

PETITIONER:
ASHA @ ASHANAND & ORS. ETC.

Vs.

RESPONDENT:
THE STATE OF RAJASTHAN

DATE OF JUDGMENT: 08/05/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 8TH DAY OF MAY, 1997

Present.

Hon'ble Mr. Justice M.K. Mukherjee

Hon'ble Mr. Justice S.p. Kurdukar

U.R. Lalit, Sr. Adv., K. L. Janjani and R.K. Agnihotri, Advs.
with him for the appellant in Crl.A.No. 183-85/90 and 462/95
S.K. Sabharwal, Adv. for the appellant in Crl.A.No. 84/91
K.S. Bhati, Adv. for the Respondent

J U D G M E N T

The following Judgment of the Court was delivered:

With

Crl.A. 84/91 and Crl.A.No. 462/95

J U D G M E N T

S.P. KURDUKAR, J.

These Criminal Appeals are filed by the appellants/accused challenging the legality and correctness of the judgment and order of conviction and sentence dated 18.8.1989 passed by the Rajasthan High Court for an offence punishable under Section 302, 302/34 IPC. Since these appeals arise out of a common judgment of the courts below they are being disposed of by this judgment.

(2) The prosecution story as unfolded at the trial is as under:

Cheturam (since deceased) was a resident of Kota and was running a kerosene shop in a log cabin near the bus stand. On 6.3.1987 while he was sitting in his shop, his three other friends, namely, Suresh Kumar (P.W.5), Farid (P.W.7) and Ashok Kumar (P.W.9) had come to his shop and they were talking with each other. Suddenly Ashanand (A-1), Mohan Singh (A-2) and Cheetar Singh (A-3) came on a motor cycle which was driven by A-1. They stopped the motor cycle near the log cabin Cheturam. A-1 who had a plastic mug containing acid threw it on Cheturam who sustained burn injuries and fell down. A-2 and A-3 thereafter assaulted Cheturam with the knives. A-1 also assaulted Cheturam with the knife. Because of this murderous assault Cheturam sustained the acid and bleeding injuries and became unconscious. All the three accused then fled away. Farid (P.W.7) and Ashok Kumar (P.W.9) hired an auto rickshaw and carried Cheturam to M.B.S. Government Hospital, Kota.

Medical. officer on duty declared Cheturam dead. Ashok Kumar (P.W.9) then proceeded to the police station, Gumanpura and submitted the written report Ex.P-16 at 6.30 p.m. about the incident. The FIR Ex.P-17 came to be registered and the Station House Officer, Samarath Singh (P.W.11) deputed some constables to the place of incident. He himself reached the place of occurrence at about 8.00 p.m. Since it was dark he did not carry out further investigation during the night. He then went to the hospital and verified about the death of Cheturam. On 7th March, 1987 he proceeded to the place of occurrence and carried out further investigation. During investigation A-1 was arrested on 8.3.1987, whereas A-2 was arrested on 14.3.87 and A-3 came to be arrested on 17.6.87. Dr. Manmohan Singh (P.W.2) held the autopsy on the dead body and noticed as many as 9 incised and acid born injuries on the dead body of Cheturam. After completing the investigation all the three accused were put up for trial for the offence of committing murder of Cheturam punishable under Section 302/34 IPC.

(3) All the three accused denied the allegations levelled against them and claimed to be tried. According to them Cheturam might have been assaulted by some terrorists but they have been falsely implicated in the present crime. A-1 and A-3 in their statements recorded under Section 313 Cr.P.C. had stated that the acid injuries on their persons were caused due to the accidental fall of a battery which they were trying to take out from the jeep bearing Registration No.RJF 3031. All the three accused pleaded that they are innocent and they be acquitted.

(4) The prosecution in support of its case examined 11 witnesses of whom Suresh Kumar (P.W.5), Farid (P.W.7) and Ashok Kumar (P.W.9) are the eye witnesses. Dr. Manmohan Sharma (P.W.2) was examined to prove the injuries caused on the dead body of Cheturam and the cause of his death. It also relied upon the reports Exs. P-29 and P-30 given by the Legal Science Laboratory, Jaipur. In addition to the above evidence the prosecution also produced on record the various panchnamas including seizure panchnamas in respect of incriminating articles recovered at the instance of A-1 and A-2. The accused in support of their defence examined some witnesses.

(5) The Learned Sessions Judge, Kota on appraisal of oral and documentary evidence on record by his Judgment and order dated 9.2.1989 convicted A-1 under Section 302 IPC and awarded the capital punishment and a fine of Rs.100/-. A-2 and A-3 came to be convicted under Section 302/34 IPC and each one of them was sentenced to suffer imprisonment of life and to pay a fine of Rs.100/- in default of fine to undergo further for one month. The Learned Sessions Judge, accordingly made a reference under Section 366 Cr.P.C. to the High Court. In the meantime the three accused filed their separate appeals impugning the order of conviction and sentence. All these appeals and the reference were heard together by the Division Bench of the Rajasthan High Court. The High Court by its judgment and order dated 18.8.1989 upheld the conviction of all the three accused. However, the sentence of A-1 was commuted to life imprisonment. The sentence of A-2 and A-3 were affirmed. It is against this Judgment of the High Court A-1 to A-3 have filed these three appeals by Special Leave to this Court.

