

Sant Ram Vs. State

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Court : Delhi

Decided On : Feb-22-2016

Judge : Pradeep Nandrajog & the Honourable Ms. Justice Mukta Gupta

Appeal No. : CRL.A. No. 632 of 2000

Appellant : Sant Ram

Respondent : State

Judgement :

Mukta Gupta, J.

1. Based on the testimony of Bachha Lal PW-2, Sant Ram has been convicted for murder of Manoj vide the impugned judgment dated September 27, 2000 and awarded imprisonment for life for offence punishable under Section 302 IPC vide the order on sentence of even date.

2. An information was received at PS Geeta Colony on July 16, 1997 at about 6.05 PM recorded vide DD No.25A from one Bansi Lal informing that in his factory two workers were fighting, one worker had received many injuries and had been taken to Asija Nursing Home. On receipt of DD No.25A HC Shyam Singh went to Asija Nursing Home along with Ct.Sri Krishan where he came to know that the injured had been taken to JPN Hospital. He collected the MLC of injured Manoj which noted that injured was unfit for statement. On reaching JPN Hospital, Ct.Nanu Ram handed over DD No.28A which noted that factory owner Harish Kumar had

admitted the injured Manoj in JPN Hospital. Since no eye-witness was found available, on the basis of endorsement on DD No.28A, FIR was registered.

3. SI Ved Prakash reached the place of incident which was a cooker factory in Geeta Colony on the first floor along with HC Shyam Singh. Ram Kishore, the brother of injured Manoj, Bachha Lal and one more person Suresh were present at the spot. He recorded the statement of these witnesses. Site plan was prepared and the site was photographed. SI Ved Prakash picked up the blood of the injured with the help of cotton along with earth control sample and sealed the same. The iron rod with which the deceased was hit was also blood stained, the same was also seized and sealed. The iron ghuri, the utensils etc. lying on the spot which were blood stained were also seized.

4. Another information was received at 11.15 pm from duty constable Jitender, JPN Hospital to the effect that Manoj Kumar who was admitted in the hospital by factory owner Harish Kumar had died and the same was recorded vide DD No.30B.

5. PW-20 Dr. P.C. Dixit, who conducted the post mortem, found the following injuries on the body of the deceased:-

(i) 4 x 1 cm bone deep lacerated wound present over the back of left side hand, 8 cm behind the left. Ear.

(ii) 3 cm stitched surgical wound present on the back of left Side head 5 cm above the injury No.(i).

(iii) 1x1 cm lacerated wound present on the outer aspect of left eyebrow.

(iv) 2x1 cm lacerated wound present on the left upper eyelid.

(v) 3x1 cm lacerated wound present on the outer aspect of left eye touching the outer angle of left eye.

(vi) 1x1 cm lacerated wound present over the upper margin of left ear pinna.

6. On internal examination, depressed fracture of left side parieto temporal bone was found deviating into various directions along with a depressed fracture of left side occipital bone. Base of left side middle cranial fossa and left side anterior cranial fossa was also found to be fractured. Cause of death was opined to be due to cranio cerebral damage via injury No.(i) and (ii) consequent upon blunt force impact to head. All injuries were ante-mortem, recent in duration and were caused by blunt object. In the subsequent opinion rendered PW-20 opined that injuries (i), (ii), (iii), (iv), (v) and (vi) on the body of the deceased could be caused by the iron rod.

7. Learned counsel for the appellant challenging the conviction contends that the conviction has been based solely on the testimony of Bachha Lal PW-2. PW-7 Ram Kishore and PW-21 Suresh have been disbelieved by the learned Trial Court being the relatives of the deceased and interested witnesses. The presence of Bachha Lal at the spot is highly doubtful. His version does not inspire confidence. On the sole testimony of Bachha Lal, no conviction under Section 302 IPC could be awarded.

