

Narayan Prasad Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Mar-25-2005

Reported in : 2005(3)MPHT170

Judge : Rajeev Gupta and ;S.K. Kulshrestha, JJ.

Acts : [Oaths Act, 1969](#) - Sections 3, 4, 5, 6(1), 6(2) and 7; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 161 and 164

Appeal No. : Criminal Appeal No. 840/1996

Appellant : Narayan Prasad

Respondent : State of Madhya Pradesh

Advocate for Def. : S.K. Rai, Govt. Adv. and ;Public Prosecutor

Advocate for Pet/Ap. : None

Disposition : Appeal allowed

Judgement :

S.K. Kulshrestha, J

1. These appeals assail the judgment dated 17-4-1996 of the learned 6th Additional Sessions Judge, Jabalpur, in Sessions Trial No. 409/1995, by which the

learned Judge has convicted the appellants for offence punishable under Section 302, IPC, on three counts, for the murder of Sher Singh @ Bahadur Singh, his wife Ramaitri Bai and his son Ramji aged 11 months, and sentenced each of them to Imprisonment for Life thereunder. The sentences have been directed to run concurrently.

2. The accused and the deceased were members of the same family. P.W. 2 Shanti Bai had two sons, accused Har Prasad and his younger brother deceased Sher Singh @ Bahadur Singh. Both the brothers were living in separate portions of the house, maintaining separate establishments. The family property had already been divided between the two except a portion of land measuring 3 acres, which P.W. 2 Shanti Bai had retained for herself. However, Har Prasad was not satisfied with the distribution of the property and was always complaining that his younger brother Sher Singh @ Bahadur Singh had been allotted more land than the land allotted to him, and he wanted to, therefore, grab the land given to the deceased. In this connection, there had been instances of quarrel between the two brothers. There were also instances when Har Prasad had taken away the crop of his brother Sher Singh @ Bahadur Singh. During the period when the incident occurred, Sher Singh @ Bahadur Singh had sown pulses in his land and for keeping watch, the family used to sleep in the field at night. On the date of the incident, i.e., in the night intervening 3rd-4th of March, 1995, deceased Sher Singh @ Bahadur Singh had, as per his routine, gone to the fields but since he did not return, his mother P.W. 2 Shanti Bai went to the field to find out the reason why he had not returned to the house. On reaching, she found that deceased Sher Singh @ Bahadur Singh, his wife Ramaitri Bai and his son Ramji were lying dead with injuries on their bodies. She, therefore, rushed to the Kotwar and informed him about the said calamity and also informed that the accused persons used to intimidate that they would do away with the deceased. Report (Ex. P-4) was made to the Police by P.W. 2 Shanti Bai, which was recorded by P.W. 7 J.S. Jaggi, and transmitted to Police Station, Panagar where on account of the three deaths, three crimes vide Crime Nos. 14/95, 15/95 and 16/95 were registered. Inquest was held and inquest reports Ex. P-14, P-15 and P-16 were prepared. Dead bodies were forwarded to the Medical College, Jabalpur where the Autopsy Surgeon Dr. D.K. Sakle P.W. 1 conducted the autopsy and gave Reports Exs. P-1, P-2 and P-3.

P.W. 7 J.S. Jaggi, Investigating Officer, inspected the spot and found two mattresses, blood stained paddy, plain paddy which were seized vide seizure memo Ex. P-18. He also arrested accused Har Prasad, Narayan Prasad, Hallu, Ramaitri Bai wife of Har Prasad vide Exs. P-20, P-21, P-22 and P-23. He obtained the nail clippings of accused Narayan, his trousers and shirt which were seized vide Ex. P-24. Similarly clothes and nail clippings of Hallu were seized vide Ex. P-25 and of Har Prasad vide Ex. P-26. Photographs Ex. P-29 of the spot were taken. Accused Hallu gave information which was recorded vide Ex. P-5. Accused Narayan gave information which was recorded in Ex. P-7, in pursuance whereof at the instance of the respective accused, axe was recovered from the house of Har Prasad. Another axe was recovered from Hallu vide Ex. P-8, and an axe was recovered from Narayan vide Ex. P-9. Har Prasad had also given information in pursuance whereof axe was recovered and seized vide Ex. P-10. Spot map (Ex. P-17) was prepared by the Investigating Officer. Patwari was called to make a sketch map. Seized articles were sent to Forensic Science Laboratory, Sagar. As per the report (Ex. P-31) of the Forensic Science Laboratory, the seized axes, sweater, vest, sari, sweater, mattresses, nail clippings and other articles were found blood stained. Report of the Serologist was not received to confirm that the blood was of human origin.

