Supreme Court of India
State Of Rajasthan vs Teja Ram And Others on 1 February, 2000
Author: Thomas
Bench: D.P.Mohapatro, K.T.Thomas

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           PETITIONER:
STATE OF RAJASTHAN

        Vs.

RESPONDENT:
TEJA RAM AND OTHERS

DATE OF JUDGMENT:       01/02/2000

BENCH:
D.P.Mohapatro, K.T.Thomas




JUDGMENT:
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Thomas J.

It was by a midnight blitz that two sleeping inmates of a dwelling house were axed to death by armed assailants. One of the victims was the old mother of the other victim. The younger among them was not the target of the assailants but he was mistaken for his brother. In the Sessions court seven persons were put on trial as the assailants in the aforesaid double murder episode. Out of them six were convicted under Section 302 read with Section 149 of the Indian Penal Code and for certain other lesser but allied offences. They were sentenced to imprisonment for life for the principal offence and for lesser terms for the lesser offences. When they appealed a Division Bench of the High Court of Rajasthan set aside the conviction and sentence and acquitted them all. State of Rajasthan has, therefore, come up in appeal to this Court by special leave.

As there were seven accused in the case, out of which six are the respondents now, they can be referred to as accused in the same rank as they were arrayed in the trial court so that possible mistake in identifying them can be prevented. A1 Teja Ram, A2 Ram Lal and A3 Bhanwar Lal are the sons of one Maga Ram and they are cousins of deceased Ram Lal. Other accused are close relatives of those two accused. The backdrop of the case unfurls a story of continued hostility which existed as between the cousins on account of disputes over landed properties. PW15 Mota Ram (son of deceased Smt. Gamni) had launched litigation against A1 and A2. On a motion made by him the authorities concerned have initiated proceedings under Section 107 of the Code of Criminal Procedure against A1 Teja Ram and A2 Ram Lal. Thus, they looked upon each other with bitterness.

The incident happened on the night next morning of which was a Sunday (13.9.1981). Prosecution case is that all the seven accused, armed with axe and lathis etc. travelled in a tractor and at a subsequent stage they walked on foot and reached the house of the deceased by midnight.

Deceased Ram Lal and his mother Gamni were sleeping inside the room adjoining the gate of their house. Mota Ram used to sleep at that place but on the fateful night Ram Lal thought it convenient to sleep there as that was the cruel game of his fate. The assailants entered into the room and hacked both the deceased with axe. The squall of the victims rumbled the neighbour-hood. All those who heard it rushed to the scene but by the time they reached the assailants took to their heels and escaped from the place. Other inmates of the house carried the injured in a vehicle to the hospital and on the way Mota Ram (PW15) informed the police about the incident at the Police Out Post at Auwa. From there he proceeded to Kharchi police station and lodged the FIR. The SHO (PW21) recorded the statement of both the injured who were removed to the hospital thereafter. Ram Lal died on the same night, while his mother lived for a week more fighting with death and she too succumbed to the injuries on 21.9.1981.

Trial court, while convicting six accused, mainly relied on Ex. P31 and Ex.P32 which are the two dying declarations attributed to deceased Ram Lal and Gamni respectively which were recorded by PW21, the Investigating Officer. Besides the above, the trial court relied on certain circumstances, such as the testimony of witnesses who reached the scene saw the accused running away with axes and lathis, and recovery of the weapons effected pursuant to the informations elicited from the accused.

But the Division Bench of the High Court of Rajasthan declined to act on the two dying declarations. High Court was not persuaded to place any reliance on the witnesses who claimed to have seen the assailants running away. High Court put-forth two reasons for adopting that course. First is that prosecution failed to examine any independent witness even though such persons were residing in the neighbour-hood, and the witnesses examined by the prosecution for that point are close relatives of the deceased. Second is that there are discrepancies between their versions and such discrepancies are of a substantial nature. The High Court declined to act on the evidence relating to the recovery of axes for the main reason that since human blood could be detected only on one of them while origin of the blood on the other was not established, there was room for entertaining doubt as to the real person whose blow with the axe would have caused the injury.

In the final end the Division Bench, after voicing a lamenting chord that it is unfortunate that two cold blooded murders are going unpunished in this case, expressed its view that it is unsafe to maintain the conviction. Hence, the High Court set aside the conviction and sentence passed on the respondents.

