

Sukh Dev Singh and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Oct-16-2001

Reported in : 2003(3)WLN134

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Appeal No. : D.B. Criminal Appeal No. 188 of 1996

Appellant : Sukh Dev Singh and anr.

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

K.C. Sharma, J.

1. This appeal has been preferred by the accused-appellants namely, Sukh Dev, Jai Prakash and Pyare Lal challenging the judgment of conviction and sentence dated 26.2.1996 passed by learned Session Judge, Jhunjhunu, whereby, he has convicted the accused appellants under Section 302/34 of the Indian Penal Code and sentenced each of them to undergo life imprisonment.

2. Briefly stated the contextual facts of the case are that on 26.10.1994 at 8.15 P.M. PW-11 Shiv Kumar, Assistant Sub-Inspector, Police Station, Khetri received a telephonic message informing that Pawan Kumar @ Banti is lying unconscious,

near petrol pump due to injuries caused by 4-5 persons. The person did not disclose his identity and disconnected the telephone. PW-11 Shiv Kumar recorded this information in 'Rojnamcha' as Ex.P.24 and proceeded to the place of occurrence alongwith S.H.O., Bhisham Raj Arya, PW-13 and other police personnel. They found the dead body of one youth lying near the Cabin of petrol pump. PW-13 Bhisham Raj Arya received an information from Police Station that Bharat Kumar, the brother of deceased Banti alongwith the report is present at the police station. He directed to register the case and forwarded the First Information Report alongwith the complainant to Government Hospital, Nawalgarh as he had to proceed alongwith deceased Banti to the hospital. The Medical Officer in the Hospital declared Banti dead.

3. PW-6 Bharat Kumar submitted a written report Ex.P.6 at Police Station, Nawalgarh on 26.10.1994 at 9.30 P.M. to Ganpat Ram, Head Constable, PW-8 to the effect that on 26.10.1994, he and his brother Pawan Kumar @ Banti came to Mukundgarh at about 8.00 or 8.15 P.M. while they were passing, through in front of the petrol pump, a Bus No. RJ-18-P 0139 came from the opposite side and stopped near them and all of a sudden, 10-12 persons armed with Barchies, Gandasis and Dhariya got down from the bus. Accused Sukh Dev was having a Barchi like Lathi and he told other accused persons that enemy has met, so kill him. Alongwith accused Sukh Dev, there were Pyare Lal, Jai Prakash, Shiv Prasad and Mahi Pal and 5-6 other persons, to whom he can identify. These persons ran towards them to kill them and he ran towards the back side and Pawan Kumar ran towards the petrol pump, then all the accused persons surrounded him and started giving beating to him with their respective weapons. When he cried for help, some persons including his uncle's son Mahesh Kumar, PW-5 came running. It has been further mentioned that at the petrol pump two boys, who were filling petrol were also there, but none has to rescue him. He himself did not try to rescue Pawan Kumar because accused persons would have killed him. Accused persons after giving beating to Pawan @ Banti went away by the same bus. Pawan Kumar is lying near the petrol pump in dead condition. It has further been mentioned that there was enmity between the family of the complainant and the family of Sukh Dev. PW-8 Ganpat Ram, on the basis of the report, registered a case No. 271/94 under Sections 147, 148, 149 and 302, IPC

vide FIR, Ex.P.7. One constable alongwith Bharat Kumar reached the hospital, where PW-13 Bhisham Raj Arya recorded his statement of Bharat Kumar.

4. PW-13 Bhisham Raj Arya, S.H.O. inspected the site on 27.10.1994 and prepared site plan Ex.P.4. He collected blood stained soil and blood stained hair and control soil vide Ex.P.5. PW-10 Mohan Lal, took photographs of the scene of occurrence and also of the deceased. The photographs are Ex. P. 16 to Ex. P. 23 and their negatives are Ex. P. 16-A to Ex.P. 23-A. PW-13 Bhisham Raj prepared the inquest report Ex.P. 10. He arrested accused Sukh Dev, Jai Prakash and Pyare Lal on 3.11.1994 vide memos of arrest Ex.P. 1 to Ex.P. 3. He recovered one Gadhasi from the possession of accused Jai Prakash on his information Ex.P. 32 vide recovery memo Ex.P. 25. The site plan of the place of recovery is Ex.P. 28. He also recovered one Gadhasi from the possession of accused Pyare Lal on his information Ex.P. 23 vide recovery memo Ex.P. 26. The site plan of the place of recovery is Ex.P. 29. He also recovered Barchi like Lathi from the possession of accused Sukh Dev on his information Ex. P. 34 vide recovery memo Ex.P. 27. The site plan of the place of recovery is Ex.P. 30. He also recovered bus No. RJ-18-P 0139 on the information of accused Jai Prakash Ex.P. 35 vide recovery memo Ex.P. 31. He took in possession the blood smeared clothes of deceased Pawan Kumar vide Ex.P. 14. He deposited the recovered articles in Malkhana, a copy of malkhana register is Ex.P. 13. He sent the recovered articles for examination to F.S.L., Jaipur through letter of Superintendent of Police Ex.P. 36, the receipts of which is Ex.P. 15.