3. On completion of the investigation, the accused were prosecuted. The accused pleaded that they were innocent and that they had been falsely implicated. On trial, however, the learned Judge found them guilty and convicted and sentenced them as stated hereinabove. It is against this conviction and sentence that they have now approached this Court in appeal.

4. The case of the prosecution is based on the testimony of P.W. 4 Suman Bai, who has been treated to be an eye-witness to the incident. Before proceeding to refer to her evidence, we may observe that Suman Bai being above the age of 12 years, the Trial Court could have administered oath to her and it was not necessary for the Trial Court to have put questions to gauge whether she understood the duty of speaking the truth, as required in view of the decision of the Supreme Court in *Rameshwar v. State of Rajasthan*, reported in AIR (39) 1952 SC 54.

5. The provision with regard to administering oath to a witness is contained in Section 3 of Oaths Act, which reads as under :--

'3. Power to administer oaths.-- (1) The following Courts and persons shall have power to administer, by themselves, or, subject to the provisions of Sub-section (2) of Section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely :--

(a) all Courts and persons having by law or consent of parties authority to receive evidence;

(b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by Sub-section (1) or by or under any other law for the time being in force, any Court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf:--

(a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or

(b) by the State Government in respect of other affidavits.'

The persons who have to make oath and affirmations have been enumerated in Section 4 of the said Act, which reads as under :--

'4. Oaths or affirmations to be made by witnesses, interpreters and jurors.-- (1) Oath or affirmations shall be made by the following persons, namely :--

(a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:

Provided that, where the witness is a child below twelve years of age, and the Court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.'

The proviso to Section 4, as reproduced above, makes the exception only in those cases where witness is a child under 12 years of age and the Court or person having authority to examine such witness is of the opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of the oath or affirmation. Apparently, in the case of P.W. 4 Suman Bai, the Trial Court, in its estimation has recorded her age as 13 years and, therefore, there existed no impediment in administration of oath to such a child under the provisions aforesaid. However, since omission of oath is a mere irregularity and does not invalidate any proceeding nor render any evidence inadmissible, as provided under Section 7 of the aforesaid Act, and we also find that no prejudice has been caused to the accused merely on account of non-administration of oath to P.W. 4 Suman Bai, we proceed to examine the case on the basis of her evidence.

6. P.W. 4 Suman Bai has deposed that accused Har Prasad is her father, while accused Ramaitri Bai is her step mother. Accused Hallu and Narayan were her maternal uncles. She has further stated that Sher Singh @ Bahadur Singh and his wife Ramaitri Bai (deceased) were her uncle and aunt and her cousin's name was

