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Ram Sagar Vs. the State

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Court : Allahabad

Decided On : Feb-25-1993

Reported in : 1994CriLJ589

Judge : Giridhar Malaviya and ;J.P. Semwal, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 2959 of 1981 (from Jail)

Appellant : Ram Sagar

Respondent : The State

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : A.N. Mulla, Adv. appointed from Jail

Disposition : Appeal dismissed

Judgement :

J.P. Semwal, J.

1. Ram Sagar, accused-appellant, has filed this criminal appeal from jail against the judgment and order dated 20-5-1980 passed by the Sessions Judge, Banda, convicting him under Section 302, I.P.C.

2. The gravamen of charge is that on 15-12-1978 at about 4 p.m. in village Samgara, Police Station Marka, district Banda the accused Ram Sagar committed the murder of Ram Chandra by shooting him dead with Tamancha.

3. The facts, presented by the prosecution, are that deceased Ram Chandra alias Bachchan was the elder brother of Phool Chandra P.W. 1. The house of the accused Ram Sagar is adjoining to the house of Phool Chandra. About six years ago there was quarrel between the wife of the deceased and the mother of the accused and the former had hit the mother of the accused with a stone. At that time the accused was not present. After the accused returned, he learnt about the incident. He believed that his mother had been hit by accused Ram Chandra and that he would take revenge from him. Two months after the said incident his mother died and the accused thereafter left his village. The accused Ram Sagar was the resident of village , Khushrupur, district Fatehpur and had settled in village Samgara. He had only his mother in his family and had no wife and children. The occurrence of this case took place on 15-12-1978 at about 4 p.m. The accused had returned to village Samgara 10-15 days prior to this occurrence. Phool Chandra P.W. 2 and his brother Ram Chandra deceased had gone to grind wheat at the flour mill of Ramadhin Pathak and they returned from the flour mill at about 4 p.m. Each of them were carrying flour in separate Dalias. The deceased was going ahead of his brother Phool Chandra. When the deceased reached near the cattle-shed of Chhabinath Tiwari P.W. 3, the accused Ram Sagar, who was standing at the door of the said cattle shed, fired with his Tamancha at Ram Chandra. Ram Chandra fell down and died on the spot. The occurrence was witnessed by Chhabinath Tiwari P.W. 3, and Chandra Shekhar P.W. 4 as well as Iqbal. The accused fled towards the South. Leaving the dead body of his brother Ram Chandra under the supervision of village Chowkidar, Phool Chandra P.W. 2, proceeded to police station Marka along with a written report Ext. Ka-2, which he handed over at police station Marka at 7 p.m. on 15-12-1978. Constable Lal Singh P.W. 6, who was constable clerk at police station Marka on 15-12-78, prepared chik report Ext. Ka-11 on the basis of written report Ext. Ka-2 and entered the case at serial No. 20 of the General Diary (vide Ext. Ka-12 extract).

4. The case was investigated by S.I. Jai Prakash, P.W. 5, who was posted as Station Officer at police station Marka at the relevant time. The report was lodged in his absence on 15-12-1978 as he had gone to Banda. After he returned during the night, he immediately proceeded to the place of occurrence reaching there at about mid-night. He found the deadbody of Ram Chandra lying near the cattle-shed of Chhabinath Tiwari. He posted a police constable there for the safety of the dead-body. He recorded the statements of the witnesses during the night and on the next morning he held inquest on the deadbody of the deceased after appointing panches and prepared the inquest report, Ext. Ka-6 and also usual connected papers. The deadbody was sealed and sent to Banda mortuary through constable Ganga Charan Verma. S.I. Jai Prakash inspected the place of occurrence and prepared the site plan, Ext. Ka-7 and took in his possession bloodstained and plain earth (vide recovery memo Ext. Ka-8). He found two Dallas and about 10 Kgs. flour lying on the ground at the place of the occurrence. He gave these articles in the custody of Smt. Vimla Devi, wife of the deceased (vide Supurdaginama. Ext. Ka-9).

