

Prakash Vs. State

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Court : Rajasthan Jodhpur

Decided On : Mar-24-2015

Appellant : Prakash

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

D.B.Criminal Appeal No.84/2009 Prakash versus State of Rajasthan Date of judgment : 24.3.2015 PRESENT HON'BLE Mr.JUSTICE GOPAL KRISHAN VYAS HON'BLE Mr.JUSTICE ANUPINDER SINGH GREWAL Mr.Sanjay Mathur} Mr.Manoj Pareek }, for the appellant.

Mr.C.S.Ojha, Public Prosecutor.

<><><> BY THE COURT: [Hon'ble Mr.Justice G.K.Vyas].The instant criminal appeal has been filed by the accused appellant Prakash S/o Lalu Katara under Section 374(2) of the Cr.P.C.against the judgment dated 29.11.2008 passed by Addl.

Sessions Judge (Fast Track).Dungarpur in Sessions Case No.43/2008 (42/2008) whereby the learned trial court convicted the accused appellant and passed the following sentence : Under Section 302 I.P.C.: Life Imprisonment with fine of Rs.1,000/- and in default of payment of fine to further underto three months SI.

Under Section 449 I.P.C.: Ten Years R.I. With fine of Rs.1,000/- and in default of payment of fine to further undergo three months SI.

Both the above sentences were ordered to be run concurrently.

2 Brief facts of the case are that on 31.3.2008, the complainant (PW-2) Savji gave an oral report in the police Station Chitri District Dungarpur to the effect that at about 6.00 p.m., in the evening, when he was in the way to his home, received the information that his son Vishram has been killed by accused appellant - Prakash and upon reaching home, his wife told that due to injury hit of leg by the accused Prakash, his two and half months old son died.

Upon the aforesaid complaint, an FIR Ex.P/1 was registered against accused appellant Prakash by the SHO PS Chitari, District Dungarpur on 01.04.2008 at about 12.00 a.m. and investigation was commenced and on the basis of the allegations levelled against the accused appellant, he was arrested vide Ex.P.7 and body of deceased Vishram was taken to the hospital on 1.4.2008 itself for post-mortem and after post mortem, the post mortem report Ex.P.8 was prepared and body was handed over to the complainant and later on after completion of investigation, challan was filed against the accused appellant for the offence of murder under Sections 302 and 449 I.P.C. The investigating officer filed the charge-sheet against the accused appellant for offence under Sections 302 and 3449 of I.P.C. in the court of Addl.

Chief Judicial Magistrate, Saagwada District Dungarpur from where the case was committed for trial to the Court of District & Sessions Judge, Dungarpur but later on transferred to the Court of Addl.

District & Sessions Judge (Fast Track).Dungarpur.

The trial Court after framing charge for the offence under Sections 302 and 449 of I.P.C., commenced the trial.

To prove the prosecution case, statement of nine prosecution witnesses were recorded including PW-1 Rassi, PW-2 Savji, PW-3 Ishwar, PW-4 Manna, PW-5 Shankar Lal, PW-6 Varsang, PW-7 Devji, PW-8 Dr.

Mahendra Singh Jakhad, PW-9 Sawai Singh by the trial Court and after recording the oral evidence of prosecution witnesses, the statement of the accused appellant were recorded under Section 313 Cr.P.C.in which accused appellant stated that I am innocent and falsely implicated in this case by the complainant party.

The learned trial court after providing an opportunity to lead evidence in defense, finally heard the arguments in the case and held the accused appellant guilty for committing an offence under Sections 302 and 449 I.P.C.and passed sentence against the accused vide judgment dated 29.11.2008.

In this appeal, the accused appellant Prakash is challenging the aforesaid judgment.

4 Learned counsel for appellant vehemently argued that the trial Court has failed to appreciate the evidence in right prospects and not appreciated the evidence in the light of checks and balances available on record, therefore, the conviction of accused appellant for alleged offence under Sections 302 and 449 I.P.C.deserves to be quashed.