Ramji. All the three were dead. She has further deposed that while she was in the 'parchhi', she had heard the accused saying that Sher Singh @ Bahadur Singh should be done to death and only then they will have solace. All the four accused persons armed themselves with axe, baka and Kulra (all hard and sharp weapons) and accused Ramaitri changed her clothes to salwar suit, went out and she was locked in the parchhi. These persons returned home at 2.00 in the night and washed their clothes. All of them had blood stains on their clothes. They then concealed their weapons in the house. In cross-examination she has not been able to explain as to why in her case diary statement (Ex. D-1) there is no mention that she had heard accused say that they will have solace only upon exterminating the deceased. She has also not been able to explain the omission to the effect that the four accused persons had gone out armed with weapons. There is also omission with regard to her statement regarding the clothes having been changed by Ramaitri Bai (accused) and she (witness) having been locked in the 'parchhi'. There is also omission about the blood stains having been noticed by this witness on the clothes of the accused and the accused having washed the clothes and concealing the weapons. Practically, the entire statement of this witness is absent in the statement to the Police. The record indicates that she had also made a statement before the Magistrate under Section 164 of the Code of Criminal Procedure. Even that does not corroborate her version. We are, therefore clearly of the view that on the statement of a witness whose statement was recorded by the Police after 8 days of the incident and the statement recorded also does not contain any of the facts deposed to by her in the Court, no reliance can be placed. Thus, the above evidence of the prosecution, as it is circumstantial, can not be believed, unless there are other circumstances pointing to the guilt of the appellants. We may also observe that P.W. 4 Suman Bai, being daughter of accused Har Prasad, does create an impact on the mind that she would not depose falsely against her own father. But when we analyse her statement in the context of her case diary statement and story put by her before the Court and the fact that there was delay in recording her statement under Section 161, Cr.PC, the evidence itself being shaky, unreliable and untrustworthy, it can not be accepted.

7. The prosecution has also relied upon the evidence of recovery of weapons and blood stains being found on them. We may point out that the weapons which have

been allegedly seized are mostly implements of agriculture which the villagers keep in their houses and, therefore, the possession and production of such weapons does not by itself lead to any inference against the accused. The prosecution has, however, relying upon the report of Forensic Science Laboratory (Ex. P-31) and on the basis of their claim that these weapons were blood stained, stated that added to the testimony of P.W. 4 Suman Bai, since their weapons were also blood stained, their conviction is proper. Nothing has been brought on record to show that there was human blood on the weapons and the clothes of the accused.

8. We may also observe that in the requisition for post-mortem sent by the Police to the Hospital alongwith the body of Ramji, in the prescribed column the description given by the Police states that he had been killed during the night by means of a sharp weapon by someone. Same is the position in respect of deceased Ramaitri Bai wife of Sher Singh @ Bahadur Singh. This also indicates that on detection of the body in the initial stage, it was not known as to who were the assailants of the deceased.

9. In view of the fact that testimony of P.W. 4 Suman Bai even if taken at its face value is not sufficient to convict the appellants for the three murders, for which they were proceeded against, the same is even otherwise unreliable for having not disclosed the facts deposed, to the Police in the 161 statement recorded after inordinate delay of 8 days, the evidence of recovery of the articles from the accused persons also does not fully connect the accused with the crime, as the blood stains found on these articles by the Forensic Science Laboratory as per report (Ex. P-31) have not been proved to be of human origin, the other evidence and documents on record also are not such as can form basis for upholding the conviction, we find that the evidence of the prosecution is far too short of the degree of proof required. As a matter of fact, in the family partition, after dividing the property between the two sons the mother P.W. 2 Shanti Bai had kept three acres of land and perhaps deceased Sher Singh @ Bahadur Singh had taken some land from Shanti Bai that the accused was making a grievance. Be that as it may, no strong circumstances have been brought on record to indicate existence of a motive for a heinous offence of triple murder. We are, therefore, of the view

that on the shaky evidence of the prosecution anchored on the testimony of P.W. 4 Suman Bai, who was not even administered oath, conviction of the appellants cannot be sustained.

10. In the result, these appeals are allowed. The appellants are acquitted of the charge under Section 302 of the IPC, on three counts, and the sentences awarded thereunder are set aside.

11. Appellants Hallu @ Vijay s/o Giranilal and Smt. Ramaitri Bai @ Sheela Bai wife of Har Prasad, in Criminal Appeal No. 1242/1996, are on bail. Their bail bonds shall stand discharged. Appellants Har Prasad s/o Rajaram and Narayan Prasad s/o Matholi Kori are undergoing sentence in jail. They be released forthwith if not required in connection with any other matter.

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