5. The deadbody of Ram Chandra in sealed condition was produced by constable Ganga Charan P.W. 7 before Dr. G. S. Rana P.W. 1, Medical Officer, District Hospital, Banda and identified the deadbody. Dr. G. S. Rana performed the autopsy on the deadbody of deceased Ram Chandra on 17-12-1978 at 3.10 p.m. and prepared the post-mortem report (vide Ext. Ka-1). The deceased was about 35 years of age and two days had elapsed since his death. Dr. Rana found the following ante-mortem injuries on the person of the deceased.

1. Gun-shot wound of entry on the back of left side chest in between scapula and vertebral column, 2 cms. x 1.5 cm. x chest cavity deep, margins inverted, abraded collar present, no tattooing or charring present, directed inwards slightly upwards and towards front of chest, 1 cm. above and medial to inferior angle of left scapula, 3 cms. lateral to vertebral column and 14 cms. below the root of neck-back.

2. Four gun shot wounds of entry on the back of chest in the left side each measuring 1 cm. x 1 cm. x chest cavity deep, margins inverted, abraded collar present, no blackening or charring present, directed inwards slightly upwards and

towards front of chest left side just adjacent to injury No. 1 in an area 3.5 cm. x 2 cm.

3. Gun-shot wound of exit on the front of left side chest on the left nipple, 2.5 cms. x 1 cm. x through and through, margins everted.

4. Gun-shot wound of exit on the front of left side chest, 1 cm. x 1 cm. x through and through, 0.5 cm. above injury No. 3, margins everted.

5. Gun-shot wound of exit on the left side of the front of chest, 1 cm. x 1 cm. x through and through, 1.5 cms. above and medial to injury No. 3, margins everted.

6. On internal examination, Dr. Rana found the left lung perforated. Thorastic cavity contained about 1000 ml. of free and clotted blood. Posterior parts of 5th and 6th ribs of left side were fractured, Three wad pieces, out of which one plastic, were recovered from the underneath area of medial border of left scapula. Three metallic pellets were recovered from front of chest, 1 cm. above the injuries and there was fracture of anterior part of 4th and 5th ribs left side.

7. In the opinion of Dr. Rana, deceased Ram Chandra died due to shock and haemorrhage as a result of ante-mortem fire arm injuries.

8. S.I. Jai Prakash was transferred on 22-12-1978 and thereafter the remaining investigation was done by his successor Sri Nepal Singh who after completing the investigation submitted the charge-sheet Ext. Ka-10 against the accused Ram Sagar on 30-1-1979.

9. The prosecution examined in all seven witnesses. Out of them, Phool Chandra P.W. 2, Chhabinath P.W. 3 and Chandra Shekher P. W. 4 are eye-witnesses. Dr. G. S. Rana P.W. 1 performed autopsy on the dead-body of-Ram Chandra and prepared the postmortem report Ext. Ka-1. He took in his possession Dhoti, Kurta, Baniyan, Underwear, Janeoo, Batuwa and Maflar Exts. 1 to Ext. 7 and sent them to police station Marka in a sealed bundle. He also recovered three metallic pellets and three wads and sent them also to Superintendent of Police, Banda in a sealed bundle.

10. S.I. Jai Prakash P.W. 5, investigated the case up to the date of his transfer e.g. 22-12-1978. Constable Ganga Charan Verma P.W. 7 had accompanied the dead body of the deceased to the mortuary and produced the same before the Doctor on 17-12-1978.

