Ajmer Singh alias Rana Vs The State of Punjab

Criminal Appeal No. 628-DB of 2002

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 7, 2009

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 302, 392

Citation: (2009) 2 RCR(Criminal) 32

Hon'ble Judges: Mehtab S. Gill, J; L.N. Mittal, J

Bench: Division Bench

Advocate: Gorakh Nath, for the Appellant; S.S. Gill, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

Mehtab S. Gill, J.
This is an appeal against the judgment dated 19.3.2002 of the learned Addl. Sessions Judge, Jalandhar, whereby he

convicted Ajmer Singh alias Rana u/s 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs. 2,000/-. In default to

further undergo R.I. for six months. He was further convicted u/s 392 IPC and sentenced to undergo five years R.I. and to pay a fine of Rs.

1,000/-. In default to further undergo R.I. for four months. The co-accused of Ajmer Singh, Shano wife of Kishori Lal was acquitted by the

learned Addl. Sessions Judge, Jalandhar and no appeal has been filed against her acquittal by the State.

2. The case of the prosecution is unfolded by the statement Ex.PB of Smt. Amarjit Kaur given to Swaran Singh ASI at Police Post Nangal Shama.

3. Amarjit Kaur stated, that she is a resident of Rama Mandi, Police station Sadar Jalandhar. About 8/9 months ago she was married to Hans Raj

teacher, resident of Batala District Gurdaspur. She and her husband were residing with her parents. She had four brothers. All are married. Three

brothers were serving outside. One of the brothers Gulab Singh was residing at Rama Mandi. On 13.5.1992 at about 12.30 p.m., three young

men in the age group of 24/25 years and having height of about 5-5/6"" wearing shirts and pants came to their house. One of them had a beard and

other two were Sikhs. After parking their scooter Bajaj Chetak of light yellow colour, they knocked at the door. Amarjit Kaur asked them to

come from the second door, which was open. All the three young men entered the house. They asked her, where her father Subedar Harbans

Singh was. She told them that he was lying on the cot in the porch. They went to the porch and after asking her father his name, one of the young

men took out a revolver and shot at the head of her father. Her father fell down. Another round was fired at her father, when he was on the

ground. Her father died at the spot. One of the Sikh young men then removed the gold ear rings and one gold ring of Amarjit Kaur and then

locked her in a room. They searched her house and took away cash and more jewellery. She was threatened not to raise an alarm. There was no

one in the house, as the brother of Amarjit Kaur and her mother had gone to their relatives" house. Thereafter all the young men went away on the

scooter. Amarjit Kaur left Amrik Singh son of Mangal Singh to safeguard the body of her father and went to the police station. She met ASI

Swaran Singh on the way, who recorded her statement Ex.PB. On the basis of this statement, FIR Ex.PB/2 was registered on 13.5.1992 at

2.00/2.30 p.m. Special report reached the Ilaqa Magistrate on the same day at 6.30 p.m.

4. The prosecution to prove its case brought into the witness box, HC Jaswinder Singh PW1, Const. Daljit Singh PW2, Amarjit Kaur PW3, Dr.

Adarsh Sood PW4, Chaman Lal PW5, Dalip Singh PW6, HC Sukhdev Singh PW7, Gurdeep Singh Inspector PW8, ASI Ajit Singh PW9, SI

Swaran Singh PW10, Harbinder Singh SI PW11, Lakhwinder Singh ASI PW12 and Harbans Singh Inspector PW13.

5. Learned counsel for the appellant has argued, that appellant Ajmer Singh was arrested on 12.8.1998 in another case and thereafter the police to

solve this blind murder falsely implicated him in the present FIR. He was arrested after a gap of six years and three months. Both Amarjit Kaur

PW3 and appellant Ajmer Singh are residents of Jalandhar. Appellant could have been identified and brought to justice much before 12.8.98, if he

had committed the crime. Statement of complainant Amarjit Kaur was recorded on 11.10.1999 in Court i.e. after a gap of 7-1/2 years of the

occurrence. She identified the appellant in Court for the first time. This identification did not have any meaning. As per the statement of Ajit Singh

ASI PW9 and Lakhwinder Singh ASI PW12, when the gold ornaments were recovered, appellant and complainant Amarjit Kaur PW3 were

present. Amarjit Kaur PW3 had already seen the appellant before she identified him in Court. Police should have held a test identification parade.

