



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 396/2008

Shahjad Khan s/o Liakat Khan, by caste Kaiyamkhani, R/o
Degana Junction, District Nagaur.
(At present lodged in Central Jail at Ajmer)

-----Appellant

Versus

The State of Rajasthan

-----Respondent

For Appellant(s) : Mr. Nishant Bora
For Respondent(s) : Mr. B.R. Bishnoi, PP

**HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**

Judgment

Reportable

18/08/2023(Per Hon'ble R.P. Soni, J.)

1. This is an appeal against the judgment dated 15.05.2008 passed by the learned Additional Sessions Judge (Fast Track), Nagaur in Sessions Case No.45/2006 (pertaining to F.I.R. No.59/2006 Police Station Kuchera), whereby the accused appellant (in short "the appellant") was convicted under Section 302 of the Indian Penal Code (in short "the Code") and was sentenced to life imprisonment and to pay fine of Rs.15,000/- with a default clause.

2. The case of the prosecution is unfolded by a report (ExP-1) lodged by Bhanwar Singh (PW-1) on 09.06.2006 at about 4:00 p.m. at the place of occurrence before the S.H.O. of Police Station to the effect that his son Jitendra Singh (deceased) had gone to "Roll" village to attend the marriage of his friend, along with his



friends namely Chandra Prakash (PW-2), Naresh Choudhary (PW-4), Ram Lal (PW-5), Harish Kumawat @ Pappu Ram (PW-6) and Sanjay Binda (PW-7). They hired a bolero jeep of appellant Shahjad Khan which was being driven by the appellant himself. At about 2:00 p.m. in the noon, complainant received a telephonic call at the shop of his neighbour and was informed by Chandra Prakash (PW-2), that while returning back, appellant Shahjad Khan was driving the jeep negligently. This led to a heated argument between Jitendra Singh and appellant. Thereafter, all of them left the jeep on the way and resumed their further journey on foot. After walking about a kilometer, they saw that appellant Shahjad Khan was coming from the opposite direction in his jeep, intending to hit them. They all saved themselves by moving to the side of road but Shahjad Khan intentionally hit Jitendra Singh resulting in serious injuries and that caused his death on the spot. On receiving such information, complainant along with Jethmal (PW-3), Om Prakash, Kushal Singh (PW-10), Mahendra Singh (PW-8) reached at the place of occurrence and found that his son Jitendra Singh had received serious injuries and as a result of which he had died. It was alleged that appellant has intentionally murdered Jitendra Singh hitting him with his vehicle.

3. On being received of the F.I.R., the matter was investigated into and upon completion of the investigation, charge-sheet was filed in the concerned Court of Magistrate thereafter, the case was committed to the Sessions Judge. Charge under Section 302 of the Indian Penal Code was then framed against the appellant to



which he pleaded not guilty and claimed to be tried. Consequently, trial began against the appellant.

4. During trial, prosecution examined as many as 17 witnesses and exhibited 37 different documents. The appellant was then examined under Section 313 of the Criminal Procedure Code and questions were put to him what appeared against him in the evidence of the prosecution to which he, however, plainly denied of having any role in the alleged crime. He produced one witness in his defence.

5. The trial court while relying upon the testimony of eye witnesses namely Chandra Prakash (PW-2), Naresh Choudhary (PW-4), Ram Lal (PW-5), Harish Kumawat @ Pappu Ram (PW-6) and Sanjay Binda (PW-7), the medical evidence which has been found to be consistent with the ocular evidence as well as the motive of the appellant, convicted and sentenced the appellant as indicated above. Hence, this appeal.

6. Mr. Nishant Bora, learned counsel for the appellant has contended that impugned judgment passed by learned trial court is against law and facts, not sustainable in the eyes of law and deserves to be set aside as learned trial court has erred in convicting and sentencing the appellant. He urged that the conviction of the appellants as recorded by the trial court is based purely on conjectures and surmises and the impugned judgment suffers from lacunae and perversity, hence, the same should be quashed and set aside. He, implored the court to accept the appeal and acquit the appellant of the charges. Learned counsel for the appellant further submits that



the prosecution has suppressed the true story regarding the way in which the present occurrence has taken place and merely on the basis of evidence of interested witnesses, judgment of the conviction has been passed without looking into other material available on record.

