

(2019) 01 RAJ CK 0363

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Appeal No. 319 Of 2018

Jaibhagwan

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision: Jan. 24, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 323
- Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 - Section 3(2)(V)
- Evidence Act, 1872 - Section 27
- Code Of Criminal Procedure, 1973 - Section 313

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

Bench: Division Bench

Advocate: Govind Prasad Rawat, Sonia Shandilya

Final Decision: Disposed Off

Judgement

1. By this appeal, a challenge has been made to the judgment dated 10th July, 2018 passed by the Special Judge, SC/ST (Prevention of Atrocities)

Cases, Tonk (Rajasthan) in Session Case No. 09/2012, whereby, the accused-appellant has been convicted and sentenced as under:

For offence under Section 323 IPC - six months' simple imprisonment.

For offence under Section 302 IPC - Life imprisonment with fine of Rs. 5000/-. In case of default in payment of fine, to further undergo, one month's rigorous imprisonment.

For offence under Section 3(2)(V) of SC/ST (Prevention of Atrocities) Act - Life imprisonment with fine of Rs. 5000/-. In case of default in payment

of fine, to further undergo, one month's rigorous imprisonment.

2. Learned counsel for the accused-appellant submits that no motive has been shown by the prosecution for the occurrence at the instance of the

accused-appellant. It is also that PW - 1 Babu Lal and PW - 7 Rajendra Kumar were planted by the prosecution otherwise, PW - 1 Babu Lal is not a

witness for last seen and even the statement of PW - 7 Rajendra Kumar, projecting himself to be an eye-witness, is untrustworthy.

3. A reference of the statement of PW - 28 Rewar Mal has been given. In the cross-examination, he has not shown presence of PW - 1 Babu Lal at

the time of the occurrence. In view of the above, the prosecution could not bring chain of evidence to connect the accused-appellant with the crime. If

the statement of PW - 7 Rajendra Kumar is discarded, it becomes a case of circumstantial evidence.

4. Learned counsel for the accused-appellant further submitted that PW - 7 Rajendra Kumar is said to have received injury out of a nail used by the

accused. The aforesaid is not supported by the injury report Exhibit P - 13. The injury therein is shown to be out of blunt object and not by sharp edged

nail, thus for the aforesaid reason also, the presence of PW - 7 Rajendra Kumar at the time of the occurrence becomes doubtful. Since, the

prosecution failed to bring chain of evidence to connect accused with the crime, the trial Court should have acquitted the accused-appellant. The

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

5. It is also stated that the trial Court has convicted the accused-appellant even for the offence under Section 3(2)(V) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act of 1989") and sentenced him accordingly, though, no evidence exists that

offence was caused under the Act of 1989. Accordingly, the accused-appellant deserves to be acquitted even for the offence under Section 3(2)(V)

of the Act of 1989 and for that also, the order of the trial Court may be set aside.

6. Learned Public Prosecutor has contested the appeal. It is submitted that PW - 1 Babu Lal has given evidence of last seen of the accused and

deceased and PW - 7 Rajendra Kumar has stated about the occurrence being an eye-witness. There exists no reason to disbelieve both the witnesses.

The statements of PW - 1 Babu Lal and PW - 7 Rajendra Kumar have been corroborated by other evidence. It is not only recovery of a nail on disclosure of the accused-appellant under Section 27 of the Indian Evidence Act, 1872 (for short "the Act of 1872") vide Exhibit P - 51 but disclosure and recovery of blood stained clothes vide Exhibit P - 52. The nail so as the clothes recovered on disclosure of the accused-appellant were found blood stained. They were sent to FSL and the FSL report Exhibit P - 46 to Exhibit P - 48 have confirmed human blood on the nail as well as on clothes of the deceased so as of the accused. The blood group "A" was found on clothes of the deceased as well as on clothes of the accused. The blood group remained inconclusive for the nail. Since, blood group on clothes of the accused-appellant is matching to the blood group of the deceased, it was another corroborative evidence to prove the case.

7. A reference of the postmortem report Exhibit P - 16 has been given apart from the reference of statements of PW - 10 - Dr. Tikaram and PW - 16

Dr. Hemant Gwalani. The postmortem report gives description of the injuries on the person of deceased. The deceased had received nine injuries and

all are out of sharp edged weapon. The cause of death has also been given. The injuries caused by nail affected the organ and was the cause of

death, thus the aforesaid evidence has also proved the case against the accused-appellant. The prayer is accordingly to dismiss the appeal.