5. The report of F.S.L., Jaipur Ex.P. 38 indicates that blood stained hair, Pant and open Shirt were found stained with human blood. PW-7 Dr. G.C. Gupta, conducted the autopsy on the dead body of Pawan Kumar @ Banti on 27.10.1994 and found following injuries on his body.

(1) Incised wound 15 cm x 5 cm x 6 cm - Extending from right infra-orbital area to anterior aspect of left ear cutting the nasal bone, right axillary, bone, left axillary and zygomatic bones. Left eye ball incised and collapsed with haematoma.

(2) Incised wound 8 cm x 2 cm x 4 cm - Extending from right side of nose to left angle of mouth cutting the nasal bone and septum and right cheek.

- (3) Incised wound 7 cm x 2 cm x bone deep. Mid forehead vertically.
- (4) Incised wound 7 cm x 2 cm x bone deep left temporal area transversely.
- (5) Incised wound 12 cm x 3 cm x brain tissue deep - left temporo-occipital area extending from 3 cm above left ear to posterolateral side of neck cutting the temporal and occipital bone, underlying meninges and brain matter haematoma.
- (6) Incised wound 7 cm x 2 cm x bone deep - left occipital area obliquely placed parallel to injury No. 5.
- (7) Incised wound (cross shaped) 8 cm x 2 cm x bone deep - mid parietal area transversely and 5 cm x 1 cm x bone deep and 8 cm anteroposteriorly 5 cm injuries on upper limb left side.
- (8) Incised wound 6 cm x 1 cm x 1 cm deltoid region transversely.
- (9) Abrasion 12 cm x 0.5 cm - left deltoid laterally.
- (10) Abrasion 12' x 0.5' - left deltoid laterally.
- (11) Abrasion 10 cm x 0.5 cm - left deltoid laterally.
- (12) Abrasion 8 cm x 1 cm - left deltoid laterally.
- (13) Abrasion 7 cm x 0.5 cm left deltoid laterally.
- (14) Abrasion 6 cm x 0.5 cm left arm laterally lower 1/3rd.
- (15) Incised wound 1.5 cm x 0.5 cm x 0.5 cm.
- (16) Incised wound 2 cm x 0.5 cm x muscle deep.
- (17) Incised wound 2 cm x 0.5 cm x 1 cm. Laterally side of left arm lower 1/3 rd transversely.
- (18) Incised wound 10 cm x 4 cm x bone deep. Extending over lower third of left forearm (sparing the medial side only) cutting muscles, both bones tender and ligature vessels transversely.

(19) Incised wound 6 cm x 4 cm x bone deep - Anterolateral to left wrist transversely cutting the bone of wrist muscles, tenders and vessels.

(20) Incised wound 6 cm x 3 cm x bone deep. transvesely over knuckles of left hand posteriorly cutting 2nd, 3rd and 4th metacarpals bones lower ends.

Injuries over right upper limb:

(21) Incised wound 6 cm x 4 cm x bone deep - Back of right wrist and hand obliquely cutting the upper end of 2nd and 3rd metacarpals.

(22) Incised wound 10 cm x 1 cm x 1cm right forearm lower end to back of right and medial side vertically.

(23) Incised wound samilunar shaped 8 cm x 3 cm x bone deep - Extending from back of right thumb to back of index finger cutting the 2nd proximal phalanges.

(24) Incised wound 5 cm x 2cm x bone deep vertically and medial side of right third finger.

(25) Incised wound 4cm x 1cm x bone deep. Back of right 4th finger vertically cutting the proximal phalange bone.

(26) Incised wound 2cm x 1cm x 0.5cm. Back of right 4th finger transversely over middle phyalanyx.

(27) Incised wound 2cm x 1 cm x 0.5cm. Right 4th finger transversely over distal phalanx dorsally.

(28) Incised wound complete amputation of distal segment of right V finger.

(29) Left lower limb - Incised wound 7cm x 0.5cm x skin deep.- Left mid thigh laterally and transversely.