Though on the defence side a number of witnesses were examined neither the trial court nor the appellate court placed any reliance on any of them. Nor did the appellant make any endeavour to convince us that those witnesses are of any use for the defence.

Mr. Aruneshwar Gupta, learned counsel for the State of Rajasthan contended that the approach made by the High Court is wholly untenable in discarding the best evidence on the strength of some trivial reasons. Mr. Doongar Singh, advocate for the accused argued in extenso supporting the reasoning of the High Court and strongly pleading for maintaining the acquittal.

We are in agreement with the argument of Shri Doongar Singh that the High Court was justified in not acting on the two dying declarations. The injuries found on the body of Ram Lal as noted by PW9 Dr. Nand Kishore Sharma are the following:

(i) Vertical incised wound with oozing of blood of 8.5 x 1.5 cms x brain deep on the right forehead region to frontal region from eye brows to upward lacerated brain tissues coming out from the wound. Injury was grievous and was caused by sharp object.

(ii) Hematoma of both the Eyelids of right eye. (iii) Haemotoma of left upper eye lid.

The same doctor noticed the following injury on the body of Smt. Gamni: Vertical incised wound with blood oozing with 8.5 x 3.0 x brain deep on the left temporal region 3 cm above the ear pinna. Brain tissue was lying out of the wound.

Even if the injured was able to mutter something or even speak out something after sustaining the above injuries it is extremely unsafe to place any credence on such statements as the brain functions of the injured would have impaired due to the brain injury.

But we find it difficult to side-step the remaining circumstances as lightly as Division Bench of the High Court has down-staged them. The first among the circumstances is the strong motive for A1 Teja Ram and A2 Ram Lal because the family of Mota Ram had moved the authorities to initiate proceedings against them under Section 107 of the Code of Criminal Procedure. This shows the acuteness of hostility which prevailed as between the two warring factions. That aspect remains undisputed, though the defence contention is that they were falsely implicated on account of that enmity. Of course that possibility has to be eschewed before counting the enmity aspect as a circumstance against the accused. For that endeavour the Court has to look at other circumstances presented by the prosecution against the accused.

PW13 (Idan), father of Mota Ram was sleeping inside his house during the night. Mota Ram was also sleeping in the same room. Gamni and her other son Ram Lal were sleeping inside the room which adjoins the gate. PW13 said in his evidence that on hearing the sound of a cry he woke up and rushed to the place wherefrom the cry emanated and the he saw all the accused, among whom he noticed A1 Teja Ram and A2 Ram Lal holding Kulhadi (axe). They were seen running away from the scene.

PW18 (Roopa Ram) who is brother of PW13 (Idan) who was sleeping in his house situated in the neighbour-hood and his son Chhoga Lal (PW4) who was sleeping inside the cabin of a truck (which was parked in front of the house of the deceased) also heard the sound of cry and they too rushed up to the scene and saw all the accused scampering away from the place and A1 and A2 had axes with them and others have lathis.

PW10 (Oghada Ram) is another brother of PW13 (Idan) and he too was residing close by. He also said that by midnight he heard the sound of a loud cry from the house of his brother. PW13 -Idan and he also rushed to the place and saw the accused, among them A1 (Teja Ram) and A2 (Ram Lal)

were in possession of axes.

The fact that the above witnesses were residing in the immediate neighbour-hood was not disputed either in the trial court or at the appellate stage. When the incident of this nature occurs the persons who would normally run to the place of occurrence are those living in the neighbour-hood. But the High Court did not act on the testimony of those persons who reached at the scene immediately on a very fragile reasoning.

High Court pointed out a discrepancy in the evidence as between two sets of witnesses, PW4 Chhogalal and PW15 Mota Ram said that the assailants were seen going out from the western gate of the house while PW10 Oghada Ram and PW18 Roopa Ram said that the assailants went out through the eastern gate. This according to the High Court is a very substantial contradiction between them.

There is little justification for blowing up such a motely discrepancy to the size of a mountain and then to reject the whole evidence by depicting it as a material discrepancy. What the High Court over-looked in the above exercise was the core of the evidence and consideration of it on broad probabilities. We have to bear in mind the time when the occurrence took place the wee hours of the night, the sleeping locality was woken up by the yelling voice crying for help from ones own kith and kin. When they rushed to the scene their focus would be on the victims and the identity of the fleeing assailants. Perhaps some of the assailants would have gone out through one gate and others through the other gate. After all both gates were of the same house and are situate close to each other.