7. It is further argued that the post-mortem report and injuries sustained by the deceased do not corroborate the prosecution version since deceased received fracture on the thigh. Thereafter while falling on the ground by hit, he received other injuries on the head and other parts of the body. As per the post-mortem report, he also received fracture of hyoid bone and defence witness Dr. N.S. Kothari, regarding this injury, has stated that this fracture can only be caused by strangulation or by causing injury by a *lathi* on the neck; that deceased received six injuries in all out of which four were fractures; that he received three types of injuries namely primary impact, secondary impact and running over injuries which have been very well explained by Dr. N.S. Kothari (DW-1) who was produced in the defence and there was no reason to disbelieve his deposition; that above contradictory medical opinion available on record creates a serious doubt as to whether deceased died due to hit or he was beaten earlier and thereafter camouflage the occurrence to be one of vehicle hit case.

8. It is further argued that the site plan prepared by the investigating officer does not corroborate the version of the eye-witnesses since deceased did not receive any injury from the thorny bushes where he had fallen after being hit by the jeep.



9. The next contention of the learned counsel for the appellant is that mechanical report of the vehicle also does not corroborate the versions stated by the eye-witnesses. It is further argued that there are material contradictions and omissions on the major portion of the evidence which also creates a serious doubt upon the prosecution story.

10. It is further argued that investigation was started very much prior to the lodging of the FIR and FIR was also sent to the concerned Magistrate after delay. Neither the investigation agency has tried to pick up moulds of the marks of the tyre of jeep and no blood was found at the place of occurrence. The dead body was also shifted to another side of the road prior to the arrival of police on the spot. All these circumstances create a serious doubt in the prosecution story.

11. Lastly, it is argued that on the basis of above facts and circumstances prosecution has failed to prove its case beyond reasonable doubt and appellant has been implicated falsely in the case whereas the actual manner in which occurrence has taken place has neither been stated by the witnesses nor the investigating officer has investigated into. He, therefore, submits that under such circumstances conviction and sentence of the appellant cannot be sustained and, therefore, impugned judgment passed by the trial court should be set aside and appellant be acquitted.

12. In support of his submissions, learned counsel for the appellant relies upon following decisions:-



1. Ram Narain Singh and Ors. Vs. State of Punjab
(AIR 1975 SC 1727)
2. Amar Singh and Ors. Vs. State of Punjab
(AIR 1987 SC 826)

13. Per contra, learned Public Prosecutor for the State has argued that there was a strong motive of appellant to commit the alleged offence. As per all eye-witnesses, appellant had developed inimical terms towards Jitendra Singh (deceased) during the course of journey because of the manner in which the appellant drove his vehicle and tried to endanger lives of passengers and protest raised by them. As per him, in fact there are no contradictions in the statements of the prosecution witnesses and their depositions before the trial court were almost similar to one recorded in their statements made under Section 161 of the Criminal Procedure Code; that statements of eye-witnesses are corroborated by medical evidence and, therefore, version of all the eye-witnesses are consistent and reliable.

14. It is further argued that from the evidence led by prosecution, it can be safely inferred that it was the appellant only who had murdered Jitendra Singh, therefore, after appreciating all materials and evidence available against the appellant, learned trial court was right in convicting and sentencing him under Section 302 of the Indian Penal Code.

15. We have heard the learned counsel for the parties and perused the materials available on record including the trial court record.

16. From a perusal of the First Information Report lodged by Bhanwar Singh (PW-1), it was reported that Jitendra Singh was



severely injured upon being hit by a vehicle and he succumbed to the injuries. As per the prosecution case Chandra Prakash, Naresh, Ram Lal, Harish @ Pappu Ram and Sanjay Binda were eye-witnesses to the jeep intentionally hitting the deceased.

17. In his deposition before the trial court, Chandra Prakash (PW-2) stated that he along with Naresh, Ram Lal, Harish @ Pappu Ram and Sanjay Binda went to "Roll" village to attend a wedding of his friend Jagdish Prashad by hiring vehicle of appellant.

18. While returning back, appellant was driving his vehicle at a very high speed and negligently; They had a narrow escape from overturning of vehicle just before reaching Mundwa village; Jitendra Singh was sitting next to the appellant on front seat of the vehicle; He and his friends requested the appellant to drive vehicle slowly.

19. It is further deposed that again, the vehicle was saved from over turning near Jhunjala village also. There was an altercation between appellant and Jitendra Singh as well as his friends for his negligent driving. They all told appellant to let them alight at that spot itself and also stated that they would proceed further on foot. Even then, appellant did not pay any attention to their request; Later, all of them got down from the vehicle near Firozpora. On this, appellant threatened them saying that he would teach them a lesson; after getting down from vehicle of the appellant when they were walking on foot towards Kuchera village, at that point of time appellant brought his vehicle back from side of Kuchera village. He was driving his vehicle deliberately towards them with intention of



murdering them. When they saw vehicle of appellant coming down the road towards them, they all started running to side of the road and hide behind an acacia tree, however, Jitendra Singh got hit by the vehicle and received serious injuries.



