

Satpal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-20-2002

Reported in : RLW2003(3)Raj1469; 2002(4)WLC184

Judge : Y.R. Meena and; A.C. Goyal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154; Indian Penal Code (IPC) - Sections 302, 323 and 341

Appeal No. : D.B. Criminal Appeal No. 506 of 2001

Appellant : Satpal

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Rajendra Yadav, P.P.; Biri Singh, Adv.,; Mukesh Punia

Judgement :

Goyal, J.

1. This appeal is preferred against the judgment dated 1.8.2001, passed by learned Additional Sessions Judge (Fast Track), Sikar, whereby the accused appellant was convicted and sentenced under Section 341 IPC with one month simple imprisonment, under Section 323 IPC with six months rigorous imprisonment and a fine of Rs. 2000/-, in default to further undergo two months imprisonment. All the sentences were ordered to run concurrently.

2. The facts giving rise to this appeal in brief are that P.W.1 Smt.Hema Devi wife of the deceased Roopa Ram submitted a typed report dated 8.2.2001 (Ex.P/1), to the S.H.O. Police Station, Raghunathgarh, District Sikar, on 9.2.2001 at 8.50 a.m. with the averments that around 1.30/2.00 p.m. on February 2, 2001, her husband Roopa Ram went to the house of his ailing brother Sukhdeva. The moment, Roopa Ram was to enter the house, accused appellant Satpal and his wife Banarasi Devi started beating him with lathi resulting into injuries on his head and legs, P.W.2 Kana Ram and P.W.8 Sheopal intervened and brought her husband to her house. As she being old, issue less and having no support, thought that his condition would be improved. But when his condition became serious, he was got admitted in Kalyan Hospital, Sikar, where doctor referred him to Jaipur and as such he was taken to Jaipur. This incident occurred due to previous enmity regarding land and property of the deceased Roopa Ram. Formal FIR No.29/2001 (Ex.P.2) was registered under Section 341 & 323 IPC and investigation commenced. Site was inspected and site-plan Ex.P/3 was drawn. In the meantime, Roopa Ram died in S.M.S. Hospital, Jaipur, at 1.00 p.m. on 9.2.2001. The offence punishable under Section 302 IPC was added. Ex.P.4 Panchnama of the dead body of Roopa Ram was drawn. Autopsy of the dead body of the deceased was conducted by P.W.15 Dr. P.C. Vyas, the then Medical Jurist, S.M.S. Hospital, Jaipur, who prepared Post Mortem Report Ex.P.14. Following antermortem injuries were noted:

1. Abrasion 3 x 2 cm left knee cap with hard seat that has fallen at places leaving pinkish raw area;
2. Abrasion 2 x 1 cm Rt, knee cap with hard black seat that has fallen at places;
3. Diffuse swelling on parieto occipital region and rt.temporal region of the brownish red dark colour anterior haematoma present Rt.temporal and parieto occipital sub-scalp region dark red in colour. Skull healthy. The Veins congested. This brown subdual temporal region. Brain congested, swelling, found filled up. Two contusion 3 x 2 on rt. frontal and anterior contusion 4 x 3 cm left parietal region dark colour on the left occipital plate found contused and fractured with anterior haematoma.

The cause of death in the opinion of Dr.Vyas was coma brought as a result of ante-mortem head injury to skull, brain as mentioned and, sufficient to cause death in ordinary course of nature. Statements of the witnesses under Section 161 Cr.P.C. were recorded. Accused appellant was arrested and at his instance, a lathi was recovered. On conclusion of the investigation, charge sheet was filed against the accused-appellant only.

3. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track), Sikar. The trial court framed charges under Sections 341, 323 & 304 IPC against the accused who denied charges and claimed trial. The prosecution examined as many as 16 witnesses. Thereafter the explanation of the accused under Section 313 Cr.P.C. was recorded. The accused denied the allegations' and pleaded that litigation is going on between him and witnesses Kana Ram for the last two years. It was also pleaded by him that he is the adopted son of deceased Roopa Ram and P.W. 1 Smt. Hema Devi who is aunt (Masi) of P.W.4 Bhanwarial and his brother P.W.5 Ashok Kumar, who wanted to grab his property which was gifted to him by Roopa Ram. Two witnesses viz., D.W.1 Kana Ram and D.W.2 Vidhya Dhar were examined in defence. Learned Judge after hearing the final submissions convicted and sentenced the accused appellant as indicated hereinabove.