8. Bachha Lal in his statement before the Court deposed in sync with the statement recorded under Section 161 Cr.PC and stated:-

On 16.7.97 at about 5.40 P.M. I was present in the factory where I am employee. The factory where I am employee is known by the name Vishal ?. On that day i.e. 16.7.97 at about 5.40 P.M. I was working in the factory and was facing the wall there " At that time few of the workers working in the factory had left and few of the workers were still working in the factory. When I was working in the factory I heard the noise of Khat Khat and when on hearing the said noise I turned back and saw, I saw Manoj who has been working there bleeding from his head and the accused Sant Ram present in the court giving another saria blow on the head of Manoj. On seeing this while I was badly terrified and could not speak, I heard some worker shouting pakro pakro ?. Thereafter I saw the accused Sant Ram running away through the stairs leaving behind the saria at the spot. Then me and the other workers in the factory informed the staff of the factory about the incident. Sala (brother-in-law) of Manoj whose name is Suresh has also been working in the

same factory. After the incident Ram Kishore who is the brother of Manoj had also come to the factory in the office by which time Harish who is the owner of the factory also arrived at the office. Thereafter Manoj was shifted to the Asija Nursing Home at 13 block Geeta Colony. Myself, Suresh and Ram Kishore also went to said Asija Nursing Home. When we i.e. myself, Ram Kishore and Suresh reached Asija Nursing Home we were informed that Manoj had already been shifted to JPN Hospital. Then we went to JPN Hospital but could not meet Manoj Kr. as were not allowed to do so. Then from the said hospital we came back to factory and then from the factory all three of us went to the house of Manoj Kumar. When we had come back from JPN Hospital from the factory we met the police there when the police made enquiries from us. Then in the presence of all three of us i.e. myself, Suresh and Ram Kishore police seized the saria lying at the spot as also the samples of blood, one sauce pan (bhagona), one cover (dhakan), one fry pan without handle, one incomplete cooker and one ghorī (an equipment on which keeping the utensil rippet is fixed on the utensils) were seized by the police. The said articles which were seized by the police were sealed by the police in pullandas. For the saria a separate pullanda was prepared and sealed with the seal of mark 'SS'. The saria was seized by the police vide seizure memo which is signed by me at point-A and is Ex.PW2/A. The utensils which were seized by the police vide seizure memo Ex. PW2/8 is signed by me at point-A. The ghorī was seized by the police vide seizure memo Ex.PW2/C which is signed by me as a witness at point-A. The samples of blood taken by the police at the spot were seized vide seizure memo Ex.PW2/D which bears my sign. at point A. Police had also taken sample of taat which had blood stained and the sample which were not blood stained and the said samples of taat were seized by the police vide seizure memo Ex.PW2/E which bears my sign. at point-A, I can identify the articles which were seized by the police in my presence vide Ex.PW2/A to PW2/E if shown to me (At this stage one sealed pullanda sealed with the seal mark with only legible words SC, is opened and found to contain one iron rod and an open pullanda cover. The witness identifies the said iron rod to be the saria which was seized by the police in his presence vide Ex.PW2/A. The said iron rod is Ex.P-1 and the open pullanda cover found inside the sealed pullanda opened today is Ex.P-2. The pullanda cover opened today is Ex.P-3. Another sealed pullanda bearing the seal

mark IDSC is opened and is found to contain one (cylindrical aluminium small drum with a lid on it and the pullanda cover and one fry pan without handle and one aluminium patila, a lid, one without top portion raw cooker and one more patila shaped aluminium article. The witness identifies aluminium patila to be the bhagona, the lid (aluminium), the fry pan without handle, without top portion raw cooker (the incomplete cooker) and the aluminium drum with the lid on it and one patila to be the utensils which were seized by the police in his presence at the spot vide Ex.PW2/B. The patila which the witness identifies to be bhagona is Ex.P4, the aluminium lid of bhagona is Ex.P-5, the fry pan without handle is Ex.P-6, the incomplete cooker is Ex.P-7, the cylindrical aluminium drum with lid is Ex.P-8, the aluminium patila is Ex.P-9, the open pullanda found inside the sealed pullanda opened today is Ex.P-10, sealed pullanda cover opened today is Ex.P-11. ?