We have absolutely no doubt that whoever rushed to the spot on hearing the squeak or the out cry, it is most unlikely that they would have remained where they were even after hearing the cries. It is extremely probable that the witnesses would have seen the fleeing assailants in such a hubbub and if some witnesses did not correctly notice the exact gate (out of the two gates) through which each one of the assailants flushed out, it is not a good cause for drawing any adverse inference against such witnesses.

Another reason which the High Court advanced to repel the testimony of such a good number of probable witnesses is that they are all close relatives of the deceased and that independent witnesses were not examined by the prosecution. The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house the most natural witnesses would be the inmates of that house. It is un- pragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non-examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbour- hood may be replete with other residents also.

One of the circumstances which trial court relied on as incriminating the accused is the recovery of two axes (Kulhadi) on the strength of statements of A1 Teja Ram and A2 Ram Lal. They were subjected to chemical examination and the result is that both axes were found stained with blood. When it was further subjected to test by Serologist the blood on one axe was found to be of human origin, while the blood stain on the other axe was found to have so disintegrated that its origin became undetectable. Ex.P10 is the report of the Serologist.

Axes hidden beneath the rags were disinterred with the help of information elicited from the accused. According to PW 21 (the Investigation Officer) A1 Teja Ram told him I have concealed the axe under some rags and kept it at the left corner of the hut in my farm at Dhokwa. The axe recovered pursuant thereto on 20.9.1981 as per Ex.P14 seizure memo was marked as Article No.8. Similarly, A2 Ram Lal has told the Investigation Officer that I have concealed the axe under some rags and placed it on a slab in the store of my house. On the said information another axe was recovered on 23.9.1981 as per Ex.P3 Seizure Memo. That axe has been marked as Article 1.

The facts discovered from the aforementioned statements and recovery of axes are that those weapons were concealed by the said two accused.

Normally, the above circumstance should have been given weighty consideration in the evaluation of circumstantial evidence. But the High Court down staged it on a reasoning which is difficult to sustain. This is what the High Court has observed regarding the evidence relating to the recovery of the two axes (Kulhadi).

The evidence of the blood stained Kulhadi is not sufficient as the prosecution has not been able to prove that Kulhadi which was stained with human blood was recovered from whom. Thus it is not clear whether the recovered Kulhadi was of Teja Ram or of Ramlal. The other infirmity in the Chemical Examiners Report is that it does not mention the extent of blood seen on the Kulhadi. It has not been established clearly as to which particular accused, the incriminating axe belonged. As such, it can not be used against any one of these two accused.

Failure of the Serologist to detect the origin of the blood, due to disintegration of the serum in the meanwhile, does not mean that the blood stuck on the axe would not have been human blood al all. Sometimes it happens, either because the stain is too insufficient or due to hematological changes and plasmatic coagulation that a Serologist might fail to detect the origin of the blood. Will it then mean that the blood would be of some other origin? Such a guess work that blood on the other axe would have been animal blood is unrealistic and far-fetched in the broad spectrum of this case. The effort of the criminal court should not be to prowl for imaginative doubts. Unless the doubt is of a reasonable dimension which a judicially conscientious mind entertains with some objectivity no benefit can be claimed by the accused.

Learned counsel for the accused made an effort to sustain the rejection of the above said evidence for which he cited the decisions in Prabhu Babaji vs. State of Bombay [AIR 1956 SC 51] and Raghav Prapanna Tripathi vs State of UP [AIR 1963 SC 74]. In the former Vivian Bose J. has observed that the Chemical Examiners duty is to indicate the number of blood stains found by him on each exhibit

and the extent of each stain unless they are too minute or too numerous to be described in detail. It was a case in which one circumstance projected by the prosecution was just one spot of blood on a dhoti. Their Lordships felt that blood could equally have spurted on the dhoti of a wholly innocent person passing through in the circumstances described by us earlier in the judgment. In the latter decision this Court observed regarding the certificate of a chemical examiner that inasmuch as the blood stain is not proved to be of human origin the circumstance has no evidentiary value in the circumstances connecting the accused with the murder. The further part of the circumstance in that case showed that a shirt was seized from a dry cleaning establishment and the proprietor of the said establishment had testified that when the shirt was given to him for dry cleaning it was not blood stained.