As per submission of counsel for appellant, there is no evidence of previous enmity or motive between the accused appellant and the family of the deceased, but on the basis of allegation of prosecution, that appellant was seen by the wife of complainant PW-1 Rassi when he was going from his house.

The said witness PW-1 Rassi stated in her statement in the Court that she has not seen the incident by her eyes but seen the accused appellant going out from his house.

Meaning thereby, there is no direct evidence against the accused appellant for committing offence of murder, therefore, the judgment impugned deserves to be quashed.

It is vehemently argued that the story of prosecution is not supported by the medical evidence because Doctor PW-8 Dr.

Mahendra Singh gave statement in the Court that bone of neck was not broken and only blood was present inside the respiratory tract of the child, therefore, it can be inferred that the child might have been died as a natural death but to settle the score and suspicion, the complaint 5 was filed against the accused appellant but none of the prosecution witnesses supported the allegation levelled in the FIR so also there is major contradiction in the statements of prosecution witnesses.

Lastly it is argued that whole prosecution case is based on hearsay evidence of interested witnesses in which there is major contradiction, therefore, as per basic principle of law, no person can be convicted on the basis of testimony of such witnesses but in this case, trial Court has convicted the accused appellant on the basis of surmises and ignoring the material contradiction in the statement of prosecution witnesses, therefore, the judgment impugned may be quashed and accused appellant may be acquitted from the charges levelled against him.

Per contra, learned Public Prosecutor vehemently opposed the prayer and submitted that by leading trustworthy evidence, the prosecution has proved its case beyond reasonable doubt, therefore, trial Court has correctly held the appellant guilty for offence under Section 302 I.P.C.on the basis of last seen evidence and oral evidence of the prosecution so also considering the conduct of the appellant, therefore, the instant appeal may kindly be dismissed.

6 After hearing learned counsel for the parties, We have perused the entire evidence and also considered the arguments raised by the counsel for the appellant as well as the learned Public Prosecutor.

It is evident from the facts that prosecution has relied upon the statement of PW-1 Smt.

Rassi.

The said witnesses stated in examination in chief of the statement in the trial that , ! # \$ % # # # 5 # , 12 . But in the cross-examination, it is stated by the witness PW-1 Rassi that 5 , 2 , % # 5 5 5 ! 5 # #- # 1 5 ! 2 15 ! 2 5 5 # 2 5 # # 2 .

Upon perusal of above statement of PW-1 Smt.

Rassi, there is major contradiction for the alleged incident upon 7 which appellant has been convicted.

More so, the said witness stated in the cross examination that when I came back to the home, I opened the lock of house and opened the door whereas in examination in chief, it is stated by her that Prakash has murdered her son, so also accepted before the Court that we have demanded Rs.15000/- from the father of accused Prakash but that amount was paid after registration of case not before registration of FIR, therefore, complaint was filed by us.

The witness PW-2 Savji, husband of PW-1 Smt.

Rassi was not present in the house as stated by him and PW-1 herself that her husband gone to taking Crasher outside the village.

Therefore, the statement of said witness is not relevant for the purpose of incident.

Similarly, the witness PW-3 Ishwar stated in cross- examination that my house is situated 200-300 ft.

far from the house of Rassi, when he reached to the home of Rassi, the door was already opened, so also, I did not enter inside the home of Rassi and Prakash was going out from the house of Rassi.

Meaning thereby this witness PW-3 Ishwar was not present at the time of occurrence took place because PW-1 Rassi stated in her cross-examination that Mana, Shankar, Varsang and Ishwar were called by her.

8 In the statement of PW-4 Manna, it is stated before the Court that !! ; 200- 300 ; ; 1 5 ; 2 2 ! ; # # 5 ! ! ! 2 ; ; ! .

In the cross-examination, it is stated by the said witness that accused appellant Prakash was going towards the house of Rassi and he did not talk with accused Prakash.

