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Ram Sukh and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-28-2005

Reported in : RLW2006(2)Raj1065; 2006(2)WLC229

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 162 and 313; Indian Penal Code (IPC) - Sections 34, 147, 148, 149, 302, 304, 307, 323, 341 and 343

Appeal No. : D.B. Criminal Appeal No. 910 of 2004

Appellant : Ram Sukh and ors.

Respondent : State of Rajasthan

Advocate for Def. : Ashwini Kumar Sharma, Public Prosecutor and; R.N. Khandelwal, Adv.

Advocate for Pet/Ap. : A.K. Gupta,; Alka Bhatnagar,; Ashutosh Bhatia,;

Judgement :

Shiv Kumar Sharma, J.

1. The appellants Ram Sukh, Ramdev and Tara Chand were charged and tried before the learned Additional Sessions Judge (Fast Track) No. 1 Ajmer in Sessions Case No. 84/2001. Learned Additional Sessions Judge (Fast Track) No.

1 Ajmer vide judgment dated August 11, 2004 convicted and sentenced them as under:

Under Section 304 Part I with the aid of 34 IPC:

Each to suffer Life imprisonment and fine of Rs. 200/- in default to further suffer ten days simple imprisonment.

Under Section 323/34 IPC:

Each to suffer simple imprisonment for six months and fine of Rs. 100/-, in default to further suffer seven days imprisonment.Sentences were ordered to run concurrently.

2. The prosecution case as unfolded during trial is as under:

On December 23, 1998 at 11.30 PM the informant Sukhpal (PW. 20) submitted a written report (Ex. P-27) at police station Mangaliyabas, stating therein that because of chronic litigation with Dr. Subhash the informant and his family members had left their native village Tabiji in 1995. On receiving information that one Mahipal of their village died, the informant, his father Ladu Ram and brother in law Ratan on December 23, 1998 at 2 PM had gone to attend 'Baithak' to the village and stayed there for fifteen minutes. When they were coming back they were belaboured on the way by Ramsukh, Ramdev, Dr. Subhash, Tara Chand, Norat, Ghishi and Panni, who were armed with swords and axes. Informant sustained injuries and his father died in the incident. Informant some how got himself escaped. Police Station Mangaliyabas registered a case under Sections 147, 148, 149, 302, 307, 323 and 343 IPC and investigation commenced. Post mortem on the dead body was performed, the accused were arrested, necessary memos were drawn, statements of witnesses were recorded and on completion of investigation charge sheet only against the appellants. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1 Ajmer. Charges under Sections 147, 148, 302, 323 and 341 read with 149 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 24 witnesses. In the

explanation under Section 313 Cr.P.C, the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Death of Ladu Ram was undeniably homicidal in nature. As per postmortem report (Ex. P-24) following ante mortem injuries were found on the dead body:

1. Incised wound 16cm 2cm bone deep on the (R) frontal temporal region, obliquely placed clean cut margin with clotted blood.

2. Incised wound 2cm 1cm bone deep on the chin.

3. Incised wound on (R) forearm 2cm 1cm bone deep.

4. Incised wound on (R) little finger and (R) ring finger measuring 1 0.5cm skin deep 1 1cm skin deep.

5. Incised wound 14cm 3cm bone deep (L) arm ant. lat. Clean cut margin obliquely placed.

6. Incised wound on the (1) elbow laterally 4cm 2cm bone deep.

7. Incised wound 3cm 2cm bone deep above injury No. 6.

8. Incised wound 2cm 1cm bone deep (1) forearm middle obliquely placed clean cut margin.

9. Incised wound (1) index finger dorsally 2 1cm bone deep.

10. Incised wound on the (1) side of chest in mid axillary line 11cm 2cm bone deep obliquely placed clean cut margin.

11. Incised wound 3cm 2cm bone deep on (R) leg below knee with // of shelf of tibia and febula underneath the wound.

12. Incised wound on the (1) knee 13cm 2cm bone deep fracture of (1) patella.

13. Incised wound on the (1) leg laterally 10cm 2cm bone deep/(L) leg bone in middle 1/3 part anteriorly.

14. Incised wound 9cm 3cm bone deep on (1) leg below injury No. 13 fracture of lower lid of both leg bones.

15. Incised wound (1) foot dorsally 7cm 3cm bone deep fracture of Metacorsal bone

In the opinion of Dr. R.K. Mathur (Pw. 16) the cause of death was come due to head injury.

