

Ramesh Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-24-2013

Appellant : Ramesh

Respondent : The State of Madhya Pradesh

Judgement :

HIGH COURT OF MADHYA PRADESH : JABALPUR Cri. Appeal No.1968/2009
Ramesh, son of Chaitram Degarse (Pawar), aged about 30 years, Resident of Village Chhabadi, P.S. Mohkhed, Distt. Chhindwara Appellant vs. State of M.P., through SHO P.S. Mohkhed, Distt. Chhindwara Respondent .. Shri A.D. Mishra, Advocate for the appellant. Shri Ramesh Kushwaha, P.L. for respondent-State.

JUDGMENT

(24/1/13) The appellant, though charged with the offence punishable under Section 302 of the IPC, stands convicted under Section 304 Part II of the IPC and sentenced to undergo R.I. for 8 years. Corresponding judgment dated 8.10.2009 passed by Sessions Judge, Chhindwara in S.T.No.26/09 is the subject matter of challenge in this appeal.

2. As indicated already, the appellant is a resident of Village Chhabadi whereas, at the relevant point of time, Yadorao (since deceased) was living with his wife Kaushibai (PW3) in Village Shakkarjhiri.

3. Prosecution story, in short, may be narrated thus - (i) On 5/12/08 at about 9 p.m., while returning home on a motorcycle from crop sharers agricultural field situated in Village Lohangi, the appellant had reached at the spot located on the road side near Matalwadi where Ganpat (PW2) and Dilip (PW5) were sitting around fire for warming ::

2. :: Cri. Appeal No.1968/2009 themselves. He stopped the vehicle there and sat around the fire. At this point of time only, Yadorao came there pushing his bicycle. He reproached the appellant for not offering liquor to him. In the course of a quarrel that ensued, the appellant belaboured Yadorao with fists and also gave a kick on Yadorao's chest with such a force that it had resulted in fracture of left 2nd & 3rd ribs and consequent rupture of left lung as well as heart. (ii) The appellant himself informed Kaushibai (PW3) that after being assaulted by him, her husband Yadorao was lying near Matalwadi. After half an hour, in a severely injured condition, Yadorao was brought home from the place of occurrence by Achhelal (PW4) but he succumbed to the injuries in the same night. Corresponding information (Ex.P-1) given by his younger brother namely Madhavrao (PW1) led to registration of a morgue (death case). (iii) Upon information given by Kaushibai, O.P. Parwar (PW9), the then SHO of P.S. Mohkhed, recorded Dehati Nalishi (Ex.P/7) and registered a case under Section 302 of the IPC against the appellant. During investigation, he was able to seize bloodstained & control soil from the spot and a bloodstained shirt and trousers worn by the appellant. These articles were sent to FSL, Sagar for forensic examination. However, groups of the blood found on the trousers and in the soil could not be matched due to disintegration.

4. On being charged with the offence of murder of Yadorao, the appellant abjured the guilt and pleaded false implication. However, no reason whatsoever was assigned therefor even in his examination under Section 313 of the Code of Criminal Procedure. ::

3. :: Cri. Appeal No.1968/2009 5. A bare perusal of the impugned judgment would reveal that learned trial Judge had placed reliance on the following incriminating pieces of evidence - (i) Direct evidence of Achhelal (PW4) and his wife Munni Bai (PW6). (ii) Extra-judicial confession made by the appellant before Kaushibai

(PW3). (iii) Absence of explanation regarding human blood found on the clothes of the appellant.

6. Legality and propriety of the impugned conviction have been challenged on the ground of what is termed as mis-appreciation of evidence on record. According to learned counsel, - (a) Evidence of Acchelal (PW4) and Munni Bai (PW6), who were declared hostile by the prosecution, suggesting that they were able to witness the assault leading to death of Yadorao, was not worthy of credence in view of categorical assertion made by Ganpat (PW2) and Dilip (PW5) that they had arrived at the spot after the occurrence. (b) No reliance could be placed on the extra-judicial confession as it was not reflected in the morgue intimation given by Madhavrao (PW1). (c) Circumstance as to existence of human blood on the soil recovered from the spot as well as on the clothes worn by the appellant was not of any consequence in view of inability of the Serologist to determine the blood group. ::

4. :: Cri. Appeal No.1968/2009 In response, learned Panel Lawyer, while making reference to the incriminating pieces of evidence, has submitted that the conviction is well founded.

