

Jamna Prasad Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Apr-04-2005

Reported in : 2005(3)MPHT358; 2005(4)MPLJ4

Judge : S.K. Pande, J.

Acts : Indian Penal Code (IPC) - Sections 302 and 304; Code of Criminal Procedure (CrPC) , 1974 - Sections 154(1) and 374(2)

Appeal No. : Criminal Appeal No. 156/1990

Appellant : Jamna Prasad

Respondent : State of M.P.

Advocate for Def. : S. Paliwal, Adv.

Advocate for Pet/Ap. : Ramesh Shrivastava and ;Wakeel Khan, Adv.

Disposition : Appeal allowed

Judgement :

S.K. Pande, J.

1. Sessions Judge, Bhopal in S.T. No. 204/88 recording conviction of appellant under Section 304 Part II, IPC sentenced him to undergo R.I. for a period of five years. Being aggrieved, appellant has preferred this appeal under Section 374(2).

Cr.PC.

2. On 12-2-86 deceased Pratap s/o Khoobchand had been to Police Station, Nishadpura where he orally lodged the report recorded in Rojnamcha (Ex. P/8-C) to the effect that on 11-2-86 while returning from Bhopal he alongwith Ramlal (P.W. 4) alighted from the bus. On way, appellant who is son-in-law of his brother Khushilal (P.W. 1) inflicted injury on his hand by Kharra (a thick wooden stick). Appellant also inflicted injury on his chest by throwing stone. Recording the substance of the report in Rojnamcha (Ex. P/8-C) Pratap s/o Khoobchand was sent to the hospital for medical examination. Examined by Dr. Anoop Dave (P.W. 8), the deceased made complaint of pain on chest and back. Recording report (Ex. P-11) he was referred to the R.S.O. Dr. Hari Singh Chandel (P.W. 10) on examination found swelling, contusion and abrasions respectively on his chest, left side of back and above left wrist. Report (Ex. P-12) was recorded. Pratap s/o Khoobchand left the hospital and is said to have stayed at residence of some of the relative at Village Khejda. Since he died on 17-2-86 merg intimation (Ex. P-10) was recorded. Preparing inquest Panchnama (Ex. P-1), dead body was sent for post-mortem. Dr. Jain Narayan Soni (P.W. 5) performed the post- mortem and recorded the report (Ex. P-5) to the effect that corresponding to the chest injury there was a contusion in spleen and right lung. As a result of injury aforesaid Pratap s/o Khoobchand died. Statement of Ramlal (P.W. 4) was recorded on 19-2-86 wherein the witness had narrated the incident of assault by the appellant. Completing the investigation, appellant was charge sheeted under Section 302, IPC.

Appellant abjured the guilt and contended that Khushilal (P.W. 11), Ramlal (P.W. 4) are real brothers of deceased Pratap s/o Khoobchand. Daughter of Khushilal (P.W. 1) is the wife of appellant. These persons during the subsistence of this marriage, performed another marriage of daughter of Khushilal (P.W. 1) with some another person. Having a grudge, these witnesses have falsely implicated him.

3. P.W. 7 Ram Prakash, Head Constable has stated that on 17-2-86 merg intimation (Ex. P-10) to the effect that Pratap s/o Khoobchand died, was recorded. Admittedly, preparing inquest Panchnama (Ex. P-1), the dead body was sent for

post mortem. P.W. 5 Dr. Jai Narayan performing the post mortem has stated that the deceased had the following ante mortem injuries :--

(i) Bruise-- 8 cm x 2.5 cm. on left side of chest obliquely transverse, underneath sub-cutaneous tissue including intercostal muscles in the 4th, 5th and 6th intercostal space are ecchymosed, 5th and 6th ribs fractured at mid-clavicular line;

(ii) Rail pattern bruise on left upper arm 3.5 x 2.0 cm., transverse, underneath, tissue ecchymosed;

(iii) Spleen -- shows contusion in area of 8 cm. x haemorrhage present rupture of spleen seen inferior surface 2.5 cm x 0.5 cm, irregular. Spleen is enlarged weight 1060 gms.

(iv) Lungs -- Right lung severally adherent to chest wall, left lung contused below the fracture side of ribs, small laceration present;

(v) Abdominal cavity containing haemorrhage fluid about one liter and also clotted blood.

(vi) Liver -- shows contused area 5 x 3 cm, right lobe superior aspect overlying diaphragm also contused cut, surface is pale.

P.W. 5 Jai Narayan has stated that death was caused due to shock and haemorrhage as a result of thoraco abdominal injuries.

4. On the basis of Rojnamcha report (Ex. P/8-C) Pratap s/o Khoobchand was sent to the hospital. He was examined by (P.W. 10) Dr. Hari Singh Chandel. This witness has stated that on 12-2-86 Pratap s/o Khoobchand brought to the hospital, was examined. The following injuries were found :--

(1) Swelling on left side of chest.

(2) Contusion on left side of back

(3) Abrasions of left elbow.

5. The aforesaid injuries described in the report (Ex. P-12) said to have been noticed by (P.W. 10) Dr. Hari Singh Chandel were corresponding to the injuries found at the time of performing post mortem. As against this, there is nothing, as such the Court below rightly held that sustaining external injuries of the description detailed in report (Ex. P-12) deceased Pratap s/o Khoobchand subsequently died as a result of corresponding internal ante mortem injuries described in post mortem report (Ex. P-5). The death of the deceased was homicidal in nature.