4. We heard learned counsel for the appellant, learned Public Prosecutor and scanned the entire evidence. We will now examine the evidence adduced by the prosecution, Informant Smt. Hema Devi is the wife of the deceased Roopa Ram. She is not the eye-witness. According to her Kana Ram and Sheopal, who accompanied her husband to the house of Sukhdev, narrated the incident that accused Satpal gave a lathi blow upon the head and Smt. Banarasi Devi inflicted injuries upon the legs. P.W.2 Kana Ram is said to be eye-witness. He deposed that he and Sheopal accompanied Roopa Ram to the house of Sukh Dev. At about 1.30 p.m. accused Satpal gave a lathi blow and Smt. Banarasi Devi inflicted injuries upon legs of Roopa Ram in front of the house of Sukhdev. He and Sheopal brought him back to his house and narrated the incident to Hema Devi. P.W.3 Rameshwar is brother of Hema Devi. P.W.4 Bhanwar Lai and P.W.5 Ashok Kumar both real brothers are sons of sister of Hema Devi. All the three Rarneshwar,

Bhanwar Lal and Ashok Kumar are not eye-witnesses of this occurrence. According, to Rarneshwar, he was informed about this incident on the next day i.e. 3.2.2001 by Ashok on telephone. Thereafter, he came to village Khatrathal and found Roopa Ram in unconscious condition and they brought him to hospital at Sikar on the next day i.e. 4.2.2001. P.W.4 Bhanwar Lal, Professor in Govt. College, Sikar, deposed that he was also informed on 3.2.2001 by his younger brother Ashok on phone. Then he went to Khatrathal and found Roopa Ram in serious condition and they took him to hospital next day. P.W.5 Ashok Kumar deposed that his aunt (Masi) came to his house and narrated this incident. He informed P.W.3 Rameshwar and P.W.4 Bhanwar Lal, who also came to village Khatrathal and took Roopa Ram to Hospital at Sikar. P.W.6 Shri Chothu Ram is cousin brother of deceased Roopa Ram. He has been examined as an eye-witness but he turned hostile. He did not support the prosecution case. P.W.8 Sheopal also turned hostile. He did not support the prosecution case. P.W.7 Mali Ram was posted in S.M.S. Hospital, Jaipur Police Chowki. He deposed that Constable Rohitash from Moti Doongri, Police Station, Jaipur handed over Ex.P.7 (information under Section 174 Cr.P.C.). He thereafter prepared Panchnama Ex.P.4. P.W.9 Mahavir Prasad and P.W.10 Balbir while admitting their signatures upon Ex.P.9 (Recovery Memo of lathi at the instance of accused Satpal), did not support the contents of this Memo. Hence, they were declared hostile. P.W. 11 Dr.S.S. Sharma, the then Medical Jurist, S.K. Hospital, Sikar, deposed that he medically examined Shri Roopa Ram aged 70 years on 4.2.2001 at about 10.00 a.m. in Male Surgical Ward. Roopa Ram was in semi-unconscious condition and he immediately referred him to S.M.S. Hospital, Jaipur, and prepared report Ex.P. 11. Roopa Ram was admitted in this hospital at about 9.30 a.m. on that day. P.W. 12 Mohan Lal Incharge, Police Station Raghunam-garh, deposed that Smt.Hema Devi submitted a typed report Ex.P. 1 on 9.2.2001. P.W. 13 Richpal Singh Constable is also a formal witness. P.W.14 Banwari Lal Head Constable prepared site-plan Ex.P.3. P.W.16 the then S.H.O. Police Station, Raghunaihgarh, conducted the investigation and submitted charge sheet only against the accused appellant Satpal.

5. We will now analyse the submissions made by learned counsel for the parties in the light of evidence adduced on behalf of both the sides. The appellant aged 38