20. It is further deposed that due to the collision, Jitendra Singh bounced and fell 20-30 feet away. The vehicle collided with Jitendra Singh from front side. Jitendra Singh was unable to speak after the collision; When they come back on the road, appellant again attempted to run over the vehicle but they saved themselves. They went to Jitendra Singh and found that his heart was still beating. In an effort to save his life, Jitendra Singh was picked up and moved to other side of the road. While waiting for another vehicle to arrive, Jitendra Singh died on the spot; had they not hidden themselves behind the tree and saved themselves, appellant would likely have killed them as well.

21. According to the prosecution, other witnesses Naresh (PW-4) Ram Lal (PW-5), Papu Ram @ Harish (PW-6) and Sanjay Binda (PW-7) were present at the time of the incident, they have also given their statements describing the events like Chandraprakash.

22. The injuries on the person of the deceased has pointed out by Dr. Tilak Raj (PW-15) are as under:-

- | | | | |
|-----|---------|------------|---|
| (1) | Bruise | 10 x 6 cm. | Middle of right thigh |
| (2) | Bruise | 12 x 6 cm. | Middle 1/3 of thigh |
| | left | | |
| (3) | Bruise | 8 x 4 cm. | Right Franto parietal region of skull. Fracture |
| | present | | |
| (4) | Bruise | 6 x 4 cm. | Right side of neck interior & fracture of |



Hyoidbone

- | | | | |
|-----|--------|------------|--|
| (5) | Bruise | 8 x 4 cm. | Left side of neck |
| (6) | Bruise | 10 x 6 cm. | Left franto parietal
region of skull. |

23. As per the doctor, all above injuries were anti-mortem in nature. The cause of death was stated to be, due to head injury along with fracture of right and left femur, leading to hemorrhage and shock.

24. Other witnesses Jethmal (PW-3), Mahendra (PW-8), Kushal Singh (PW-10) had supported the statement of eye-witnesses on material particulars though they were not strictly eye-witnesses.

25. Although Dungar Ram (PW-9) has been declared hostile but he has definitively proven several facts including when he was riding his bicycle a car overtook him leading to an accident; he saw six persons walking towards Kuchera; speed of the car was out of control; four or five persons were going on the side of road and one of them was hit by car; car also took U-turn; he could not identified the accused. Because of this part of deposition, he was declared hostile but identity of accused is proved by evidence of the eye-witnesses since it is not disputed that appellant, deceased and eye-witnesses knew each other as they belonged to the same village and had worked together earlier.

26. Before embarking on examining the evidence brought on record, it may be recalled that in the defence, appellant has admitted to having taken Jitendra Singh, Chandra Prakash, Naresh, Ram Lal, Harish @ Pappu and Sanjay Binda as a passenger in his rented vehicle. His explanation under Section 313 of the Criminal Procedure Code was that all these persons had



consumed liquor leading to an altercation among them. Due to drunkenness of these persons, appellant had get them out of his vehicle and did not go back to them. Death of Jitendra Singh was not due to being hit by vehicle driven by the appellant but rather his friends might have killed him.

27. The object of examination under Section 313 of the Cr. P. C. is to give accused an opportunity to explain case made out against him. This statement can be taken into consideration in judging his innocence or guilty where there is an onus on the accused to discharge. It depends upon circumstances of each case whether such statement discharges the onus or not. Object is to permit him to put forward his own version and reasons, if he so chooses. This is the statement which the accused makes without fear or without impinging upon right of other party to cross-examine him. However, if the statements made are found to be false, the Court is entitled to draw adverse inference and pass consequential orders as may be called for in accordance with law.

28. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequence such statement can be used. The statement of accused can be used to test the veracity of the exculpatory nature of admission if any, made by the accused. It can be taken into consideration in any trial but still it is not strictly an evidence in the case. The provisions of Section 313(4) of the Cr.P.C. provides that the answer given by the accused may be taken into consideration in such a trial and put in evidence against the accused in any other inquiry or trial which tend to show that he



has committed the crime. The Courts may rely upon the portion of statement of accused and find him guilty in consideration of other evidence against him led by the prosecution, however, such a statement made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. In view of the above principles, effect of explanation given by the accused shall be considered in later part of this judgment.

