

Chaina Ram Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jan-30-2015

Appellant : Chaina Ram

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :::
D.B.Criminal Jail Appeal NO.386/2006 Chaina Ram versus State of Rajasthan
Date of order: 30/1/2015 PRESENT HON'BLE Mr.JUSTICE GOPAL KRISHAN
VYAS HON'BLE Mr.ANUPINDER SINGH GREWAL Mr.Vivek Shrima, for the
appellant.

Mr.CS Ojha, Public Prosecutor.

<><><> BY THE COURT:[Hon'ble Mr.Justice G.K.Vyas,J.].The instant cr.

jail appeal has been filed by the accused appellant Chaina Ram against the
judgment dated 21.1.2006 passed by the Addl.

Sessions Judge (Fast Track).Rajsamand in Sessions Case NO.29/2005 whereby
the learned trial court convicted the accused appellant for committing offence
under Section 302 IPC and passed sentence for life imprisonment with fine of
Rs.1000/- and in default of payment of fine to further undergo 3 months
imprisonment.

As per the brief facts of the case, a written 2 report (Ex.P/6) was filed by the wife Smt.

Gomali wd/o late deceased Lalu Gameti, resident of Kalthawa, District Bhilwara, in which it was reported that in the night of 18.6.2005 at about 10-11 p.m. her husband Lalu went outside the house for sleeping on Chokala and his son was also sleeping with him in the night upon hearing cry of deceased Lalu Ram his son Noja wake up and upon hearing noise, the complainant come out from the house and saw that her husband Lalu was lying on the floor and there were injuries upon his head and other parts of the body and his both legs were cut down by unknown person.

The SHO, Police Station, Kelwada registered the FIR no.80/2005 and commenced the investigation and prepared the Panchnama upon the site.

Upon search the Investigating Officer found one incised wound upon the forehead of the deceased and another incised wound was upon right side of the eyes and due to that injury the eyes of the deceased come out and other injuries were found upon the face of the deceased and both the legs were cut down.

After the investigation, the accused Chaina Ram was arrested on the basis of the statement of Noja S/o deceased that at about 11.30 in the night he saw that his uncle inflicted injury 3 by axe (Kulhari) and at that time, his uncle was wearing black shirt and after inflicting injuries, went back side of his house because house of his uncle is situated near the house of deceased.

The Investigating Officer after thorough investigation recovered the blood stained axe and arrested 3 accused persons namely Chaina Ram (present appellant).Roopa Ram S/o Khuma J.and Moda S/o Kesa, resident of Kalthana, District Bhilwara and after completion of investigation, filed challan in the court of Judicial Magistrate, FiRs.Class, Khumbhalgarh from where the case was committed for trial to the District Judge, Rajsamand, but ultimately, the case was transferred to the Court of Addl.

Sessions Judge (Fast Track).Rajsamand where trial took place.

In the trial, after framing charge under Section 302 and 302/34 IPC, the learned trial court commenced the trial and recorded statement of 15 prosecution witnesses.

Thereafter, the statements of all the accused persons were recorded under Section 313 Cr.P.C. and upon denial, granted an opportunity to the accused persons to lead their evidence in defence, but no oral evidence was produced by the accused persons.

4 The learned trial court after hearing the parties finally acquitted the accused Roopa Ram S/o Khuma J. and Moda S/o Kesa from the charges leveled against them for offence under Section 302 and 302/34 IPC, but held accused appellant guilty for offence under Section 302 IPC and gave punishment of life imprisonment alongwith fine of Rs.1000/-.

In this jail appeal the appellant is challenging the validity of the judgment on various grounds.

The learned counsel Mr. Vivek Shrimali was appointed as Amicus Curiae to provide legal assistance to the appellant in this jail appeal.

The learned Amicus Curiae vehemently argued that finding given by the learned trial court with regard to conviction of the appellant for offence under Section 302 IPC suffers from patent illegality because the appellant is real brother of deceased Lal Gameti and as per the FIR (Ex.P/6) filed by the wife of the deceased (PW-2) no allegation was leveled by her against appellant, therefore, the judgment impugned deserves to be quashed.

While inviting the attentions towards the finding given by the learned trial court it is submitted that the learned trial court has relied upon the testimony of PW-6 Noja s/o deceased who has stated in his statement that injuries were inflicted by Kulhari by a person, who was wearing black shirt and the accused appellant was wearing black shirt upon which human blood was found.