years claims himself to be the adopted son of P.W. 1 Smt.Hema Devi and her deceased husband Roopa Ram, although Smt. Hema Devi denied this fact in cross- examination. P.W.6 Chothu Ram being relative of both the sides deposed that accused Satpal was adopted son of deceased Roopa Ram. P.W.16 Surendra Singh, S.H.O. also stated in cross- examination that the fact of adoption of accused Satpal by Roopa Ram before 25-26 years, prior to this incident was admitted by the witnesses whose statements were recorded during the investigation, According to two registered gift deeds Ex.D.8 and Ex.D.9 dated 22.4.1999, said to be executed in favour of appellant by deceased Roopa Ram go to show that appellant was adopted by Roopa Ram in Samvat 2032 (approximately 26 years earlier from the date of execution of these documents). D.W.2 Vidhyadhar Advocate deposed to the effect that Ex.D. 8 and Ex.D.9 bear photograph of deceased Roopa Ram who affixed his thumb impression on both the documents in his presence as well as in the presence of former M.L.A. Shri Ranmal Singh. In cross-examination, D.W.2 Vidhyadhar pleaded ignorance about any report against the appellant and Ranmai Singh in regard to these documents. P.W.1 Hema Devi admitted in cross-examination that she alongwith her husband was residing in nohra of P.W.4 Bhanwar Lal and P.W.5 Ashok Kumar for the last 15 years as she was ousted from her own house by appellant and his family members. D.W. 1 Shri Kana Ram also admitted in cross-examination that deceased Roopa Ram alongwith hi wife Hema Devi was residing separately because the wife of appellant and Smt.Hema Devi were not on good terms. Thus it is not disputed that relations between P.W.I Hema Devi, P.W.3 Rameshwar, P.W.4 Bhanwar Lal and P.W.5 Ashok Kumar on the one hand were strained with appellant and as such we have to scrutinize the sole testimony of P.W.2 Kana Ram as an eye- witnesses. Out of three eye- witnesses examined on behalf of the prosecution, P.W.6 Chothu Ram and P.W.8 Shiv Pal as stated earlier earlier turned to whether it is safe to sustain the conviction of the appellant only on the sole testimony of P.W. 2 Kana Ram?

6. It is well settled principle of law that conviction can be based upon the sole testimony of a witness provided such witness is found wholly reliable. When we judge the statement of P.W.2 Kana Ram in the light of this settled legal position, we find that P.W.2 Kana Ram was unreliable witness. Kana Ram is a witness who

is interested in the prosecution side and further is on inimical terms with the appellant. Kana Ram worked as a labourer of deceased Roopa Ram and Roopa Ram sold his four bighas of land to Kana Ram about two to three years prior to this incident and litigation was and is still going on between P.W.2 Kana Ram and the appellant. Therefore, his testimony has to be scrutinized carefully. According, to Kana Ram, he alongwith Sheopal P.W.8 accompanied Roopa Ram to the house of Sukhdev and infront of the house of Sukhdev appellant gave a lathi blow upon the head of Roopa Ram while wife of Satpal Smt.Banarasi Devi inflicted 'kasia' blows upon his knee caps. It is significant to mention here that Smt.Banarasi Devi was not found involved in this incident and further no injury caused by 'kasia' was found either by Dr.P.W.11 Shyam Sunder Sharma or by P.W.15 Dr.P.C. Vyas. It is also significant to note that Roopa Ram was first taken to Kalyan Hospital at Sikar, he was admitted there at about 9.30 a.m. on 4.2.2001 and was medically examined by P.W. 11 Dr.Sharma who prepared the report Ex.P. 11 but surprisingly enough no injury was mentioned in Ex.P. 11. According to the statement of P.W.2 Kana Ram, appellant caused only one injury upon head of the deceased and thus injuries on knee caps of the deceased remained unexplained i.e. as two who was the author of these injuries. It was rightly contended by learned counsel that there is no corroboration by medical evidence also. As stated earlier, Ex.P.11 is the first document which was prepared at 10.00 a.m. on 4.2.2001, and according to it, looking to the delirious condition of Roopa Ram, he was referred to S.M.S. Hospital, Jaipur, but not a single injury was noted in Ex.P. 11 by Dr.S.S. Sharma. No explanation was furnished regarding it on behalf of the prosecution. - P.W.11 Dr.Sharma stated in cross-examination that delirious condition of Roopa Ram may be on account of some disease. Keeping in view Ex.P. 11 and the statement of concerned doctor it may be concluded that either there was no injury or the doctor failed in his duty to note the same. Next relevant document in this regard is Ex.P. 1 FIR itself wherein it has not been specified as to who was the author of the injuries though the FIR was lodged after a delay of seven days. Third relevant document is Ex.P.4 Panchnama of the dead body of Roopa Ram which was prepared at 2.00 p.m. on 9.2.2001 in the presence of P.W.3 Rameshwar, P.W. 4 Bhanwar Lal and one third person Rameshwar Lal Balai. In para 4 of Ex.P.4 only two injuries on knee caps were noted and it is

