

Hari and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-07-2009

Reported in : 2010CriLJ308

Judge : Dalip Singh and; K.S. Chaudhari, JJ.

Appellant : Hari and ors.

Respondent : State of Rajasthan

Judgement :

K.S. Chaudhari, J.

1. This appeal has been filed against the judgment dated 21-4-2003 passed by Additional Sessions Judge (Fast Track), Hindauncity by which he convicted accused-appellant-Kadu under Section 302, I. P. C. and other accused-appellants Hari, Pattal alias Suraj Mai and Ram Niwas under Section 302/34 I.P.C. and sentenced each accused to undergo life imprisonment and fine of Rs. 500/-, in default of payment of fine to further undergo three months rigorous imprisonment.

2. Brief facts of the prosecution case are, that PW-3 Vikram Singh lodged F.I.R. Ex, P/1 on 30th July, 2001 at 2.15 p.m. and stated that on 30th July, 2001 at 9.30 p.m. his father Narayan along with his mother Kampuri, sister Kinni (Kinni) went to their field. Kadu, Ran Niwas, Hari, Dharam Singh, Pattal, Kailash, Kishanpal, Keshanti, Barfi armed with Gandasi, Farsa, Sela, Lathi were sitting in the field and

Hari was tilling field by tractor. Narayan requested Hari not to till the field then all accused-persons belaboured Narayan with lathi, his mother and sister tried to rescue then they were also beaten. Accused Kadu caused injury with iron sela on the chest of Narayan on account of which Narayan died instantly. His mother and sister cried, then he along with his elder brother Sagar Singh rushed to the spot by then his father Narayan had died. On this report, case under Sections 147, 148, 149, 302, I.P.C. was registered and after completion of investigation, challan was filed against accused-appellants under Section 302/34, I.P.C. in the Court of A. C. J. M. Hindaun. Case was committed to the Court of Additional Sessions Judge, Hindaun which was transferred to the Court of Additional Sessions Judge (Fast Track), Hindaun and charges under Sections 302, 302/34, I.P.C. were framed against accused-persons to which they denied. Prosecution examined 14 witnesses and after recording statement under Section 313, Cr.P.C. and hearing arguments, accused-appellants were convicted and sentenced as aforesaid.

3. Heard learned Counsel for the parties and perused record.

4. Learned Counsel for the appellants argued that original F.I.R. has been suppressed and F.I.R. Ex. P/1 was lodged after postmortem report which cannot be relied on and further submitted that F.I.R. is apparently ante-time. He further submitted that so called eye-witnesses were not present on the spot and further submitted that in the absence of blood on the clothes of the deceased and blood on the spot, prosecution has failed to prove that accused-persons committed murder of deceased-Narayan in the field at 9.30 a.m. and trial Court has committed error in convicting accused-appellants, hence, appeal may be accepted and they may be acquitted of the charges.

5. On the other hand, learned Public Prosecutor argued that the trial Court has given cogent reasons for conviction and prosecution has proved the case against the accuseds-appellants beyond reasonable doubt, hence, the appeal of the appellants may be dismissed.

6. PW-3 Vikram Singh, who is son of deceased, has stated in his statement that he reached on the spot and his father Narayan succumbed to injuries inflicted by accused-persons and he submitted report Ex. P/1 which bears his signature.

Report Ex. P/1 bears endorsement of S.H.O. Hindauncity made on 30-7-2001 at 2.15 p.m. at Hindauncity Hospital. PW-3 Vikram Singh has stated in his cross-examination that report was written by himself, but report Ex. P/1 is not his hand written. He has further admitted that report written by him was kept by Station House Officer in his pocket and SHO got his signature on report Ex. P/1 which was not written by him though report Ex. PI was read-over to him. He has specifically stated that report Ex. P/1 is not that report which was given by him. Thus, it becomes clear that report Ex. PI is not that report which was written by PW3-Vikram Singh and the actual report has been suppressed by Investigating Officer for the reasons best known to him and in such circumstances no reliance can be placed on report Ex. P/1.