29. First argument of learned counsel for the appellant is in respect of suppression of genesis and origin of the incident. On basis of material available on record, we are of the view that there is no reason to disbelieve the evidence of eye-witnesses Chandra Prakash, Naresh, Ram Lal, Harish @ Pappu and Sanjay Binda, who have corroborated each other on all material aspects of the case and clearly stated that they witnessed appellant hitting Jitendra Singh at the time of occurrence. The trustworthy evidence is available on record given by these eye-witnesses corroborated by medical evidence and other formal evidence of various memos prepared by the Investigating Officer and there was no reason for eye-witnesses to give false statements. They have been thoroughly cross-examined by the defence but their testimony has not been shattered.

30. Therefore, the contention of defence is not found to be proved that prosecution has suppressed true story or genesis of occurrence for which the prosecution becomes vulnerable. This submission of Shri Nishant Bora, learned counsel for appellant is



not tenable and is not substantiated by evidence available on record that prosecution witnesses had improved their case.

31. Contrary, it is proved that deposition of eye-witnesses before the trial court is almost similar to what they had stated before the police in their statements recorded under Section 161 of the Cr.P.C. This being the position, prosecution witnesses are wholly reliable so as to arrive at conclusion that accused is author of the crime and it is proved that death of Jitendra Singh was caused because of injuries he suffered by hitting of the jeep being driven by the appellant.

32. The place and manner of occurrence alleged by prosecution is corroborated by site plan (ExP-2) as well as statement of mechanical inspector Surendra (PW-14) and mechanical report (ExP-28). The site plan of the crime scene prepared by the investigation officer reflects and corroborates the version appearing in ocular evidence. Investigation officer Chotu Ram (PW-17) has proved entire investigation and nothing adverse could be elicited by defence in his cross-examination.

33. The next argument advanced to demolish testimony of eye witnesses is that witnesses were close friends to deceased and as such were interested witnesses. It is not acceptable at all. Presence of eyewitnesses at the spot can not be doubted. On the point of interested witnesses, the law is well settled. Evidence of interested witnesses cannot be rejected on the sole ground that the witnesses are interested witnesses but the Court has to scrutinize evidence of interested witnesses with care and caution. The statements made by Chandra Prakash, Naresh, Ram Lal,



Harish @ Pappu and Sanjay Binda inspire confidence. The statements of friends of deceased are found to be reliable since these are duly corroborated and supported by other documentary evidence produced by the prosecution including medical and other formal evidence. Since their evidence is found trustworthy, it cannot be discarded on said score. For the reasons aforesaid, evidence of all the eye witnesses is convincing, reliable and trustworthy. It may also be pointed out that close friend of deceased are, in fact, best witnesses who would naturally like to ensure that real culprits do not escape.

34. So far as intention of appellant is concerned, overall evidence leaves no doubt that all the eye-witnesses traveling in jeep were not on good terms with appellant. A dispute had arisen between them regarding the manner in which accused was driving the vehicle. On scanning of the evidence available on record as a whole, it is amply proved that the appellant caused fatal injury to Jitendra Singh as he and his friends had scolded appellant for his reckless driving and declined to travel further in the vehicle of the appellant. Thus, it is an established fact that parties had developed strained relations during course of journey because of that dispute. It is very much proved that the appellant hit Jitendra Singh by a speeding jeep and inflicted injuries upon him resulting into his death.

35. The hit by jeep to Jitendra Singh was premeditated. The manner and vigor in which Jitendra Singh was hit and looking to background of incident, it is proved that appellant followed Jitendra Singh and his friends with clear intention to kill one or all



of them and Jitendra Singh was killed in a jeep collision. This evidence itself goes a long way in proving case against appellant Shahjad Khan.

36. In the aforesaid circumstances, it can be safely concluded that the appellant had motive to cause death of the deceased.

37. On analysis of medical evidence produced, it is found that the evidence of Dr. Tilak Raj, who held autopsy on dead body of Jitendra Singh found that injuries inflicted were sufficient to cause death. All the injuries were anti-mortem in nature and the cause of death was due to hit injury and fracture of right thigh coupled with hemorrhage and shock. Although defence has tried to prove a different type of medical opinion by producing another medical expert Dr. N.S. Kothari (DW-1) but we are of the opinion that no importance could be attached to the evidence of Dr. N.S. Kothari for the simple reason that no cross-examination was conducted with the medical expert of prosecution Dr. Tilak Raj (PW-15) about the nature of opinion given by Dr. N.S. Kothari.