9. Bachha Lal was extensively cross-examined to find out whether the incident took place on the ground floor, first floor, second floor or the third floor of the factory and the purpose for which the various portions of the factory were being used. In his cross-examination, this witness gave the complete pen picture of the factory. He also stated that his statement was recorded on July 16, 1997 at 7.00 PM by the police and besides him statements of Ram Kishore and Suresh were also recorded. The only improvement that could be pointed out in the deposition of Bachha Lal was that he did not specify in his statement recorded under Section 161 Cr.P.C. that the incident took place on the first floor. A perusal of the statement would reveal that though he did not state that incident took place on first floor however he stated that after the incident when Manoj fell down, he along with other workers brought him down from the stairs. Further the version of this witness that the incident took place on the first floor is corroborated by the testimony of PW-18 Mahinder Pal who is the owner of the factory who stated that Manoj and Sant Ram were working in his factory as labourers and on July 16, 1997 he came to know that at the first floor somebody assaulted Manoj. Version of Bachha Lal is further corroborated by the opinion of Dr.P.C.Dixit PW-20 who opined that there were two depressed fractures on the skull one on the left side parieto temporal bone and the other on the left side occipital bone resulting in multiple fractures. Dr.P.C.Dixit further opined that the injuries on the deceased were possible by the iron rod Ex.P-1.

10. As per the FSL reports Ex.PW-19/A and Ex.PW-19/B blood was detected on the utensils, pieces of rug, iron rod recovered from the spot. The blood on the utensils and the iron rod was opined to be of Bgroup human origin which was that of the deceased.

11. Learned Trial Court discarded the evidence of PW-7 Ram Kishore and PW-21 Suresh for the reasons they improved upon their previous statements.

12. The only improvement in the testimony of PW-7 Ram Kishore was that on July 15, 1997 when he had gone to pick Manoj from the factory, Sant Ram had complained to him that Manoj had teased his sister, thus suspecting harm on the day of the incident, Ram Kishore had gone to pick Manoj on July 16, 1997. Even truthful witnesses are prone to exaggerate facts. This version of Ram Kishore is only an exaggeration and the learned ASJ was required to separate the grain from the chaff.

13. The finding of the learned Additional Sessions Judge that the version of PW-21 Suresh is not corroborated by post-mortem report of Dr.P.C.Dixit for the reasons, the deceased received six injuries and not two is a perverse finding. As noted above, from the post-mortem report it is evident that there were two depressed fractures pursuant to two blows received by the deceased and the other fractures on the skull were only consequential injuries.

14. The learned Additional Sessions Judge also committed an error in discarding the evidence of PW-7 and PW-21 being interested witnesses for the reasons that they were close relatives of the deceased, PW-7 being the brother-in-law of the deceased and PW-21 being brother-in-law of PW-7. Merely because the witnesses were related they cannot be termed as interested witnesses.

15. It is well settled that it is not the quantity of evidence but the quality of evidence and conviction can safely be based on the testimony of one reliable eye-witness. In the decision reported as 2007 (14) SCC 150 Namdeo vs. State of Maharashtra it was held:

28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the Legislature (Section 134, Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye witness, therefore, has no force and must be negated.

29. It was then contended that the only eye witness PW6-Sopan was none other than the son of the deceased. He was, therefore, 'highly interested' witness and his deposition should, therefore, be discarded as it has not been corroborated in material particulars by other witnesses. We are unable to uphold the contention. In our judgment, a witness who is a relative of the deceased or victim of a crime cannot be characterised as interested ?. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive.

30. Before more than half a century in Dalip Singh v. State of Punjab [1954]1 SCR 145, a similar question came up for consideration before this Court. In that case, the High Court observed that testimony of two eye witnesses required corroboration since they were closely related to the deceased. Commenting on the approach of the High Court, this Court held that it was 'unable to concur' with the said view. Referring to an earlier decision in Rameshwar Kalyan Singh v. State of Rajasthan 1952 CriL J 547, their Lordships observed that it was a fallacy common to many criminal cases and in spite of endeavours to dispel, "it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel".

31. Speaking for the Court, Vivian Bose, J. stated:

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. (emphasis supplied)

The Court, no doubt, uttered a word of caution: However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts. (emphasis supplied)

16. In view of the testimony of Bachha Lal duly corroborated by Ram Kishore and Suresh, recoveries made from the spot, the post-mortem report and the FSL report, the prosecution has proved beyond reasonable doubt the offence committed by Sant Ram.

17. The appeal is dismissed. Sant Ram will surrender to custody. His bail bond and surety bond are cancelled.

18. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

19. TCR be returned.

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