

Raj Mangal Vs. State

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Court : Allahabad

Decided On : May-29-1998

Reported in : 1999CriLJ2418

Judge : D.K. Trivedi and ;I.P. Vashishth, JJ.

Acts : [Evidence Act, 1872](#) - Sections 118; [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307 and 506

Appeal No. : Criminal Appeal No. 185 of 1992

Appellant : Raj Mangal

Respondent : State

Advocate for Def. : G.A.

Advocate for Pet/Ap. : U.P.S. Chauhan, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

1. The present Criminal Appeal is directed against the judgment and order dated 7-9-1991 passed by the I Additional Sessions Judge, Gonda, convicting the appellant under Section 302 I.P.C. and sentencing him to undergo Imprisonment for Life as well as to pay a fine of Rs. 2000/- and in default of payment of fine he

was directed to undergo a further Rigorous Imprisonment of six: months in connection with an incident which is alleged to have taken place on 14-5-1989 at about 4-00 a.m. in the morning in village Narainpur Girant Police Station Mankapur, District Gonda.

2. It is alleged that appellant Raj Mangal committed the murder of his wife Smt. Sonapati by inflicting Basula injuries on her. It is said that accused Raj Mangal had pawned the ornaments of his wife with Baba Prahlad Das. Smt. Sonapati used to demand the said ornaments from the accused but the accused always refused to return the said ornaments. It is said that in between the night of 13/14-5-1989 a quarrel took place regarding the ornaments between the deceased and the accused, and it is said that at about 4-00 a.m. appellant Raj Mangal started inflicting injuries by Basula on her head. It is said that Satindra Kumar (P. W. 1) son of the deceased who was sleeping nearby woke up and raised an alarm but the accused threatened to kill him also. It is said that on hearing the alarm raised by Satindra Kumar several persons reached there but the accused ran away. It is alleged that Smt. Sonawati was still alive, therefore, Satindra Kumar rushed to the Police Station along with Smt. Sonawati. Satindra Kumar thereafter wrote a report and lodged the same at Police Station Mankapur on 14-5-1989 at about 8-10 p.m. The distance of Police Station from the place of the incident is 8 kilometres. Head Constable Gaya Prasad Misra registered a case under Section 307/506 I.P.C. P.W. 7 Ram Bahadur, S.I. in whose presence the case was registered, started investigation in this case. He immediately recorded the statement of Satindra Kumar at the Police Station itself and thereafter proceeded to the place of the incident but on the way he met Constable Shri Pati Shukla (P.W. 5) who informed him that Smt. Sonapati had died at P.H.C. Mankapur. On receipt of this information he instructed the said Constable to inform the Police Station for converting the case under Section 302 I.P.C. and proceeded to the P.H.C. Mankapur for preparing inquest report. He prepared inquest report Ext. Ka-5 between 10-30 a.m. to 11-30 a.m. and also prepared other relevant papers Ext. Ka-6 to Ka-9 and sent the dead body to mortuary for postmortem examination. The Investigating Officer thereafter recorded statements of the other witnesses and reached the place of the incident and there he prepared site-plan Ext. Ka-10 and after completing the investigation submitted charge-sheet against the

accused.

3. The autopsy on the dead body of the deceased Smt. Sonapati was conducted by Dr. O.P. Srivastava, P. W. 8 on 16-5-1989 at about 10-00 a.m. The Doctor found the following ante mortem injuries on the dead body of the deceased:

1. Contusion 15 cm. x 12 cm. on the left side of head oblique 2 cm. above the ear.

2. Several lacerated wounds in the area of 8 cm. x 7 cm. in between left eye brow to left cheek. The dimensions were different. The biggest wound was 2V6 cm. x 1 cm. x bone deep and the smallest wound was 1 cm. x 1 1/2 cm. x bone deep.

3. Contusion 3 cm. x 2 1/2 cm. oblique on right of zygomatic region 1 cm. in front of right ear.

4. In the opinion of the Doctor the death was caused due to shock and haemorrhage as a result of ante mortem injuries.

5. The prosecution, in support of its case, examined 8 witnesses in all. Out of them P.W. 1 Satindra Kumar is the main eye witness who had lodged the report. P.W. 2 Hari Maurya was declared hostile but he stated that he reached the place of the incident and, there, he was informed by Satindra Kumar that his father had killed his mother. P.W. 3 Ram Narain too was declared hostile but he also gave the same statement as P.W. 2 Hari Maurya had given. P.W.4 Head Constable Gaya Prasad Misra, P.W. 4 prepared chik report and other General Dairy entries, P.W. 5 Shri Pati was also declared hostile but he stated that the incident took place at about 5-00 a.m. P.W. 6 Mithai Lal is the witness of inquest report. P.W. 7 S.I. Ram Bahadur conducted investigation in this case and submitted charge-sheet against the appellant. P.W. 8 Dr. O.P. Srivastava conducted autopsy on the dead body of the deceased and proved the post mortem report Ext. Ka-15

6. On the other hand the accused denied the prosecution case and stated that he has been falsely implicated in this case due to enmity.

