

State of Haryana

v.

Mohd. Yunus & Ors.

(Criminal Appeal No(S).1307 of 2012)

12 January 2024

[M. M. Sundresh and Prashant Kumar Mishra*, JJ.]

Issue for Consideration

Whether the High Court was justified in convicting A1 only u/s. 323 while acquitting u/s. 302/34, and convicting and sentencing A2 u/s. 302 and 323 read with s. 34; and whether in trial u/s. 302 IPC, it is safe to convict on the basis of the statement of an untrustworthy witness.

Headnotes

Witnesses – Evidentiary value, when witness not trustworthy:

Held: For trial u/s. 302 IPC, if a witness is branded as untrustworthy having allegedly twisted the facts and made contrary statement, it is not safe to impose conviction on the basis of statement made by such witness – When there is an effort to falsely implicate one accused person, statement made by such an eyewitness cannot be relied without strong corroboration – On facts, on account of previous enmity between the parties, accused persons armed with weapons inflicted injuries resulting in death of one and injuries to the informant, his son and the other eye-witness – In appeal, A1 was convicted only u/s. 323 while acquitting u/s. s. 302/34, A2 was convicted and sentenced u/s. 302 and 323 read with s. 34, while A 4 was acquitted of charges and A3 died – Statement of witnesses-informant and other eye-witness were recorded twice, firstly, in the trial against A1, A2 and A3 and secondly, in the trial against A4 – Both the prosecution witnesses are disbelieved in the second trial since their statements were contradictory, the facts were twisted and improvements were made, thus, no reliance can be made upon such statement – Also the recovery of weapons from A1 and A2 was not proved – Thus, not safe to convict A2 for offence u/s. 302/34 IPC on the basis of statement of such

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eyewitness – Judgment of the courts below convicting A2 for offence u/s. 302/34 set aside – However, conviction of A2 for the offence u/s. 323/34 not interfered with – Acquittal of A1 u/s. 302/34 upheld – Penal Code, 1860 – ss. 302/34, 323/34. [Paras 16 - 22]

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973

List of Keywords

Witnesses; Untrustworthy; Falsely implicate; Eyewitness; Corroboration; Previous enmity; Conviction; Acquittal; Contradictory; Recovery; Delay in registration of FIR; Sentence; Bail.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1307 of 2012.

From the Judgment and Order dated 26.10.2009 of the High Court of Punjab & Haryana at Chandigarh in CRLA No.437-DB of 2001.

With

Criminal Appeal No.1308 of 2012.

Appearances for Parties

P. N. Puri, Rahul Sharma, Mrs. Reeta Dewan Puri, Ravinder Pratap Singh, Manish Dhingra, Ayush Bhatia, Dr. Monika Gusain, Ashok Mathur, Advs. for the appearing parties.

Judgment / Order of the Supreme Court**Judgment**

Prashant Kumar Mishra, J.

1. Four accused persons namely, Mohd. Yunus (A1), Mohd. Jamil (A2), Ghasita (A3) and Akhtar Hussain (A4) were sent for trial for the same incident which occurred on 09.01.1999 causing death of Akbar (deceased) and injuries to Deenu (PW-1), Ahmad (PW-2) and Harun. Initially, accused nos. 1, 2 and 3 were tried in Sessions Case No. 12 of 1999 arising from FIR No. 10 dated 09.01.1999 of Police Station Nuh, Haryana in which they were convicted for offences under Sections 302 and 323 read with Section 34 of the

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Indian Penal Code, 1860¹ while acquitting them of the charge under Section 325 read with Section 34 of the IPC. During the pendency of the trial against first three accused, the prosecution moved an application under Section 319 of the Code of Criminal Procedure, 1973² which was allowed by the Trial Court on 02.11.1999. While the first trial was decided on 25.07.2001, when accused Akhtar Hussain was absconding, he was tried separately after he surrendered, and charge sheet was submitted on 01.04.2003. The trial against Akhtar Hussain in Sessions Case No. 112 of 1999 dated 29.08.2003 was decided on 05.10.2004 in which he was acquitted of the charges under Sections 302, 323, 325 read with Section 34 of the IPC.

