

Shankar Das Vs. State

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Court : Rajasthan Jodhpur

Decided On : Feb-20-2014

Appellant : Shankar Das

Respondent : State

Judgement :

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

JUDGMENT

Shankar Das versus State of Rajasthan D.B.Criminal Appeal No.157/2010 against the judgment dated 20.3.2010 passed by Additional Sessions Judge (Fast Track) No.3, Hanumangarh, in Sessions Case No.34/2009.

Date of Judgment :: 20th February, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE ATUL KUMAR JAIN Mr.R.S.Gill, for the appellant.

Mr.J.P.Bhardwaj, Public Prosecutor, for the State.

BY THE COURT : (PER HON'BLE MATHUR,J.) The judgment impugned in this appeal is dated 20.3.2010 passed by learned Additional Sessions Judge (Fast Track) No.3, Hanumangarh recording conviction of the accused appellant for the offences punishable under Sections 302 and 323 Indian Penal Code and

sentencing as under:- u/S.302 IPC - Life term imprisonment with a fine of Rs.2000/- and in default of payment of fine further to undergo six months simple imprisonment.

u/S.323 IPC - Three year simple imprisonment with a fine of Rs.200/- and in default of payment of fine further to undergo seven days' simple imprisonment.

-2- The facts necessary to be noticed for adjudication of the appeal are that the Station House Officer, Police Station Hanumangarh on 18.10.2008 at 02:50 AM reduced in writing the statement made by Shankarlal (PW-

1) and on basis of that lodged a criminal case for commission of the offences punishable under Sections 302 and 323 Indian Penal Code against accused appellant Shankardas.

As per the statement that was reduced in writing, Shankarlal used to visit Baba Chhotunath from last about two years. On 17.10.2008 he came to the place of Baba Chhotunath at about 05:30 PM.

Baba Chhotunath sold a part of land under his possession to Shankardas (accused) for a consideration of Rs.8000/-, where he constructed a hut.

The hut was removed by the Municipal Board, Hanumangarh for constructing a road.

Shankardas being unhappy with removal of his hut was annoyed with Baba Chhotunath.

In the intervening night of 17th and 18th October, 2008, at about 01:00 AM Shankarlal (PW-1) was sleeping outside the hut of Baba Chhotunath and Baba Chhotunath was strolling nearby.

Accused Shankardas armed with an iron rod came there and gave iron rod blows on the head of Baba Chhotunath.

Baba Chhotunath fell down and on intervention, a blow from the rod was also given to Shankarlal (PW-1). Shankarlal ultimately caught hold of assailant

Shankardas and carried him to Shri Ravi Seth.

All the facts about giving assault to Baba Chhotunath were narrated by Shankarlal to Ravi Seth and while doing so accused Shankardas fled from the spot.

Information then was given to Shri Baldev and Shri Sukha.

On being called by Sukha telephonically, police came at the spot of occurrence and found Baba Chhotunath dead.

-3- The investigating agency commenced the investigation and during that corpus of deceased Baba Chhotunath was subjected to autopsy.

As per the postmortem report (Ex.P/11) deceased was having following injuries:-

1. Transversely placed lacerated wound 3.

x 1 behind left ear over left mastoid region, bone deep with exposed underlying bone and soft tissue which is covered with many blood clots.

2. Lacerated wound right infraorbital area 1.

x .

x bone deep.

3. Swelling right forehead 5.

x 4.

extends below upto right upper eye lid.

4. Lacerated wound 2.

x .

x bone deep over left parietal area obliquely placed in relation to mid line, broken skull bone and underlying soft tissue visible with clotted blood in the area.

The cause of death given was injuries to vital organs like brain tissues, its membranes, soft and bony tissues leading to excessive blood loss ultimately causing haemorrhagic shock.

All the injuries were antemortem.

Accused Shankardas was arrested and on basis of the disclosure made by him a blood stained iron rod was recovered.

The iron rod and the blood stained clothes of deceased were sent for their serological examination to the Forensic Science Laboratory, report of that is available on record as Ex.P/27.

As per the Forensic Science Laboratory's -4- report, the clothes of deceased and the iron rod recovered at the instance of accused Shankardas were having blood stains of group 'B'.

After completing the investigation a police report was filed before the court competent and the case being sessions triable was committed to the court of Sessions.

The Sessions court after providing an opportunity of hearing to the accused framed a charge for commission of the offences punishable under Section 302 and 323 Indian Penal Code, but the same was not accepted by the accused, hence trial commenced as desired.

The prosecution supported its case with the aid of seven witnesses out of whom Shankarlal (PW-1) was cited as an eye witness.

The prosecution also got 31 documents exhibited.

An opportunity was accorded to the accused to explain the adverse and incriminating circumstances against him in prosecution evidence.

While pleading his innocence the accused stated that the murder of Baba Chhotunath was committed by Shankarlal (PW-1) as he was interested to grab Baba's land.

No evidence in defence was adduced.

Learned trial court after examining the entire evidence available on record and considering the arguments advanced by learned Public Prosecutor and counsel for defence arrived at the conclusion that Baba Chhotunath was murdered by accused Shankardas, accordingly the conviction was recorded and sentence was awarded.

