

Kalyan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-02-2005

Reported in : RLW2006(2)Raj1213

Judge : Shiv Kumar Sharma and; Shashi Kant Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 302 and 448; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : D.B. Criminal Appeal No. 631 of 1999

Appellant : Kalyan

Respondent : State of Rajasthan

Advocate for Pet/Ap. : B.N. Sandu, Public Prosecutor; S.S. Hasan, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Sharma, J.

1. Instant criminal appeal has been filed by accused appellants Kalyan, Ramdayal and Laddulal against the judgment and order dated 23.8.99 passed by learned Addl. Sessions Judge, Chhabra, District - Baran whereby the accused appellants Laddulal and Ramdayal have been convicted for the offence under Section 302

IPC and accused appellant Kalyan for the offence under Section 302/34 IPC and all the three appellants have been sentenced to undergo life imprisonment and a fine of Rs. 1000/- and in default of payment of fine to further undergo six months RI.

2. The brief facts which are relevant and essential for the disposal of this appeal are as under.

3. On 31.1.98 some unknown persons gave information on phone to the SHO Police Station, Chhabra that some incident of 'Marpeet' has taken place between two groups and one Chhabulal has died in that incident. On this information, SHO Navneet Mahrishi reached the village of Panchpada where at 10 a.m. Ku. Basanti Bai Submitted a written report Ex.P-1 to SHO wherein it was written that on the fateful day i.e. 31.1.98 in the morning at about 8-9 a.m. she was sitting in front of the house at 'Chabutari', her father was also sitting on the same Chabutari. At that time accused appellants Kalyan, Ramdayal and Laddulal came there. Kalyan was armed with Lathi, Laddulal was having an axe (Kulhadi) and Ramdayal was having spear (Ballam) in his hand. All the above mentioned three accused persons dragged her father to the Nimari tree where first of all Kalyan inflicted injury to her father by lathi. Her father fell down and Laddulal inflicted injury on the head of her father with Kulhadi and Ramdayal inflicted injuries with Ballam on the person of her father. Her father died because of those injuries. It is also written in the FIR that these accused persons killed her father because of some dispute relating to some consideration of Nata marriage of Raju. It is also written in that FIR that some persons of the village also came there but they did not save her father. On this written report, police registered a case for the offences under Sections 302/34 & 448 IPC. Police recorded statement of witnesses under Section 161 Cr.P.C. and prepared a site plan Ex.P-4 and arrested all the three accused persons. Autopsy was done on the body of deceased and post mortem report Ex.P-12 was prepared. After completion of the investigation police filed challan against all the three accused appellants for the offence under Sections 302/34 and 448 IPC in the Court of ACJM Chhabra. Learned ACJM committed this case for trial to the Court of learned Addl. Sessions Judge, Chhabra.

4. The learned Addl. Sessions Judge, Chhabra framed charges against the appellants accused persons for the offences under Section 302 IPC and in alternative 302/34 IPC and 448 IPC. The accused persons denied the charges and claimed trial. Prosecution examined as many as 13 witnesses namely PW-1 Basanti Bai, PW-2 Bharatsingh PW-3 Nandlal, PW-4 Amarlal, PW-5 Babulal, PW-5 Dr. Kunjbihari Sharma, PW-7 Ramratan, PW-8 Gangaram, PW-9 Kanhaiya Lal, PW-10 Ishtak Ahmed, PW-11 Sabulal, PW-12 Ram Laxman Sharma and PW-13 Harisingh. All the accused persons are examined under Section 313 Cr.P.C. and in defence evidence accused Kalyan was examined as defence witness and one more defence witness Jagdeesh was also examined. After hearing arguments of both the parties, Trial Court has convicted and sentenced the accused appellants as mentioned herein above.