The learned counsel for the appellant submits that in the FIR wife of the deceased categorically stated that some unknown person assaulted her husband and

inflicted injuries by sharp edged weapon.

No name of the accused appellant was disclosed by her.

Similarly, as per the arguments of the learned counsel for the appellant in the statement recorded by the police in the investigation under Section 161 Cr.P.C., PW-3 Noja said that a person, who was wearing black shirt caused injuries to his father, therefore, when there is no specific allegation of the witnesses against the accused appellant then it cannot be said that offence was committed by the accused appellant under Section 302 IPC, therefore, the judgment impugned may be quashed.

With regard to enmity and intention it is submitted that although certain allegations are leveled by the prosecution that there was quarrel 6 in between the appellant and his brother deceased Lal Gameti and for that, some arbitration was also made in the village, but no cogent evidence is produced by the prosecution to prove the said fact, therefore, in absence of any motive or intention, it cannot be said that there was any ground for the accused appellant to murder his own brother.

PW-1 Raghunath Singh said that as per his information in the village Lalu and accused were having enmity due to quarrel for ownership of buffalos but that dispute was finalize upon to intervention of the villagers and arbitrat ORS.PW-12 Khuma, PW-13 Nava and PW-10 Kanna also said that there was quarrel in between the appellant and the deceased for repayment of Rs.500/- and Panchas of the village imposed fine of Rs.1200/- upon the accused appellant and his brother deceased Lal Chand, therefore, if there was any enmity but after finalizing the dispute by the Panchas, there was no quarrel between the parties.

Meaning thereby, the main ingredient of intention is absent in this case, so also, there is no eye witness to prove the fact that injuries were caused by the appellant and in the investigation cloths of the appellant and axe were recovered and sent to FSL for analysis but 7 no same blood group was reported by the FSL although it was specifically written by the investigating officer that opinion may be given with regard to blood group upon the mad taken from the spot on cloths and axe recovered from the accused appellant.

Therefore, this fact itself loudly speaks that prosecution has failed to prove its case beyond reasonable doubt.

With regard to recovery proceedings, it is submitted that the accused appellant is real brother of deceased Lalu and there was no reason to kill him and after the death, he himself took the vehicle for sending the body of deceased to the hospital and till cremation he was present, therefore, according to the conduct appellant is entitled for acquittal in this case because prosecution has failed to prove its case beyond reasonable doubt.

Lastly, the learned counsel for the appellant submits that judgment impugned may kindly be set aside because there is no reliable evidence to prove the guilt of the appellant.

More so, the learned trial court acquitted the two accused from the charges leveled against them for offence under Section 302 or 302/34 IPC, therefore, this appeal may be allowed.

The learned Public Prosecutor opposed the 8 prayer and submits that although in the FIR no name is disclosed by the complainant, but as per the statement of PW-3 Noja son of the deceased, who was sleeping near the deceased categorically said that his uncle was wearing black shirt and at about 11.30 p.m. inflicted injury by axe and, went away from the place of occurrence and in the investigation, police recovered blood stained black shirt and axe as per the information given by the accused appellant, therefore, it is a case in which the prosecution has proved its case beyond reasonable doubt, therefore, no interference is called for in this appeal because prosecution has proved its case beyond reasonable doubt against the accused appellant for committing the offence under Section 302 IPC.

With regard to ground taken by the accused appellant that he has participated till cremation took place then also there is no reason to disbelieve the testimony of PW-2 Noja son of deceased Lalu who was 11 years of age.

In the report of FSL also blood was found upon the articles which were sent for analysis to the FSL, therefore, there is no force in this appeal, hence, this appeal

may be dismissed.

After hearing the learned counsel for the 9 parties we have perused the FIR (Ex.P/6).which is filed against the unknown person by the wife of the deceased Lalu that too after meeting with the son, who was present at the time of occurrence took place.

The FIR filed at 3.00 a.m.on 19.6.2005, which reads as under:- , :- # 18/6/05 (10.11) -) * . . 2 *) .) #) 6) 2 ;) * # " Upon perusal of above FIR it is clear that FIR was filed against unknown person and it is also emerges from the evidence that PW-1 Raghunath Singh, PW-2 Gomali, PW-3 Noja that accused appellant was present after the occurrence took place and at that time, he was wearing black shirt which was taken into custody by the investigating officer and thereafter the accused appellant was arrested vide Ex.P/15.