7. Report Ex. PI bears endorsement of SHO Hindauncity Camp Hospital Hindauncity that it was given by Vikram Singh on 30-7-2001 at 2.15 p.m. On the contrary, PW12-Kailash Bhagwati, SHO Hindauncity admitted in his cross-examination that he reached on the spot at 12.15 p.m. on telephonic information by unknown person. He enquired about death of deceased from his relatives and then asked them to give report in writing but they revealed that they will give report after reaching the hospital. He has also admitted endorsement K to L on inquest report Ex. P10 in which heirs of deceased submitted that they will give report after postmortem. He has also admitted that heirs of deceased revealed that they will lodge report only after post-mortem. Inquest report Ex. P/10 also bears note M to N which was made at 5.00 p.m. on 30-7-2001 in which it has been mentioned that after receiving the body of the deceased for cremation Vikram Singh son of Narayan submitted report which was sent to Police Station Hindauncity. Admittedly, post-mortem was conducted at 3.30. p.m. on that day as mentioned in post-mortem report Ex. PI2. Only after getting the body of the deceased, report was lodged by PW3-Vikram Singh as has been admitted by Vikram Singh. Then how report Ex. PI reached to police station at 2.15 p.m. and case was registered at 2.30 p.m. This fact clearly belies report Ex. PI to have been lodged by Vikram Singh at 2.15. p.m. and in such circumstances no reliance can be placed on report Ex. P/I.

8. PW-12 Kailash Bhagwati has stated in his statement that on 30-7-2001 he got telephonic message that someone has died in scuffle in village Gavra-Meena. On enquiry person who intimated on telephone did not reveal his name. He recorded 'Rapat' Ex. P/16 in Rojnamcha and left for the place of occurrence. PW-3 Vikram Singh has admitted in his cross-examination that he telephoned at police station as well as SP's office about the incident and then police came on spot. Ex. P/16 does not contain name of assailants as well as deceased. PW-12 further states that he reached on the spot at 12.15 p.m. and enquired from heirs of deceased and came to know that deceased died on account of injury inflicted with sela. He prepared memo of the dead body Ex. P/14 which bears signature of Kadya and Yad Ram whereas Ex. P/10 inquest report bears signatures of these two persons along with signatures of Lallu Ram, Harkesh and Sagar Singh son of deceased. In these documents it has not been mentioned that how deceased got injury and who inflicted injury. Ex. P/10 contains fact that SHO asked heirs of deceased Narayan to lodge report, but they stated that the report will be lodged after post-mortem report and ultimately report was lodged at 5.00 p.m. Thus, it becomes clear that till preparation of inquest report PW3-Vikram Singh and PW-4 Sagar Singh son of deceased was not aware about the identity of the assailants, otherwise they would have disclosed their names to the SHO and he must have incorporated this fact in inquest report. Inquest report Ex. P/10 contains FIR number and it is not clear how FIR number were recorded in inquest report Ex. P/10 though it was prepared before lodging of the FIR. Thus, the inquest report itself becomes doubtful.

9. PW1-Ram Dev Singh has stated in his statement that as per direction of SHO Kailash Bhagwati he brought FIR Ex. P/1 at police station on which Check FIR Ex. P/2 was prepared. Ex. P/2 contains endorsement of A.C.J.M. Hindauncity and as per this endorsement, it was received by the Officer on 31-7-2001 at 10.30 a.m. PW/12-Kailash Bhagwati has stated in Ms statement that the FIR could not be sent to Court on 30-7-2001 upto 5.00 p.m. as he was busy in hospital and cause of delay in sending FIR can be shown only by in charge of police station. He has denied the allegation that the original report has been suppressed and after postmortem, FIR Ex. P/1 has been prepared and it is ante-time and ante-dated. He has denied this suggestion that on account of this reason FIR could not be sent to the Court on 30-7-2001. Endorsement on Ex. P/2 clearly indicates that this

report reached in the Court on 31-7-2001 at 10.30 a.m. i.e. after 20 hours though Court is situated in the same town where police station is situated.

10. Learned Counsel for the appellants submitted that on account of delay in sending FIR to the Court no reliance can be placed on the prosecution story and he placed reliance on : 1994 SCC (Cri) 1390 : 1995 Cri LJ 457 Meharaj Singh v. State of U. P. 0085/2001 : 2001 Cr LR (SC) 170 : 2001 Cri LJ 1176 State of Rajasthan v. Shri Teja Singh and Ors. and : 2007 (4) Crimes 140 : 2008 Cri LJ 372 (SC) Ramesh Baburao Devaskar and Ors. v. State of Maharashtra in which it was held that where there is delay in sending the FIR to the Court, it can give rise to an inference that the FIR is ante-time.¹ In such circumstances, it becomes doubtful that FIR was lodged at 2.15 p.m. on 30-7-2001 particularly when inquest report Ex. P/10 contains clear endorsement that FIR was lodged at 5.00 p.m. and as per statement of PW3-Vikram Singh the original FIR was lodged by him has not been produced by prosecution.