5. We have heard the arguments of both the parties. Defence counsel Mr. S.S. Hasan has argued that all the three accused appellants are innocent. They have been falsely implicated in this case. It is also argued that their conviction is based on the evidence of Basanti Bai PW-1 and Babulal PW-5. It is also argued that name of Babulal PW-5 was not mentioned in the first information report as eye-witness. It is also argued that PW-8 Gangaram is real brother of deceased. He was produced as eye- witness in the Court but he has not supported the prosecution story. PW-7 Ram Ratan was also examined in the Trial Court as eye-witness but he has also not supported the prosecution story. He deposes that he went to the spot where Chhabulal was lying dead but none else was present on the place of incident. It is also argued that in this way two important witnesses i.e. Ram Ratan and Gangaram have been examined as eye-witnesses but they have not supported the prosecution story at all.

6. It is also argued that written report Ex.P-1 was written by PW-3 Nand Lal. This Nand Lal has been examined in the Court and he has deposed that this report was written on the dictation given by Police Inspector. It is also argued that after reading the statement of PW-3, it is clear that written report which is base of this case is written on the dictation of Police Inspector, therefore, in this case this FIR has lost its all importance. It is also argued that so far as PW-5 Babulal is concerned, his statement is not at all reliable. After reading the statement of

Babulal and perusing the site plan it is clear that this Babulal could not see incident at all. His name does not find place in first information report, his statement is improbable and there are material contradictions in the statements of Babulal and Basanti Bai.

7. Defence counsel has also urged that statement of Basantibai is also not reliable. It is also urged that there are material contradictions between the statement of Basanti Bai given in Court and version given in first information report. In FIR, she alleges that Kalyan was armed with Lathi and has inflicted injuries on the body of the deceased with that Lathi but in her statement in Court she deposes that Kalyan inflicted injury by Kulhadi on his leg. In her statement in Court she does not say that Kalyan has inflicted and injury by Lathi. It is also urged that in FIR Basanti Bai says that first of all Kalyan has inflicted injuries on the body of deceased then deceased fell down and then Laddulal inflicted injury by Kulhadi on his head and then Ramdayal has inflicted injury by spear (Ballam) but in her statement in Court she says that Ramdayal came there and he inflicted injury by Ballam on the neck of the deceased and then Kalyan inflicted injury by Kulhadi on the leg of the deceased and then Laddulal inflicted injury on the leg of her father. In this way there is material contradictions in the statement of Basanti Bai given in Court and version given by Basanti Bai in the FIR.

8. Learned defence counsel has also contended that after reading the entire statement of Basanti Bai it becomes clear that her statement is not at all reliable. On every fact there is material contradiction in the statement in Court and version given in the FIR. She changes her version again and again in Court about place of occurrence. It is also argued that by her statement in the Court it is clear that it was she who has given information to the police and at that time she has not said that Ramdayal, Kalyan and Laddulal have inflicted injuries to her father. Defence counsel has further contended that these accused appellants are innocent. They have been falsely implicated in this case and prosecution has not proved guilt against these accused persons beyond reasonable doubt, therefore, judgment and conviction should set aside and they should be set at liberty.

9. Learned Public Prosecutor has argued that the prosecution has proved guilt against these accused appellants beyond reasonable doubt. It is further argued that the statements of Basanti Bai and Babulal are reliable and they are corroborated by the statement of medical officer PW-6 Kunjbihari Sharma, therefore, this appeal should be dismissed.

10. We have considered the rival submissions of both the parties and perused the entire evidence available on record.

11. The conviction of these appellants are based on the testimony of PW-1 Basanti Bai and PW-5 Babulal. We have examined the statement of PW-3 Nandlal who has written FIR Ex.P-1. After examining the statement of Nandlal it becomes clear that when this FIR Ex.P-1 was written, police inspector was also present. This witness Nandlal also deposes that this FIR was written on the dictation of police inspector. After reading the statement of Basantibai it becomes clear that first of all Basanti Bai gave information to the police on telephone about the death of her father in this incident. It is also clear by her statement that when she informed the police about this incident on telephone then she did not say that Ramdayal, Kalyan and Laddulal have killed her father but in the written report Ex.P-1 she has given the name of these three accused-appellants as assailants. After examining these facts some doubt is created in our mind that if Basantibai has seen the occurrence and has seen these accused appellants inflicting injuries to her father then why she did not tell the names of these assailants to the police on telephone. Our doubt is also doubled when Nandlal deposes in the Court that written report Ex.P-1 was written by him on dictation of Basanti Bai and police inspector.