7. The learned Additional Sessions Judge after considering the evidence on record came to the conclusion that the prosecution has successfully proved the guilt of

the appellant beyond reasonable doubt and, therefore, he convicted and sentenced the appellant as mentioned above.

8. The appellant, aggrieved by the said judgment and order filed the present Criminal Appeal from Jail and as the appellant was not represented by any counsel, therefore, we appointed Shri Chauhan, Advocate of this Court as Amicus Curiae to argue the case on behalf of the appellant.

9. We have heard the learned counsel for the appellant as well as learned Additional Government Advocate and perused the record.

10. The main contention of the learned counsel for the appellant is that in the instant case all the other independent witnesses have already been declared hostile and there is no other evidence except the solitary statement of P.W. 1 Satindra Kumar. The contention of the learned counsel for the appellant is that Satindra Kumar, P.W. 1, is a boy of about 13 years of age and on his sole testimony conviction cannot be based. On the other hand the learned Additional Government Advocate stated that Satindra Kumar, P.W. 1, is the own son of the appellant and he, from the very beginning consistently stated that the appellant who is his father had committed the murder of his mother. Moreover he promptly lodged the First Information Report naming the appellant as the accused in this case, and, therefore, in these circumstances the learned Additional Sessions Judge committed no illegality in believing the testimony of P.W. 1 Satindra Kumar and convicting and sentencing the appellant as mentioned above.

11. In the instant case, as already said above, there is the unbiased and natural testimony of P.W. 1 Satindra Kumar. The other three witnesses examined by the prosecution have already been declared hostile inasmuch as they stated that as soon as they reached the place of the incident they were informed by Satindra Kumar that his father has committed this murder. P.W. 1 Satindra Kumar was admittedly 13 years old at the time of evidence. It is not disputed that Satindra Kumar had no enmity with the appellant. The presence of Satindra Kumar (P.W. 1) is also not disputed at the time of the incident. According to the prosecution case the incident took place at about 4-00 a.m. in the morning in which Smt. Sonawati had received injuries. Satindra Kumar was the only adult male member and he

with the help of the villagers brought his mother at P.H.C. Mankapur and lodged report at Police Station Mankapur. In the report he named the appellant as the killer of his mother. It is also brought on record that the special report has also been sent to the Headquarters by Head Constable Y. N. Tewari who returned to Police Station Mankapur after handing over special report at 10-35 p.m. on the same day. The Doctor who conducted autopsy on the dead body of the deceased also supported the prosecution case that the injuries could be caused by Basula. Apart from this, there is recovery of Basula also at the pointing of the accused but the same was denied by the accused and it is alleged that Basula was planted by the Police.

12. Before dealing with the testimony of P. W. 1 Satindra Kumaf it is necessary to point out that it is the settled law that a child witness is fully competent to depose the facts and further if the testimony of such a child witness is found reliable then conviction can also be based on the sole testimony of the said child witness. No doubt, while scrutinising the evidence of the child witness it is the duty of the Court to see as to whether there is any possibility of the witness being tutored, and further where the testimony of the said eye witness is reliable and the demeanour of the witness must be like any other competent witness. It is also well settled that as a rule of precedence the Court would usually require some corroboration to the evidence of child witness.

13. The Apex Court in the case of Dattu Ramrao Sakhare v. State of Maharashtra, 1997 SCC (Cri) 685, took the following view:

A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/ her demeanour must be like any other competent witness and there is no likelihood of being

tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however, as a rule of prudence the Court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record.

14. Keeping in mind the above mentioned principle if we scrutinise the evidence of Satindra Kumar (P.W. 1) then we would find that Satindra Kumar (P.W. 1) is fully competent and reliable witness and his testimony is consistent and is supported by the medical as well as ocular testimony of hostile witnesses, therefore, it can be relied upon for convicting the appellant in this case.