11. The accused in his statement under Section 313, Cr. P. C. admitted that originally he belonged to village Khushrupur, district Fatehpur and had now settled in village Samgara. He denied that six years back the wife of the deceased had hit his mother with a stone and that two months thereafter his mother died. He also denied to have suspected that Ram Chandra had hit his mother with a stone and he harboured enmity with him and wanted to take revenge. He also denied that he had left village Samgara after the death of his mother. He also denied that he had committed the murder of deceased Ram Chandra and pleaded that he has been falsely implicated by Chhabinath Tiwari (P.W. 3) on account of enmity. According to him, Chandra Shekher had teased the sister of Chhabinath and the latter had beaten Chandra Shekher and on account of this enmity Chhabinath committed the murder of Ram Chandra and has falsely implicated the accused.

12. No evidence was adduced in defence by the accused. We have heard Sri A. V, Mulla as amicus curiae for the appellant and the learned Addl. Govt. Advocate for the State.

13. Learned counsel for the appellant raised two contentions. Firstly, that the motive attributed is stale and is not sufficient to actuate the accused for committing murder of Ram Chandra. Secondly, that the accused has been falsely implicated by Chhabinath on account of enmity.

14. We have considered both these contentions and have perused the evidence and material on record but we do not find any force whatsoever in these contentions.

15. We first consider the second contention. It is cardinal principle of the criminal jurisprudence that the prosecution has to prove its case beyond reasonable doubt. The occurrence had taken place on 15-12-1978 at about 4 p.m. in village Samgara near the cattle shed of Chhabinath. In fact, the factum of occurrence is not

disputed and the same is satisfactorily proved by the evidence of Phool Chandra P.W. 2, Chhabinath P.W. 3 and Chandra Shekher P.W. 4. Phool Chandra is the real younger brother of deceased Ram Chandra, both being sons of Sheo Dulare. At the time of occurrence, deceased Ram Chandra along with his brother Phool Chandra P.W. 2 was returning from the flour mill of Ramadhin Pathak where they had gone for grinding wheat. Both were carrying flour separately in Dallas. Ram Chandra deceased was ahead of Phool Chandra P.W. 2. When the deceased reached near the cattle-shed of Chhabinath P.W. 3, accused Ram Sagar, who was standing at the door of the said cattle-shed, fired with Tamancha at Ram Chandra which hit him, as a result of which Ram Chandra fell down and died on the spot. Phool Chandra P.W. 2 has given ocular account of the occurrence. He was accompanying his brother Ram Chandra at the relevant time and he is natural and probable witness of the occurrence. I.O. Jai Prakash recovered bloodstained earth from the place of occurrence and also two Dallas as also flour, about 10 Kgs. lying at the place of occurrence. This corroborates the testimony of eye-witnesses and fixes the place of occurrence which is neither challenged, nor any cross-examination is directed in that direction.

16. The occurrence was witnessed by Chhabinath P.W. 3 and Chandra Shekher-P.W. 4 also and they have corroborated the testimony of Phool Chandra-P.W. 2. Both Chhabinath P.W. 3 and Chandra Shekher-P. W. 4, were sitting on the Chabutara in front of the house of Chhabinath-P. W. 2 which is in front of the cattle shed of Chhabinath. Both these witnesses are residents of village Samgara. Since the occurrence had taken place near the cattle-shed of Chhabinath, hence Chhabinath as well as Chandra Shekher, who were sitting on the Chabutara, are natural and probable witnesses of the occurrence. Both of them have corroborated the testimony of Phool Chandra-P.W. 2 regarding the occurrence and there is no infirmity in their testimony. A suggestion has been put to Chhabinath that Chandra Shekher had teased his sister Champa and he had quarrel with the deceased. Suggestion was also put that he had committed the murder of the deceased and has falsely implicated the accused. Chhabinath emphatically denied these suggestions. Chandra Shekber-P.W. 4 also denied the suggestion that he is related to the deceased. He also denied the suggestion that there has been any quarrel between Chhabinath and the deceased. Both these witnesses have given

