

Pyare Lal and anr Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jan-31-2014

Appellant : Pyare Lal and anr

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Pyarelal & Anr.

versus State of Rajasthan D.B.Criminal Appeal No.328/2006 against the judgment dated 28.2.2006 passed by Additional Sessions Judge (Fast Track) No.2, Bikaner, in Sessions Case No.35/2004.

Date of Judgment :: 31st January, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE ATUL KUMAR JAIN Mr.Manish Dadhich].Mr.M.K.Garg].for the appellants.

Mr.K.R.Bishnoi, Public Prosecutor, for the State...BY THE COURT : (PER HON'BLE MATHUR,J.) Learned Additional Sessions Judge (Fast Track) No.2, Bikaner, by judgment dated 28.2.2006, convicted accused Pyarelal for the offence punishable under Section 302 Indian Penal Code and accused Fateh Chand for

the offence punishable under Section 302/34 Indian Penal Code.

Both the accused were sentenced to undergo life term imprisonment with fine of Rs.1000/- each and further to undergo one month's additional imprisonment in the event of default in payment of fine.

The case of the prosecution is that Shri Jetharam Mali was having six sons viz.

Pyarelal, Kishanlal, Fateh Chand, Bishanlal, Prabhu Dayal (deceased) and Jesram.

Jesram left the house on becoming saint.

Shri Bishanlal and -2- Prabhu Dayal were having dispute with Pyarelal, Kishanlal and Fateh Chand in relation to partition of immovable property that was in the name of their father Shri Jetharam.

On 3.3.2004, a statement made by Smt.

Jhanwari Devi wife of Prabhu Dayal before the police was reduced in writing (Ex.P/4) and on basis of that a fiRs.information report (Ex/P/8) was lodged at police station Gangashahar.

As per the statement made, Shri Prabhu Dayal, husband of Smt.

Jhanwari Devi at about 2 - 2:15 PM went to the temple to have water in a bucket.

Pyarelal, Kishanlal and Fateh Chand, who were already present in the temple gave beating to Prabhu Dayal with fist and kicks.

Hearing cry made by Shri Prabhu Dayal, Jhanwari Devi rushed to the temple, where she found Kishanlal and Fateh Chand were holding both the hands of Prabhu Dayal.

Smt.

Durga was also present there and she instigated Pyarelal to kill Prabhu Dayal.

Pyarelal abruptly went to a room and returned with a knife.

He gave 2-3 knife blows to Prabhu Dayal in his abdominal region.

In the meantime, Arjun also came there and he too gave beating to Prabhu Dayal.

Hearing hue and cry around, the assailants fled from the spot.

Smt.

Jhanwari Devi then brought a taxi and carried the injured to hospital with Kaluram and Santosh.

At hospital, Prabhu Dayal was declared dead.

On basis of the information, the investigation agency lodged a criminal case and proceeded with investigation.

Accused persons were arrested on 3.3.2004 itself.

On 5.3.2004 a disclosure was made by accused Pyarelal to the effect that he want to get the knife -3- recovered which was hidden by him after washing it.

On basis of the information, knife was recovered as per document Ex.P/4 on 6.3.2004.

The knife alongwith blood stained wearings of deceased Prabhu Dayal were sent for their serological examination to the Forensic Science Laboratory.

The report of the Forensic Science Laboratory is available on record as Ex.P/19.

As per the report of Forensic Science Laboratory (Ex.P/19) the knife and the clothes were having blood stains of human origin.

The blood group of the stains on the knife remained inconclusive, obvious so being washed.

The prosecution, after getting the investigation completed by the investigating agency, filed a police report before the court.

The court after hearing the accused persons viz.

Pyarelal, Kishanlal and Fateh Chand, framed a charge for commission of the offences punishable under Sections 341, 323, 302 read with 34 Indian Penal Code.

The trial commenced as desired by the accused persons on denial of the charge.

During the couRs.of trial, accused Kishanlal died, thus, the proceedings stood abated qua him.

The prosecution supported its case with the aid of 11 witnesses, out of whom Smt.

Jhanwari Devi (PW-2) and Kaluram (PW-4) were cited as eye witnesses.

The recovery of knife at the instance of accused Pyarelal was supported by Shri Mohanlal (PW-5).an independent witness and Shri Kaluram (PW-4).Suffice to mention that Shri Kaluram happens to be the son of Shri Bishanlal, brother of -4-deceased and accused persons.

Dr.

O.P.Saini (PW-10) adduced medical evidence being a member of the medical board that conducted autopsy on the corpus of Shri Prabhu Dayal.

Shri Anil Sharma (PW-11) narrated all the steps taken during the couRs.of investigation being investigating officer.

The prosecution also got several documents (Ex.P/1 to Ex.P/20) exhibited.