6. Recovery of the gold ornaments was made after six years. If the appellant along with his companions had stolen these gold articles, they would

not have kept them for such a long time in their possession, but would have disposed them off.

7. Further learned counsel has argued, that the appellant is in custody and undergoing his sentence since 1998 i.e. about 10 years he is in custody.

8. Learned counsel for the State has argued, that appellant was identified by Amarjit Kaur PW3 in Court, who was an eye witness to the

occurrence. Gold ornaments were recovered from the appellant, which were identified by Amarjit Kaur PW3. She had seen the murder of her

own father and could not have forgotten the physical appearance of the assailant. There is no delay in lodging of the FIR. Occurrence had taken

place on 13.5.1992 at 12.30 p.m. FIR Ex.PB/2 was registered on the same day at 2.00/2.30 p.m. and the special report reached the Ilaqa

Magistrate at 6.30 p.m. Names could not have been given in the FIR, as when the FIR was recorded, appellant was not known to her.

9. We have heard the learned counsel for the parties and perused the record with their assistance.

10. The case of the prosecution hinges around the sole testimony of Amarjit Kaur PW3, daughter of the deceased. To corroborate the statement

of the complainant, recoveries of gold ornaments have been made from the appellant, which allegedly were stolen at the time of the occurrence.

Occurrence in this case had taken place on 13.5.1992 at 12.30 p.m. and thereafter FIR Ex.PB/2 was recorded on the same day at 2.00/2.30

p.m. Appellant was arrested on 12.8.1998 i.e. after a gap of six years and three months. No test identification parade of the appellant was held.

This itself is a big flaw in the prosecution case. Hon"ble Supreme Court has held in Budhsen and another v. State of U.P., AIR 1970 Supreme

Court 1321(1) as under :-

7. Now, facts which establish the identity of an accused person are relevant u/s 9 of the Indian Evidence Act. As a general rule, the substantive

evidence of a witness is a statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its

very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what

circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with

reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence.

It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the

identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this

general rule, when, for example, the Court is impressed by a particular witness, on whose testimony it can safely rely without such or other

corroboration.

11. It is on 11.10.1999 after a gap of 7-1/2 years of the occurrence, that the appellant was identified in Court by Amarjit Kaur PW3. This

identification in Court does not have any meaning, as Amarjit Kaur PW3 had already seen the appellant, when alleged recoveries of the gold

ornaments were made. Ajit Singh ASI PW9 has stated in his testimony, that Amarjit Kaur PW3 was called, when the appellant opened his trunk

and took out the gold ornaments. The recoveries of the ear-rings, gold ring and other gold ornaments were made after a gap of six years.

Appellant would not have kept these gold ornaments for such a long time, but would have disposed them off. Recoveries made by the Investigating

Officer are false. If the appellant had stolen these gold articles, he would not have kept them for six years in a trunk.

12. Both Amarjit Kaur PW3 and appellant Ajmer Singh live in the same town of Jalandhar. If her memory was so sharp, that she could identify the

appellants physical structure and could identify the assailant, then she could definitely have recognised him earlier, as both belonged to the same

town.

13. We have gone through the record and seen that the appellant is in custody since the year 1998, though bail was granted to him on 19.3.1999

by the Addl. Chief Judicial Magistrate, Jalandhar, but as he was in custody in another case, he did not furnish bail bonds in this case, but had the

order of bail withdrawn.

14. With the above discussion and observations, a doubt is created in our mind as to whether the appellant had committed the murder of Subedar

Harbans Singh.

15. Appeal is allowed. Conviction and sentence of the appellant is set aside. He is acquitted of the charge framed against him. Appellant, if in

custody, be set free forth with, if not needed in any other case.