by the prosecution. FIR bears the endorsement dated March 30, 1978. Baldeo Singh though examined but no question was put to him, either by the Public Prosecutor or by the Defence Counsel, so the delay is unexplained. Still the question arises as to whether on account of this delay, the prosecution story can be taken to be a concocted one, and that all papers were prepared much after the occurrence. This argument also cannot be pressed into service. It may be mentioned that as to whether the FIR number was brought to the Investigation Officer or not, no question was put to the Investigation Officer. From the perusal of the site plan Ex. P. 1 it would appear that after the words FIR no space is lying blank. This shows that investigation was undertaken by the Investigation Officer at the spot and by that time, FIR Number had not reached him. The other spot investigation papers, viz., Ex. P. 2 recovery memo of blood stained soil, Ex. P. 3 Panchnama, Ex. P. 4 Inquest Memo, Ex. P. 5 recovery memo of clothes and site inspection memo Ex. P. 25 do not show the FIR number. But Ex. D. 1 the statement of Mst. Kartarkaur records the case number as 38 dated March 24, 1978. A perusal of this document shows the continuity right from the very beginning. The statement of Mst. Kartarkaur was recorded on March 25, 1978. Whatever investigation was done on March 24, 1978, it appears that FIR number had not reached the Investigation Officer and so, the commission of FIR number was made in the documents prepared at the spot. The very fact that Ex. D. 1 contains the case number shows that the investigation was in fact undertaken on March 24, 1978 soon after the recording of the FIR statement and nothing has been elicited on the basis of which this part of the prosecution case can be doubted. The whole argument has been based simply on the basis of the endorsement of the Court made on March 30, 1978. It was also pointed out that in Ex. P. 1, although endorsement is there regarding the left thumb impression of Bhupendra Singh but in fact Bhupendra Singh thumb impression was not obtained in Ex. P. 1 and only thumb impression of Dilraj Singh was obtained. This appears to be an omission on all the documents prepared on the spot. Bhupendra Singh thumb impression is there. Thus, this contention of Mr. Garg that the FIR in this case is post investigation and is highly belated is without any substance.

11. Mr. Garg also submitted that the deceased had one lacerated wound, i.e., lacerated wound 3-1/2' x 1/2' x bone deep on right parietal region longitudinally placed and three incised wounds. Kartarkaur and Dilraj Singh have stated that the accused inflicted Kassi blow taking the position on the right side of the victim. In that situation, such injuries could not have been caused from back side. This argument appears to have been advanced for the argument's sake. All the three injuries have been caused from the back side. Lacerated wound is on the right parietal region which is placed longitudinally and the three incised injuries are on the skull behind the left ear which are placed horizontally. The victim could be availed from his back side and the injuries could have been sustained longitudinally as well as horizontally. On this account, the testimony of the witnesses does not stand in any way discredited.

12. We have dealt with the points of criticism advanced by Mr. Garg relating to the evidence of the two witnesses PW 4 Dilraj Singh and PW 5 Mst. Kartarkaur. Besides that we may also mention that the learned Addl. Sessions Judge too has taken pains and has dealt with the case from all possible angles and aspects and the evidence has been thoroughly discussed and appreciated. By and Large, we agree with the view taken by the learned Addl. Sessions Judge relating to the evidence of the two witnesses. Besides the evidence of PW 4 Dilraj Singh and PW 5 Mst. Kartarkaur. the circumstantial evidence of the recovery of Kassia is also very material in this case, Kassia has been found stained with human blood and this recovery has been proved by Bhim Singh and Bhupendra Singh. In connection with this evidence, it has been pointed out that chits of the Motbirs were not obtained and extent of blood has not been stated by the Investigation Officer in the recovery memo of Kassia. How far the above criticism would demolish the significant linking factor that Kassia is stained with human blood It is inconceivable that the Investigating Officer would fabricate the weapon of the offence in such a manner. It is true that he has not been very careful at the time of the investigation. He should have obtained chits of the witnesses but his statement on oath appears to be credible and on the basis of the testimony of Bhim Singh Man Singh and Baldeo Singh, it can be found that the seals remained intact and were not tampered with and on chemical and serological examination, it was found stained with human blood. This circumstantial evidence further strengthens the

prosecution case and proves beyond all reasonable doubt that it was the accused who inflicted Kassia blows on the head of the deceased.

13. It is next urged by Mr. Garg that fatal injury on the person of the deceased is injury No. 1, which is a lacerated wound and which shows that Kassia a sharp weapon was not used from its sharp side. , If the assailant had intended to cause to death, he would have certainly made use of the sharp weapon from the sharp side. The non user of the Kassia from the sharp side manifests the intention of the assailant that he in fact did not intend to cause the death. Although this argument has not been advanced that there may be someone else who caused the blunt weapon injuries. Suffice it to say that here is a case of single assailant and the assailant has made use of his weapon from both the sides. That blow in fact proved to be fatal which was from the blunt side. The question arises that the mere use of the weapon from the blunt side is sufficient to hold that the accused did not intend to cause the death. The occurrence is to be viewed in the background of the relations of the parties. The father of the accused was murdered earlier. Case under Section 307 was going on and besides that the occurrence took place after exhortation on the part of the accused to the deceased and thereafter the deceased was availed. This is also significant that all the three injuries were caused by the accused on the head of the deceased. Besides that the impact of the injury No. 1 is to be seen which will reveal the mind of the assailant. Dr. B. M. Saini has clearly stated that on opening the skull, clotted blood was present under the scalp under injury No. 1, right parietal bone had big fracture and the brain and the meninges underneath were lacerated and blood clot was present on brain. When such was the impact of the injury, it can be said that the injury was inflicted with sufficient force and when such a force is used and the deceased sustained injuries and thereafter died, in our opinion, it cannot be said that the accused did not intend to cause the death of the deceased. Thus, in our opinion, the offence under Section 302 IPC is amply brought home to the accused in as much as the accused intended to cause the death of the deceased Mithusingh

14. No other point survives for our consideration in this appeal.

15. In the result, this appeal has no force and as so it is hereby dismissed.