An opportunity was accorded to the accused persons to explain adveRs.and incriminating circumstances against them in prosecution evidence.

While availing the same they pleaded their innocence with assertion that they were falsely implicated in the case due to vengeance.

In defence, testimony of Shri Sohanlal (DW-1) was examined and five documents were exhibited.

After hearing learned Public Prosecutor and counsel for the defence, the trial court held accused Pyarelal guilty for commission of murder, thus, he was convicted accordingly.

Accused Fateh Chand was held guilty for the offence punishable under Section 302/34 Indian Penal Code, thus, he too was convicted.

There is no dispute about homicidal death of Shri Prabhu Dayal in view of the medical evidence available on record.

Learned counsel for the appellants has also not questioned the evidence adduced by Dr.

O.P.Saini (PW-10).which as a matter of fact is nothing but verification of the details given in the postmortem report.

-5- The argument advanced on behalf of accused Pyarelal is that the entire story of the prosecution is full of contradictions and improbabilities.

It is asserted that the temple where the incident took place is parental property of the accused persons and the deceased and that is not having any housing facility, therefore, there was no question to bring any knife as alleged.

Beside the above, it is stated that Smt.

Jhanwari Devi and Shri Kaluram were not at all eye witnesses of the incident and they were planted as such, by the prosecution.

According to counsel for accused Pyarelal, Smt.

Jhanwari Devi and Kaluram improved their version of facts while deposing before the court.

Learned counsel further submitted that the knife said to be recovered at the instance of accused Pyarelal, though was found to be having stains of the blood of human origin, but group of that was not determined, hence, no just reason exists to connect the same with the crime in question.

We considered the arguments advanced and examined the record in lucid.

It is pertinent to notice that the weapon of offence is a knife i.e. normally used in kitchen.

This was recovered on basis of a disclosure made by accused on 5.3.2004.

The recovery of the same was made on 6.3.2004 in presence of Shri Mohanlal (PW-5) and Shri Kaluram (PW-4). PW-5 Mohanlal stated that on 5.3.2004 while going to Karmisar he was requested by the police personnels to accompany them to effect recovery.

This man accordingly -6- went with police party where accused Pyarelal got the knife recovered from a corner of a room.

The knife was kept sealed in a white bag.

In view of the statements given by PW-5 Mohanlal in addition to the statements of PW-4 Shri Kaluram, there is no doubt about recovery of the weapon of offence.

So far as the argument with regard to connectivity of the weapon of offence is concerned, suffice to mention that the same was found with blood stains of human origin.

No explanation is given by the accused about availability of the blood stains of human origin on the knife.

The failure to have conclusive finding about blood group is quite obvious as the knife was washed.

True it is, that the temple is not a residential premises, but i.e. having a room where parents of the deceased and the accused were residing.

As per the prosecution, from that room the knife was brought by the accused while quarrelling with deceased Prabhu Dayal.

The availability of knife in a room, used for residential purpose is quite obvious.

The argument of counsel for the appellant that there was no chances of having any knife in the temple premises, thus, is having no force.

The other argument of counsel for accused Pyarelal is that Smt.

Jhanwari Devi and Kaluram improved their case before the court.

We have examined the statements given by Jhanwari Devi and Kaluram before the police.

As a matter of fact there is no contradictions in -7- the version of facts given by these witnesses before the investigating agency and while deposing before the court.

Shri Kaluram stated in his statements given as per Section 161 Cr.P.C.(Ex.D/2) that on the fateful day at about 2 - 2:15 PM, his uncle Prabhu Dayal went to the temple to have water in a bucket.

In temple Pyarelal, Kishanlal, Fateh Chand etc.were sitting.

They stopped Prabhu Dayal and started beating to him with fist and kicks.

Hearing cry of Prabhu Dayal, Smt.

Jhanwari Devi rushed towards the temple and he followed her.

Jhanwari Devi tried to save her husband, thus, certain fist blows were given to her also.

Kishanlal and Fateh Chand were holding Prabhu Dayal from his hands.

At that time Pyarelal abruptly rushed to the room and brought knife.

He gave knife blows to Prabhu Dayal.

We do not find any contradictions or improvement in narration of facts by this witness while deposing before the court.

Before the court also this witness narrated the facts in same terms. The only difference is that before the police he has not stated about the part of the body where the stab wounds occurred due to knife blows.

This is quite a minor abrasion, which does not effect the prosecution case adversely.

So far as Smt.

Jhanwari Devi (PW-2) is concerned, suffice to mention that narration of facts by her in Ex.P/4, the statement that was reduced in writing by the police at the fiRs. instance and on basis of which fiRs. information report was lodged, in document Ex.D/3, the -8- statement made by her as per provisions of Section 161 Cr.P.C. and the narration made before the court is the same.

The minor change of words is absolutely immaterial.

