

CASE NO.:
Appeal (crl.) 409 of 1992

PETITIONER:
THE STATE OF RAJASTHAN

Vs.

RESPONDENT:
SHRI TEJA SINGH & ORS.

DATE OF JUDGMENT: 07/02/2001

BENCH:
N. Santosh Hegde & Shivaraj V. Patil.

JUDGMENT:

SANTOSH HEGDE, J.
L...I...T.....T.....T.....T.....T.....T...J
Being aggrieved by the judgment of the High Court of Judicature for Rajasthan at Jodhpur in Crl. Appeal No.329/82 dated 12.1.1988 whereby the High Court reversed the judgment of conviction and sentence awarded by the Sessions Judge, Hanumangarh, in Sessions Case No.56/81, the State of Rajasthan has preferred this appeal.

Briefly stated, the facts leading to this appeal are :

On 15.8.1981 between 4 and 4.30 p.m. one Hazoor Singh, resident of Jandawali, his daughter Amrao and Sadhu Singh were sitting under a tree near their house when they heard a loud shriek coming from a nearby house of Billu Majhabi whereupon it is stated that the said trio rushed to the place of occurrence and saw Mukhtiar Kaur (A-3), Bhajan Singh (A-2) had caught hold of the legs of one Malkiat Singh (deceased) while Teja Singh (A-1) was stabbing the said Malkiat Singh with a Kirpan. At about the same time, many other persons of the village had also gathered at the spot and on seeing the crowd gathering, the abovenamed 3 accused fled from the scene of occurrence. It is alleged that the said Malkiat Singh died on the spot. Immediately thereafter Hazoor Singh went to Ram Pratap, Sarpanch of the village and informed him of the incident, who, in turn, reported the matter to the Police over telephone. The motive for the attack is stated to be certain enmity harboured by the parties against each other in regard to kidnapping of the daughter of Hazoor Singh, namely, Guddi, some years ago. It is also stated that the accused Mukhtiar Kaur (A-3) was having an illicit affair with Teja Singh. Based on the above information by the Sarpanch, Iqbal Singh (PW-10) registered an FIR at about 7.30 p.m. the same day at Police Station Hanumangarh Junction and a case under Section 302 read with 34 IPC was registered. It is stated that after the arrest of the said accused persons, a blood-stained Kirpan was recovered from Teja Singh (A-1) and certain other blood stained clothes were also recovered during the course of investigation. On completion of the investigation, a chargesheet was prepared in which a charge under Section 302

IPC was framed against Teja Singh while a charge under Section 302 read with Section 34 IPC was framed against both Mukhtiar Kaur and Bhajan Singh. The learned Sessions Judge believed the evidence of Hazoor Singh (PW-6), Amrao (PW-7) and Sadhu Singh (PW-9) who had allegedly witnessed the ghastly incident in question and placing reliance on the recovery of the blood stained clothes recovered from the accused, convicted Teja Singh (A-1) under Section 302 IPC, and Bhajan Singh and Mukhtiar Kaur (being A-2 and A-3 respectively) for offence under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life. On an appeal filed by the accused persons, the High Court came to the conclusion that even though according to the prosecution version there were many independent eye-witnesses, none of them was examined by the prosecution while it is only Hazoor Singh (PW-6), Amrao (PW-7) and Sadhu Singh (PW-9) who were the close relatives of the deceased alone were examined and it was not safe to rely upon the evidence of these interested witnesses without any further corroboration. The High Court also took note of the fact that the Sarpanch of the village Ram Pratap who, according to the prosecution, was the first person to communicate the incident in question to the Police though cited as a prosecution witness, was not examined by the prosecution but was examined as a defence witness. The High Court further took notice of the fact that though the incident under reference was reported and an FIR was registered at about 7.30 p.m. on the date of the occurrence itself i.e. on 15.8.1981, the First Information Report reached the Court of Magistrate at Hanumangarh which is not very far away from the Police Station only on 17.8.1981 which delay though sought to be explained by the prosecution, did not find favour with the High Court. The High Court also took into account the fact that Sadhu Singh (PW-9) who is alleged to be an eye-witness though was present during the course of investigation, was examined only on 20.8.1981 nearly 5 days after the incident because of which the High Court felt it was not safe to rely upon his testimony. In view of the above circumstances, the High Court came to the conclusion that the prosecution in this case has not proved its case beyond reasonable doubt, hence, allowed the appeal, setting aside the conviction and sentences imposed on the appellants before it and respondents herein.