(6) The learned courts below have accepted the evidence of Suresh Kumar (P.W.5), Farid (P.W.7) and Ashok Kumar (P.W.9) as credible. Relying upon the ocular version given by these three witnesses the courts below held that A-1 to A-3 came on a motor cycle, stopped the motor cycle near the log cabin

of Cheturam; A-1 and A-2 threw the acid on Cheturam and thereafter they assaulted him. The First Information Report that was lodged at the earliest opportunity without any loss of time disclosed the names of the accused persons and the role played by them; the evidence of the three eye witnesses stood corroborated from the medical evidence that Cheturam had sustained incised and acid burn injuries. The under garment of A-1 had the stains of sulphuric acid; A-1 and A-2 had also sustained minor acid injuries. All these findings recorded by the courts below are based on appreciation of oral and documentary evidence on record. There is no serious challenge to the finding recorded by the courts below that Cheturam died an unnatural death due to several injuries on his person.. It is, therefore, not necessary to deal with medical evidence which did prove that he (Cheturam) met with a homicidal death. We accordingly hold so.

(7) It was contended on behalf of the appellants that the courts below ought to have rejected the evidence of three eye witnesses being unreliable, firstly, on the ground that they were residing at far of places in different localities and there was no reason for them to come to the log cabin of Cheturam. Secondly, they were all close friends of Cheturam and, therefore, interested witnesses. It is, therefore, not safe to convict the accused persons on such untrustworthy evidence. We find no substance in these contentions. We have gone through the evidence of these eye witnesses very carefully and we find that except giving a suggestion that they could not have been present at the time of incident no further material could be brought out during the cross-examination. In our considered opinion the evidence of these witnesses cannot be disbelieved on these grounds.

(8) It was then contended on behalf of the appellants that Suresh Kumar (P.W.S), Farid (P.W.7) and Ashok Kumar (P.W.9) were not knowing the names of any of the accused persons and, therefore, the prosecution ought to have held T.I. Parade to lend credence to their evidence as regards identification. It is true that no T.I. Parade was held. The evidence of Suresh Kumar (P.W.S) is that he was knowing all the three accused persons since before the incident and the names were disclosed by him to other eye witness. Ashok Kumar (P.W.9) who lodged the First Information Report has mentioned the names of all the three accused persons as assailants and with all necessary details testified that it was Farid (P.W.7) who told him the names. However Farid had stated that he came to know the names of these accused persons from Suresh Kumar (P.W.5). If this chain is viewed in proper perspective it leaves no manner of doubt that the names of the assailants of Cheturam were told by Suresh Kumar (P.W.5) to Ashok Kumar (P.W.9) who lodged the first Information Report. The incident in question took place during day time at 5.00 p.m. and, therefore, there was no question of erroneous identity. What is relevant to mention is that the first Information Report came to be lodged on the very same evening at about 6.30 p.m. There was hardly any time to concoct a false story.

(9) It was urged on behalf of the appellants flat the evidence of Ashok Kumar is inconsistent with the recitals in the FIR inasmuch as there are various material inter-se contradictions in the evidence of these three eye witnesses relating to the details of assault and the part played by them. There are some minor inter-se contradictions in the evidence of these Three eye witnesses but in our opinion the same are of too trivial in nature and, therefore, the courts below rightly ignored such minor contradictions.

(10) It was then contended on behalf of the appellants that the evidence of Farid (P.W.7) and Ashok Kumar (P.W.9) be discarded in view of their affidavits sworn on 23.6.1987 wherein they denied any knowledge about the incident. This submission needs to be stated and rejected because this only shows an attempt on the part of the accused persons who tried to win over the witnesses. It was then urged that Farid (P.W.7) and Ashok Kumar (P.W.9) are of doubtful character and, therefore, their evidence be not accepted. This submission again has no substance and has got to be rejected. Learned counsel appearing for A-2 while adopting the arguments urged on behalf of A-1, in addition thereto contended that none of the eye witnesses had attributed any specific role to A-2 and in view thereof he needs to be given the benefit of doubt. This submission again is devoid of any merit because of the fact that all the three accused came together on a motor cycle and after getting down near the log cabin of Chetaram, A-1 and A-2 threw the acid and then assaulted him and thereafter fled away on the same motor cycle. This unimpeachable evidence cannot be overlooked and in our opinion the courts below have committed no error in convicting all the three accused persons.

(11) The most crucial circumstance against A-1 and A-2 is that they had sustained acid burn injuries on their persons. Ashanand was arrested on 8.3.1987 and was medically examined on 9.3.1987. Dr. C.M. Srivastava who examined him issued an injury report Ex.9 stating therein that A-1 had acid burn injuries which were four days old. This date coincided with the date of incident. A-2 was arrested on 14.3.1987 and was medically examined on 15.3.1987. Dr. C.M. Srivastava found burn injuries on his person which were seven days old. The Medical report is at Ex.10. There is another Independent circumstance against A-1. The underwear art.6 of A-1 seized during the course of investigation at his instance, was found to have stains of sulphuric acid as per reports Ex.P-30 of the Jaipur Legal Science Laboratory. The explanations given by A-1 and A-2 and the defence evidence in support thereof is totally unreliable and a belated attempt in that behalf. That courts below have rightly disbelieved the defence evidence and the explanation given by A-1 and A-2 in their statement recorded under Section 313 Cr.P.C.

(12) After going through the evidence and other materials on record we are satisfied that the impugned judgment and order of conviction and sentence passed by the High Court does not suffer from any infirmity. There is no substance in any of these appeals.

(13) for the conclusions recorded hereinabove, all these appeals to stand dismissed. The appellants who are on bail shall surrender to their bailbonds forthwith to serve out their sentences.