We are unable to find out from the aforesaid decisions any legal ratio that in all cases where there was failure of detecting the origin of the blood the circumstance arising from recovery of the weapon would stand relegated to disutility. The observations in the aforesaid cases were made on the fact situation existed therein. They cannot be imported to a case where the facts are materially different.

Learned counsel, in this context invited our attention to one step which PW21 (Investigating Officer) had adopted while preparing the seizure memos Ex.P3 and Ex.P.4. He obtained the signature of the accused concerned in both the seizure memos. According to the learned counsel the aforesaid action of the Investigating Officer was illegal and it has vitiated the seizure. He invited our attention to section 162(1) of the Code which prohibits collecting of signature of the person whose statement was reduced to writing during interrogation. The material words in the sub-section are these: No statement made by any person to a police officer in the cause of investigation under the chapter, shall, if reduced to writing, be signed by the person making it;..

No doubt the aforesaid prohibition is in peremptory terms. It is more a direction to the investigating officer than to the court because the policy underlying the rule is to keep witnesses free to testify in court unhampered by anything which the police claim to have elicited from them. (Tahsildar Singh vs. State of UP AIR 1959 SC 1012 and Razik Ram vs. JS Chouhan AIR 1975 SC 667). But if any Investigating Officer, ignorant of the said provision, secures the signature of the person concerned in the statement, it does not mean that the witnesses testimony in the court would thereby become contaminated or vitiated. The Court will only reassure the witness that he not bound by such statement albeit his signature finding a place thereon.

That apart, the prohibition contained in sub-section (1) of Section 162 is not applicable to any proceedings made as per Section 27 of the Evidence Act. It is clearly provided in sub-Section (2) of Section 162 which reads thus: Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872, or to affect the provisions of section 27 of that Act.

The resultant position is that the Investigating Officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure memo for the recovery of any article covered by Section 27 of the Evidence Act. But, if any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it. Hence, we cannot find any force in

the contention of the learned counsel for the accused that the signatures of the accused in Ex.P3 and P.4 seizure memo would vitiate the evidence regarding recovery of the axes.

Learned counsel for the respondent pointed out the evidence of Head Constable Jagan Nath (PW8) who was in-charge of the police outpost at Auwa. The witness said, initially in his evidence, that PW15 (Mota Ram who reached the outpost soon after the incident) who reported about the incident could not mention the names of the assailants as he said that he did not know about the assailants. Learned counsel, laying emphasis on the aforesaid evidence contended that it knocks the bottom off the prosecution case. Shri Aruneshwar Gupta, learned counsel for the State invited our attention to a further portion of PW8s evidence where the witness was permitted to be cross-examined by the Public Prosecutor during which PW8 admitted having told the Investigation Officer that PW15 had in fact mentioned the names of the accused as the assailants.

One of the permitted modes of impeaching the credit of a witness is proof of former statements which is inconsistent with any part of his testimony, as indicated in Section 155(3) of the Evidence Act. But the mode of using such former statements for the purposes of contradicting the witness is prescribed in Section 14 of the Evidence Act. It cannot be contended that the aforesaid former statement was not available for the defence to confront PW8 (Mota Ram) since the Head Constable PW15 was examined later. It was open to the defence to request for recalling the witness for the purpose of further cross-examination to impeach his veracity on the strength of the alleged former statement which came on record subsequently (vide Naba Kumar Das vs. Rudra Narayan Jana AIR 1923 PC 95). In this case PW15 was not asked anything about what he told or not told PW8-Head Constable. We are unable to appreciate the contention of the learned counsel on that score. In view of the retracing made by PW15 during later part of the cross-examination, we are not disposed to give any further opportunity to the accused to confront PW8 with that material. We are of the considered view that the High Court has committed serious error in rejecting very sturdy circumstances as against A1 Teja Ram and A2 Ram Lal the cumulative effect of which was the irresistible conclusion that they were assailants in the double murder wherein deceased Ram Lal and his mother Gamni were killed.

We, therefore, set aside the order of acquittal in so far as the said two accused (Teja Ram and Ram Lal) are concerned. We restore the conviction and sentence passed on them by the trial court. We direct the Sessions Judge, Pali (Rajasthan) to take immediate steps to put A1 Teja Ram and A2 Ram Lal back in prison to undergo the remaining portion of the sentence.