It is against this judgment of the High Court that the State of Rajasthan is in appeal before us. On behalf of the appellant, it is strenuously argued that the High Court erred in rejecting the evidence of the 3 eye-witnesses whose presence could not have been doubted at the time of the incident and they having witnessed the attack, had no reason whatsoever to falsely implicate the accused persons. It is also argued that the FIR in question was lodged at about 7.30 p.m. on 15.8.1981. Since the said day happened to be a holiday on account of it being Independence Day and the next being Sunday, the court being closed, the First Information Report could reach the court only on Monday i.e. 17.8.1981 hence there was nothing unusual about the delay in sending FIR to the court. Learned counsel has also vehemently argued that so far as Ram Pratap, Sarpanch of the village is concerned, he was not a willing witness hence a bailable warrant was issued seeking his presence in court but since the same could not be executed, he could not be examined. So, no adverse inference could be drawn. More particularly, learned counsel drew our attention to the

finding of the High Court that at the time of the incident when the 3 eye-witnesses named above were sitting under the tree, according to the understanding of the High Court, there were large number of other villagers also present but were not examined by the prosecution, therefore, the High Court drew adverse inference which, according to the learned counsel, was erroneous because it was not the prosecution case that at the time when the 3 eye-witnesses were sitting outside their house, there was any other person present. Therefore, the High Court committed certain factual errors as to the presence of other eye-witnesses.

We have examined the evidence of the three eye-witnesses as also that of Iqbal Singh (PW-10), the Investigating Officer. We have also perused the evidence of Ram Pratap, Sarpanch (DW-1) and we do not find any reason to differ with the finding of the High Court which sitting as the first court of appeal on facts, had every right to re-appreciate the evidence. In our opinion, the High Court, in that process, has not committed any error. As a matter of fact, the explanation put forth by the learned counsel in regard to the delay in the FIR reaching the court is not tenable because assuming that there were some court holidays that cannot be a ground for the delay in the FIR reaching the Magistrate, because requirement of law is that the FIR should reach the concerned Magistrate without any undue delay. We are of the opinion that the explanation given by the prosecution regarding the delay in the FIR reaching the Magistrate is neither convincing nor acceptable.

In regard to the next argument of the appellants counsel that the High Court was wrong in assuming that other villagers were sitting with PWs 6, 7 and 9, assuming that it is an error even then there can be no doubt as could be seen from the prosecution case that other villagers whether sitting with PWs 6, 7 & 9 or not did rush to the scene of occurrence, therefore, it is clear that apart from the said eye-witnesses produced by the prosecution many other villagers would have atleast seen the last part of the occurrence including the escape of the accused and the accused not being strangers to those villagers could have easily identified them by not examining those independent witnesses, the prosecution has failed to produce the available independent corroborative evidence to support the evidence of interested witnesses, namely, PWs 6, 7 & 9 because of which the High Court was justified in drawing adverse inference against the prosecution. This lack of corroboration of the evidence of PWs 6, 7 & 9 coupled with the fact that PW-6 is admittedly a very old person having problems with his eyes makes it difficult to believe that he was really in a position to identify the accused persons. The evidence of the eye-witness PW-9 also becomes suspect because of the fact that though he was available in the village, his evidence was recorded only after 5 days of the crime for which the explanation given by the Investigating Officer is not at all satisfactory. The presence of the third eye-witness i.e. PW-7, Amrao, is also doubtful because of the fact that even though she stated that she had lifted the body of the deceased which was bleeding and her clothes had become blood stained, the Investigating Officer failed to recover the said clothes giving room for a genuine complaint that her presence is also doubtful. These factors coupled with the evidence of DW-1 Ram Pratap who in his evidence has stated that when he was told about the incident these eye-witnesses did not mention the name of the accused

persons to him, also makes the prosecution case doubtful. Therefore, in our opinion, the High Court was justified in not placing any reliance on the evidence of these 3 eye-witnesses without any independent corroboration.

For the reasons stated above, we are in agreement with the findings of the High Court and we see no merit in this appeal and the same is dismissed. The bail bonds of the respondents stand discharged.

JUDIS