4. As per injury report (Ex. P-33) the injuries sustained by Sukhpal (Pw. 20) are as under:

1. Superficial abrasion 1 cm linear oblique over front of left wrist joint.

2. Bruise irregular margin 1 1 cm over medial side of right thigh.

5. We have heard the submissions and weighed the material on record.

6. Taking conspectus of the prosecution evidence we notice that informant Sukhpal (Pw. 20) and Ratan (Pw. 18) are the two eye witnesses of the occurrence. Sukhpal supporting the version of the written report, in addition of three appellants, named Dr. Subhash Maheshwari and Norat and deposed that while attending the 'Baithak' of late Mahipal when they were returning, all the five assailants armed with axes belaboured them near the house of Padam Jain. Ram sukh then inflicted axe blow on the neck of his father, Doctor gave blow with axe over the forehead of his father, Tara Chand then caused injury with axe on the ulna of informant, when they proceeded further they found Smt. Ghishi and Smt. Lali who hurled stones, that caused injury on the right thigh of informant. He did not know as to where his brother-in-law had gone. The informant and his father then rushed to the 'bad a' of Narain Bhil where they found 'Kanton ki Bad' (partition made of thrones). The informant could scale the 'Bad' but his father could not. The informant helped his father to cross the Bad. Shirt of informant was stained with the blood of his father. As soon as they came out of the Bad, Dr. Subhash, Tara Chand, Norat, Ramdev

and Ramsukh surrounded them. Tara Chand then inflicted axe blow on the abdomen of his father as a result of which he fell down, Ramdev then gave axe blow on his hand. The informant again scaled the 'Bad' and saw the assailants inflicting injuries to his father. In that helpless situation the informant went back to the house of Narain Jakhad and narrated the incident to him. Narain Jakhad made the informant to sit in a jeep in which he went to Nasirabad where his brother Ganesh resided. Ganesh had gone to Pokran. Around 10.30 PM he went to police station to lodge the report. The police took him to the place of incident next day and drew site plan.

7. Ratan (Pw. 18) in his deposition stated that he along with Ladu his father in law and Sukhpal, his brother in law had gone to village Tabiji to the house of Narain whose son was dead. They stayed in the house of Narain for 15-20 minutes and proceeded back. After they crossed 10-12 houses, Ramsukh inflicted axe blow on the neck of Ladu, Subhash gave axe blow on the head, Tara Chand gave axe blow to Sukhpal but it could only cause abrasion on the hand. Ladu and Sukhpal were 50 steps away from him. When they turned towards the street Ramsukh, Tarachand, Ramdev, Subhash and Norat gave blows to Ladu. He (Ratan) then got himself seated in a truck and proceeded to village Makhupura and then took a bus and went to Nasirabad.

8. Narain (Pw. 17) in his deposition stated that Ladu, Ratan and Sukhpal (informant) came to village Tabiji to attend the Baithak organised on the occasion of demise of his son. They stayed for about 15-20 minutes and proceeded back. After some time. Sukhpal came back in disturbing state and told him that Ramdev, Ramsukh and Tarachand were beating his father. He then made Sukhpal to sit in a jeep who proceeded to Nasirabad. Thereafter he went to the house of Narain Bhil where about. 150 persons were gathered and Ladu was lying dead near the house of Narain Bhil. His son sukhpal then informed the police on telephone.

9. Sukhpal son of Narain (Pw. 5) in his deposition stated that on the death of his brother Mahipal a 'Baithak' was organised. Ladu and Sukhpal along with one person came to attend the Baithak. They remained there for about 15-20 minutes then proceeded back. After some time Sukhpal son of Ladu came rushing to his

house and told him that Ramsukh, Ramdev, Tarachand, Subhash Maheshwari were beating his father. He (Sukhpal s/o Narain) along with other persons proceeded to the spot where they found Ladu lying dead near the house of Bhil. He then informed the police over telephone.