(30) Incised wound 7cm x 1cm x muscle deep (semi lunar shaped) - left knee anter laterally.

(31) Incised wound 4cm x 1cm x bone deep - abrasion 6cm x 0.2 cm. Middle third of left leg anteromedially.

(32) Abrasion 3cm x 0.2cm - Middle third of left leg laterally. Injuries over Chestwall:

(33) Abrasion 8cm x 0.5cm right infraclavicular region.

(34) Bruise 15cm x 3cm - left axillary infrapectoral region.

(35) Bruise 12cm x 3cm - left infra-pectoral region.

(36) Bruise 16cm x 3cm - left infra axillary and infra pectoral region.

6. Dr. G.C. Gupta, has opined that the cause of death is shock following extensive injuries of face, arms, leg and head. He has further opined that the injuries were sufficient in the ordinary course of nature to cause death. All the injuries are anti mortem in nature, all incised wounds are caused by sharp weapons, whereas, bruise and abrasions are caused by blunt weapons. The duration of injuries is 6 to 24 hours and the body of the deceased was brought on 26.10.1994 at 9.15 P.M. in the hospital and autopsy was conducted on the dead body at 1.15 P.M.

7. After completion of investigation, the police submitted a charge sheet against the accused appellants under Section 302, IPC, in the Court of Additional Chief Judicial Magistrate, Nawalgarh, who committed the case for trial to the Court of Sessions, Jhunjhunu.

8. The learned trial Court after considering the material on record framed charge under Section 302/34, IPC against the accused appellants. The charge was read over to the accused appellants to which they pleaded not guilty and claimed trial.

9. During trial, the prosecution in support of its case examined PW-1 Sumer Singh, PW-2 Prem Pal, PW-3 Moti Ram, PW-4 Hari Ram, PW-5 Mahesh Kumar, PW-6 Bharat Kumar, PW-7 Dr. Girish Gupta, PW-8 Ganpat Ram, PW-9 Mangtu Ram, PW-10 Mohan Lal Sharma, PW-11 Shiv Kumar, PW-12 Balbir and PW-13 Bhisham Raj Arya and also exhibited some documents referred to above. The statements of accused appellants were recorded under Section 313, Cr PC. They

have examined Hanuman Singh in their defence.

10. After completion of trial, the learned trial Court held the accused appellants guilty of the offence under Section 302/34, IPC and accordingly, convicted and sentenced them as indicated hereinabove.

11. We have heard Shri A.K. Gupta and Shri Vishal Bansal, learned Counsel appearing for the accused appellants and Shri Rajendra Yadav, learned Public Prosecutor and Shri S.S. Sunda, learned Counsel appearing for the complainant and also perused the impugned judgment and record of the case.

12. To appreciate the findings recorded by the learned trial Court resulting in conviction of the appellants, it would be appropriate to refer the statements of the prosecution witnesses.

13. PW-2 Prem Pal, PW-3 Moti Ram, PW-4 Hari Ram, PW-5 Mahesh Kumar and PW-6 Bharat Kumar are the eye witnesses of the occurrence. All of them have categorically stated that accused appellants Sukh Dev, Jai Prakash and Pyare Lal came at the place of incident in a bus and they were armed with deadly weapons like Barchi, Gadhasi and inflicted injuries on the person of Pawam Kumar @ Banti and returned back in the same bus.

14. PW-7 Dr. G.C. Gupta, found as many as 36 injuries on the person of deceased Pawan @ Banti and opined that the injuries were sufficient in the ordinary course of nature to cause death. He noticed as much as 25 incised wounds on the person of deceased Pawam @ Banti.

15. PW-8 Ganpat Ram, Head Constable, registered a case vide F.I.R. Ex.P-7 on the written report Ex. P. 6 of Bharat Kumar brother of decease and forwarded the F.I.R. on the S.H.O. through Constable Parameshar. He also deposited three sealed packets on 27.10.1994 and four sealed packets on 7.11.1994 in Malkhana and made corresponding entries in Ex.P. 13 Malkhana register. He handed over the above mentioned sealed packets to Constable Mangtu Ram, PW-9 on 24.1.1995, who in turn after depositing the same in F.S.L., Jaipur submitted the receipt Ex.P. 15.