We have perused the 10 recovery memo of cloths at the time of arrest, which the accused appellant was wearing at the time of occurrence.

It emerges from the evidence that black shirt was seized at the time of arrest upon which blood was found.

Likewise an axe was also recovered as per the information given by the accused appellant under Section 27 of the Evidence Act, but fact remains that whether there is cogent evidence to connect the accused appellant with the crime.

For the purpose of ascertaining the correctness of facts, we have considered the conduct of the accused appellant and found that even after death of his brother he was present till cremation took place and till then, no allegation was leveled by the wife and son of the deceased that injuries were inflicted by the appellant.

Further, there is no statement of any witnesses who was party in the Panchayat with regard to any quarrel in between the accused appellant and the deceased.

Only on the basis of hear-say evidence, the learned trial court gave finding that there was quarrel in between the accused a and the deceased.

In the humble opinion of this Court for convicting any person for offence under Section 302 IPC there must be reliable and credible 11 evidence to connect the accused with the crime.

Therefore, upon the evidence on record with regard to intention or motive, we are not satisfied that any reliable evidence is on record.

Admittedly, the accused appellant was present since the occurrence took place, but at that time, none of the person gave any information or said that injuries were caused by the accused appellant.

The police relied upon the statement of PW-3 Noja son of deceased in which he said that one person who was wearing black shirt inflicted injury upon the body of his father and ran away from the place of occurrence towards the house of his uncle.

Although the said witness PW-3 Noja improved his statement before the court and said that injuries were inflicted by his Kaka but no such statement was given by him before the police in the investigation.

Therefore, in our opinion, it is not safe to say that there is any reliable evidence on record to prove the fact that injuries were caused by the accused appellant.

Now, we are also considering very important aspect of the matter.

Following articles were sent by the investigating officer to the State Forensic Science Laboratory, Rajasthan for ascertaining the 12 correctness of blood ground which are as follows:

	DESCRIPTION	OF	ARTICLES
-----	S.No.	PACKET	EXHIBIT
No.DETAILS OF EXHIBIT -----			1.

A1Blood Smearred Soil 2.

B2Control soil 3.

C3Dhoti -.- 4 Kameej -.- 5 Towel 4.

D6Bushirt 5.

E7Kulhari 6.

F8T.

Shirt 7.

G9Dhoti -.- 10 Kameej ----- Above articles were sent by the Superintendent of Police, Rajsamand vide letter dated 30.6.2005 for sending the opinion with regard to blood group upon the articles.

The said communication is as follows:) , () C :--7() -/ /05/7189-90 C :- 30/6/05 , #()) () :- C 80/05 C 19.6.05 302, 34 ..

/) C:- * C(1387 C 27-3-89 , C C ()) # 13 2 1.

M :- C C 1 ")) 22 19.6.05 2 " 22 2 , ")) , T) 3 , 2) 2 4 ")))2 21.6.05 ") , 5) 6 21.6.05 .

6 ")) 2 2 ")) , .

7 2.

C :- C 1 2 , , , ,) 2 # , C # , C 3) W 2 , , * 22 * # C 4 3.

C :- * C # C 4.

-(:-) T # 5.

:- 1- 2- 3- 4- 5-C 6- 2 7- (8- 2 9- . 10-]. ^ C # W 6.

T C C 392 7.

T C 8.

* #) C 2 sd/-) 14 :- sd/-) " We have perused the opinion given by the FSL, which reads as under: - Exhibit No.1 (from A).3,4,5 (from C).6(From D).7 (from -E) and 8(from F):- Results remained inconclusive.

As per report of FSL the blood group remained inconclusive.

Meaning thereby if the blood of mad of either cloths of deceased and cloths of accused appellant including black shirt were sent to ascertain the blood group then obviously same blood group was to be found upon the cloths so as to connect the accused appellant with the crime, but as per the result of examination of FSL, the blood group sustained on the acceptance could not be done.

Meaning thereby, the medical evidence is also not supporting the prosecution case, but the learned trial court gave finding that accused appellant is liable for punishable because there is evidence on record to prove the fact that he has committed offence under Section 302 IPC.