7. Before entering into the merits of the rival contentions in a proper perspective, it would be necessary to first advert to the medical evidence on record.

8. Dr. Madan Dehariya (PW10), who had the occasion to examine Yadorao, described the external as well as internal injuries in the following words - (i) Local swelling present over the right side of forehead size 2. x 2.; (ii) lacerated wound with swelling present over the right (eye) upper lid size 1. x . x muscle deep; (iii) swelling present over the left upper lid; (iv) multiple contusions present over the left side of chest size 1. x 1/2"; (v) (on opening of the thoracic cavity), fracture of 2nd & 3rd ribs of left side of chest noticed. 2nd rib piercing lung and also causing rupture of heart and (vi) multiple abrasions present over the left arm and forearm size 1. x 1.. According to him, injury nos.(i) to (iii) could be sustained due to fall on a rough surface yet, he categorically denied the suggestion that the contusion on chest could also be caused by a single fall.

9. As reflected in the Spot Map (Ex.P-12) prepared by the Investigating Officer O.P. Parwar (PW9) and Nazri Naksha (Ex.P-6) prepared by Patwari Ameer Singh (PW8), Achhelals hut was situated at a distance of 300 Ft. from the place of occurrence. Achhelal and his wife Munnibai, though declared hostile, came ::

5. :: Cri. Appeal No.1968/2009 forward to substantiate the charge that the injuries, resulting in death of Yadorao, were caused by the appellant only.

10. As reiterated by the Apex Court in C. Muniappan v. State of Tamil Nadu AIR 201.SC 3718.the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

11. Nothing could be elicited in the cross examination of Achhelal (PW4) and his wife Munnibai (PW6) so as to suggest that they were, in any way, interested in securing conviction of the appellant on absolutely false grounds. Their evidence drew support from the testimony of Kaushibai (PW3), who categorically asserted that the appellant had confessed before her that he had belaboured her husband Yadorao.

12. It is well settled that extra-judicial confession made even to a stranger cannot be eschewed from consideration if it is found to have been truthful and voluntarily made (Gura Singh vs. State of Rajasthan (2001) 2 SCC 20.referred to). As explained further, despite inherent weakness of extra-judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who had no reason to state falsely and to whom it was made in the circumstances which tend to support the statement.

13. In the instant case, Kaushibai (PW3), the person to whom the extra judicial confession was made, was none other than the ::

6. :: Cri. Appeal No.1968/2009 wife of the deceased and in absence of any evidence as to motive to spare the real culprit and to falsely implicate an innocent

person, mere relationship was not sufficient to discredit her.

14. Statement of Investigating Officer O.P. Parwar (PW9) to the effect that he had seized bloodstained shirts and trousers from the possession of the appellant gathered support from the evidence of Madhavrao (PW1), the panch witness to corresponding seizure memo. As rightly pointed out by learned trial Judge in the light of the decision of the Supreme Court in *Khuji v. State of M.P.* AIR 199.SC 1853, non-determination of blood group of the stains was not sufficient to make the existence of human blood as of no significance.

15. For these reasons, none of the contentions raised against appreciation of evidence deserves acceptance. Still, placing reliance on the decision of a Division Bench of the Himachal Pradesh High Court in *Pawan Kumar v. State of H.P.* 2008 Cri.L.J.(NOC) 597, learned counsel for the appellant has submitted that even if the finding that the appellant was the author of the above-mentioned injuries is affirmed, at the most, the offence under Section 325 of the Code would be made out. However, in the light of a three-judge Bench decision of the Supreme Court in *Riasat v. State of U.P.* (1969) 1 SCWR 208 the argument is not acceptable. Accordingly, the appellant was rightly convicted under Section 304 Part II of the IPC.

16. Coming to the question of sentence, learned counsel has submitted the appellant has suffered more than 4 years in custody and has also earned remission. Taking into consideration the social impact of the crime and other facts and circumstances of the case, ::

7. :: Cri. Appeal No.1968/2009 interests of justice would be met if the term of custodial sentence is reduced from 8 years to 5 years.

17. Consequently, the appeal is allowed in part. The impugned conviction is hereby affirmed. However, the term of consequent sentence of imprisonment is reduced from 8 years to 5 years. Appeal allowed in part. (R.C. Mishra) JUDGE 24 1/13