10. Jabbar Singh (Pw. 24), who was SHO at Police Station Mangaliyabas on the date of incident, in his deposition stated that Sukhpal submitted a written report (Ex. P-27) to him. On the basis of said report he proceeded to investigate the matter. He inspected the site, drew memo of site plan. He also recovered blood stained clothes from the appellants. At the instance of appellant Ramsukh, Ramdev and Tarachand he got recovered axes and drew necessary memos. In his cross examination he admitted that on December 23, 1998 one telephonic message was received at the police station at that time he was at Ajmer. He received the information on wireless about the death of Ladu. Around 5 PM he went to village Tabiji and removed dead body. As the son of deceased was not present and the villagers were not ready to disclose the details of incident, he could only drew site plan on the next day.

11. Mr. A.K. Gupta learned Counsel for the appellants urged that the report lodged by informant Sukhpal (Pw. 20) could not be treated as FIR as the same is hit by Section 162 Cr.P.C. and cannot be read in evidence. We find no merit in the submissions. As already noticed' the time of the incident was 2.30 PM, whereas the written report Ex. P-27 was submitted at police station Mangaliyabas by informant Sukhpal at 11.30 PM. Prior to it Sukhpal s/o Narain (Pw. 5) telephonically informed police station about the occurrence. As per the testimony of Jabbar Singh IO (Pw. 24) the telephonic message was entered in the Rojnamcha by the ASI present at the police station. Rojnamcha was not produced in the Trial Court and there is nothing on record to show that all the minute details of the incident had been communicated on telephone. The information communicated on telephone can not be treated as FIR. Their Lordships of the Supreme Court in Ram Singh Bavaji Jadeja v. State of Gujrat 1994 Cr LJ 3067 indicated as under:

From time to time, controversy has been raised, as to at what stage the investigation commences. That has to be considered and examined on the facts of each case, especially, when the information of cognizable offence has been given on telephone. If the telephonic message is cryptic, in nature and the officer in-charge proceeds to the place of occurrence on basis of that information to find out the details of the nature of the offence itself, then it cannot be said that the information, which had been received by him on telephone, shall be deemed to be First Information Report. The object and purposes of giving such telephone message is not to lodge the First Information Report, but to request the officer in-charge of the police station to reach the place of occurrence. On the other hand, if the information given on telephone is not cryptic and on basis of that information, the officer in-charge is prima facie satisfied, about the commission of a cognizable offence and he proceeds from the police station after recording such information, to investigate such offence then any statement made by any person in respect of the said offence including about the participants, shall be deemed to be a statement made by a person to the police officer 'in the course of investigation' covered by Section 162 of the Code. That statement cannot be treated as First Information Report. But any telephonic information about commission of a cognizable offence irrespective of the nature and details of such information cannot be treated as First Information Report.

Conjoint reading of the statements of Sukhpal (Pw.), Narain (Pw. 17) and Jabbar Singh (Pw. 24) shows that the information transmitted on telephone was cryptic in nature and FIR (Ex. P-27) was not hit by Ssection 162 Cr.P.C.

12. Mr. Gupta, learned Counsel next contended that investigation had already been commenced when Jabbar Singh IO reached at the place of incident at 4 PM and removed the dead body. In such a situation nine hours delay in submitting the report by Sukhpal caused dent to the prosecution case.

13. It is well settled that the object of insisting upon prompt lodging of FIR is to obtain early information of offence, circumstances leading to it, the names of the culprit, part played by each and names of eye witnesses. Delay may result in introduction of after-thought, coloured and exaggerated version.

14. Coming to the facts of the instant case we find that the statements of Sukhpal and Ratan were found untruthful by the Investigating Officer qua Dr. Subhash, Norat, Smt. Ghishi and Smt. Panni. The charge sheet therefore was filed only against Ram Sukh, Tarachand and Ramdev. In this backdrop of the fact situation that we have to consider as to whether exaggeration, embroideries or embellishments made by a witness in his statement, smash the substratum of the prosecution?

15. Considering the maxim 'falsus in uno, falsus in omnibus' their Lordships of the Supreme Court in Ugar Ahir v. State of Bihar : AIR 1965 SC277 held that the maxim falsus in uno, falsus in omnibus, (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinise the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest.