16. PW-11 Shiv Kumar, Assistant Sub-Inspector recorded the telephonic message in Ex.P.24 and accompanied S.H.O. and other police personnel to the place of incident. PW-12 Balbir, is the witness to the seizure memos Ex.P.25, Ex.P.26 and Ex.P.27, by which the police recovered Gadhasi from the possession of Jai Prakash and Pyare Lal and Barchi from the possession of Sukh Dev. Bus No. RJ-18-P 0139 was also recovered from Jai Prakash vide Ex.P.31 in the presence of this witness. Bhisham Raj, PW-13 conducted the entire investigation referred to above.

17. Learned Counsel appearing for the accused appellants has contended that the report lodged by the unknown person and reduced to writing in 'Rojnamcha' as Ex.P.24 by PW-11 Shiv Kumar is the first information report which gives all the details of cognizable offence. According to him, the written report, Ex.P.6 came into existence after a great delay, which is fatal to the prosecution case.

18. PW-11 Shiv Kumar has categorically stated that the unknown person gave a telephonic message to the effect that 4-5 persons have given beating to Banti near the petrol pump and they have left him in unconscious condition. In the facts and circumstances of the present case, it is crystal clear that the information received by PW-11 Shiv Kumar on telephone is only an information, requesting the Incharge to reach at the place of occurrence and S.H.O. Bhisham Raj proceeded to the place of occurrence on the basis of that information to find out the details of the nature of the offence and hence the information received by PW-11 Shiv Kumar on telephone cannot be deemed to be first information report. While dealing with identical facts situation, the Apex Court in the case of Ramsinh Bavaji Jadeja v. State of Gujarat, Cr LR 1994 (SC) 303, held 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 a 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 purpose of giving such telephonic 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 the 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 can not 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. This can be illustrated. In a busy market place, a murder is committed. Any person in the market including one of the shop owners, telephones to the nearest police station, informing the officer in charge, about the murder, without knowing the details of the murder, the accused or the victim. On basis of that information, the officer in charge reaches the place where the offence is alleged to have been committed. Can it be said that before leaving the police station, he has recorded the First Information Report? In some cases the information given may be that a person has been shot at or stabbed. It cannot be said that in such a situation, the moment the officer in charge leaves the police station, the investigation has commenced. In normal course, he has first to find out the person who can give the details of the offence, before such officer is expected to collect the evidence in respect of the said offence.

19. The Apex Court has reiterated the same legal position in a recent case in *T.T. Antony v. State of Kerala and Ors.*, with *Damodaran P. and Ors. v. State of Kerala and Ors.* and in the case of *State of Kerala and Ors. v. Revada Chandrasekhar and Ors.* AIR 2001 SCW 2571 and held that apart from a vague information by a phone call or cryptic telegram, the information first entered in the station house diary, kept for this purpose. by a police officer incharge of a police station is the first information report.

20. In the case in hand, a vague information by a phone call was supplied to PW-11 Shiv Kumar and in order to find out the details of the nature of the offence, S.H.O. Bhisham Raj proceeded to the place of occurrence. Therefore, in view of the legal position propounded by the Apex Court in the above referred two authorities, it cannot be said that vague information supplied on phone call was an F.I.R.

21. The learned Counsel for the appellants has further argued that PW-2 Prem Pal, PW-3 Moti Ram, PW-5 Mahesh Kumar, PW-6 Bharat Kumar are not the eye witnesses of the occurrence. Their conduct is unnatural, as they did not try to save the deceased Pawan & Banti, even Bharat Kumar, the brother of deceased did not taken any step to take Pawan @ Banti to Hospital.

22. The learned Counsel for the appellants has cited various authorities in Daljit Singh etc. v. State of Punjab, with Jaspal Singh v. State of Punjab : 1999 CriLJ454 , Suresh Rai and Ors. v. State of Bihar : 2000 CriLJ3457 , Bhanwar Lal and Ors. v. The State of Rajasthan, 1989 Cr LR (Raj.) 140, Balvendra Singh v. State of Rajasthan, Cr LR 1983 (Raj.) 135, Hari Singh and Ors. v. The State of Rajasthan, 1979 RCC 106, Anokh Singh v. State of Punjab : 1992 CriLJ525 , Din Dayal v. Raj Kumar @ Raju and Ors. : 1999 CriLJ467 and in the case of the Bahal Singh v. State of Haryana : 1976 CriLJ1568 .

23. The Apex Court in the case of Leela Ram v. State of Haryana and Anr. : AIR 1999 SC3717 , has held that there cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and pedantic exercise. The Apex Court remarked that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals.

24. PW-6 Bharat Kumar immediately after the incident rushed to the police station and lodged the report. In the report Ex.P.6 itself, he explained his conduct by stating that he did not try to save Pawan @ Banti because in that event the

accused would have also killed him. The scenario in which the incident occurred makes the conduct of Bharat Kumar natural. The accused all of a sudden came at the place of incident in a bus armed with deadly weapons and inflicted as many as 36 injuries on the person of Pawan @ Banti.