11. As far as the eye-witnesses are concerned, prosecution has tried to examine PW3-Vikram Singh, PW4-Sagar, PW5-Kampuri and PW6-Kinni as eye-witness. Report Ex. P/1 indicates that PW3-Vikram Singh and PW4-Sagar were not on the spot and they reached on the spot on hearing hue and cry of their mother and sister and by the time they reached, their father had already died. PW3-Vikram Singh has stated in his cross-examination that all the accused-persons inflicted injuries with weapons on the body of deceased and he along with his brother Sagar, mother Kampuri, sister-Kinni and Chinta tried to rescue his father, than they were also beaten by accused-persons. Later on in his cross-examination he admitted that at the time of occurrence he was at his house and he along with his brother Sagar reached on the spot on the hue and cry of his mother. PW3-Vikram Singh has stated that when they were rescuing their father they were also beaten by accused-persons but he has also admitted that except his mother none other received any injury. Thus, it becomes clear that he and Sagar were not on the spot at time of occurrence and they are not the eye-witnesses to the occurrence.

12. PW4-Sagar Singh has stated in his examination in chief that his mother, father and two sisters were on the field and he was at a distance of 40 ft. in the field. He

has stated that all accused-persons armed with sela, gandasi and lathi came on the field and inflicted blows by fists and kicks on the body of his father Narayan. On the instigation of accused-Hari, accused-Kadu inflicted blow with sela on the abdomen of deceased on account of which Narayan died on the spot. Vikram Singh who has seen occurrence intimated to the police on telephone. He has admitted in his cross-examination that he reached on the spot after hearing hue and cry of Vikram Singh. Thus, it becomes clear that he reached on the spot after Vikram Singh and when Vikram Singh himself is not an eye-witness PW4-Sagar also cannot be an eye-witness to the occurrence and he has also' tried to implicate falsely to all the accused-persons.

13. PW5-Kampuri wife of deceased has', stated that she along with her two daughters Chinta, Kinni and husband Narayan were on the field. All the accused-persons came on the spot and tried to till the land. They requested accused-persons not to till the land then the accused stopped the tractor and inflicted injuries with fists and kicks on the body of her husband. She further stated that; on the instigation, of Hari, accused Kadu inflicted injury with sela on the body of Narayan. She has further stated that her husband died within five minutes. She further stated that her two. fingers of left hand were cut by injuries inflicted by accused-persons. She has no where stated in her statement that Vikram Singh and Sagar were on spot. She has also admitted in her cross-examination that her two sons and two daughters were at, some distance so they did not receive any injury.

14. As per her statement Vikram Singh and Sagar were not the eye-witnesses. Her statement also does not inspire any confidence as she has stated that 25 to 30 injuries were inflicted with lathi, gandasi and farsa on the body of her husband by accused-persons. She has further stated that as she tried to rescue her husband she also received injuries with lathi, gandasi and farsa on every part of her body. She further stated that blood came out only from injuries caused on fingers. On the contrary, all documents including post-mortem report Ex. P/12 clearly reveals that deceased sustained only one injury which was a stab injury on his abdomen. There is no injury report of Kampuri and none of the other witnesses have stated that Kampuri received many injuries. In such circumstances, it cannot

be believed that Kampuri is an eye-witness.

15. PW6-Kinni has stated that she along with her sister Chinta, mother-Kampuri and father Narayan were on the field. Accused-persons came on the spot and accused Kadu inflicted sela blow on the abdomen of her father. She has further deposed that at the time of occurrence her brother-Sagar and Vikram Singh also came so accused persons ran away and did not inflict injury on their body. She has further deposed in her cross-examination that her father received injuries on his body by lathi, gandasi and farsa, but she herself and her sister-Chinta did not receive any injury. She has further stated that her mother sustained injuries on her fingers. Her statement cannot be believed as her father received only one injury on the abdomen whereas she has, stated that her father received many injuries by lathi, gandasi and farsa, thus, her testimony is contrary to the medical evidence on record. She has stated that accused-persons left the scene of occurrence as Sagar and Vikram Singh came on the spot whereas Vikram Singh has stated that he along with his family members tried to rescue his father but accused-persons inflicted injuries on there body also whereas neither Kinni nor any other eye-witness sustained any injury. No. doubt all the witnesses have stated that Kampuri received injuries on her two fingers, but in the absence of corroboration by any medical report it cannot be believed that she received any injury on her fingers in the occurrence. In her police statement Ex. D/4 she has not disclosed name of assailants Kailash, Kishanpal, Dharam Singh, Barfi, Keshanti, In such circumstances it cannot be believed that she is eye-witness to the occurrence. Prosecution has not examined Chinta daughter of deceased for the reasons best known to the prosecution though her name has been shown in the list of witnesses.

