

State of Rajasthan Vs Amer Singh and Others

Court: Rajasthan High Court

Date of Decision: Nov. 17, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 161, 313, 319
Penal Code, 1860 (IPC) - Section 148, 149, 302

Hon'ble Judges: Gopal Krishan Vyas and Vijay Bishnoi, JJ.

Bench: Division Bench

Advocate: J.P.S. Choudhary, PP, for the Appellant; M.K. Garg, for the Respondent

Final Decision: Dismissed

Judgement

Vijay Bishnoi, J.

This criminal appeal has been filed by the appellant-State against the judgment dated 12.10.1990 passed by Additional Sessions Judge, Bali (hereinafter referred to as the "trial court") in Sessions Case No. 36/86, whereby the trial court has acquitted the accused-

respondents for the offence punishable under Section 302 IPC.

2. The brief facts of the case are that on 03.08.1981 at about 02:30 PM, PW-12 Vijay Singh Jodha S/o Mang Singh Jodha R/o Village Koselav

submitted a typed report Ex. P/1 to the Superintendent of Police, Pali, wherein he had stated that Jabar Singh S/o Jeevraj Singh contested election

against him for the post of Sarpanch and defeated by him and therefore, he is having enmity with him. He further stated that Jabar Singh is the

Chairman of Gram Sewa Sahakari Samiti, Koselav and about 17-18 days before, Gram Sewa Sahakari Samiti, Koselav tried to construct a wall

and when the villagers protested and reported the matter to the Gram Panchayat, he being the Sarpanch of Gram Panchayat, served a notice upon

the Manager of Gram Sewa Sahakari Samiti, Koselav for not constructing the wall and also went for inspecting the site along with other Ward

Panchas viz. Tara Ram and Van Singh, where Jabar Singh, Amar Singh and Narayan Singh etc. belonging to the Jabar Singh's party quarreled

with them and in relation to that a case is pending investigation in Police Station, Takhatgarh. He further stated that on 02.08.1981 at about 07:00

PM when his cousin brother Hanwant Singh along with Narayan Meena was going on a tractor then Amar Singh and Ranjeet Singh forcibly

stopped the tractor and thereafter Jabar Singh, Narayan Singh, Ratan Singh and Shyam Singh, who ambushed themselves nearby, also came there

and encircled Hanwant Singh and forcibly alighted him from the tractor. He further stated that Narayan Singh inflicted Lathi blow on the head of

Hanwant Singh and thereafter Jabar Singh also inflicted Lathi blow on him. It is stated that at that time Bhawani Singh S/o Ram Singh had also seen

the incident. He further stated that on the day of incident, he had gone to village Galthani and at about 09:00 PM Chunnilal had informed him about

the incident. He further stated that Hanwant Singh was brought to Koselav in unconscious state and thereafter shifted to Pali Hospital and he also

went to Pali Hospital. During the course of treatment, he succumbed to the injuries. He further stated that he enquired from Narayan Meena, who

was accompanied Hanwant Singh at the time of incident and on the basis of information given by him, he is submitting this report.

3. The report Ex. P/1 submitted by PW-12 Vijay Singh Jodha was forwarded by the Superintendent of Police, Pali to the Police Station,

Takhatgarh, where the FIR No. 43/1981 was registered for the offences punishable under Sections 148, 149 and 302 IPC and investigation were

commenced. After investigation, the police filed charge-sheet against the accused-respondents and the trial court framed charges against the

accused-respondents for the offences punishable under Section 302 IPC. The accused-respondents have denied the charges framed by the trial

court and claimed trial.

4. During the course of trial, the prosecution had produced as many as 20 witnesses to prove the charges against the accused-respondents. The

statements of the accused-respondents were recorded under Section 313 IPC, wherein they had stated that they did not commit any offence and 5

witnesses were produced in defence.

5. The trial court after hearing Additional Public Prosecutor, counsel for the accused-respondents and counsel for the complainant has acquitted

the accused-respondents for the offence punishable under Section 302 IPC vide impugned judgment.

6. Learned Public Prosecutor has assailed the impugned judgment while arguing that the trial court has grossly erred in discarding the evidence of

eye witnesses viz. PW-6 Devi Singh, PW-7 Modaram, PW-13 Narayan Meena and PW-16 Bhawani Singh. It is contended that by producing the

above eye witnesses the prosecution has proved the case against the accused-respondents beyond reasonable doubt. However, the trial court has

discarded the testimonies of the above named eye witnesses merely on the basis of surmises and conjectures. It is argued that the statements of the

above named witnesses were recorded after so many days of incident and, therefore, there is all possibility that some contradictions might have

arisen in the said statements, but solely on that ground, the evidence of the said eye witnesses cannot be discarded. Learned Public Prosecutor has

further argued that from the statements of the above named eye witnesses, the charges against the accused-respondents are fully proved, however,

the trial court has grossly erred in not relying upon the testimonies of eye witnesses and, therefore, the judgment impugned is liable to be set aside.

