
(2019) 01 RAJ CK 0359

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Appeal No. 348 Of 2017

Ghanshyam

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision: Jan. 17, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 302
- Code Of Criminal Procedure, 1973 - Section 313

Hon'ble Judges: M.N. Bhandari, J; Banwari Lal Sharma, J

Bench: Division Bench

Advocate: Bharat Yadav, Aladeen Khan

Final Decision: Dismissed

Judgement

1. This appeal has been filed against the order dated 30th November, 2016 passed by Additional District and Session Judge No. 18 Jaipur

Metropolitan, Jaipur in Sessions Case No. 12/2014. The accused has been convicted for the offence under Section 302 IPC and sentenced to life

imprisonment with fine of Rs. 10,000/-. In default of payment of fine, to further undergo two year's simple imprisonment.

2. It is a case where the accused alleged to have caused occurrence with use of knife. He said to have given twenty two blows to the deceased in the

presence of the eye-witnesses PW -1 Deenbandhu Sharma, PW - 2 Ganesh, PW - 3 Poluram, PW - 4 Baijnath, PW - 5 Jagdish and PW - 7 Smt.

Savitri. After the occurrence, he went to Police Station, Sodala along with the knife and as per the statement of PW - 16 Paburam Vishnoi, he kept

the knife on the table and disclosed the incident. It was found to be an incident falling under the jurisdiction of Police Station Shyam Nagar, thus was

sent for registration of FIR to the said police station. Accordingly, the FIR was registered by Police Station Shyam Nagar, which caused the investigation.

3. A case was found against the appellant for the offence under Section 302 IPC and accordingly, charge sheet was filed. The trial Court thereupon

heard the matter for framing of charges and framed charges for the offence under Section 302 IPC. When charges were denied by the accused, trial

commenced. The prosecution produced sixteen witnesses and seventeen documents to prove their case. In defence, statement of the accused was

recorded under Section 313 Cr.P.C. The trial Court convicted and sentenced the accused for the offence under Section 302 IPC.

4. Learned counsel for the appellant submits that recovery of knife is prior to the registration of FIR and, thereby, investigation was initiated prior to

registration of FIR. On the aforesaid ground itself, the case set out by the prosecution vitiates and accordingly, the order passed by the trial Court

deserves to be set aside.

5. The other argument of learned counsel for the appellant is in reference to the eye-witnesses. It is submitted that none of the eye-witnesses had

seen the occurrence. They were planted by the prosecution and otherwise, are relatives of the deceased. In that regard, reference of the statements

of PW - 1 Deenbandhu Sharma, PW - 2 Ganesh, PW - 3 Poluram, PW - 4 Baijnath, PW - 5 Jagdish has been given. It is also stated that PW - 7 Smt.

Savitri was an independent witness. She did not support the prosecution case. In view of the above, the trial Court should not have believed

testimonies of PW - 1 Deenbandhu Sharma, PW - 2 Ganesh, PW - 3 Poluram, PW - 4 Baijnath and PW - 5 Jagdish so as to convict the accused. The

prayer is accordingly to set aside the order passed by the trial Court and acquit the appellant for the offence under Section 302 IPC.

6. Learned Public Prosecutor has opposed the arguments raised by learned counsel for the appellant. It is submitted that the investigation was caused

after registration of the FIR. PW - 16 Paburam Vishnoi has given description of the incident. He has stated that after the occurrence, the appellant

himself came to Police Station Sodala along with the knife. The accused described the incident. Finding it to be an occurrence under the jurisdiction of

Police Station Shyam Nagar, it was sent to the said Police Station where a report was registered and, thereupon, the accused was arrested with recovery of knife. The arrest and recovery of knife is much subsequent to registration of the FIR, thus it is incorrect to state that investigation in the case was started prior to registration of the FIR.

7. It is also stated that the prosecution has not planted any witness. PW - 1 Deenbandhu Sharma, PW - 2 Ganesh, PW - 3 Poluram, PW - 4 Baijnath and PW - 5 Jagdish had seen the occurrence and accordingly, the prosecution produced them. They are otherwise natural witnesses and were not relatives of the deceased but were belonging to the same village.