2. Akhtar Hussain's (A4) acquittal was challenged before the High Court which came to be dismissed against which no further appeal has been preferred either by the complainant or by the State.
3. Under the impugned judgment in Criminal Appeal No. 1308 of 2012 the High Court has passed the common order disposing of Criminal Appeal No. 437-DB of 2001 and Criminal Revision No. 418 of 2005. The criminal appeal was preferred by Mohd. Yunus, Mohd. Jamil and Ghasita challenging their conviction by the Trial Court whereas criminal revision was preferred by the complainant-Deenu challenging the judgment of acquittal passed in favour of accused-Akhtar Hussain. The High Court dismissed the appeal qua accused-Ghasita and Mohd. Jamil whereas the appeal preferred by accused Mohd. Yunus was allowed in part acquitting him of the charges under Section 302 read with Section 34 of the IPC but maintained his conviction for offence under Section 323 read with Section 34 IPC and sentenced him for the period already undergone.
4. Ghasita (A3) has died during the pendency of this appeal. Resultantly, at present, out of the four accused persons, Mohd. Yunus (A1) stands convicted only under Section 323 of the IPC, Ghasita (A3) has died, and Akhtar Hussain (A4) is acquitted by the Trial Court and affirmed by the High Court against which there is no further appeal. Thus, out of four accused persons, only Mohd. Jamil (A2) stands convicted under Sections 302 and 323 read with Section 34 IPC.

1 For short 'IPC'

2 For short 'Cr.P.C.'

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5. Criminal Appeal No. 1307 of 2012 has been preferred by the State challenging the judgment of the High Court acquitting Mohd. Yunus (A1) from the charges under Section 302 of the IPC while convicting him under Section 323 of the IPC.
6. The prosecution case, in brief, is that at about 09.10 p.m on 09.01.1999, the informant-Deenu (PW1) along with his brother Akbar (deceased) and Harun (son of PW1) were sitting together warming themselves in front of fire. When the deceased was going to his house, Ghasita (A3), his son Akhtar Hussain (A4) armed with Pharsa, Mohd. Jamil (A2) armed with Kulhari and Mohd. Yunus (A1) armed with lathi reached there to teach a lesson in connection with a fight broke between them a day before. As per the FIR, Ghasita (A3) and Akhtar Hussain (A4) gave Pharsa blows on the head of the deceased. Akhtar Hussain (A4) gave another blow whereas Jamil (A2) also inflicted injuries by Kulhari on the head of the deceased. When the deceased fell down Yunus (A1) gave lathi blows on the legs of the deceased and Ghasita (A3) gave another Pharsa blow over his head. When Ahmad (PW2) tried to rescue the deceased from the accused persons, Yunus (A1) gave lathi blows on the shoulder of Ahmad (PW2). Deenu (PW1) lodged the first information report.
7. During the investigation, Dr. M.S. Ranga (PW3) medically examined the deceased-Akbar and found the following injuries on his person:
 - “(1) Incised wound 2.5 cm x 2 cm x bone deep placed over the scalp frontal region in the midline transversely with profuse bleeding.
 - (2) Incised wound 4cm x 2mm x bone deep placed over the frontal region of the scalp profused bleeding placed just paralld and behind the injury no.1
 - (3) Incised wound 1cm x 2cm placed over the frontal region of the scalp just lateral to injury no. 1 & 2 placed vertically with profused bleeding.
 - (4) Incised wound 2cm x 1cm bone deep placed over the frontal region of the scalp just behind the injury no.3 anteroposteriorly.”

PW-3 opined that the injuries are caused within six hours by using sharp edged weapons.

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8. Ahmad (PW2) received two injuries over his right shoulder and right hip joint respectively. Both having been caused by blunt weapon within six hours. The deceased-Akbar succumbed to the injuries on 11.01.1999. Dr. Chander Kant (PW7) of Safdarjang Hospital, New Delhi conducted the post-mortem examination and found the following injuries:

- “1. One transversely placed stitched wound on right fronto temporal region. Total length 12 cm. Total number of stitches 12. on removal of the stitches the wound was partially surgical in nature.
- (a) One incised wound on right fronto region at the junction of frontal region with anterior aspect of right parietal region size 3 x 1.3 cm x bone deep. Margins were clean cut except at the places of stitched both angles acute.
- (b) One incised wound parallel to injury No.(a) size 2.1cm x 1.4 cm x bone deep, both margins clean cut except at the place of stitches.

Underneath right fronto-parietal bones were in pieces in irregular shape and size, already removed in an area of 8 cms x 5 cms.