38. Besides it, evidence of Dr. N.S. Kothari is based on document only and he was not the person, who conducted autopsy on dead body of deceased.

39. In case of different opinions of two doctors, this Court cannot make a comparative assessment of different medical opinions to decide which medical report is correct with regard to cause of death. The argument of learned counsel for the appellant that as per statement of eye-witnesses, Jitendra Singh fell down on his head and that was result of his head injuries, hence, death due to the collision should not be treated as proved, is devoid of any





merit. Any person, hit by a jeep, will naturally fall to the ground. Dr. Tilak Raj (PW-15) has categorically deposed that it is possible that injuries on person of the deceased could be caused if deceased is struck by a vehicle and he fell down on the ground. Therefore, we are of the view that homicidal death of Jitendra Singh has been proved beyond all reasonable doubts by the prosecution.

40. The another significant argument of learned counsel for the appellant is that the investigation, in the present case, was started prior to the lodgment of FIR and substantial progress was made in the investigation much prior to lodgment of the FIR. According to him, the police received the information about the incident vide ExP-33 which was taken down in the *Roznamcha* and in fact it was the real FIR and not the report ExP-1 submitted by complainant Bhanwar Singh, therefore, the FIR as well as such investigation were hit by Section 162 of the Criminal procedure Code. Learned Public Prosecutor has opposed the contention raised by learned counsel for the appellant.

41. In view of this Court, the said contention of learned counsel for the appellant is not tenable. The FIR with details was submitted by father of deceased to Chhotu Ram, S.H.O. of Police Station Kuchera, on his arrival at spot of occurrence at 4:00 p.m. upon which a formal FIR was registered at Police Station Kuchera at 4:15 p.m. The investigating officer prepared the site plan at 4:15 p.m., therefore, it cannot be concluded that the substantial progress had been made in the investigation even before lodging of the FIR. Even otherwise, the entire case of the prosecution



cannot be thrown for this reason since police is obliged to be diligent, truthful and fair in their approach and investigation. The default or breach of duty, intentionally or otherwise, can sometimes prove fatal to case of prosecution, therefore, said argument of defence does not hold water.

42. Now, we proceed to discuss consequence of explanation under Section 313 of the Cr.P.C. furnished by accused. In view of the principles mentioned herein before, the explanation under Section 313 of the Cr.P.C given by the accused is found unacceptable because if, Jitendra Singh and his friends were intoxicated, the appellant would have made them get down of his vehicle as soon as they left "Roll" village. He has not furnished explanation whether or not he received fare for the vehicle.

43. In this connection, report of mechanical inspection of vehicle (ExP-28), the statement of mechanical inspector Surendra (PW-14) are also relevant. As per the mechanical inspection report (ExP-28) the left side bonnet and bumper of the vehicle was dented as well as the front iron frame was also found broken. There was no explanation of the accused in respect of the statement of mechanical inspector as also about the mechanical inspection report regarding the damage caused to the vehicle. Only the appellant could have known the reason and occasion in respect of the mechanical damage caused to his vehicle. In the instant case, appellant could not give any explanation as to for how his vehicle got damaged. Thus, presumption under Section 114 of the Evidence Act would be drawn that it was the appellant only who committed murder of Jitendra Singh by hitting his



vehicle. The intensity of impact of hit can be gauged from the fact that it was so vigorous and forceful that in a collision between a human being and a jeep, front main iron parts of the jeep got damaged.

44. In this case there was no need to collect moulds of the marks of the tyre of jeep from the spot as the identity of the jeep was certain.

45. In view of findings, we have reached on assessment of evidence as also for weighty reasons pointed out by learned counsel for the state, we agree with the trial court that testimonies of all the eye-witnesses inspire confidence and the same were rightly relied upon by learned trial court in recording conviction and awarding sentence to the appellant. Thus, all the eye-witnesses are found to be trustworthy. The conclusion reached by the learned trial judge is neither irrational nor untenable. It can safely be concluded that prosecution has successfully proved charges against accused beyond reasonable doubt. There being no infirmity nor any illegality in impugned judgment, it deserves to be upheld by this Court.

46. Resultantly, appeal of appellant Shahjad Khan fails and the same is hereby dismissed. The judgment and order dated 15.05.2008 passed by the learned trial court is upheld.

(RAJENDRA PRAKASH SONI),J

(ARUN BHANSALI),J

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