8. Learned Public Prosecutor has further given reference of the recovery memo of blood stained clothes of the accused apart from blood stained knife. The accused could not give any clarification about it in his statement under Section 313 Cr.P.C. and otherwise, PW - 16 Paburam Vishnoi has proved the prosecution case. The accused first came before him to surrender and there, he disclosed the occurrence, thus extra judicial confession of the accused also exists. The prayer is accordingly to dismiss the appeal preferred by the appellant while maintaining the order passed by the trial Court.

9. We have considered rival submissions made by learned counsel for the parties and scanned the record carefully.

10. The FIR was registered by Police Station Shyam Nagar on a written report of the complainant Ramesh. It was contended that on 04th August, 2011, his brother Dhanraj went to Ashokpura, New Sanganer Road to bring milk from Ajmera Brothers. The accused Ghanshyam @ Shyama came on a tea stall and started abusing the deceased. The accused was having knife with him. He started giving knife blows to the deceased, who shouted on it. Baijnath, Poluram, Jagdish and Deenbandhu came to save the deceased. The accused caused knife blows to Poluram also and ran away from the place of occurrence. The deceased was immediately taken to SMS Hospital where he was declared dead by the doctors and accordingly, the complainant went to Police Station Shyam Nagar to make a report of the occurrence.

11. On his written report, an FIR No. 247/11 was registered for the offence under Section 302 IPC. After registration of FIR, the accused was arrested along with knife. He was wearing blood stained clothes, which were seized and sent for the FSL report and dead body was sent for postmortem. The accused gave twenty two blows to the deceased. The occurrence was caused by the accused under suspicion. The accused was thinking that his wife's photograph has been kept by the deceased.

12. After the charge sheet, charges were framed for the offence under Section 302 IPC, which was explained to the accused, who denied it and accordingly, trial commenced. The prosecution produced sixteen witnesses apart from seventeen documents to prove their case, whereas, statement of the accused was recorded under Section 313 Cr.P.C. The accused produced two documents in defence. The trial Court found that the prosecution has proved its case beyond doubt, thus the appellant was convicted for the offence under Section 302 IPC and accordingly, sentenced for life imprisonment with fine of Rs. 10,000/-.

13. Learned counsel for the appellant has submitted that investigation in the case started before registration of the FIR. It was also stated that the accused was arrested immediately when he went to the police station after the occurrence. It was without registration of the case. Even a knife was also recovered from him.

14. From perusal of the written report (Exhibit P - 1) and FIR (Exhibit P - 14), it comes out that the FIR was registered at around 12.20 PM (noon) on 04th August, 2011, whereas, arrest and personal search memo (Exhibit P -8) was prepared at 9.30 PM on 04th August, 2011, i.e., much subsequent to registration of the FIR. In view of the above, the first argument raised by learned counsel for the appellant is not made out and otherwise, it seems to have been raised under confusion. At this stage, learned counsel for the appellant was fair enough to admit the aforesaid and did not press the first ground.

15. Learned Public Prosecutor has otherwise given the fact about registration of the FIR. In fact, after the occurrence, the accused himself went to the Police Station Sodala, as is coming out from the statement of PW - 16 Paburam Vishnoi, who was deputed in Police Station Sodala on the relevant

date. PW - 16 Paburam Vishnoi has stated that at around 10.45 AM on 04th August, 2011, one person came hurriedly having one blood stained knife

in his hand. His clothes were also blood stained. He confessed about the occurrence where he had given knife blows to the deceased Dhanraj at New

Sanganer Road. Since, the place of occurrence was falling under the jurisdiction of Police Station Shyam Nagar, information was sent to Police

Station, Shyam Nagar through wireless. Article - 3, the knife and Article - 4, blood stained clothes of the accused were identified by PW - 16

Paburam Vishnoi in the trial.

16. In the cross-examination, the said witness was asked about the knife, which is said to have been kept initially by the police, but, later on, given to

the accused, as the case was not falling in the jurisdiction of police station Sodala. The fact aforesaid shows that it is the accused, who himself came

to police station, however, he could not be arrested, as the incident took place in the jurisdiction of another police station. Accordingly, not only the first

argument raised by learned counsel for the appellant is not made out but the statement of PW - 16 Paburam Vishnoi shows extra judicial confession of

the accused.

17. The prosecution has otherwise produced eye-witnesses PW - 1 Deenbandhu Sharma, PW - 2 Ganesh, PW - 3 Poluram, PW - 4 Baijnath and PW

- 5 Jagdish According to learned counsel for the appellant, they all are interested witnesses, thus planted, as otherwise they were not present at the

scene of the occurrence. They came later on.

