

Ramesh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-15-2007

Reported in : 2007(3)MPHT181

Judge : S.S. Jha and ;Sushma Shrivastava, JJ.

Appellant : Ramesh

Respondent : State of Madhya Pradesh

Disposition : Appeal dismissed

Judgement :

Sushma Shrivastava, J.

1. Feeling aggrieved by the order of conviction and sentence passed by Sessions Judge, Sagar, in S.T. No. 57/96, decided on 4-10-96, appellant has preferred this appeal.
2. Appellant has been convicted under Section 302 of IPC for committing murder of Ku. Shradha Koshti and sentenced to imprisonment for life with fine of Rs. 1,000/- in default, imprisonment for one month by the impugned judgment.
3. According to prosecution, on 28-10-1995, at about 6 O'clock in the evening, at Vivekanand Ward, District Sagar, when deceased Shradha Koshti (hereinafter to be referred as 'deceased') was sitting at the house of her maternal aunt Munnibai

with her back towards the door of the house, appellant Ramesh came there with a knife and gave two knife blows on her back with intent to kill her and fled away. Shradha Koshti was taken to the Police Station, Moti Nagar in injured condition, where she lodged the FIR. She was then sent to the hospital for treatment, where she succumbed to her injuries and expired at 11 O'clock on the same night. The intimation of her death was given to the police by the hospital authorities. Merg intimation was then recorded and merg inquest was made. The dead body of deceased Shradha Koshti was sent for post-mortem examination. Blood stained and plain earth were seized from the spot. During investigation, appellant was arrested and the knife used in the commission of offence was seized at his instance and a blood stained shirt was also seized from him. After due investigation, appellant was prosecuted under Section 302 of IPC and was put to trial.

4. Appellant abjured the guilt and pleaded innocence and false implication.

5. The learned Sessions Judge, after trial and appreciation of the evidence adduced in the case, found the appellant guilty for committing murder of Shradha Koshti and convicted him under Section 302 of IPC and sentenced as aforesaid. Hence, this appeal.

6. Appeal has been preferred mainly on the ground that the Trial Court has erroneously convicted the appellant under Section 302 of IPC, though no offence was proved against him.

7. Arguments of both the sides were heard. Record of the Lower Court perused.

8. It was no longer disputed that deceased Shradha Koshti met a homicidal death. It is also evident from the testimony of Dr. M.C. Jain (P.W. 12), who conducted the autopsy on the dead body of Shradha Koshti, that following injuries were found on her person:

(1) Incised wound 1' x 1/2' in size cavity deep on the back left side scapular region near midline at the level 6th/7th vertebrae, obliquely present.

(2) Incised wound on left side of back about 1' x 1/2' cavity deep obliquely present from above downward at the level of 7th/8th ribs.

On cut section, there was subcutaneous haemorrhage underneath the injuries.

On internal post-mortem examination of dead body of the deceased, left thoracic cavity was found full of blood and there was an incised wound 1/2' x 1/8' on postero lateral aspect of lower lobe and the lungs had collapsed.

9. According to Dr. M.C. Jain, the injuries found on the body of the deceased were ante-mortem in nature and cause of her death was severe shock due to excessive internal haemorrhage due to injury in the lungs. The post-mortem report given and signed by Dr. M.C. Jain (Exh. P-12) is also placed on record.

10. In view of the aforesaid medical evidence, which virtually remained unchallenged, it is upheld that the death of Shradha Koshti was homicidal in nature.

11. The next question to be considered is whether appellant intentionally caused the homicidal death of Shradha Koshti ?

12. The conviction of the appellant is founded mainly on the evidence of Munnibai (P.W. 5), Shobharam (P.W. 7) and Dharmendra (P.W. 11) coupled with other corroborative evidence. Learned Counsel for the appellant submitted that the Trial Court gravely erred in placing implicit reliance on the inconsistent testimony of the interested and chance witnesses and erroneously convicted the appellant.

13. We have carefully examined the evidence on record. P.W. 5 Munnibai is the main eye witness, before whom the incident had occurred. P.W. 5 Munnibai categorically deposed in her evidence that deceased Shradha Koshti was her niece and at about 6 O'clock in the evening, she had come to her house and was sitting in the frontal 'kotha' of her house with her back towards the door and she was talking to her. According to Munnibai (P.W. 5), the doors of her house were open and the appellant came inside her house and gave two knife blows on the back of the deceased saying that he would kill her. When Munnibai (P.W. 5)shouted, Ramdayal and Gomti Bai, immediately came there. Meanwhile, the

appellant fled away. Ramdayal and Gomtibai, the sister-in-law of the deceased, took her with them in injured state. P.W. 5 Munnibai also deposed that Shradha Koshti expired in the hospital in the night at 11 O'clock.

14. P.W. 5 Munnibai was much cross-examined but nothing could be elicited in her cross-examination so as to discredit her version. There are no reasons to disbelieve her statement that deceased Shradha Koshti had come to her house and the incident occurred in her presence and appellant had given two knife blows on her back. She also asserted in her cross-examination that she had seen the appellant with a knife in his hand and he had caused injuries to the deceased on her back by knife. The evidence of P.W. 5 Munnibai is found to be clear, cogent and trustworthy and does not create any doubt as to the incident narrated by her. P.W. 5 Munnibai had no animus against the appellant or any reason or motive to falsely implicate him.