In our opinion the finding given by the learned trial court with regard to motive and 15 causing injuries is not supported by reliable evidence because even if it is presumed that axe was recovered from the accused appellant and incised wound was found upon the body of the deceased, but it cannot be presumed that without any evidence that these injuries were caused by the accused appellant who is brother of the deceased.

Even though the prosecution case is accepted that black shirt was recovered at the instance of appellant then also, on the basis of report of FSL, we are of the opinion that there is no connecting evidence to prove the fact that accused appellant has committed offence under Section 302 IPC.

We have scanned the entire evidence on record including the statements of PW-3 Noja son of deceased, but in our opinion, the prosecution has measurably failed to prove its case beyond reasonable doubt and on the basis of suspicion no person can be convicted for offence which is punishable under the Indian Penal Code.

It is settled principles of law that for the purpose of convicting any person on the basis of circumstantial evidence, the prosecution is required to produce the complete chain of evidence, so also, to held accused guilty for the offences on 16 the basis of circumstantial evidence, but here in this case, the complete chain is

missing.

The Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda versus State of Maharashtra reported in AIR 1984 SC1622 held that if case is based upon circumstantial evidence then prosecution is required to prove its case beyond reasonable doubt while leading complete chain so as to hold accused guilty.

The following adjudication is made by the Hon'ble Supreme Court in paras Nos.152 and 153 of the said judgment, which reads as under: A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established.

There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabao Bobade & Anr.v.State of Maharashtra(') where the following observations were made: "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say.

they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

The instant case is also based upon the circumstantial evidence and the learned trial court in its finding held that prosecution has tried to plant PW-3 Noja as eye witness and for that purpose in the Court he has specifically named the accused appellant that he has committed the murder but in the FIR, so also, in the police station of PW-3 Noja, no name was disclosed by him for committing murder of his father deceased Lalu Ram.

PW-2 Gomali in her statement before the Court said that her brother-in-law Chaina Ram murdered her husband, but it is stated by her in her statement that the said information is hear say information.

Therefore, it is obvious from the statements of both these so called eye witnesses that in whole of 18 the investigation, they did not disclose the name of the accused appellant but in the court they tried to indulge the accused appellant but other circumstantial evidence is not corroborating their version.

The learned trial court accepted the testimony of both the witnesses to the extent that accused-appellant was wearing black shirt and the black shirt was recovered from whom and while saying so accepted the statement of PW-3 Noja to the extent of fact that he saw the person who killed his father was wearing black shirt.

Witness Nagraj before whom the recoveries were made not produced before the learned trial court, therefore, in our opinion, when the trial court has discredited the testimony of PW-2 Gomali and PW-3 Noja to the extent that they did not disclose the name of the accused appellant in the investigation, therefore, their allegation in the court statement cannot be accepted and it can be said that prosecution has failed to prove its case beyond reasonable doubt to prove the guilt of the accused appellant.

It is the bounden duty of the prosecution to prove its case and produce the relevant evidence to complete the chain of circumstantial evidence and in absence

of such 19 evidence, the conviction cannot be passed upon untrustworthy testimony of witnesses.

The learned trial court although discussed the entire evidence but accepted the part of evidence of PW-3 Noja and PW-2 Gomali and discredited their testimony to the extent of last seen of person who was wearing black shirt and rest of the testimony is discredited.

Meaning thereby the finding given by the learned trial court is erroneous.

In fact, there is no eye witness of the incident and in whole of the investigation none of the witnesses said in their statement before the police that murder was committed by the accused appellant Chaina Ram but in the court, out of all the witnesses, two witnesses namely PW-2 Gomali and PW- 3 Noja in their statements made allegation but even in the FIR filed by PW-2 no such allegation was levelled by her.

In view of the above, we are of the opinion that the learned trial court has committed an error while holding appellant guilty for offence under Section 302 IPC, therefore, the judgment is not sustainable in law.

In view of the above discussion, this jail appeal is hereby allowed.

The judgment passed by 20 the learned trial court dated 21.1.2006 in Cr.

Case No.29/2005 is set aside and the accused appellant is acquitted from the charges leveled against him.

The accused appellant shall be released forthwith if not required in any other case.

(ANUPINDER SINGH GREWAL),J.

(GOPAL KRISHAN VYAS),J.

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