specifically mentioned that no other injury was visible. P.W.3 Rameshwar deposed that injuries were on head and legs while P.W.4 Bhanwar Lal stated that he saw only one injury on head. Ex.P.4 bears the signatures of both Rameshwar and Bhanwar Lal and their statements are contrary not only to Ex.P.4 but contrary to medical evidence also. No explanation has been given regarding omission of head injury in Ex.P.4. P.W.7 Mali Ram, Head Constable prepared Ex.P.4 and he deposed in cross-examination that he had seen the injuries upon the body of Roopa Ram and found injuries only on legs and did not see any other injury. The Post-Mortem Report Ex.P. 14 was prepared at 4.00 p.m. on 9.2.2001 by P.W.15 Dr. P.C. Vyas. The nature of injury upon the head of the deceased as disclosed in the Post- Mortem Report is such that in normal course it would not have escaped while Panchnama Ex.P.4 was prepared. It was nowhere stated by P.W.3 Rameshwar and P.W.4 Bhanwar Lal that the head injury was visible but it was not noted in Panchnama Ex.P.4. It was also rightly contended by learned counsel that duration of the injuries has not been disclosed and in absence of any injury report it was not sufficient only to say that injuries were ante- mortem. Bed Head ticket of S.M.S. Hospital, where the patient remained admitted from 4.2.2001 to 9.2.2001 was also not produced P.W.16 Surendra Singh S.H.O. admitted in cross-examination that he did not obtain bed head ticket from S.M.S. Hospital, Jaipur. It is also important to mention here that according to the statements of P.W.1 Smt.Hema Devi, P.W.3 Rameshwar, P.W.4 Bhanwar Lal and P.W.5 Ashok Kumar, the condition of Roopa Ram became serious on the next day of the occurrence i.e. 3.2.2001 and he was taken to hospital on 4.2.2001 at Sikar and then on the same day to S.M.S. Hospital, Jaipur, but no injury report was prepared either at Sikar or in S.M.S. Hospital, Jaipur. It was lastly argued that there was inordinate delay in lodging the FIR and conduct of the witnesses was highly unnatural and, therefore, prosecution story cannot be believed. Learned Public Prosecutor contended that merely on the ground of delay in FIR and some contradictions in the statements of the witnesses including that of P.W.2 Kana Ram, their testimony can not be discarded. Admittedly, according to the prosecution this occurrence took place at about 1.30/2 p.m. on 2.2.2001 and the concerned Police Station was about 24 kms. away from the place of occurrence and FIR Ex.P.1 was lodged at the Police Station at about 8.50 a.m. on 9.2.2001 i.e. after a delay of seven days. No

satisfactory explanation has come forward. It was tried to explain that since the condition of Roopa Ram became serious and his wife Smt.Hema Devi was busy in the hospital in looking after him, this delay stands explained. But it can not be accepted at all because the condition of Roopa Ram according to Smt.Hema Devi became serious on the next day of occurrence and Roopa Ram was admitted in the hospital on 4.2.2001. There was Police Station at Sikar and a Police Chowki in S.M.S. Hospital Campus and as stated earlier the concerned Police Station was not so far from the place of occurrence and in view of these facts and circumstances, there was no reason at all for such inordinate delay of seven days. It is true that only on account of delay in lodging the F.I.R., prosecution story cannot be thrown out. But such inordinate delay coupled with other suspicions may create reasonable doubt in the reliability of the prosecution story. In *Nirbhay and Anr. v. The State of Rajasthan* (1) it was held by this Court that in a murder case possibility of introduction of coloured version as a result of deliberation and consultation cannot be ruled out in case the FIR is delayed. Similar view was taken by this Court in *Pema Ram and Anr. v. State of Rajasthan* (2), it was held that FIR is a valuable piece of evidence in criminal case for appreciating the evidence. Delay in FIR results in affecting the credibility of the investigation and case cannot be taken to be proved beyond a reasonable doubt. In *Nain Singh and Anr. v. State of U.P.* (3), it was held that that delay in lodging of FIR and prosecution failing to lead cogent, reliable and trustworthy evidence, conviction cannot be sustained. In *Thulia Kali v. The State of Tamil Nadu* (4) it was held that first information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and delay in lodging the FIR quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the FIR should be satisfactorily explained. While in the case of *Peddireddy Subbareddi and Ors. v. State of Andhra Pradesh* (5) there was delay of 15 hours in lodging FIR and eye-witness after witnessing occurrence did not report to any of the villagers, therefore, his statement was found clouded with strong suspicion. In the