2. One incised wound vertically placed middle of fronto-parietal region 2.6 cms x 2 cm x bone deep.
 3. Abrasion on back of left shoulder region size 4 cms x 3 cms.
 4. Abrasions on occipital region left side size 2 cm x 1 cm .
 5. Contusion left eye.”
9. On 14.01.1999, Yunus (A1) and Jamil (A2) were arrested and a lathi was recovered from Mohd. Yunus (A1) whereas Kulhari was recovered from Mohd. Jamil (A2) . Ghasita (A3) was arrested on 22.01.1999 and blood stained Pharsa was recovered from him. Akhtar Hussain (A4) was found innocent by the police and was not sent for trial. However, he was summoned later under Section 319 Cr.P.C. There is no recovery against Akhtar Hussain (A4). Akhtar Hussain (A4) challenged the order of summoning before the High Court and the trial against him was stayed which commenced later on after dismissal of the criminal revision.

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10. During the course of trial, the prosecution examined the complainant/ eye-witness-Deenu (PW-1), injured eye-witness- Ahmad (PW-2), Dr. M.S. Ranga (PW-3), Constable Sarwan Kumar (PW-4), Head Constable Sunil Dutt (PW-5), Constable Raj Kumar (PW-6), Dr. Chander Kant (PW-7), ASI Siri Niwas (PW-8), Head Constable Hari Kishan (PW-9) and SI Daya Nand (PW-10). However, listed prosecution witnesses namely, Harun, Abdul Rashid, Mozam Khan, Rati Mohd. And Fattu were gave up being unnecessary.

In defence, accused appellants submitted certified copy of complaint made by Ghasita (A3) against deceased-Akbar, PW Harun and others for offences punishable under Sections 379, 380, 411, 406, 407, 452, 120-B, 506, 427 and 403 IPC for illegal cutting and removal of 13 trees belonging to the Panchayat. A copy of pedigree showing 4th degree relationship between prosecution witnesses namely, Deenu and Ahmad as well as certified copy of statement of Ghasita (A3) as prosecution witness in trial "State vs. Tundal etc." under Section 304 IPC were also submitted.

11. Upon their conviction by the Trial Court, Mohd. Yunus (A1), Mohd. Jamil (A2) and Ghasita (A3) preferred appeal before the High Court which was dismissed qua Mohd. Jamil (A2) and Ghasita (A3) whereas appeal preferred by Mohd. Jamil (A1) was allowed in part. In the separate trial, Akhtar Hussain (A4) was acquitted which was affirmed by the High Court against which there is no further appeal.
12. In the present Criminal Appeal No.1308 of 2012, we are required to consider the legality and validity of conviction imposed upon Jamil (A2) whereas in the Criminal Revision, the State has called in question Yunus (A1) acquittal under Section 302 IPC.
13. It was argued by the learned counsel for the appellant-Mohd. Jamil (A2) that the FIR is ante-timed and delayed; the conviction is based on the testimony of interested witnesses who are closely related to the deceased and the prosecution has failed to examine the independent witnesses namely, Harun and Deenu s/o Kalu. It is also argued that the presence of informant (PW-1) is doubtful considering the statement of Ahmad (PW-2) recorded under Section 161 Cr.P.C. in which he did not mention that Deenu (PW-1) was present at the spot; moreover, Deenu's clothes were not smeared with blood, although Deenu deposed in his statement that after the deceased

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suffered injuries he lifted him in an injured condition and put him in the tractor. Learned counsel has referred to the omissions and contradictions in the statements of these witnesses.

14. On the contrary, learned counsel appearing for the State of Haryana would submit that conviction of Mohd. Jamil (A2) under Section 302 read with Section 34 IPC is born out from the evidence on record, which is unimpeachable, therefore, no interference is called for. Challenging the acquittal of Mohd. Yunus (A1) for offence under Section 302 read with Section 34 IPC (in Criminal Appeal No.1307/2012), learned counsel for the State of Haryana argued that the same set of evidence, which holds good for convicting Mohd. Jamil (A2) should have been given due weightage for upholding the conviction of Mohd. Yunus (A1) for the offence under Section 302 read with Section 34 IPC. According to him, the High Court ought not to have acquitted Mohd. Yunus (A1) of the charge under Section 302 read with Section 34 IPC.
15. We have heard learned counsel for the parties at length and perused the material available on record.
16. The High Court has rejected the argument qua delay in registration of FIR or that it is ante-time, and we see no reason to disagree with the High Court's finding on this aspect of the matter.
17. It is to be noticed that as per the first version of the incident narrated by the informant-Deenu in the FIR lodged by him, Ghasita (A3) gave a Pharsa blow on the head of the deceased and second blow was given by Akhtar Hussain (A4) by Pharsa over his head and third blow was given by Mohd. Jamil (A2) with Kulhari on his head and when the deceased fell down, Mohd. Yunus (A1) gave a lathi blow and Ghasita (A3) gave another blow over the head of the deceased. When Akhtar Hussain (A4) was sent for trial, Deenu was examined as PW-7 who maintained his statement that Mohd. Jamil (A2), Ghasita (A3) and Akhtar Hussain (A4) assaulted the deceased with Pharsa and Kulhari. Comparing the statement of the Deenu (PW-7) with the statement of Ahmad (PW-8), the Trial Court found major contradictions and disbelieved the statement of Deenu (PW-7) while acquitting Akhtar Hussain(A4) of the charges under Section 302 read with Section 34 IPC. It was also held in the said judgment of the Trial Court that PW-7 and PW-8 are interested witnesses and cannot be relied upon in the circumstances of the case. Further it

