

HIGH COURT OF RAJASTHAN AT JODHPUR

Bench: Hon'ble Dr. Justice Pushpendra Singh Bhati and Hon'ble Mr. Justice Rajendra Prakash Soni

Date of Decision: 29th May 2024

Case No. :

D.B. CRIMINAL APPEAL NO. 443/1989

APPELLANT(S): JOG SINGHAppellant

VERSUS

RESPONDENT(S): THE STATE OF RAJASTHANRespondent

Legislation:

Sections 302, 436, 447 of the Indian Penal Code (IPC)

Section 3/27 of the Arms Act

Subject: Appeal challenging conviction and life imprisonment for the murder of Ratan Singh, based on eyewitness testimony, motive, and recovery of weapon.

Headnotes:

Criminal Law – Conviction for Murder – Appellant convicted under Sections 302, 436, 447 IPC and Section 3/27 of the Arms Act – Trial court relied on eyewitness testimony, medical evidence, and motive – High Court re-examines evidence and finds significant discrepancies, lack of corroboration, and unreliable eyewitness accounts – Conviction quashed, appellant acquitted [Paras 1-25].

Eyewitness Testimony – Reliability – Alleged eyewitnesses, including the complainant and his sons, claimed to have witnessed the incident – High Court finds inconsistencies in their statements and lack of corroboration from the crime scene – Discrepancies regarding the presence and activities of the witnesses at the time of the incident undermine credibility [Paras 12-17].

Motive and Enmity – Prosecution argued motive based on longstanding enmity over land disputes – High Court acknowledges enmity but notes it as a double-edged sword, potentially leading to false implication – No conclusive evidence linking appellant to the crime based solely on enmity [Para 19].

Medical and Forensic Evidence – Postmortem confirms homicidal death by gunshot – However, forensic evidence, including the recovery of the weapon and its connection to the appellant, lacks conclusive proof – High Court emphasizes need for corroborative evidence beyond medical findings [Paras 10, 14].

Appellate Review – Standards of Proof – High Court reiterates principle of proof beyond reasonable doubt – Finds trial court's reliance on prosecution evidence insufficiently scrutinized – Emphasizes requirement for credible and trustworthy evidence for conviction in serious offences like murder [Paras 23-24].

Decision – Criminal Appeal Allowed – Conviction and sentence set aside – Appellant acquitted of all charges – Bail bonds discharged [Paras 24-25].

Referred Cases:

Suresh Raj v. State of Bihar, 2000 (2) Crimes 137 (SC)

Pratap Singh v. State of M.P., 2006 SCC (Criminal) 284

Representing Advocates:

For Appellant(s): Mr. Bhanwar Singh Rathore

For Respondent(s): Mr. B.R. Bishnoi, Public Prosecutor

Judgment

(Per Hon’ble Mr. R.P. Soni, J)

1. The appellant was charged and tried for offences under Sections 302, 436, 447 of the IPC and Section 3/27 of Arms Act for having committed murder of Ratan Singh on 20.10.1986 at Village Barathal Kallan, P.S. Khinvasar, Distt. Nagaur. He was convicted for aforesaid offences by judgment and order dated 26.09.1989 passed by Additional District & Sessions Judge,

Nagaur and was sentenced as under:-

Sentence under Section	Sentence awarded	Fine imposed	Fine Default Sentence
447 IPC	1 month R.I.	-	-
436 IPC	3 years’ R.I.	Rs.100/-	1 month R.I.
302 IPC	Life Imprisonment	Rs. 100/-	1 month R.I.
3/27 Arms Act	3 years’ R.I.	Rs.100/-	1 month R.I.

All the sentences were ordered to run concurrently.