16. It is contended on behalf of the appellants that conduct of informant sukhpal in not coming forward of rescue of his father Ladu is highly unnatural therefore the evidence of informant Sukhpal should be discarded. Similar argument is advanced in regard to other witness Ratan, the son-in-law of deceased. We find no merit in the contention. Both Sukhpal and Ratan appear to be unarmed therefore their inaction to rescue the deceased cannot be a ground for discarding their evidence. The Hon'ble Supreme Court in Sucha Singh v. State of Punjab 2003 Cr.L.J. 3876 : RLW 2003 (4) SC 484 indicated thus (para 23)

so far as inaction of Pws. 9 and 10 in not coming to rescue of deceased is concerned, it has been noted by the Trial Court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors like in the present case where witnesses are unarmed, but the assailants are armed with

deadly weapons. In a given case instinct of self preservation can be the dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence.

17. Factors related to 'Human behaviour' were considered by the Hon'ble Apex Court in State of U.P. v. Devendra Singh : 2004 CriLJ3118 as under

Human behaviour varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start walling. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Some may remain tight lipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.

18. In Mainpal v. State of Haryana : 2004 CriLJ2036 it was held that merely because the evidence of father of deceased shows that he acted in an unnatural manner i.e. he left spot seeing his son being attacked and did not return for long period is per se not a determinative factor to throw out otherwise cogent prosecution evidence. If eye witness's version is truthful and credible, It cannot be rejected on ground of being relative.

19. As already noticed, the incident according to Sukhpal (PW. 20) did occur at three places:

i) First attack was made near the house of Padam Jain where Ram Sukh inflicted axe blow on the neck of Ladu, Dr. Subhash gave axe blow on the forehead of

Ladu and Tara Chand caused abrasion on the hand of Sukhpal.

ii) Second attack was made by Smt. Ghishi and Smt. Lali by hurling stones at Ladu and Sukhpal just near the house of Padam Jain where Sukhpal received bruise on thigh.

iii) Third attack was made in front of the house of Narain Bhil where Dr. Subhash, Norat, Ram Sukh, Ram Dev and Tara Chand all caused injuries with axe to Ladu.

20. A look at the injury report Ex. P.33 of Sukhpal demonstrates that he received only two superficial injuries, over front of left wrist joint, one superficial abrasion and over medial side of right thigh, one bruise. It is highly unlikely that if Sukhpal would have been with his father throughout the incident he would have suffered only two superficial injuries. It appears to us after conjoint reading of the statement of Sukhpal and his injury report, that after the stone his at his thigh, he fled away leaving Ladu alone.

21. Ratan (PW. 18) also corroborated the attack made near the house of Padam Jain and attributed injuries to Ram Sukh, Tarachand, and Subhash. This witness also appears to leave the place of incident immediately after the first attack.

22. In the evidence of Sukhpal and Ratan, presence of Ramdev near the house of Padam Jain has not been established and this possibility can not be ruled out that Ramdev just like Dr. Subhash, Norat, Smt. Ghishi and Smt. Lali also subjected to over implication. Delay of nine hours in lodging the report resulted in introduction of after-thought, coloured and exaggerated version. We are satisfied that when the assailants inflicted injuries on Ladu in front of the house of Narain Bad, Sukhpal (PW. 20) and Ratan (PW. 18) were not present and they did not see Ramdev inflicting injury on the person of Ladu. The prosecution in our opinion is succeeded in making out a convincing case for recording a finding that appellants Ram Sukh and Tarachand are guilty of the charge for the offence under Sections 304 Part I read with 34 and 323 read with 34 IPC.

23. For these reasons, we dispose of the instant appeal in the following terms:

i) Appeal of appellant Ramdev is allowed. He is acquitted of the charge under Sections 304 Part I read with 34 and 323/34 IPC. The appellant Ramdev is in jail, he shall be set at liberty, forthwith if not required to be detained in any other case.

ii) We dismiss the appeal of appellants Ram Sukh and Tarachand. They are on bail, their bail bonds stand cancelled and they are directed to taken back in custody forthwith.

iii) The impugned judgment of learned trial Judge stands modified.

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