7. Per contra, learned counsel appearing for the accused-respondents has argued that the trial court has not committed any illegality in acquitting

the accused-respondents for the offence punishable under Section 302 IPC because the prosecution has failed to prove beyond reasonable doubt

that the accused-respondents have committed the crime. It is further submitted that one of the eye witnesses viz. PW-13 Narayan Meena has not

supported the prosecution story and turned hostile and, therefore, his evidence is of no help to the prosecution. It is further argued that the other

eye witnesses viz. PW-6 Devi Singh, PW-7 Modaram has also not supported the prosecution story and turned hostile. They have specifically

stated in their statements that they did not see the accused-respondents beating deceased Hanwant Singh and, therefore, from that piece of

evidence, it cannot be said that the prosecution has proved that the accused-respondents have murdered Hanwant Singh.

8. In respect of eye witness PW-16 Bhawani Singh, learned counsel for the accused-respondents has submitted that the said witness is a made up

witness as he was not present on the scene of crime at the time of incident. It is argued that the conduct of PW-16 Bhawani Singh of not informing

anybody about the incident for two days is enough to disbelieve his testimony. It is further submitted that the trial court has dealt with the statement

of PW-16 Bhawani Singh in detail and found that they are not trustworthy and, therefore, rightly disbelieved the same. Learned counsel for the

accused-respondents has, therefore, argued that when the prosecution has failed to prove the case against the accused-respondents beyond

reasonable doubt, the trial court has not committed any illegality in acquitting the accused-respondents. Hence, no case for interference is made

out.

9. Heard learned counsel for the parties and carefully scrutinised the record.

10. To prove the charges against the accused-respondents, the prosecution has produced as many as 20 witnesses, out of which 4 witnesses are

posed as eye witnesses viz. PW-6 Devi Singh, PW-7 Modaram, PW-13 Narayan Meena and PW-16 Bhawani Singh.

11. PW-6 Devi Singh has stated that about four years back at about 08:00 PM when he was returning from the temple, he saw three persons

assaulting Hanwant Singh. He specifically stated that the persons assaulting Hanwant Singh are not known to him and they were some unknown

persons. However, he was declared hostile and during his cross-examination by the Additional Public Prosecutor, denied his police statement. In

his cross-examination by the counsel for the accused-respondents, he has specifically stated that he did not see Narayan Meena at the place of

incident. Similarly PW-7 Modaram has also not supported the prosecution story and submitted that he has not identified the persons who were

assaulting Hanwant Singh. PW-13 Narayan Meena has also not supported the prosecution story and was declared hostile. In his statement he

specifically stated that he along with Hanwant Singh was going to the agriculture field of Vijay Singh Jodha on tractor at about 07:00 PM and when

they reached the Bus Stand, Amar Singh and Ranjeet Singh stopped the tractor and thereafter some stones and Lathis were pelted by some

persons, however, he said that he did not see who pelted the stones and Lathis as he received an injury. He further stated that he did not know the

name of the persons who have assaulted Hanwant Singh. In his cross-examination by Additional Public Prosecutor, he has denied the statement

given to the police.

12. So far as PW-16 Bhawani Singh is concerned though he has specifically stated in his statement that he did see the incident and named the

accused persons as assailants, however, he has also named two more persons viz. Narayan Singh and Jabar Singh as assailants. It is noticed that

Narayan Singh and Jabar Singh have not been charge-sheeted by the police and applications filed on behalf of the State as well as the complainant

to summon them as accused under Section 319 Cr.P.C. has been rejected by the trial court. It is also noticed that the statement of the PW-16

were recorded for the first time by the police under Section 161 Cr.P.C. on 04.08.1981 i.e. about two days after the incident. PW-16 Bhawani

Singh in his statement has stated that after witnessing the incident, he went to his village and not told anybody about the incident till his statements

were recorded by the police. The trial court has disbelieved the testimony of PW-16 Bhawani Singh for one of this reason out of several other

reasons that his conduct of not informing anybody about the incident for two days is not natural. The trial court has also found that there are several

discrepancies in his testimony and contradictions in his court statement if compared to the police statement. The trial court has found that the

presence of PW-16 Bhawani Singh at the scene of crime is doubtful.

13. After carefully gone through the evidence of PW-16 Bhawani Singh and taking into consideration all other facts and circumstances of the case,

we are also of the opinion that the testimony of PW-16 Bhawani Singh is not reliable and, therefore, the trial court has not committed any illegality

in not believing the same.

14. Another lacuna on the part of the prosecution is that the Investigating Officer has not been produced as witness and the trial court has rightly

observed that non-examination of Investigating Officer is a serious lacuna and on account of his non-production as witness the accused-

respondents have been seriously prejudiced.

15. The trial court has also found that there is inordinate delay in filing the complaint of the incident. The trial court has found that PW-12 Vijay

Singh Jodha and PW-13 Narayan Meena had opportunities to lodge the complaint about the incident much prior to submission of Ex. P/1 but they

had not done so and from this fact, it appears that the complaint of the incident has filed after much deliberation and with the intention to implicate

the accused persons on account of enmity.

16. After perusing the record of the case, we also find that there was inordinate delay in filing the FIR about the incident and this creates doubt that

the accused-respondents might have falsely been implicated by the complainant Vijay Singh Jodha after deliberation.

17. In view of the above analysis, we have no hesitation in holding that the trial court has not committed any illegality in acquitting the accused-

respondents as the prosecution has failed to produce cogent and reliable evidence to connect the accused-respondents with the commission of

crime.

18. Hence, no case for interference is made out in this criminal appeal and the same is hereby dismissed.