

The State of M.P. Vs. Ramkripal

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Court : Madhya Pradesh

Decided On : Jun-29-2004

Reported in : 2004(3)MPHT443; 2004(3)MPLJ528

Judge : S.P. Khare ; and A.K. Shrivastava, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 161 and 366; [Evidence Act, 1872](#) - Sections 3 and 27

Appeal No. : Criminal Reference No. 1/2004 and Cr.A. No. 484/2004

Appellant : The State of M.P.

Respondent : Ramkripal

Advocate for Def. : Neena Khera, Adv.

Advocate for Pet/Ap. : R.S. Patel, Addl. Adv. General

Judgement :

S.P. Khare, J.

1. This is a reference under Section 366 of the Code of Criminal Procedure, 1973 for confirmation of the sentence of death imposed upon accused Ramkripal for the offence punishable under Section 302, IPC. He has also filed an appeal challenging his conviction and sentence.

2. Deceased Nanhai was sister-in-law (Sarahaj), that is wife of brother of the wife of the accused.
3. The prosecution case is that on 26-5-2003 at about 8 A.M. in Village Bhursi accused Ramkripal beheaded the deceased by attacking on her neck with an axe resulting in her instantaneous death. The report of this incident was lodged by Johan Singh (P.W. 5) who is elder brother of the husband of the deceased at 12.30 P.M. on the same date at Jaisinghnagar Police Station and that is Ex. P-2. In this report the name of Anelabai has been mentioned as eye-witness. Raghavendra Dwivedi (P.W. 12) is the Police Officer who recorded the FIR and proceeded to the place of incident. He prepared the panchnama of the dead body of Nanbai and that is Ex. P-5. The body was sent for post-mortem examination. The autopsy was conducted by Dr. Swamidin Kanwar (P.W. 3) and his report is Ex. P-1. In his opinion the cause of death was severance the head from trunk by a sharp edged weapon. According to the prosecution the incident was witnessed by Ramsahai (P.W. 1) and Charku (P.W. 4) and the blood stained axe was recovered from the possession of the accused as per seizure memo (Ex. P-9) from his house in consequence of the information given by him under Section 27 of the Evidence Act as per memorandum (Ex. P-8) on the date of incident itself.
4. The accused pleaded not guilty.
5. The Trial Court relying upon the evidence of the two witnesses mentioned above coupled with the recovery of axe convicted the accused under Section 302, IPC and sentenced him to death.
6. In the reference and appeal it has been argued on behalf of the accused that the conviction is not well merited. It is pointed out that Anelabai who is named in the FIR as eye-witness has not been examined by the prosecution; Ramsahai (P.W. 1) and Charku (P.W. 4) are not named in the FIR as eye-witnesses; they remained silent for more than one month; their statements under Section 161, Cr.PC were recorded on 28-6-2003 whereas the incident had taken place on 26-5-2003; they are trumped up witnesses; there is no explanation by them for remaining silent for a long time when in the normal course they ought to have spoken immediately after the incident; their evidence is not cogent, convincing and

reliable; the axe was not recovered from the house of the accused and that is the finding of the Trial Court also and therefore, it could not be used as incriminating circumstance. It is demonstrated that the Trial Court has not read the evidence of Lalla Singh (P.W. 7) and Mohan Singh (P.W. 8) who are said to be the attesting witnesses to the memorandum (Ex. P-8) and seizure memo (Ex. P-9) in cross-examination who have deposed that the axe was found in a Khaliyan by Lalla Singh (P.W. 7) and it was produced before the police officer by him. On the other hand the Additional Advocate General has supported the conviction and sentence.

7. It is well settled that in a reference under Section 366, Cr.PC the High Court has to examine the whole case itself. The reason behind this special treatment of a reference for confirmation of death sentence is that a sentence of death being the highest penalty, when such sentence is involved, the High Court must deal the matter carefully and examine all material circumstances before upholding the conviction and confirming the sentence of death. All arguments urged by the appellant and all material infirmities pressed before the High Court on his behalf must be scrupulously examined and considered before a final decision is reached. There has to be independent appraisal of the evidence. (*Masalti v. State of U.P.*, AIR 1965 SC 202 and *Balakram v. State of U.P.*, AIR 1974 SC 2165).

8. It is no longer in dispute that the deceased met a homicidal end and that is amply borne out from the evidence of the doctor and the post-mortem report mentioned above. The only question which has been debated is whether the accused is the author of this crime. The evidence on record is to be analyzed with that end in view. Ramsahai (P.W. 1) has deposed that he was going towards his village in the morning and he saw accused Ramkripal causing injuries to the deceased with an axe. He says in the examination-in-chief itself that he did not disclose this incident to anyone at the time when he saw it. He should have shouted or called other persons. That should have been his natural impulse if he had been an eye-witness. In cross-examination he says that he had seen the incident from a distance of 150 to 200 feet. He did not go to Village Kotwar to tell him about this incident and he was the person who has witnessed it. He says that he revealed this incident to Sunder Singh Sarpanch after two days. In cross-examination he has stated that he did not see the weapon with which the assault

was made whereas in examination-in-chief he has said twice that the axe was used. The testimony of this witness does not inspire confidence. As already stated the witness should have raised an alarm if he had seen the commission of the crime attracting other persons to the place of incident who would have corroborated his evidence, he should have gone to the Village Kotwar or Sarpanch on the date of incident itself and he should have proceeded to the police station to lodge the FIR. But he did not behave in that manner. Therefore, it is very hard to believe that he was really an eye-witness when his statement under Section 161, Cr.PC has been recorded after more than a month. There is no explanation for his unholy silence when speech at that moment was his duty. Recently it has been held in *Kantilal v. State of Gujrat*, AIR 2003 SC 684, that in the absence of 'some logical or acceptable explanation' for the delay in examining the witness under Section 161, Cr.PC his evidence is rendered unbelievable.