2. The prosecution story as set out in the F.I.R. (Ex.P-1) is that on 20.10.1986, complainant Khag Singh (PW-1) lodged a report to the police station khivsar to the effect that his younger brother deceased Ratan Singh was living in a *Dhani* (hamlet) situated on their field named *Indokawala*. Ratan Singh was not married and lived alone. On 20.10.1986, complainant and his two sons Dul Singh @ Dule Singh (PW-2) and Labu Singh @ Labhu Singh (PW-3) alongwith Ratan Singh were working in the said field of joint-tenancy. On that day, at about 3:15 in the afternoon, appellant-accused Jog Singh came to the complainant's field from the road leading from his village to *Tankla* village. This road passes near the boundary wall of the complainant's field. Jog Singh had a 12 bore gun and a bundle of cartridges. As soon as he arrived, he challenged Ratan Singh and told him to get ready to die. He then, fired gun at Ratan Singh, causing Ratan Singh to fall to the ground. The complainant and his two sons, out of fear, ran towards the neighboring *Dhani* to save their lives. Jog Singh fired 2-3 more shots at Ratan Singh. Thereafter, Ratan Singh went to the *Dhani* of complainant and set it on fire and then ran away. After Jog Singh left, the complainant and his two sons went to Ratan Singh and saw that he was lying dead in the field with gunshot wounds on his body. His body was soaked in blood. Seeing the flames, many people from the neighboring hamlets gathered there. The complainant and the villagers tried to extinguish the fire, which caused a delay in lodging of the F.I.R.

3. After receiving of above report, a formal F.I.R. was registered, investigation was commenced and after completion of investigation, challan was filed against the appellant. After the case was committed to the Court of Sessions, appellant was put on trial. He stood charged for the offences punishable under Sections 447, 436, 302 of the I.P.C. and Section 3/27 of the Arms Act. The appellant denied the charges and claimed to be tried.

4. To establish guilt of the appellant, prosecution examined as many as 13 witnesses and also got exhibited different documents and articles during the trial. In his statement recorded under Section 313 of the Criminal Code Procedure, appellant denied all the allegations levelled against him appearing in evidence of prosecution. He pleaded innocence and false implication. Oral evidence of Manohar Singh (DW-1) and Chotu Khan (DW-2) were produced by the appellant in his defence and some documents were also exhibited.

5. This story has been held to have been proved by the trial Court relying upon the successful establishment of facts by the prosecution. The trial Court, while relying upon the testimony of eye-witnesses Khag Singh (PW-1) and his two sons namely Dul Singh @ Dule Singh (PW-2) and Labu Singh @ Labhu Singh (PW3), the medical evidence, the recovery as well as the motive of the appellant, convicted and sentenced the appellant as indicated above. Hence this appeal.

6. Mr. Bhanwar Singh Rathore, learned counsel appearing on behalf of the appellant strongly contended that impugned judgment passed by the learned Trial Court is against law and facts which is not sustainable in the eye of the law and deserves to be set aside as learned trial Judge has erred in convicting and sentencing the appellant. He further submitted that prosecution has suppressed true story and merely on basis of evidence of interested and relative witnesses, the judgment of conviction has been passed without looking into other material available on record. Lastly, it is argued that prosecution has failed to prove its case beyond reasonable doubt. He therefore, urged that under such circumstances, conviction and sentence of the appellant cannot be sustained and the impugned judgment should be set aside and the appellant be acquitted. In support of his

submissions, he has relied upon the following decisions:-

1. 2000 (2) Crimes 137 (SC)

Suresh Raj Vs. State of Bihar

2. 2006 SCC (Criminal) 284

Pratap Singh Vs. State of M.P.

7. On the contrary, Mr. B.R. Bishnoi learned Public Prosecutor appearing for the State took us through the entire evidence and argued that all the evidence relied upon by the prosecution have been proved beyond reasonable doubt. The prosecution has been able to prove the fact of motive, intention and recoveries beyond reasonable doubt. From the evidence led by the prosecution, it can safely be inferred that it was the appellant only, who has murdered the deceased Ratan Singh. He, therefore, prays for dismissal of the appeal.

8. We have carefully perused the record as well as considered the submissions made by learned counsels for the parties. We have also thoroughly re-appreciated the evidence available on record.