12. PW-5 Babulal has been examined as eye witness in the Court but his name does not find place in written FIR. In this case, FIR is written not only in the presence of inspector but also on his dictation. As in this case on an information, police came on the spot, police examined everything and then this report Ex.P-1 was written. If Babulal PW-5 was really a eye witness his name must have been written in the FIR. This fact that his name does not find place in the FIR creates a doubt in our mind about his presence at the time of occurrence. We also examined

the statement of Babulal with care and caution. After reading his statement and perusing site plan Ex.P-4 we come to the conclusion that Babulal is not speaking truth. If Babulal was sitting in front of his house then he could not see any incident which occurs in front of the house of deceased looking to the site plan. We have also examined the statement of Babulal and Basantibai, we found many material contradictions in their statements.

13. In this case, most import witness is Basanti Bai. According to prosecution, Basanti Bai was of 13 years of age at the time of occurrence. After reading the statement of Basantibai given in the Court and her version given in the FIR it is crystal clear that there are many material contradictions between the two. In FIR she has clearly mentioned that Kalyan was armed with Lathi and he has inflicted injury by Lathi on the person of her father. When she has been examined in Court she says that Kalyan has inflicted injuries on the leg of deceased by Kulhadi. In her statement in Court she does not say that at any point of time Kalyan was armed with Lathi or he has inflicted any injury on her father by Lathi or blunt weapon. In her statement in the Court she deposes that Ramdayal accused came there and inflicted injuries on the neck of her father by spear Ballam and then Kalyan inflicted injury by Kulhadi on his leg and then Laddulal cut the leg of her father but if we read her version in FIR it was Kalyan who has inflicted first injury and then her father fell down and then Laddulal inflicted injury on the head of her father and then Ramdayal inflicted injury. By Ballam. In this way, there is material contradictions in her statement in Court and version given in the first Information report by her. When we examine post mortem report and statement of Dr. Kunjbihari Sharma PW-6, we find that there were Incised wounds on the person of deceased. There was no piercing Injury on his person. The Doctor has deposed in Court that in post mortem report Ex.P-12 he did not mention that by what weapon these injuries could be caused but these Injuries have been caused by sharp edged weapon. When we examine the statement of Basantibai given in Court her version given in FIR statement of Doctor and post mortem report, it becomes clear that Basanti Bat had changed her version many times. Her first version which was given in the FIR in which it was said that Kalyan has Inflicted injury by Lathi does not find place in her statement given in Court. So far as accused Ramdayal is concerned it was said in the FIR that he has inflicted Injury by Ballam. It is also

mentioned in the statement of Basantibal in Court that Ramdayal inflicted injury by Ballam on the neck of deceased but it does not find support by medical evidence. According to medical evidence, Injury on the neck of deceased was incised wound and it could be caused by sharp edged weapon when Ballam is not a sharp edged weapon. We have also considered this fact that two Important eye witnesses i.e. Gangaram and Ramratan have been turned hostile. Gangaram PW-8 is none else but brother of deceased. After examining entire evidence available on record, we come to the conclusion that statements of Basantibal and Babulal are not trustworthy and prosecution has failed to prove the guilt against these accused appellants beyond reasonable doubt.

14. For these reasons, we allow the appeal and set aside the impugned judgment dated 23rd August, 1999 of the learned Addl. Sessions Judge, Chhabra District-Baran. We acquit the appellants Ramdayal and Laddulal of the charge under Section 302 IPC and appellant Kalyan of the charge under Section 302/34 IPC. Appellant Kalyan is on bail, he need not surrender, his bail bonds stand discharged. Appellants Ramdayal and Laddulal who are in jail shall be set at liberty forthwith if not required to be detained in confinement in any other case.