P.W. 7 Head Constable, Ramprakash has stated that on 12-2-86 Pratap s/o Khoobchand had been to the Police Station with Khushilal (P.W. 1). As reported substance of the information was recorded by him in the Rojnamcha (Ex. P-8-C)/ This Rojnamcha is the foundation of prosecution case against the appellant. As per this report, on 11-2-86 deceased Pratap alongwith brother Ramlal (P.W. 4) had been to Bhopal. On return they alighted from the bus at about 5 PM. While proceeding ahead to the village appellant who is son-in-law of Khushilal (P.W. 1) inflicted injuries by Kharra on his left hand. The other injury by throwing stone was caused to him on the chest. P.W. 4 Ramlal has stated that both of them alighted from the bus at 4 number dairy. The deceased stopped for a while to ease. Appellant started beating the deceased by Kharra. The deceased since caught the Kharra, the appellant inflicted other injury to him on the chest by a stone. Thereafter the appellant ran away. P.W. 1 Khushilal has stated that the deceased was brought back to the village where he has narrated the incident of sustaining injuries as a result of beating by the appellant.

6. P.W. 1 Khushilal, P.W. 4 Ramlal, real brothers of the deceased have stated that next day the deceased was taken to the Police Station, Nishadpura, wherefrom he was sent to the Hamidiya Hospital. After medical examination the deceased was taken to Village Khejda where he stayed with one of the relative, on 17-2-86 the deceased died.

7. The Court below has read the statement of (P.W. 1) Khushilal and that of Rojnamcha entry (Ex. P/8-C) as a piece of evidence being dying declaration of the deceased. In Ramvati Devi v. State of Bihar, AIR 1983 SC 164, it has been held that there is no requirement of law that dying declaration must necessarily be

made to a Magistrate. What evidentiary value or weight has to be attached to such statement, must necessarily depend on the fact and circumstances of each particular case. In a proper case, it may be permissible to convict a person only on the basis of a dying declaration in the light of the facts and circumstances of the case.

An oral dying declaration to a real brother who happens to be on inimical terms with the appellant must be proved strictly. P.W. 1 Khushilal in cross-examination has stated that his daughter is the wife of appellant. Without seeking a valid divorce, the daughter has been remarried with some other person. P.W. 1 Khushilal did not state in whose presence deceased Pratap narrated the incident to him of the alleged beating by the appellant. P.W. 1 Khushilal did not inform anybody else in the village so as to meet the deceased and ascertain facts relating to the alleged incident wherein the deceased sustained external injuries.

8. Under Section 154(1), Cr.PC every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as may be prescribed. The object of recording the First Information Report is to put into writing the statement of the informant before his memory fails or before he gets time and opportunity to embellish it. The evidentiary value of an FIR will be reduced if it is made after such delay, which is unexplained as would make it likely for the informant to concoct the story and falsely implicate his enemies. Information recorded in the Rojnamcha entry under Section 154(1), Cr.PC would always be on a different footing. Oral information in relation to non-cognizable case substance of which has been recorded by the Head Constable (P.W. 7) Ram Prakash in any case can not be read as a piece of evidence of the description dying declaration. As such the Court below erred in treating part of statement of P.W. 1 Khushilal and the substance of information in the Rojnamcha entry (Ex. P/8-C) as an evidence of the nature dying declaration.

9. P.W. 4 Ramlal has stated that on alighting from the bus the deceased stayed to ease. P.W. 4 Ramlal did not stay and had gone ahead. What this witness has stated that after hearing the noise (Halla) he returned and had seen the appellant escaping. If the statement of (P.W. 4) Ramlal is read with reference to Paras 8, 9 and 10 of the cross-examination it makes it clear that this witness in fact did not witness the incident. P.W. 4 Ramlal has stated that instead of going to the Police Station he had taken the deceased to the village. In the village itself the incident was not reported to any one. This is the most unusual conduct of P.W. 4 Ramlal, the real brother of the deceased. P.W. 1 Khushilal has stated that, to the deceased, there was a visible injury on his chest. The blood was coming from the mouth. In that condition itself (P.W. 1) Khushilal, (P.W. 4) Ramlal did not take him to the Police Station, Nishadpura nor to any hospital. Next day on 12-2-86 at about 12.30 PM he was taken to the Police Station where the gist of narration of incident was recorded in Rojnamcha (Ex. P/8-C).

Presence of (P.W. 4) Ramlal at the time of alleged incident for the first time emerged in the Rojnamcha (Ex. P/8-C). P.W. 1 Khushilal, P.W. 4 Ramlal are real brothers of the deceased. As stated they have remarried the wife of the appellant with some other person without seeking legal divorce. The time taken by these witnesses in taking the deceased to the Police Station is highly suspicious conduct and could be said to have provided an opportunity to embellish and concoct the story to falsely implicate the appellant.

10. P.W. 2 Kamal Singh, P.W. 6 Abdul Rashid also were cited as witnesses of the incident alleged. These witnesses have stated that in their presence injuries to the deceased were not inflicted. These witnesses since did not support the prosecution, have been declared hostile. P.W. 6 Abdul Rashid has stated that a boy was seen running from the site of alleged incident. As such statement of P.W. 4 Ramlal in cross-examination Para 10 is unbelievable that the person inflicted injuries in fact was caught and maltreated by the mob. Had it been so, P.W. 2 Kamal Singh, P.W. 6 Abdul Rashid must have stated that appellant was the person apprehended and subjected to maltreatment by the mob.

11. On facts and in the circumstances, P.W. 4 Ramlal can not be said to be a witness present at the time of alleged incident. It can also be not said that the deceased narrated the incident to the effect that the appellant inflicted injuries to him. On the basis of statement of P.W. 1 Khushilal, P.W. 4 Ramlal conviction of appellant can not sustain.

12. Consequently, the appeal is allowed. Setting aside the conviction-sentence passed by the Court below vide impugned judgment in S.T. No. 204/88, appellant stands acquitted of the charge under Section 304 Part II, IPC.

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