18. To support the arguments, a reference of the statement of PW - 1 Deenbandhu Sharma has been given. In the cross-examination, the said witness

has stated that he was in the shop at the distance of 30 to 40 feet from the place of occurrence. He was inside the shop when the occurrence took

place. He came out immediately after hearing shout of the deceased. The accused ran away from the place of occurrence. The deceased was lying

on the floor in a pool of blood. He has named others present at the place of occurrence. As per the statement of PW - 1 Deenbandhu Sharma, he

cannot said to be an eye-witness to the occurrence but reached to the place of occurrence immediately and saw the accused running away while the

deceased was in a pool of blood.

19. PW - 2 Ramesh is, however, an eye-witness. He has seen the occurrence and described it accordingly. He has specifically stated that the accused was causing knife blows and it was seen by him. It is also stated that after the occurrence, the accused Ghanshyam @ Shyama ran away from the place of occurrence. Baijnath, Jagdish, Poluram and Deenbandhu Sharma tried to save the deceased, thus their presence has also been shown by the said witness. PW - 2 Ramesh has not been cross-examined so as to doubt his presence at the time of occurrence, thus his statement cannot be disbelieved only for the reason that he may be an interested witness and otherwise, not shown to be relative of the deceased, but, is belonging to same village.

20. PW - 3 Poluram, PW - 4 Baijnath and PW - 5 Jagdish have corroborated the statement of eye-witness PW - 2 Ramesh. Their testimonies cannot be disbelieved on the ground urged by learned counsel for the appellant. The interested witnesses would never try to save the real culprit so as to book the other, rather, they will come with true story.

21. PW - 7 Smt. Savitri, no doubt, turned hostile, thus did not support the prosecution case, but, merely for that reason, the case of the prosecution cannot be disbelieved. It is moreso when, they could produce corroborative evidence and, for that, statement of PW - 8 Dr. NL Disania is relevant.

He has given description of the injuries caused to the deceased. He has also shown the nature of injuries. The deceased received twenty three injuries, out of which, twenty two are inside wound. The injuries were caused by sharp edged weapon. A knife was recovered from the appellant at the time of arrest itself and was sent for the FSL report apart from his blood stained clothes.

22. The statement of PW - 16 Paburam Vishnoi has been referred earlier and is relevant for the aforesaid apart from the statement of PW - 14

Ramgopal S/o. Hari Kishan. He investigated the case. He has proved the Exhibit P - 7, seizure memo of one blood smeared shirt of the accused apart

from Exhibit P - 6, seizure memo of blood smeared clothes of deceased Dhanraj. The said witness has even proved the arrest memo as well as

recovery of knife from the accused at the time of his arrest vide Exhibit P - 8 and Exhibit P - 9. The FSL report Exhibit C -1 has also been proved.

23. The perusal of the FSL report Exhibit C - 1 shows that on the clothes of the deceased and accused, human blood was found and other than on mobile phone and shirt, it was found to be of blood group 'A'. The blood on the knife was also matching to the blood group of the deceased, thus blood on the clothes of the accused and also the deceased was of matching group. The aforesaid has also corroborated the case of the prosecution.

24. The articles, so recovered, by the prosecution were kept in ""Malkhana"" and produced during the course of trial, thus it is not only that the prosecution could bring evidence to prove its case beyond doubt, but, it was believed by the trial Court finding corroboration in the evidence. It is not only the statement of eyewitness but other witnesses, who proved the documents produced by the prosecution.

25. In the statement under Section 313 Cr.P.C., the accused has failed to give any explanation to blood on his shirt and even to the extra judicial confession before PW - 16 Paburam Vishnoi. The extra judicial confession has been relied by the trial Court and accordingly, finding case against the accused, he was convicted and sentenced for the offence under Section 302 IPC.

26. In a case where the appellant had caused not one or two injuries to the deceased but gave twenty two blows by sharp edged weapon and obviously, the process must have taken time, thus seen by the eye-witness. Accordingly, we do not find a case to cause interference in the order of the trial Court. It is moreso when, no explanation in the statement under Section 313 Cr.P.C. exists.

27. Accordingly, we dismiss the appeal. The record be sent back to the trial Court.