9. The testimony of Charku (P.W. 4) suffers from the same infirmities. He is also not named in the FIR. He woke up after more than a month to claim that he is an eye-witness. His statement under Section 161, Cr.PC has also been recorded on 28-6-2003 when the incident had taken place on 26-5-2003. He kept silent for such a long time. He has also not given any explanation why did he not come forward earlier to claim that he is an ocular witness. He has deposed that he was going towards his house and he saw accused Ramkripal chasing Nanbai and causing injuries to her with an axe. In cross-examination he says that he is resident of Village Amjhor and not that of Village Bhursi where the incident took place. These villages are at a distance of 10 to 12 kilometres. He says that he was going alone. He does not state that Ramsahai (P.W. 1) was seen on the spot. He admits that there are many houses near the place of incident but he did not raise any alarm nor called any person to tell about the incident. He did not go to the police station and kept his lips tight for one and a half month. The conduct of this type of witness is such which robs the value of his testimony and it is difficult to attach credence to it.

10. Sunderlal Gond (P. W. 2) has deposed that on learning about the incident he went to the spot and he met Ramsahai (P.W. 1) and Charku (P. W. 4). He was told about the incident by Charku (P.W. 4) who disclosed that he was going with

Ramsahai (P.W. 1) and then he saw the accused attacking the deceased with an axe. In cross-examination he has stated that the police had reached the place of incident. It is apparent that Ramsahai (P.W. 1) and Charku (P.W. 4) knew about the arrival of the police in the village but they did not approach the police and make a statement that they were eyewitnesses. They emerged after more than a month to make their statements. The probative value of the evidence of such witnesses is extremely weak.

11. Johan Singh (P.W. 5) is elder brother of the husband of the deceased. He claims for the first time in the Court in his deposition that he was also an eye-witness. He lodged the FIR (Ex. P-2) on the date of incident but in that report he did not say that he is an eye-witness. On the contrary he has stated that he was informed about the incident by Joga and when he reached the spot he found the deceased lying dead. He has also slated in the FIR that he was told by Anelabai that she is an eye-witness. As already stated Anelabai has not been cited as a prosecution witness. She has not been examined. In the statement under Section 161, Cr.PC (Ex. D-1) also Johan Singh (P.W. 5) did not claim to be an eye-witness. Therefore, his evidence in the Court that he was an eye-witness and he saw the accused causing fatal injury to the deceased can not be relied upon.

12. Dadda (P.W. 6) was cited to prove that the accused had made an extra-judicial confession before him but this witness has not supported the prosecution case and he has been declared hostile. Oli (P.W. 9) is daughter of the accused. She was cited as an eye-witness. She has also not supported the prosecution case and she has been declared hostile.

13. Raghavendra Dwivedi (P.W. 12) is the Investigating Officer. He has deposed that on the date of incident he interrogated accused Ramkripal who disclosed to him that he has kept an axe inside his house in a corner and he, would produce the same. His statement is Ex. P-8. He has further stated that the accused took him to his house and produced the axe which was seized by him as per seizure memo (Ex. P-9). Lalla Singh (P.W. 7) and Mohan Singh (P.W. 8) are the witnesses to Ex. P-8 and Ex. P- 9. Lalla Singh (P.W. 7) has deposed in Para 3 that the police had seized an axe from Khalihan on the information given by the accused that he

has kept it there. Thus, he contradicts the testimony of the Investigating Officer to the effect that the axe was seized from the house of the accused at his instance. In cross-examination this witness further states that the accused did not tell anything about the axe. According to this witness he himself found the axe in the Khalihan and produced it before the police officer and at that time the accused was not there. Same is the evidence of Mohan Singh (P.W. 8) who has been declared hostile. The Trial Court has also found the evidence regarding the recovery of axe discrepant and unsatisfactory in Para 18 of the impugned judgment and therefore, the recovery of the axe could not be treated as circumstantial incriminatory material.

14. In view of the foregoing discussion there is no satisfactory and legal evidence to hold that the charge has been brought home to the accused. It is well settled that in a criminal trial however intriguing may be the facts and circumstances of the case, the charge against the accused must be proved beyond reasonable doubt and the requirement of proof can not lie in the realm of surmises and conjectures when offence alleged is murder, which visits the perpetrator of the crime with minimum sentence of imprisonment for life Court would be justified in demanding full satisfaction before lethality of Section 302, IPC can be used against anyone. (Jagga Singh v. State of Punjab, AIR 1995 SC 135).

15. It has been held time and again 'fouler the crime stricter should be the proof'. In Sarkar's Evidence Act, 15th Edition Volume 1 Page 56, it has been stated-- 'The rules' of evidence can not be departed from because there may be a strong conviction of guilt; for a judge 'can not set himself above the law which he has to administer to make it or mould it to suit the exigencies of a particular occasion (per Jenkins, C.J. in Barindra v. R, 14 CWN 1114). Convictions must be based on sufficient evidence not merely on moral convictions.

16. In the present case the charge under Section 302, IPC has not been proved against accused Ramkripal. Therefore, the reference for confirmation of death sentence is rejected and the appeal of the accused is allowed. His conviction and sentence are set aside and he is acquitted of the charge under Section 302, IPC.