instant case there was delay of 7 days and no satisfactory explanation has come forward. Therefore, the prosecution case becomes seriously doubtful; Conduct of witnesses including eyewitness P.W.2 Kana Ram is found quite unnatural. P.W.1 Smt.Hema Devi stated that her husband died in the hospital during the treatment and thereafter some one asked her to lodge the report. It shows that she lodged Ex.P. 1 upon the instructions of some one else and that too after the death of Roopa Ram while the typed report Ex.P.1 is dated 8.2.2001 i.e. one day earlier to the death of Roopa Ram. She did not even disclose the name of that 'some one' who asked her to lodge report. She further stated in cross-examination that at about 8.00 p.m. in the night of the occurrence her sister and Bhagwana (husband of the sister) came to her. She did not disclose this incident to them. P.W.2 Kana Ram also admitted in cross-examination that he did not narrate this incident to any of the villagers except Hema Devi. P.W..3 Rameshwar, P.W.4 Bhanwar Lal and P.W.5 Ashok Kumar also did not disclose this incident to any of the villagers and they also did not make any effort to lodge the report, though they are close relatives of P.W.1 Smt. Hema Devi. In *Din Dayal v. Raj Kumar @ Raju and Ors.* (6), the Hon'ble Supreme Court justified the decision of the High Court in not relying upon testimony of the witnesses in such facts and circumstances as narrated here-in-above. Similar view was taken by Hon'ble Supreme Court in *State of Orissa v. Mr. Brahmananda Nanda* (7). In the present case the defence taken by the accused appellant was that there was a Neem Tree in front of the house of Sukhdev and Roopa Ram fell on the roots of the tree and thus might have received injuries and on account of enmity the appellant was falsely implicated after the death of Roopa Ram. P.W. 11 Dr. Sharma and P.W.15 Dr. Vyas both admitted the suggestion that on account of fall on hard surface one may get such injuries. D.W. 1 Kana Ram deposed that he was well conversant with Roopa Ram and both of them often used to meet each other. On 3.2.2001 at about 9.30 a.m. Kana Ram and Roopa Ram were sitting near a temple and during conversation Roopa Ram told him that he went to see his ailing brother and while coming back he fell down upon the roots of neem tree and got some minor injury on legs. On the next day Kana Ram went to see Roopa Ram and then he came to know that Roopa Ram was taken to Sikar Hospital. A neem tree has been shown near the place of occurrence in the site plan Ex.P.3. P.W.1 Hema Devi and P.W.2 Kana

Ram admitted in cross-examination that there is a neem tree in front of the house of Sukhdev and roots of that tree were coming out of ground surface. All the Witnesses i.e. P.W.1 Hema Devi, P.W.3 Rameshwar, P.W.4 Bhanwar Lal and P.W.5 Ashok Kumar were given the suggestion that Roopa Ram entangled the roots of neem tree and fell down and thus received injuries. P.W.1 Smt.Hema Devi first agreed to this suggestion but in next breath she stated that her husband received injuries with lathi. P.W.3 Rameshwar denied this suggestion while P.W.4 Bhanwar Lal and P.W.5 Ashok Kumar pleaded ignorance about this suggestion. P.W.6 Chothu Ram though declared hostile, categorically stated that there is a big neem tree in front of the house of Sukhdev and Roopa Ram had fallen upon the roots of that tree. Therefore, this possibility can not be ruled out that Roopa Ram fell upon the roots of the neem tree and received injuries. In this context the statement of P.W.1 Hema Devi is very significant. She stated that her husband was brought back by P.W.2 Kana Ram and P.W.8 Sheopal and both the witnesses narrated his incident to her. But it was nowhere stated by her that her husband told this incident to her. According to Hema Devi on a quarry her husband told "mUgksaus dgk Fkk fd ekewyh yx xbZ gS] Bhd gkstk;sxk A**". This version of Roopa Ram to his wife just after the incident goes a long way to show that the defence version may be probable. At the cost of repetition it is reiterated that according to the statement of P.W. 1 Hema Devi, her husband Roopa Ram did not say a word to the effect that he was beaten by appellant Satpal and his wife as well as disclosed by P.W.2 Kana Ram.

7. In the result the appeal stands allowed and impugned judgment of the court below is set aside. The appellant Satpal shall stand acquitted from the charges under Sections 341, 323 & 302 IPC. He shall be released forthwith if not required in any other case.