-5- In appeal, the argument advanced by counsel for the appellant is that conviction of the accused is based on the statement made by Shankarlal (PW-1) and that is having material contradictions, as such, that is not reliable.

According to learned counsel for the appellant the version of Shankarlal (PW-1) before the court is absolutely different than the version of the incident given by him while lodging the fiRs.information report.

It is further submitted that the recovery said to be made at the instance of the accused appellant is planted one.

Per contra, as per learned Public Prosecutor the contradictions in the version given by eye witness are quite minor and on that count his testimony cannot be ignored.

We have examined the entire record and considered the arguments advanced.

Conviction of the accused appellant is founded on the statement given by Shankarlal (PW-1) and the recovery of the weapon of offence at the instance of the accused.

Shri Shankarlal (PW-1) stated before the court that in the intervening night of 17th and 18th October, 2008 Baba Chhotunath was sleeping in his hut and he was sleeping outside the hut.

In night at about 01:00 AM he wake up hearing the bark of dogs.

At that time he saw that accused Shankar Bihari was giving iron rod blows on the head of Baba Chhotunath.

Accused Shankar Bihari also gave an iron -6- rod blow to this witness, but ultimately he was caught hold.

He also found that the wife of Shankar Bihari and a 'baniya' were standing there.

He narrated all the facts of the incident to that 'baniya', however, in the meantime Shankar Bihari fled from the spot.

He then went to Sukhdev and narrated him the entire incident.

Sukhdev then came to the spot of occurrence with his brother.

A telephonic information was given by Sukhdev to the police.

Quite contrary to whatever stated before the court, this witness during the couRs.of investigation, including while giving information to the police at fiRs.instance stated that in the intervening night of 17th and 18th October, 2008 he was sleeping outside the hut of Baba Chhotunath and Baba Chhotunath was strolling nearby.

At that time accused Shankar Bihari came and gave iron rod blows on the head of Baba Chhotunath.

Consequently, Baba Chhotunath fell down and on intervention an iron rod blow was also given to him.

While narrating the incident he did not give any reference about presence of the wife of accused Shankar Bihari.

He specifically named Ravi Seth, the person to whom he carried the accused for narration of the incident.

Pertinent to notice here that no person in the name of Ravi Seth was produced in evidence by the prosecution.

The statements given by eye witness Shankarlal (PW-1) are materially changed from his fiRs.version that was given to the police immediately after the incident.

As already stated, at the fiRs.instance Shankarlal (PW-1) stated to the police that he was sleeping outside the hut of Baba Chhotunath who was strolling nearby, but while deposing he stated that Baba Chhotunath was sleeping in his hut and this witness was -7- sleeping outside the hut.

While narrating facts to the police he did not utter a single word about his awaking by hearing bark of dogs, but before the court he mentioned in this regard too.

Quite a significant difference is that at the fiRs.instance he did not mention anything about the presence of the wife of the accused at the place of occurrence, whereas before the court he in quite unambiguous terms stated that the wife of accused Shankar Bihari was also present at the spot.

Another important contradiction is that while deposing before the court this witness mentioned about presence of some 'baniya', whereas before the police during the couRs.of investigation he named the person as 'Ravi Seth'.

No person in the name of 'Ravi Seth' was produced in evidence.

An another important aspect of the matter is that as per this witness iron rod blows to deceased Baba Chhotunath were given in his hut and he died there, but as per the site plan (Ex.P/1) prepared by the investigating agency during the couRs.of investigation, the dead body of deceased Baba Chhotunath was found not only out of his hut but even outside his residential courtyard.

The contradictions noticed above are quite material and those create reasonable doubt about the version of the incident given by so called eye witness Shankarlal (PW-1).In totality, testimony of this witness, looking to the material contradictions, is not at all reliable.

-8- After disbelieving testimony of eye witness the only circumstance against the accused is recovery of blood stained iron rod as per recovery memo Ex.P/4.

The accused was arrested in the evening of 18.10.2008 and on 19.10.2008 at 09:30 AM he made a disclosure about hiding of the weapon of offence.

The weapon of offence was recovered as per recovery memo Ex.P/4 wherein the attesting witness was Shri Shankarlal (PW-1) and Sukhdev (PW-2). Suffice to mention here that while explaining the adverse circumstances in prosecution evidence the accused apprehended about causing murder of Baba Chhotunath by Shankarlal (PW-1). In the discussions earlier made we did not find Shankarlal (PW-1) a reliable witness.

As such, no much credence can be given to this witness even for attestation of the recovery of the weapon of offence.

Beside that, the only circumstance of the recovery of the weapon of offence, even if that is accepted, is not sufficient to indicate definite involvement of the accused with crime in question.

We are having a reasonable doubt in accepting the prosecution case as advanced.

Accordingly, this appeal is allowed.

The judgment impugned dated 20.3.2010 passed by Additional Sessions Judge (Fast Track) No.3, Hanumangarh, in Sessions Case No.34/2009 is set aside.

Accused Shankardas is acquitted from the charge levelled.

Let he be released from State custody forthwith, if not otherwise required.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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