
(2018) 04 RAJ CK 0252

Rajasthan High Court (Jodhpur Bench)

Case No: Criminal Revision No. 1053 of 2012

Manish
@APPELLANT@Hash
State of Rajasthan &
Ors.

APPELLANT

Vs

RESPONDENT

Date of Decision: April 27, 2018

Acts Referred:

Code of Criminal Procedure, 1973 " Section 161, 173, 313, 319#Indian Penal Code, 1860 " Section 147, 149, 302, 323, 325, 341, 382

Citation: (2018) 04 RAJ CK 0252

Hon'ble Judges: SANDEEP MEHTA, J

Bench: Single Bench

Advocate: H.S.S. Kharlia, Trilok Singh, O.P. Rathi

Final Decision: Allowed

Judgement

By way of this revision, the petitioners herein have approached this Court for challenging the order dated 22.11.2012 passed by the learned Additional

Sessions Judge No.2, Sri Ganganagar in Sessions Case No.38/2009 whereby, the trial court allowed the application preferred by the learned Public

Prosecutor under Section 319 Cr.P.C. and directed summoning of the present petitioners as additional accused to face trial with the chargesheeted

accused for the offences under Sections 323, 341, 302, 382, 325, 147 and 149 IPC and issued bailable warrants against them.

Facts in brief are that a written report was submitted to the SHO, Police Station Purani Abadi, Sri Ganganagar by Satish Kumar Gupta on 31.01.2008.

It was alleged inter alia in the report that the first informant accompanied by Kurban and Islam were proceeding from Tarachand Vatika to Dev

Nagar at about 09.15 pm. When they reached in front of Panchmukhi Hanuman Temple, Pintu, his brother Manish, Baljeet, Manoj, Goriya Soni, Ravi

Nayak and 3-4 others, accosted and attacked them. Pintu was having a knife, Manish and Goriya were having swords and the others were having

motorcycle chains, iron rods and sticks in their hands. They rained blows upon Kurban and Islam after surrounding them. Rajkumar came to the scene

of occurrence on hearing the commotion on which, the accused persons left Kurban and Iqbal and started assaulting Rajkumar. Pintu inflicted knife

blow on the head of Rajkumar. Kurban took the opportunity and called the complainant on phone. In the meantime, Badey Lal and Manish came to

the scene of occurrence on which, the accused persons left Rajkumar dead in a pool of blood and escaped. The police reached the scene of

occurrence on receiving a telephonic information. While going away, the accused persons took away the motorcycle bearing registration No.RJ-13-

SA-5513 owned by Rajkumar and his mobile phone with them. Rajkumar used to give information regarding the accused Pintu and others indulging in

illicit trafficking of liquor, etc. and being enraged thereby, the accused party, assaulted Rajkumar and killed him. Iqbal and Kurban were also caused

injuries in the incident. On the basis of this report, an FIR was registered for the offences mentioned above and investigation commenced. The I.O.

submitted a report under Section 173 Cr.P.C. in the court concerned on 19.03.2008 after concluding investigation finding only the accused Rupesh @

Pintu, Baljeet Singh, Manoj Kumar Jat, Gaurav Kumar @ Goriya involved in the incident. A specific finding was given that the accused petitioners

were not involved in the incident. It may be mentioned here that Iqbal and Kurban the injured eye witnesses named the present petitioners as

assailants in their statements recorded by the I.O. under Section 161 Cr.P.C. Likewise, the first informant Satish Kumar also alleged that the

petitioners too participated in the incident. Despite that, the I.O. did not file a charge-sheet against the petitioners herein. When the postmortem was

conducted upon the body of Rajkumar, the medical jurist found that he was having 7 injuries on his body all of which were opined to be caused by

blunt weapons. Kurban was having three abrasions on his person whereas Iqbal was having one abrasion on his nose. The investigating officer, also

recorded the statements of Harish Shukla, the intervener, who also gave a statement consistent with the statements of injured eye-witnesses Islam

and the first informant Satish Kumar implicating the petitioners herein. At the trial, Kurban did not support the prosecution story and was declared

hostile. Islam upon being examined on oath, categorically stated that the petitioners were also present at the scene of the occurrence and alleged that

Pintu and Ravi Nayak inflicted lathi blows on the head of the deceased Rajkumar. However, the witness was confronted with his previous statement

(Ex.D/1) wherein, the specific attribution of injuries to the particular accused persons was missing. Satish Kumar, upon being examined at the trial,

alleged that Pintu was having a knife, Manish and Goriya were having swords, Manoj Jat was having a rod, Ravi Nayak was having a stick whereas