ocular account of the occurrence and have corroborated the testimony of Phool Chandra-P.W. 2. Merely because there is some variance in the testimony of eye-witnesses about the distance from which the accused had fired is by itself not sufficient to throw out the prosecution case. No doubt, in his cross-examination Phool Chandra-P.W. 2 stated that accused Ram Sagar had fired from a distance of about 5-7 cubits, while Chandra Shekher-P.W. 4 deposed in his cross-examination that the accused had fired from a distance of 4 or 6 or 10 paces. It is well known that village people have little idea of time and distance. The evidence of the village folk cannot be taken with an exactitude regarding time and distance, See 1972 SCC (Cri) 394 : (1971 Cri LJ 1306), Sheo Darshan v. State of U.P., 1973 Cri App R (SC) 410 : (1973 Cri LJ 1783), Shivali Saheb Rao Bobade v. State of Maharashtra. Slight discrepancies in the statements of the eye-witnesses are not uncommon in the testimony of most truthful witnesses. There are details which unless the witnesses are tutored must vary in minor particulars, and, in the normal course of things are found generally to be stated differently by different observers. Such differences are indications of truth rather than falsehood of the version given by the prosecaution witnesses (See 1972 SCC (Cri) 684 : (1972 Cri LJ 1254), Yeshwant v. State of Maharashtra and 1973 SCC (Cri) 222 : (1973 Cri LJ 169) State of Assam v. Krishna Rao).

17. As already set out, the prosecution witnesses have proved the place and time of the occurrence and the manner in which the occurrence took place as also the participation of the accused in the crime. The occurrence had taken place at about 4 p.m. and Phool Chandra-P.W. 2, brother of the deceased, was accompanying the deceased at the time and Chhabinath-P.W. 3 and Chandra Shekher-P.W. 4, who were sitting on the Chabutara nearby are natural and probable eye-witnesses of the occurrence and they had every opportunity to see the occurrence. All the witnesses as well as the accused were residents of village Samgara and knew such other and hence there was no question of any mistaken identity. No doubt, the accused has suggested that it was Chhabinath who had committed the murder of Ram Chandra and has falsely implicated him due to enmity. There is no material on record to indicate that there was any quarrel between Chabinath and the deceased on account of teasing of Champa. No doubt, Phool Chandra is the brother of deceased Ram Chandra but that by itself is not sufficient to discard his

evidence. It is well settled from a long catena of decisions of the Supreme Court that the relationship of the prosecution witness to the murdered man is no ground for not acting upon his testimony if it is reliable and that the close relatives of murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant (See : 1969 CriLJ6 , Bhupendra Singh v. State of Punjab : 1956 CriLJ827 , Gurucharan Singh v. State of Punjab and 1972 SCC (Cri) 275 : (1972 Cri LJ 487), State of U.P. v. Samman Das). Even if it is assumed, though not proved, that Chhabinath could have any motive to falsely implicate the accused, there is no ground to presume that Phool Chandra-P.W. 2, who is the real brother of the deceased would falsely implicate the accused and spare the real assailant. It is not shown at all that Phool Chandra had any enmity or grudge against the accused. It may be mentioned here that the evidence of the witnesses either partisan or interested cannot be rejected merely because they were interested or partisan witnesses if the same stands careful scrutiny. In the present case, the testimony of Chhabinath P.W. 3 and Chandra Shekher-P.W. 4 have stood careful scrutiny and there is no infirmity in their testimony. The prosecution has led positive and cogent evidence of the eyewitnesses who have proved the prosecution case beyond reasonable doubt and further the evidence of these eye-witnesses is backed by medical evidence. The medical evidence goes to show that the deceased had received firearm injuries and died as a result of the said injuries. Where the evidence of witnesses is backed by medical evidence, conjectural alternatives cannot be substituted in place of accepted evidence of those who actually saw the incident (See 1973 SCC (Cri) 128 : (1972 Cri LJ 1177), Janak Singh v. State of U. P.). The contention of the learned Counsel for the appellant has thus no force that the accused has been falsely implicated by Chhabinath.