15. P.W. 7 Shobharam and P.W. 11 Dharmendra have also deposed that when they were passing through the house of Munnibai at about 6 O'clock in the evening, they heard shrieks from her house and then they witnessed that appellant Ramesh had stabbed the deceased. They also tried to apprehend him but he escaped. Learned Counsel for the appellant submitted that it was not possible for these two witnesses to have witnessed the incident from the road and the evidence of such chance witnesses is not reliable. However, the presence of these two witnesses at the time of occurrence is also reflected in the FIR (Exh. P-13), which was lodged by the deceased herself and recorded by Sub-Inspector Junas Bara (P.W. 13) on the same day at about 6.15 P.M. Even if it is accepted for arguments' sake that it was not possible for P.W. 7 Shobharam and P.W. 11 Dharmendra to have witnessed the appellant stabbing the deceased from the road side, yet there are no reasons to disbelieve their statement that they had seen him running with knife from the house of Munnibai, where the incident had occurred. More so, there is clear cogent and positive evidence of P.W. 5 Munnibai that she had witnessed the appellant stabbing the deceased with knife on her back resulting into her death same day.

16. Besides FIR (Exh. P-13) was also lodged by the deceased, which would be treated as her dying declaration, after her death. FIR (Exh. P-13) is duly proved to have been lodged by the deceased by the evidence of Sub-Inspector Junas Bara (P.W. 13), who testified that the FIR (Exh. P-13) was written as narrated by the deceased, which also bore her signature. It is also evident from the testimony of P.W. 8 Ramdayal, father of the deceased and Shantibai (P.W. 6), aunt of the deceased that just after the incident, deceased was taken to Police Station, Motinagar, where deceased had lodged the report. It is also borne out from the FIR (Exh. P-13) that appellant had stabbed the deceased and gave her two knife blows on her back.

17. There is also evidence of oral dying declaration made by the deceased, as revealed from the evidence of Shantibai (P.W. 6) Ramdayal (P.W. 8) and Gomtibai (P.W. 10) that just after the incident, deceased had informed them that appellant had stabbed her with knife. There is nothing on record to suggest that deceased was not able or fit to speak or lodge the FIR after the incident.

18. Learned Counsel for the appellant submitted that it had come in the prosecution evidence as well as in the evidence of defence witness Raghuvir (D.W. 1) that there were certain other person known as Ramesh Koshti in the locality; therefore, it could not be said that the FIR or the so called oral dying declarations made by the deceased actually referred to the appellant. But, needless to repeat that besides the aforesaid report and oral dying declaration, there is positive evidence of P.W. 5 Munnibai that she had seen the appellant stabbing the deceased and the other two witnesses Shobharam (P.W. 7) and Dharmendra (P.W. 11) had also seen the appellant running from the house of Munnibai with a knife at the time of occurrence. Therefore, there remains no doubt as to the identity of the appellant, particularly in view of the evidence of the main eye witness Munnibai (P.W. 5).

19. The plea of alibi, as suggested by D.W. 2 Delan Singh that appellant was at Deori on 28-10-95 is also not reliable in view of the eye witness account given by P.W. 5 Munnibai about the commission of the offence by the appellant. Moreover, D.W. 2 Delan Singh has not been able to depose any other previous date of the

visit of the appellant to his uncle's place at Deori, which shows that D.W. 2 Delan Singh has given a cooked up version to defend the appellant. Moreover, the appellant himself never took any plea of alibi during his examination under Section 313 of IPC. The evidence of D.W. 2 Delan Singh in this behalf, is, therefore, rejected.

20. Thus, in view of the overwhelming prosecution evidence available on record against the appellant, particularly the evidence of the eye-witness P.W. 5 Munnibai, it could not be doubted that the appellant came inside the house of Munnibai and assaulted and stabbed the deceased, who was sitting there, with a knife and thereby caused her consequent death.

21. The evidence of P.W. 5 Munnibai or other relative witnesses could not be rejected merely on the ground, as argued, that they were closely related to the deceased. The Apex Court in the case of Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh reported in 2006 AIR SCW Page 4143, observed that the evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy or credible.

22. Learned Counsel for the appellant also submitted that there was no motive on the part of the appellant to commit the offence. However, it has come in evidence that sometimes prior to the occurrence, appellant had pelted small stones at the deceased, which led to his scolding by the family members of the deceased. Moreover, it is settled law, as reiterated by the Apex Court in the case of Yunus @ Kariya v. State of M.P. reported in : 2003 CriLJ817 , that establishment of motive is not a sine qua non for proving the prosecution case.

23. The learned Counsel for the appellant lastly submitted that appellant had no intention to cause the death of the deceased and his act at the most would be covered under Section 304 Part II of IPC. However, as discussed above, it was well established, particularly from the evidence of P.W. 5 Munnibai that appellant had come inside her house with a knife, where Shradha Koshti was sitting and gave two knife blows on her back. It is also evident from the testimony of Dr. M.C. Jain (P.W. 12) that both the incised wounds found on the back of the deceased

were cavity deep and the second incised wound was parallel to the 7th and 8th rib and there was also an incised wound in the left lobe of the lung of the deceased and her lungs had also collapsed, which indicated that appellant gave two knife blows with such force that the cavity deep wounds were caused and the lungs of the deceased also collapsed. It was thus abundantly clear that the act of the appellant was pre-planned, pre-meditated and well-intended and he gave two knife blows on the body of the deceased with an intention to cause death and thereby intentionally caused her death.

25. In view of the aforesaid discussions, we are of the opinion, that the Trial Court committed no error in finding the appellant guilty under Section 302 of IPC for committing murder of Shradha Koshti. Therefore, the conviction of the appellant recorded by the Trial Court under Section 302 of IPC and life imprisonment awarded to him with a fine of Rs. 1,000/- do not warrant any interference in this appeal.

Appeal being bereft of any merit and substance is hereby dismissed.

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