15. As pointed out above the presence of P.W. 1 Satindra Kumar at the time of the incident is not disputed. He consistently pointed out that the incident took place in his presence and he saw his father Raj Mangal giving Basula blows to his mother. He also stated that, he raised alarm and on hearing his alarm several persons reached there and he also informed them that his father had killed his mother. He was cross-examined by the defence but nothing could be elicited from his testimony on the basis of which it would be said that this witness is not a trustworthy witness. A suggestion was put to this witness that his mother was killed by some 'Badmash' who also snatched away the ornaments of his mother but he denied this suggestion. It is not possible to believe that a son of about 13 years of age would have any enmity with his father and would falsely implicate his father in the murder case of his mother. From a perusal of the statement of this witness it is revealed that P.W. 1 Satindra Kumar has given a very natural eye witness account in this case. The Trial Court also after scrutinising the evidence on record, in great detail, recorded his reasons and found that P.W. 1 Satindra Kumar was a competent witness and his evidence is absolutely untutored and untarnished. He promptly lodged the First Information Report disclosing the name of his father as the accused and nonc-else along with the weapon and the manner of assault. The report was lodged at 8-10 a.m. and the Special Report was sent from the Police Station to the Headquarters at 10-30 a.m. The autopsy on the dead body was conducted by Dr. O.P. Srivastava who also supported the testimony of P.W. 1 Satindra Kumar and stated that the injuries to the deceased could be caused by Basula.

16. Apart from this, the incident is also supported by the evidence of the other hostile witnesses. P.W. 2 Hari Maurya stated that he heard the cries of the children and reached there and then he was informed by the children that their father had killed their mother. No doubt, he has not named Raj Mangal and did not say that he himself saw Raj Mangal assaulting his wife but the fact to the extent that he reached the place of the incident hearing the cries of the children and there he was informed by the children that their father had killed their mother is fully corroborated, P.W. 3 Ram Narain also stated similar thing and, therefore, this witness also supported the testimony of Satindra Kumar (P.W. 1) to this extent. P.W. 5 Shri Pati stated that he heard the cries of weeping of the children of Raj Mangal at about 4-50 a.m. in the morning and when he reached there he found Srati Sonapati lying in an injured condition. This witness also corroborated the incident which took place in the early hours of the morning. Here it may be pointed out that it is also a settled law that the Courts are not bound to shut their eyes and acquit the accused only if some of the witnesses have turned hostile.

17. The Apex Court in the case of State of Gujarat v. Anfrudhsing, 1997 SCC (Cri) 1946 : AIR 1997 SC 2780 : 1997 Cri LJ 3397 as well as in the case of Chhotu v. State of Maharashtra, 1997 SCC (Cri) 1143 : AIR 1997 SC 3501 : 1997 Cri LJ 4394 took the view that even the testimony of the hostile witnesses would be sufficient to bring home the commission of the crime if the said part, of the testimony is found reliable. In the instant case P.W. 1, Satindra Kumar has infallibly been found reliable as well as believable. The testimony of P.W. 1, Satindra Kumar to this extent finds full support from the testimony of hostile witnesses that the murder was committed in the early hours of the morning in the house of the appellant. P.W. 1 Satindra Kumar was present at the time of the incident and as soon as the witnesses reached there Satindra Kumar (P. W. 1) informed them that the appellant who is the father of the witness had killed his mother. The prompt F.I.R. as well as the postmortem reports and the testimony of the Doctor also corroborated the testimony of P.W. 1, Satindra Kumar and, therefore, in our opinion, the above mentioned facts are sufficient to hold that the prosecution has successfully proved the guilt of the appellant beyond reasonable doubt.

18. As regards the recovery of Basula, it is pointed out by the learned counsel for the appellant that the same is not believable because Satindra Kumar (P.W. 1), in his statement, before the Court had clearly stated that his father ran away after killing his mother throwing the said Basula, on the spot. According to him if this statement is correct then this shows that the Investigating Officer tried to concoct the evidence against the appellant and this fact also belies the testimony of P.W. 1, Satindra Kumar. We are unable to accept this contention of the learned counsel for the appellant. The testimony of P.W. 1, as pointed out above, is consistent and he has narrated the incident in a straightforward manner. As already pointed out above P(r)W. 1, Satindra Kumar is a child witness and if in cross-examination he stated that the said weapon was thrown away by his father and thereafter the Investigating Officer showed the said weapon having been recovered at the pointing of the accused then on that ground alone the entire testimony of P.W. 1, Satindra Kumar cannot be discarded. Even if we do not accept the recovery of Basula at the pointing of the appellant, the other evidence as mentioned above is sufficient to hold that the prosecution has successfully proved the guilt of the appellant beyond reasonable doubt and, therefore, we find no merit in this appeal which is liable to be dismissed.

19. Appeal is accordingly dismissed. Conviction and sentence awarded by the learned Trial Judge is confirmed. The appellant is in Jail, he shall serve out the sentence as awarded.