More so, it is stated by the said witnesses that ! 5 ! , ! ! !-! 5 ! !-! # 2 5 B # # # 2 5 .

Upon perusal of above statements, it is clear that the witness PW-4 Manna stated altogether different story and not corroborating the allegation levelled by the star witness PW-1 Rassi.

Likewise, PW-5 Shankar Lal deposed in his statement that he reached on the spot when heard the noise of Rassi at about 4 O' Clock, at that time Rassi was asking that 9 Prakash has killed my son.

In the cross examination, it is stated by this witness that Manna S/o Lakhma was not present when he reached to the home of PW-1 Rassi.

Meaning thereby, all the witnesses including PW-1 Rassi made contradictory statement before the Court and none of the witnesses are corroborating the story of PW-1 Smt.

Rassi that door was closed and at the time of occurrence lock was opened by her and if it is the fact then how it can be presumed that the prosecution has proved its case beyond reasonable doubt against the accused appellant.

In the case of State of U.P.versus Naresh, reported in (2011) 4 SCC p.324, the Hon'ble Supreme Court gave following verdict, which reads as under :- In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence.

Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon.

However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety.

The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

Exaggerations per se do not render the evidence brittle.

But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier.

The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited.

A similar view has been re-iterated by this Court in Tehsildar Singh & Anr.

versus State of U.P., AIR 1959 SC1012 Pudhu Raja & Anr.

versus State, Rep.

by Inspector of Police, JT2012(9) 252; and Lal Bahadur versus State (NCT of Delhi).(2013) 4 SCC557.

11 Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay.

In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.

Upon applying the aforesaid principle in the facts of present case, we have no hesitation to hold that the prosecution has completely failed to prove its case

beyond reasonable doubt for allegation of murder against accused appellant.

In our opinion, for conviction, the prosecution is required to prove its case beyond reasonable doubt and evidence must be transparent in all respects so as to reach upon the conclusion that offence has been committed by the accused, none else but in present case, there is major contradiction in the statement of all the prosecution witnesses so also Doctor PW-8 is not corroborating the allegation of PW-1 Smt.

Rassi, who has categorically stated in her statement that accused Prakash pressed the neck of her son so he died, therefore, the finding given by the trial 12 Court is not sustainable in law.

We have also considered the statement of doctor PW-8 Dr.

Mahendra Singh Jakhad in which he has specifically stated in his cross-examination that 5 ; # (#) # ! 5 5 # F ; F # # .2 1 2 \$ 1 ; ; F ! # .2 1 2 1 # 5 \$; # ! 1 2 ! \$ 2 5 2 2 2 \$ 2 2 # 2B 2 .

The above opinion of the Doctor loudly speaks that the prosecution has failed to prove its case beyond reasonable doubt.

In this regard a reference to the five golden principles.

enunciated by this Court in Sharad Birdhichand Sarda v.

State of Maharashtra (1984) 4 SCC116 may be recapitulated below: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

(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.

13 (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.

In view of above discussions, we are of the opinion that prosecution has failed to prove its case beyond reasonable doubt against the accused appellant because not only major contradiction is there in the statement of witnesses but also the medical evidence is not corroborating the prosecution evidence, therefore, the conviction of accused appellant under Section 302 and 449 of I.P.C. is not sustainable in law.

Consequently, while giving benefit of doubt to the appellant, the appeal filed by the appellant Prakash is hereby allowed.

The judgment dated 29.11.2008 passed by the learned Addl.

Sessions Judge (Fast Track).Dungarpur in Sessions Case No.43/2008 (42/2008) against the accused appellant Prakash S/o Lalu Katara is hereby quashed and set aside.

The accused appellant Prakash S/o Lalu Katara shall be released forthwith if not required in any other case.

(ANUPINDER SINGH GREWAL).J.

(GOPAL KRISHAN VYAS),J.

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