16. Thus, it becomes clear that alleged eye-witnesses are not witness to the occurrence and from their statements it cannot be believed that accused-Kadu on the instigation of accused-Hari, inflicted sela blow on the body of deceased-Narayan. No doubt post-mortem report Ex, P/12 indicates that deceased died on account of stab wound on his abdomen which has been proved by PW-7 Dr. Umesh Gupta, who was Member of Medical Board, which, conducted the postmortem. Merely because deceased-Narayan died on account of injury on his

abdomen, it cannot be presumed that he died on account of injury inflicted by accused-Kadu at the instigation of accused-Hari in conspiracy to other accused-persons

17. Learned Counsel for the appellants submitted that in the absence of bloodstains on the spot prosecution story becomes doubtful and appellants cannot be convicted. PW3-Vikram Singh has stated that a lot of blood came out on account of injury to his father, but it did not spread on field as it was absorbed by clothes which his father was wearing. PW4-Sagar has stated that blood which came out of wound of his father was absorbed by deceased's clothes and some blood also spread on field, but police neither took blood smeared soil nor bloodstained clothes of deceased. On the contrary, PW5-Kampuri stated that after injury with sela blow Narayan was dragged by the accused on account of which blood spread all over the field. She has also admitted that clothes of Narayan also absorbed blood and his 'Baniyan' (vest) had holes. PW6-Kiririi has also corroborated PW5-Kampuri. Out of so called four alleged eye-witnesses, three have stated that blood spread on field, whereas Vikram Singh has denied any blood on the field. On the contrary, PW12-Kailash Bhagwati, who prepared site plan, inquest report and memo of deceased's body, has admitted that he did not find any blood near deceased's body. He has also admitted that he has not recovered bloodstained clothes of deceased particularly the vest he was wearing. Site plan Ex. P/9 does not reveal that there was any blood in the field. Inquest report Ex. P/10 specifically mentions that there was no blood on the field near dead body. Thus, it becomes clear that neither blood was found near the dead body, nor blood smeared soil was recovered by the Investigating Officer.

18. Learned Counsel for the appellants placed reliance in the case of Mehraj Singh (1995 Cri LJ 457) (supra) in which it was held as under:

Absence of bloodstains at the place of occurrence as also absence of blood trail from the place of occurrence to the place where dead body was found shows that the occurrence did not take place in the manner suggested by the prosecution and that the genesis of the fight has been suppressed from the Court.

19. In such circumstance, it becomes doubtful that the occurrence took place in the 'disputed field in the manner suggested by the prosecution. Looking to the contradiction in the statements of eye-witnesses regarding blood on the field it cannot be believed that the so called eye-witnesses have at all seen the occurrence.

20. PW3-Vikram Singh has stated that after the death of Narayan, he along with his brother, mother and sister hugged the body of deceased-Narayan and their clothes became bloodstained. PW-4-Sagar, PW-5. Kampuri and PW6-Kinni have not corroborated PW3-Vikram Singh and have not stated that their clothes were also stained with deceased's blood. Admittedly, investigating officer has not recovered bloodstained clothes of these witnesses. In Mehraj Singh's case (1995 Cri LJ 457) (supra) it was observed by the Apex Court that presence of eye-witnesses is doubtful because of the fact that even though she lifted body of deceased which was bleeding and her clothes had become bloodstained, the investigating officer failed to recover said clothes, giving room for a genuine complaint that her presence is also doubtful.

21. It is admitted case that investigating officer neither recovered bloodstained clothes of deceased nor of the alleged eyewitnesses. In the light of aforesaid judgments their presence at the scene of occurrence is wholly doubtful and on their testimony the appellants cannot be convicted for the aforesaid offences.