This witness at every juncture stated that on 3.3.2004 her husband Prabhu Dayal went to the temple to bring water in a bucket.

Accused persons were already present in temple who gave beating to Prabhu Dayal.

Hearing cry of Prabhu Dayal this lady rushed to the temple premises and tried to escape her husband.

At that time Fateh Chand and Kishanlal were holding Prabhu Dayal with hands and Smt.

Durga instigated Pyarelal to kill Prabhu Dayal.

Pyarelal abruptly rushed to the room and brought a knife.

He then gave knife blows to Prabhu Dayal.

In the statement made before the police, Smt.

Jhanwari Devi stated that knife blows were given in abdominal region.

However, while deposing before the court she stated that knife blow was given in the chest.

The emphasis of counsel for the appellant is that this improvement was made by this witness on having knowledge about the medical evidence as per which stab wound was on chest and that penetrated the heart.

We do not find any force in the argument advanced.

True it is, that at the fiRs.instance the lady stated about giving knife blows in abdominal region and before the court she stated that the blow was given on chest.

The minor difference of place of having stab wound is not sufficient to disbelieve testimony of the eye witness.

It is quite difficult for a wife to refer exact place of injury immediately after getting her husband brutally killed, specially when the place of injury stated -9- and occurred are quite near.

The little change about the place of injury to deceased Prabhu Dayal is not a contradiction adequate to throw the entire evidence adduced by Smt.

Jhanwari Devi.

In view of the version given by the eye witnesses in addition to the recovery of weapon of offence having blood stains of human origin, we do not find any wrong with the conclusion arrived by the trial court in recording conviction of accused Pyarelal for an offence punishable under Section 302 Indian Penal Code.

The case of accused Pyarelal also does not come in any exception to bring out him from commission of the offence except murder.

The second appellant Fateh Chand has been convicted for the offence punishable under Section 302/34 Indian Penal Code.

The trial court arrived on the conclusion that this accused participated in the crime in furtherance to the common intention with Pyarelal, being holding hands of deceased Prabhu Dayal.

Before examining the evidence in this regard, it shall be relevant to mention that a heavy burden lies on prosecution to prove that actual participation of more than one person for commission of a criminal act was done in furtherance of common intention.

Normally, it is difficult to have direct proof of common intention and that can only be inferred from the circumstances appearing in the settled facts.

The common intention may be pre-arranged by pre-meeting of minds and that may also be developed at the spur of moment.

It is always required to be kept in mind that mere proved participation of the accused in crime is not sufficient to arrive at a conclusion of having common intention, but the need is to examine common intent shared by the participants of the crime.

The case of accused Fateh Chand is required to be examined by keeping in mind the principles noticed above.

In the case in hand looking to the definite evidence adduced by the eye witnesses there is no doubt about participation of this accused in the crime, but whether that was in furtherance to common intention is to be examined by due appreciation of the evidence available.

As per Smt.

Jhanwari Devi (PW-2) and Kaluram (PW-4).Prabhu Dayal was beaten by Pyarelal, Kishanlal and Fateh Chand.

These persons at that time were not armed with any weapon.

It is only during the course of quarrel Pyarelal rushed to a room and brought a domestic knife and caused fatal injuries resulting into death of Prabhu Dayal.

This fact clearly indicates that there was no pre-arranged plan and no pre-meeting of minds for causing death of Prabhu Dayal.

No evidence is also available on record that Fateh Chand and Kishanlal caught hold of Prabhu Dayal to provide time to Pyarelal to bring the knife and to cause fatal injuries.

As per the eye witnesses, when these accused were holding both the hands of Prabhu Dayal, Pyarelal abruptly rushed to the room and brought knife and caused stab injuries.

No material is available on record to -11- infer common intention on part of accused Fateh Chand to cause death of Prabhu Dayal.

As a matter of fact, there is nothing on basis of that it can be said that this accused was having an apprehension that accused Pyarelal would be returning with a knife to stab Prabhu Dayal.

In view of the available set of evidence we do not find any reason to infer that accused Fateh Chand participated in crime in furtherance to the common intention as of accused Pyarelal.

Thus, in our opinion, conviction of Fateh Chand for the offence punishable under Section 302 with the aid of Section 34 Indian Penal Code is erroneous.

Accordingly, this appeal deserves acceptance in part, hence is allowed in part.

The conviction of accused Pyarelal for the offence punishable under Section 302 Indian Penal Code and sentence awarded as a consequent thereto under the judgment impugned is affirmed.

The conviction of accused Fateh Chand for the offence punishable under Section 302 read with Section 34 Indian Penal Code and the sentence awarded accordingly is set aside.

Accused Fateh Chand is availing suspension of sentence in pursuant to the order passed by this Court, hence the bail bonds furnished by him stands discharged,

being acquitted.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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