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was noticed that PW-7 is changing his stand inasmuch as in his earlier statement dated 08.07.1999 he denied that Ghasita (A3) and Akhtar Hussain (A4) were armed with Pharsa which he stated in the trial against Akhtar Hussain (A4). The Trial Court was of the opinion that both the important witnesses namely, Deenu (PW-7) and Ahmad (PW-8) made improvements in their statements. Therefore, when the statements are contrary, facts are twisted and improvements are made, no reliance can be made upon such statement.

18. Although, appellant – Mohd. Jamil (A2) and Akhtar Hussain (A4) were tried separately and the statement of witnesses were recorded twice, firstly, in the trial against three accused persons (Mohd. Yunus (A1), Mohd. Jamil (A2) & Ghasita (A3)) and secondly, in the trial against Akhtar Hussain (A4), the fact remains that both the star witnesses of the prosecution namely Deenu (PW-7) and Ahmad (PW-8) are disbelieved in the second trial by clearly stating that their statements are contradictory, the facts are twisted and improvements are made. For trial under Section 302 IPC, if a witness is branded as untrustworthy having allegedly twisted the facts and made contrary statement, it is not safe to impose conviction on the basis of statement made by such witness. When there is an effort to falsely implicate one accused person, statement made by such an eyewitness cannot be relied without strong corroboration. Moreover, there is material on record proving previous enmity between the parties as mentioned in paragraph 25 of the trial court judgment.
19. It is important to notice that the Trial Court had recorded a finding that recovery of Lathi from Mohd. Yunus (A1) and Kulhari from Mohd. Jamil (A2) is not safe to rely upon, meaning thereby, the recovery has not been proved. The Trial Court found that the recovery of Pharsa from Ghasita (A3) is fully proved. However, the appeal preferred by Ghasita (A3) has already abated.
20. Summing up the quality of evidence available on record, we have found that recovery of Kulhari from Mohd. Jamil (A2) and Lathi from Mohd. Yunus (A1) has not been proved. The deceased had sustained four injuries over his head. There are allegations against Ghasita (A3) that he inflicted injuries over the head of the deceased on more than one occasion. The statement of eye-witness Deenu (PW-7) and Ahmad (PW-8) have not inspired confidence in the second trial against Akhtar Hussain (A4). The credibility of their evidence is

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under serious doubt because of twisting of facts and improvements made. Therefore, for all these reasons it is not safe to convict the appellant- Mohd. Jamil (A2) for offence under Section 302 read with Section 34 IPC on the basis of statement of such eyewitness.

21. Accordingly, we set aside the impugned judgment of the High Court and the Trial Court convicting the appellant-Mohd. Jamil (A2) for offence under Section 302 read with Section 34 IPC. However, in view of the evidence on record conviction of appellant-Mohd. Jamil for the offence under Section 323 read with Section 34 IPC is not required to be interfered. Resultantly, Criminal Appeal No. 1308 of 2012 preferred by the appellant-Moh. Jamil (A2) is allowed in part setting aside his conviction under Section 302 read with Section 34 IPC and, at the same time, maintaining his conviction and sentence under Section 323 read with Section 34 IPC. The appellant-Mohd. Jamil (A2) has been sentenced to undergo rigorous imprisonment for six months for offence under Section 323 read with Section 34 IPC. As per the custody certificate, he has already undergone sentence for more than six months. Since, the appellant-Mohd. Jamil is on bail during the pendency of this appeal, his bail bonds are discharged.
22. Criminal Appeal No. 1307 of 2012 preferred by the State of Haryana challenging the acquittal of Mohd. Yunus (A1) under Section 302 read with section 34 IPC stands dismissed.

Headnotes prepared by: Nidhi Jain

Result of the case:
Criminal Appeal No. 1308 of 2012
partly allowed and Criminal Appeal No.
1307 of 2012 dismissed.