22. PW12-Kailash Bhagwati has stated that he recorded statements of witnesses PW3-Vikram Singh and PW4-Sagar on 1-8-2001 and statements of PW5-Kampuri and PW6-Kinni on 7-8-2001. He has further de. posed that the statements of Kampuri and Kinni were recorded after 9 days because they were not available. He has further deposed that as he was busy in other work he could not record statement of witnesses Vikram Singh and Sagar before 1-8-2001. On the contrary, PW3-Vikram Singh has stated that his first statement was recorded on the day of occurrence at the spot later on his statement was recorded on 1-8-2001 and after 15 to 20 days again his statement was recorded. PW4-Sagar has stated that his statement was recorded on next day of the incident and he has denied that his statement was recorded on 1-8-2001. Thus, it becomes clear that if statements' of

witnesses were recorded on the day of occurrence or on next day, they have been suppressed by investigating officer and if statement of investigating officer is believed that statements of witnesses were recorded on 1-8-2001 and 7-8-2001 as they were not available, it can be inferred that these witnesses were not on the spot and they were not aware about the assailants otherwise they would have disclosed names of the assailants immediately on the spot to PW12-Kailash Bhagwati.

23. In : AIR 1979 SC 135 : 1979 Cri LJ 51 Ganesh Bhavan Patel and Anr. v. State of Maharashtra statement of witnesses were recorded on next day, though they were or, could be available when Investigating Officer visited place of occurrence and on account of delay in recording statements of witnesses, accused persons were acquitted under Section 302, IPC. In the present case, all witnesses were available in the village on 30-7-2001 even then their statements were recorded after 2 to 9 days and no reasonable explanation has been given by the Investigating Officer for delay in recording statements. Hence, no reliance can be placed on the statements of these witnesses and accused persons are entitled to benefit of doubt.

24. Learned Counsel for the appellants further submitted that as per post-mortem report Ex.P/12 stomach of deceased contained liquidity of food material in a stage of digestion and there was pool of dark fluid blood in abdominal cavity. As per statement of PW7-Dr. Umesh Gupta duration of death was within 12 hours from the time of post-mortem examination and semi digested food along with dark fluid blood in abdominal cavity was found in body of deceased. It cannot be denied that death of deceased took place at some other place in the mid night of 29th and 30th July, 2001 particularly when no blood was found on the alleged spot.

25. Learned Public Prosecutor submitted that recovery of sela on the information of accused Kadu proves case of prosecution beyond reasonable doubt. This argument is devoid of force as recovered sela was not bloodstained as per recovery memo and statement of PW12-Kailash Bhagwati. PW7-Dr. Umesh Gupta has also admitted in his cross-examination that the weapon by which injury was inflicted on abdomen must have received bloodstains of deceased. Absence of

blood on the recovered sela cannot in the facts and circumstances of the present case be useful for bringing home the charge against the accused-persons.

26. It is submitted position that there was enmity between the accused-persons and deceased pertaining to land on which this incident is alleged to have taken place. This land was purchased by appellant-Kadu etc. on 8-6-2001 vide registered sale deed Ex. D/5 and they have claimed their possession over the land whereas deceased was claiming possession over the land. Enmity is double-edged sword and on account of enmity between the parties in the facts and circumstances of this case the possibility of false implication cannot be ruled out or it cannot be used for bringing home the charge beyond reasonable doubt.

27. As per above discussion it becomes clear that original FIR has been suppressed and FIR Ex./P1 has ante-dated by the Investigating Officer for the reasons best known, to him. Investigating Officer had not recovered bloodstained clothes of deceased and other eye-witnesses and has also not taken blood smeared soil from the spot and delayed in recording statements of witnesses under Section 161, Cr.P.C. without any reasonable explanation. In such circumstances it cannot be inferred from evidence brought by the prosecution on record that accused-persons are guilty of murder of, deceased-Narayan and they are entitled to benefit of doubt and they are to be acquitted of the charge levelled against them.

28. Before parting with this case we may add that this case is a glaring example of how not to conduct the investigation. The manner in which the investigation has been conducted in the instant case as we have pointed out above, right from recording the FIR as given by PW3-Vikram Singh carrying the inquest and not making recovery of clothes of deceased and the witnesses which were corroborated evidence and not recording the statement of witness immediately even though they were available has only helped the cause of the accused in the hands of the Investigating Officer.

29. Consequently, DB Criminal Appeal No. 729/2003 filed by appellants is accepted and allowed and the judgment dated 21-4-2003 passed by Additional Sessions Judge (Fast Track) Hindauncity by which he convicted appellant Kadu

under Section 302, IPC and other accused-appellants under Section 302/34, IPC is set aside. Accused-appellant-Kadu son of Jai Narayah, who is in jail, may be released forthwith, if not wanted in any other criminal case. Appellants Hari, Pattal alias Suraj Mal and Ram Niwas are on bail, their bail bonds stand cancelled and they need not to surrender.

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