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

9. It is a case where on a written report dated 17th November, 2011, police registered the FIR No. 206/2011 Exhibit P - 2. After registration, police

filed charge sheet against the accused-appellant. The charges were framed by the trial Court and explained to the accused. He denied the charges,

thus trial commenced.

10. The case of the prosecution, as given by the complainant Babu Lal, was that on 16th November, 2011 at around 6-6.30 PM, he was going towards

agricultural mandi. When he reached near Uniara Bag, he found that in front of the house of Kammu Miyan, his brother-in-law Motilal, the deceased

and the accused Jai Bhagwan Kumawat were sitting together. They were consuming liquor. He stopped there for sometime and asked not to take

liquor. He then received an information at around 8-8. 30 PM about injuries to his brother-in-law Motilal, who was admitted in Uniara Hospital. He reached Uniara Hospital where his brother-in-law was declared dead. He saw many injuries on the person of deceased by sharp edged nail. The blood was seen on the shirt as well as on ""Baniyan"". He had shown his suspicion on the accused - Jai Bhagwan Kumawat.

11. The prosecution produced twenty eight witnesses apart from fifty seven documents to prove their case, whereas, statement of the accused-

appellant was recorded under Section 313 Cr.P.C. The star witnesses in the present matter are PW - 1 Babu Lal and PW - 7 Rajendra Kumar. PW -

7 Rajendra Kumar has been shown to be an eye-witness. He has stated that on 16th November, 2011, he came to Uniara from Sawai Madhopur. He

saw two persons fighting with each other. It was seen from window of the bus. One person was his maternal uncle Motilal and other was Jai

Bhagwan Kumawat. He came to the scene of occurrence and tried to settle the quarrel between them. At that stage, the accused caused injury by a

nail to him also. After separating the accused-appellant and deceased, he came to his village. In the morning he came to know about death of the

deceased. The said witness has proved the site plan Exhibit P - 7. The witness was cross-examined by the appellant. It was admitted that he saw

accused for the first time at the time of occurrence.

12. It is submitted by learned counsel for the accused-appellant that no identification parade was made in this case, thus statement of PW - 7 Rajendra

Kumar should not be relied. It is also that Exhibit P-13, injury report of PW - 7 Rajendra Kumar does not corroborates his statement. The injury to the

said witness is not out of a nail but by blunt object. In view of the above, a doubt has been created about presence of PW - 7 Rajendra Kumar at the

time of occurrence.

13. Before recording finding on the aforesaid, we are referring to the statement of PW - 1 Babu Lal, who has given evidence of last seen. He has

stated that he was going towards bus stand from agricultural market road at around 5-6.00 PM. He saw the accused and deceased sitting together

near the garden and consuming liquor. He asked the deceased as to why he is consuming liquor and thereafter, he left the place. At around 8-9.00

PM, he received information that deceased Motilal has received injuries. He immediately reached the hospital. He identified the dead body of

deceased having injuries by a sharp edged nail. The blood was seen on clothes of the deceased. The said witness has thus given evidence of last seen

and his statement could not be demolished in the cross-examination. He cannot be said to be a planted witness.

14. Learned counsel for the accused-appellant has given reference of the statement of PW - 28 Rewar Mal to show that as per his statement PW - 1

Babu Lal was not available at the time of the occurrence. The argument aforesaid is irrelevant for the reason that PW - 1 Babu Lal has not shown

himself to be an eyewitness but a witness of last seen, thus there was no question of his presence at the time of the occurrence otherwise, he would

have been an eye-witness. Hence, we find that the prosecution could bring evidence of last seen.

15. Other evidence produced by the prosecution is about disclosure by the accused under Section 27 of the Act of 1872. Exhibit P - 51 is for sharp

iron kili, whereas, Exhibit P - 52 is for clothes of the accused. Exhibit P - 53 is disclosure under Section 27 of the Act of 1872 about the place of the

occurrence. In pursuance of the disclosure aforesaid, recovery of clothes of the accused was made vide recovery memo Exhibit P - 21 and recovery

memo of sharp iron kili is Exhibit P - 19. The sharp iron nail and clothes of the accused were blood stained. They were sent for FSL report vide

Exhibit P - 22 and Exhibit P - 23. The FSL report is Exhibit P - 46 to Exhibit P - 48. The FSL report shows human blood on clothes of the deceased as

well as accused so as on the sharp iron nail. The blood group on the clothes of deceased and accused matched, as it was found to be of group ""A"". In

view of the above, another connecting evidence is not only the disclosure of the accused under Section 27 of the Act of 1872 for his clothes and nail

apart from place of the occurrence but recovery in pursuance of it followed by the FSL report.