Baljeet was having motorcycle chain and all were assaulting Rajkumar. Harish Shukla though named the accused persons as assailants. He alleged

that Pintu was having a knife, Manish was having an iron rod, Manoj Jat and Goriya were having swords whereas Ravi Nayak was having a stick in

his hand. As per the postmortem report (Ex.P/10), the deceased Rajkumar was found having 6 blunt injuries located all over his body. Out of these

injuries, 5 were grievous. Evidently, the medical officer did not notice any sharp weapon injury while conducting the postmortem examination upon the

deceased. Furthermore, there is a significant discrepancy regarding the weapon and specific part attributed to the petitioner Manish by material

witnesses because as noted above, witnesses Kurban and Islam alleged that he was having a sword in his hand whereas Harish Shukla alleged that he

was having an iron rod in his hand. Manifestly thus, if the evidence available on record is appreciated, apparently there is a grave discrepancy

regarding the role attributed to the petitioner Manish. However, all the witnesses are consistent regarding participation of the petitioner Ravi Nayak in

the incident. All the eye witnesses have attributed an iron rod in his hand and have assigned specific role to him in the incident alike the charge-

sheeted accused. After all the prosecution witnesses had been examined and even the statement of the accused had been recorded by the trial court,

the prosecution moved an application under Section 319 Cr.P.C. which was allowed in the above terms. Being aggrieved by the said order, the

accused persons have approached this Court for challenging the order passed by the trial court for summoning them to face trial with the charge-

sheeted accused.

Learned Sr. Counsel Shri Kharlia representing the petitioners vehemently urged that there is a grave discrepancy regarding the participation of the

petitioners in the incident. The investigating officer conducted thorough investigation and did not find them involved in the alleged assault. He candidly

admitted that though the petitioners were named as assailants in the FIR as well as in the statements of the eye witnesses recorded during

investigation but as per him, these statements are not corroborated by the medical evidence. He thus implored the Court to set aside the impugned

order whereby, the petitioners were summoned as additional accused in the case. Shri Kharlia further urged that the trial was at its fag end when the

impugned order came to be passed. The entire prosecution evidence as well as the statements of the accused had been recorded and the matter was

pending for defence evidence at which stage, the trial court proceeded to accept the belated application filed by the prosecution under Section 319

Cr.P.C. He urged that there was no occasion whatsoever for the trial court to have accepted the highly belated and frivolous application filed by the

prosecution in view of the fact that the trial was at the fag end.

Per contra, learned Public Prosecutor vehemently opposed the submissions advanced by the petitioners' counsel. He urged that the prosecution

witnesses have clearly stated about active participation of the petitioners in the incident and as such, he supported the order passed by the trial court

praying for dismissal of the instant revision.

I have given my thoughtful consideration to the arguments at Bar and have perused the material available on record as well as the impugned order.

It is an admitted position as emanating from record that the order under challenge came to be passed after the entire prosecution evidence as well as

the statement of the accused had been recorded by the trial court. There is no such material on record which can satisfy the Court as to what

prevented the prosecution or the trial court from exercising the power to summon the accused at an earlier stage i.e. soon after the material eye

witnesses had been examined at the trial. Though, it is true that mere delay in filing of application under Section 319 Cr.P.C. cannot be, by itself a

ground to dismiss the same but the Court cannot be ignorant of the valuable time spent by the trial court in collecting the requisite evidence and so also

the fact that summoning of additional accused would result into yet another tedious exercise of de-novo trial. Thus, while examining the challenge

given to the impugned order, this Court would have to remain cautious of the aspect as to whether the evidence as available on record against the

freshly summoned accused is of such impeccable and unimpeachable nature that the same gives rise to the only inference about involvement of the

left out accused to the extent of something beyond being sufficient for framing charge. Tested on the above touch-stone, this Court is of the firm

opinion that the prosecution evidence falls well short of the said yardstick. As stated above, the prosecution came out with a specific case that the

accused persons were armed with numerous blunt as well as sharp weapons and indiscriminately used the same for assaulting the deceased Shri

Rajkumar. However, the postmortem report (Ex.P/10) patently rules out use of a sharp weapon in the assault because no clean-cut wound was

caused to the deceased thereby corroborating the alleged use of sharp weapons in the incident. As per the FIR, the petitioner Manish was allegedly

armed with a sword whereas at the trial, the injured eye-witness Islam did not give any pertinent statement regarding the weapon held by Manish. The

witness Satish Kumar alleged that Manish was having a sword. On the other hand, the witness Harish Shukla in the initial part of his testimony,

alleged that the accused were assaulting the occupants of the motorcycle (Kurban and Islam) by brickbats. In the later part of his statement, he

alleged that when Rajkumar came, the accused proceeded towards him and started assaulting him. At this stage, he stated that Manish was having an

iron rod, Pintu was having a knife whereas Ravi Nayak was having a stick in his hand. Evidently thus, there are grave discrepancies in the statements

of the so-called eye witnesses regarding the participation of the petitioners in the incident.

In view of these material discrepancies in the statements of the witnesses, and considering the fact that the order under challenge came to be passed

at a highly belated stage i.e. after the statements of the accused had been recorded by the trial court under Section 313 Cr.P.C., this Court feels that

requiring the present petitioners to undergo the agony of trial at this belated stage and also looking at the time which is likely to be consumed in the

fresh trial (considering that the original trial had taken almost three years to reach the stage of defence evidence), it would be a travesty of justice if a

de-novo trial is held by sustaining the order summoning the petitioners as additional accused in the case.

In this view of the matter, the instant revision deserves to be and is hereby allowed. The impugned order dated 22.11.2012 passed by the learned

Additional Sessions Judge No.2, Sri Ganganagar is hereby quashed and set aside. In case, the trial of the charge-sheeted accused has not been

concluded, the trial court shall proceed and decide the case at the earliest.