9. Learned Counsel for the appellant has contended that all the three witnesses namely, Khag Singh, Dul Singh @ Dule Singh and Labu Singh @ Labhu Singh who were produced as eye-witnesses of the incident in question were really not present at the spot and had not seen the occurrence. It is contended that admittedly there was bitter enmity between the appellant on the one hand and the deceased, complainant and both the eye witnesses on the other hand. Khag Singh (PW-1), Dul Singh @ Dule Singh (PW-2) and Labu Singh @ Labhu Singh (PW-3) were in close relations of the deceased Ratan Singh besides being related inter se. Admittedly, they were on inimical terms with the appellant Jog Singh. Their presence at the place of occurrence is not supported by other evidence. Therefore, their evidence is liable to be brushed aside completely.

10. At the outset, we are of the opinion that in view of the medical evidence, there is no doubt that death of the deceased Ratan Singh was homicidal one, caused by gunshot injury. The crucial question is whether witnesses Khag Singh, Dul Singh @ Dule Singh and Labu Singh @ Labhu

Singh saw the accused Jog Singh firing at Ratan Singh as well as setting the Dhani on fire and on this basis, has the prosecution been successful in proving its case against the accused Jog Singh beyond reasonable doubt?

11. What is correct and what is not correct has to be decided on a consideration of overall facts and circumstances of the case as emanating from the material brought on record including the statement of witnesses recorded by the trial court.

12. The prosecution story when analysed, indicates the field of Khagsingh and deceased Ratan Singh was the joint khatedari place where the incident took place. Khag Singh (PW-1), Dul Singh @ Dule Singh (PW-2) and Labu Singh @ Labhu Singh (PW3) were allegedly at the spot and had witnessed the occurrence.

13. The statement of the complainant Khag Singh (PW-1) was: "We were cutting the *Paala* (*Shrubs, bushes and tiny plants*) in the field; we had started the work of cutting the *paala* two days ago." His son Dule Singh (PW-2) also stated:- "We were cutting the

Paala in the field. It is true that when we cut the *Paala*, the "jaadbad" and "jei" (Instruments) remain in hand and nearby, which were also with my father and we brothers. We had cut the *Paala* a day before the incident as well." The third witness Labu

Singh (PW-3) stated:- "We were cutting *Paala* in the field, which we had been cutting for two days. We had a "Gandasi" (cutting instrument) and a "jei" (collecting instrument) with us to cut the *Paala*."

14. Contrary to it, the Investigation Officer Veer Singh (PW-13) has deposed that the bundles of scrapped *Paala* were not found at the scene; bundles are not shown in the site-plan (Ex.P-2) and the memo of description of the crime-scene (Ex.P-3); there were no signs of *Paala* cutting at the scene of the incident; there were no tools for *Paala* cutting; the "Gandasi" and "jei" were also not found there.

15. Analysis of above evidence proves that presence of above three alleged eye-witnesses at the spot is not corroborated by the heaps of *Paala* which they had scraped and had kept in bundles (*Bhintke*). The “Gandasi and Jeiya” (the instruments used for cutting and collection of bushes) with which they had scraped the *Paala* for last two days, were also not found by the police at the time of site inspection.

16. In view of this Court, if the *Paala* had really been scraped and collected by them, the “Gandasi” and “Jei” utilised for scraping the *Paala*, investigating officer Veer Singh (PW-13) would have noticed it on the portion of the land from which the *Paala* was scraped and he would have also found bundles of the scraped *Paala* there.

17. These circumstances clearly indicate that the *Paala* was not being scraped nor was it collected in the field and therefore, none of the eye-witnesses namely, Khag Singh (PW-1), Dul Singh @ Dule Singh (PW-2) or Labu Singh @ Labhu Singh (PW-3) were present at the spot for the purpose stated, when Ratan Singh was fired upon. Thus, the presence of these three alleged eyewitnesses at the spot is not found trustworthy on the basis of the purpose for which they were citing their presence at the scene of the incident. This is a strong and justified reason to discard and brush aside testimony of Khag Singh, Dul Singh @ Dule Singh and Labu Singh @ Labhu Singh who were interested and inimical witnesses. It is well settled that the evidence of interested or inimical witnesses is to be scrutinized with great care and cannot be rejected merely on the ground of being a partisan witness. In the present case, the evidence produced by prosecution satisfies the conscience of the Court that all the three alleged eyewitnesses are not telling the truth with regarding to the occurrence. Therefore, it is not found trustworthy that they were present at the spot of occurrence and were scrapping the *Paala* at the time of incident.