16. The prosecution even produced and proved the postmortem report Exhibit P -

16. It shows nature of injuries apart from cause of death. The

injuries were out of sharp edged nail. In all nine injuries were found on the person of deceased and were the cause of death. The postmortem report

has corroborated the statement of PW - 1 Babu Lal and PW - 28 Rewar Mal. PW - 10 Dr. Tikaram and PW - 16 Dr. Hemant Gwalani have

described the injuries on the person of deceased and nature of weapon. The cause of death has also been given. The articles, so recovered, were also

produced in the Court during trial. PW - 23 Gopal Singh has also given corroborative evidence and demolished the defence. He has stated about

purchase of liquor by accused and deceased and thereby, supported the statement of PW - 1 Babu Lal about consumption of liquor by them near the

garden.

17 . We further find that PW - 28 Rewar Mal has not only proved the documents exhibited by the prosecution but has given evidence to corroborate

the statement of PW - 1 Babu Lal. We are not referring the statement of PW - 7 Rajendra Kumar, on which, a doubt has been raised about his

presence. We, however, find that PW - 10 Dr. Tikaram, the Chief Medical Officer, has also given the description of injuries, which were nine in all,

thus he has given corroborative statement and supported the prosecution case not only in regard to the postmortem report but number of injuries with

its nature. It is even to corroborate the statement of PW - 16 Dr. Hemant Gwalani.

18. PW - 13 Mamta is wife of the deceased and stated about involvement of the accused in the crime. However, she is not an eye-witness but made

statement based on hearsay information. The reference of the statement of PW - 23 Gopal Singh has been given earlier. The occurrence has not only

taken place in his presence but he was knowing Jai Bhagwan Kumawat and stated that the accused Jai Bhagwan Kumawat and deceased Motilal

came to his shop to purchase liquor.

19 . The other witnesses P.W.-3 Nandlal and P.W.-5 Vijay Ram Meena have also proved the documents produced by the prosecution in evidence so

as P.W.-4 Jagdish Prasad Meena. It is not only in regard to blood smeared soil but articles sent for the FSL report. It is even regarding seizure memo

of quarter of liquor Exhibit P - 12. P.W.-6 Kamlesh has proved the site plan.

20. P.W.-8 Deshraj has proved the Exhibit P - 12 and Exhibit P - 13, i.e., clothes of the accused brought and sealed and also the arrest memo. P.W.-

11 Balu has proved the recovery of sharp iron nail at the instance of the accused and even proved the recovery of other articles and for that, the

documents exhibited by the prosecution. The other witnesses, who proved the case is P.W.-15 Badri Lal and P.W.-19 Hukma Singh. They both are police officials. The prosecution even produced Malkhana Incharge P.W.-22 Gopichand to prove that after recovery of articles, it was kept in Malkhana"".

21. In view of the above, we find that the prosecution could bring evidence to prove the case against the accused beyond doubt. It is even if the statement of P.W.-7 Rajendra Kumar is ignored.

22. In view of the discussion made above, we do not find any reason to accept any of the arguments raised by learned counsel for the accused-appellant and accordingly, find no reason to cause interference in the order passed by the trial Court for conviction of the accused-appellant under Section 302 IPC so as the sentence.

23. The accused-appellant has been convicted for the offence under Section 3(2)(V) of the Act of 1989. We do not find that the prosecution could prove the offence under the Act of 1989. The witnesses have not alleged an offence under the Act of 1989 and for that, we are not relying on the statement of P.W.-7 Rajendra Kumar. There is no other witness to prove the case for the offence under the Act of 1989, thus the accused-appellant is acquitted for the offence under Section 3(2)(V) of the Act of 1989 and thereby, the order passed by the trial Court for conviction and sentence for the aforesaid offence is set aside while maintaining conviction and sentence for the offence under Section 302 IPC.

24 . As there is contradiction in the testimony of P.W.-7 Rajendra Kumar, thus conviction under Section 323 IPC cannot be maintained. It is also set aside accordingly.

25. With the aforesaid, the appeal is disposed of. The record be sent back to the trial Court.