25. PW-2 Prem Pal has also reported the matter to the police on telephone and when police arrived at the place of occurrence, he did not disclose himself as the eye witness of the incident, even he did not disclose his identity on telephone. Conduct of the witnesses cannot be said to be unnatural in above facts situation. However, his presence at the time of occurrence is established from a bare reading of the report itself, in which it has clearly been mentioned that at the time of incident two employees of the petrol pump were also present at the petrol pump. The witness Prem Pal has admitted his signatures A to B on Ex.D.2 affidavit. The witnesses denied the contents of the affidavit and clarified that he put his signatures on a blank paper. He has further clarified that accused Pyare Lal happens to be his uncle and Pyare Lal made him to put his signatures on Ex.D.2 on a blank paper. PW-3 Moti Ram also did not try to save Banti and explained that accused were armed with weapons and, therefore, due to fear, he did not try to save the deceased and ran away from the place of incident. The witness has admitted his signatures on Ex.D.3 affidavit. However, he has explained that Ram Karan and one more person made him to put his signatures on Ex.D.3, on the pretext of an application to be moved for recording his statement early. The presence of Prem Pal and Moti Ram is established from the statements of other witnesses and the fact of their presence is also mentioned in the report Ex.P.6 itself. PW-5 Mahesh Kumar and PW-4 Hari Ram also did not try to save Pawan @ Banti and went to their village. The statements of the above named witnesses cannot be discarded on the ground of their reaction not falling within a set pattern as has been held in the case of Leela Ram (Supra).

26. The incident occurred at about 8.00 P.M. and Bharat Kumar lodged the report at police station at 9.30 P.M. on the same day. The police station is about 15 Kms. away from the place of incident as is evident from Ex.P. 7 F.I.R. Bharat Kumar promptly lodged the F.I.R., which expels the opportunity for any possible concoction of a false version. The eye witnesses whose presence at the scene of

occurrence is established have described the incident in a clear and graphic manner and categorically asserted that petitioners gave number of blows with sharp edged weapons on the person of deceased. The witnesses were subjected to searching cross-examination but nothing material could be elicited from them which may cast a doubt on their credibility. Their statements are further corroborated by the statement of Dr. Gupta, who conducted autopsy on the dead body of Pawan @ Banti and found as such as 36 injuries on his person and the injuries on the person of deceased were sufficient in the ordinary course of nature to cause death. The evidence of Bharat Kumar and Mahesh Kumar cannot be discarded merely on the ground that they are relatives of the deceased. Normally, close relations of the deceased are not likely to falsely implicate a person in the incident leading to the death of a relation unless there are very strong and cogent reasons. In our considered opinion, the evidence of eye witnesses inspire confidence and nothing concrete or substantial has been shown to us to castigate their version or condemn their evidence.

27. The learned Counsel has pointed out some omissions and contradictions in the evidence of eye witnesses. But on facts, it is proved that accused persons arrived at the place of occurrence in a bus, armed with deadly weapons and assaulted Banti and inflicted as many as 36 injuries on his person resulting into his death and hence minor contradictions which had not affected the basic structure of the prosecution version would not entitle the accused to benefit of doubt.

28. It has come on record that deceased Banti was facing trial under Section 302 on the report of accused Sukh Dev which makes it clear that enmity between the parties is proved on record. All the three accused were armed with lethal weapons and Sukh Dev exhorted to Kill Banti and all the three accused inflicted injuries on the person of the deceased. The motive of all the three accused persons to do away with the deceased is thus established. Accused petitioners came at the place of incident together in a bus armed with deadly weapons and left the place of incident together in the same bus after inflicting injuries on the person of the deceased. Section 34, IPC lays down the rule of joint responsibility for criminal acts performed by plurality of persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all

of them. The section is attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention. In the facts and circumstances of the present case, the inference deducible is that all the three accused persons in furtherance of common intention of all to do away with the deceased inflicted fatal injuries on the person of the deceased.

29. From what has been discussed above, we are firmly of the view that the learned Sessions Judges has correctly arrived at the conclusion to indict all the accused appellants applying the principles engrafted in Section 34, IPC to punish the accused appellants for offence under Section 302, IPC

30. For the reasons stated above, we find no merit in the above appeal. Consequently, the appeal fails and is hereby dismissed. The judgment of conviction and sentence passed by the learned trial Court is maintained.

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