18. As regards the first information report, it was lodged on the same day at 7 p.m. at police station Marak which is at a distance of about six miles from village Samgara. The first information report of the incident was thus lodged promptly by Phool Chandra-P. W. 2, real brother of the deceased, who was accompanying him at the relevant time and in whose presence the murder of Ram Chandra took place. The evidence of Phool Chandra-P.W. 2 is fully corroborated by the first information report lodged by him and the eye-witnesses Chhabinath-P.W. 3 and

Chandra Shekher-P.W. 4.

19. We now proceed to consider the contention about motive. Learned counsel for the appellant argued that the alleged motive is stale and is not sufficient for actuating the accused to commit the alleged crime after lapse of 4-5 years. His contention was that it does not appear probable that the accused would wait for 4-5 years and would then commit the murder by way of revenge. We have carefully considered this contention in the context of the evidence on record but we are not persuaded to accept this contention. It is well settled from a long catena of decisions of the Supreme Court that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance (See : 1956 CriLJ827 , Gurucharan Singh v. State of Punjab : [1971]1SCR133 , N. N. Naik v. State of Maharashtra and 1986 Cri App R (SC), 490 : (1986 Cri LJ 1903), State of Andhra Pradesh v. Bogam Chandraiah).

20. So far the motive is concerned, the prosecution may prove, but is not bound to prove the motive for a crime, and even in cases where innocence of intention is a defence and innocent or praiseworthy motive, if the necessary intent is proved is irrelevant and affords no defence (See Slephens History of Criminal Law 110 and Halsbury's Laws of England, 3rd Edn. Vol. X, page 233). The Supreme Court has observed that it is well known that the evidence regarding existence of motive which operates in the mind of an assassin, is very often not within the reach of others. The motive may not be even known to the victim of the crime. The motive may be known to the assassin only and to none else. (See AIR 1939 SC 733 : (1989 Cri LJ 923), Subedar Tiwari v. State of U.P.). The fact that motive appears inadequate is by itself not a circumstance against the prosecution inasmuch as the real motive may be invisible to all except the person influenced by it. Experience shows that some of the gravest and most atrocious crimes have been committed from some of the flimsiest and most frivolous considerations. In the present case, the prosecution has led positive and direct evidence of the witnesses which establishes the prosecution case. It is not necessary to discover motive for the said offence. However, even if motive is required the prosecution has succeeded in an ample measure in showing the motive for the accused for the commission of the crime. According to the prosecution case, the accused wanted to take revenge

from the deceased as his mother had been hit by a stone thrown by the wife of the deceased and the mother of the deceased had died thereafter. This aroused suspicion in the mind of the accused that his mother has been killed by the deceased and therefore he was out to take revenge from the accused. The prosecution has led evidence to show that he had shifted to his village Khusrupur after the death of his mother and returned to village Samgara only 10-15 days before the occurrence. This has not been controverted. The human nature being what it is, a man's passion may be aroused at time by some very trifling circumstances. Motive of men are often so deep seated as to be almost unfathomable. It has been remarked by a mediaeval jurist 'the devil himself knoweth not, thoughts of men. 'The accused had no wife and children and was living with his mother in village Samgara and this after the incident of stone throwing, the death of his mother must have aroused his passion and, therefore, he came to village Samgara from village Khushrupur to accomplish the act of taking revenge after the death of his mother for whom he must have deep love and affection.

21. The contentions of the learned Counsel for the appellant thus have no force.

22. No other point was either raised or argued.

23. After careful scrutiny of the entire evidence, facts and circumstances of the case, we agree with the findings of the trial Court which had advantage of watching the demeanour of the witnesses before it. We, therefore, agree with the trial Court that the accused was guilty for committing the murder of Ram Chandra on 15-12-1978 at about 4 p.m. in village Samgara. The appeal has thus no force and is liable to be dismissed.

24. The appeal is dismissed. The accused-appellant is already in jail. He shall serve out the sentence awarded to him in accordance with law.

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