18. We may now deal with another aspect of the case dealing with the presence of the eye-witnesses at the spot. In this context, the statement of witness Jerup @ Jayrupram (PW-4) is very important. During the investigation, as per his statement (Ex.-5) the police found that he was at his dhani in the evening on the day of the incident. When he saw the flames, he went to Ratan Singh's dhani and learned about the incident. However, he made drastic improvements in his statements recorded in court. Becoming an eyewitness to the incident, he deposed that he had seen Jog Singh firing at Ratan Singh in the afternoon. While admitting his enmity with Jog Singh, he also acknowledged that he had a court case against accused Jog Singh. If these improvements are considered, it would appear that this witness is clever enough to make improvements on points which he thought material and that is very fatal for the prosecution particularly in a murder case. This witness is sufficient to destroy the case of the prosecution. Jerup @ Jayrupram (PW-4), though not an eyewitness, is nevertheless a prosecution witness and has forcefully tried to become an eye witness. It appears that he has deposed only to fix the accused on the basis of this also, the case of the prosecution appears to be doubtful.

19. We now proceed to consider the aspect of motive. All the three alleged eye witnesses admitted that there was a dispute of boundary of fields between the deceased and the accused Jog Singh which was the cause of enmity amongst the parties. Enmity, undoubtedly, is a double-edged weapon; it may be a motive for commission of crime; it may also be a motive for false implication. In the backdrop of the present case, it was but natural that the appellant Jog Singh would have been implicated at the instance of complainant KhagSingh (PW-1) in the incident, which he had not witnessed nor had it been witnessed by both of his sons. On this aspect, benefit can be dug out from the judgment rendered by Hon'ble the Apex Court in the case of **2000(2) Crimes 137(SC) Suresh Rai Vs. State of Bihar** in support of above observations of this court.

20. The record reveals that the entire investigation was wholly tainted and the case presented was the collective mischief of the informant Khag Singh and both of his sons.

21. It is, no doubt, true that the death of deceased was homicidal but since prosecution has not been successful in proving its case against the accused Jog Singh beyond reasonable doubt, therefore, we are of the view that evidence relied upon by the prosecution is hardly sufficient to establish the guilt of the accused Jog Singh.

22. We are of the firm view that in absence of any cogent and credible corroborating evidence to conclusively prove the involvement of the accused Jog Singh in the death of Ratan Singh, it would not be safe to base their conviction on the basis of the statements of purported eye witnesses.

23. On an overall assessment of the facts and circumstances of the case it therefore, becomes apparent that the Trial Court merely accepted the evidence placed before it by the prosecution. Mere production of the evidence would not lead to conviction. It is its reliability and trustworthiness that matters. Thus, we are of the considered view the Trial Court has not appreciated the evidence available on record properly. There is no credible and trustworthy evidence to come to the conclusion that it was the appellant Jog Singh who committed the offence. Accordingly, we feel that it is a fit case where the benefit of reasonable doubt must be extended to the appellant. We are inclined to set aside the conviction and sentence rendered by the Trial Court.

24. As a result appeal is hereby allowed. The conviction and sentence passed against appellant Jog Singh in Sessions Case No.3 of 1987 titled as "State of Rajasthan Vs. Jog Singh" vide judgment and order dated 26.09.1989 rendered by the Court of Additional District and Sessions Judge, Nagaur are set aside. The appellant is acquitted of the charges framed against them.

25. Appellant is on bail. His bail-bonds are discharged. Appeal allowed accordingly.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.