

Peerusingh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-10-1986

Reported in : 1987CriLJ1781

Judge : G.G. Sohani and; B.B.L. Shrivastava, JJ.

Appellant : Peerusingh

Respondent : State of M.P.

Judgement :

G.G. Sohani, J.

1. This appeal is directed against the judgment dt. 21-5-1982 passed by the learned Sessions Judge, Shajapur, in Sessions Trial No. 129 of 1981, 'The appellant' has been convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life.

2. Briefly, the prosecution case was that on 20th Aug. 1981, at about 10 A.M., the appellant assaulted Poorsingh with a stick and an axe. PW-2 Dulesingh, the Chowkidar of the village, lodged the first information report Ex.P-2 on the same day at 12-15 P.M. at Police Station Sadalpur situated at a distance of two kilometres from the scene of occurrence. In that report, the name of the accused was mentioned as the assailant. Poorsingh was taken to the hospital at Susner, where he was examined by PW-9 Dr. Deepak Kumar Bhatnagar. As the condition

of Poorsingh was quite critical, his dying declaration Ex,P-6A was recorded at 1-30 P.M. by P.W. 10 Ramdas Gupta, the Naib Tehsildar of Susner in the presence of PW-9 Dr. Deepak Kumar Bhatnagar. In that dying declaration, Poorsingh disclosed that on the date of the incident, when he was chopping wood with an axe, the accused armed with a stick assaulted him and that when he fell down, his axe was-picked up by the accused and the accused then assaulted Poorsingh with that axe. Poorsingh was then taken to the Civil Hospital at Ujjain for further treatment, but on the next day, he succumbed to the injuries caused to him. After investigation, the accused was arrested and put up for trial. He denied commission of any offence. The learned trial Judge, after appreciating the evidence on record, found that the accused was guilty of the offence charged with. The accused was accordingly convicted and sentenced as aforesaid. Aggrieved by his conviction, the accused has preferred this appeal.

3. The fact that Poorsingh met a homicidal death has been established by the prosecution beyond reasonable doubt. PW-1 Dr. Vijay Pendharkar, who conducted the autopsy, found the following injuries on the body of Poorsingh :

(1) Contusion 23 cm X 16 cm X Red on the posterior, lateral and anterior surface of right arm extending to shoulder. Right arm deformed. Abnormal movements present. Grepitus present. On further exploration, right humerus found fractured into two pieces 5 cm below the neck of humerus. Ante mortem.

(2) Contusion 18 cm X 6 cm X Red on the anterior surface of chest across the midline at the level of 2nd to 4th costal cartilage. 2nd to 5th rib fractured on right side, 5 cm away from the mid line. Ante mortem.

(3) Incised wound 3 cm X 1.5 cm X 0.5 cm on the anterior surface of middle 1/3 of right leg. swelling present in the surrounding area of 5 cm X 5 cm. Blood clot present. Ante mortem.

(4) Stitched wound 11 cm long X full thickness of abdomen wall, transversely placed on the right lumber region (Ant.) of the abdomen 3 cms above the Ant. superior iliac spine. Ante mortem.

(5) Incised wounds 3 cm X 1 cm and 2 cm X 1 cm elliptical in shape 3 cm apart horizontally placed on the right lumbar region (Post.) 8 cms above the iliac crest. The medial one lying 6 cms away from the midline, wounds reaching up to abdominal cavity, direction-from below upwards and medially to lower surface of liver. Ante mortem.

(6) Contusion 10 cm X 4 cm X Red oblique in direction on the Ant. Abdominal wall in I left lumbar region, medial and pointing upwards. Ante mortem.

PW-1 Dr. Vijay Pendharkar further deposed that the injuries found on the body of the deceased were sufficient in the ordinary course of nature to cause death. In view of this evidence, the learned Counsel for the appellant did not rightly assail the finding of the trial Court that Poorsingh met a homicidal death.

4. It was, however, seriously contended by Shri Jaisingh, the learned Counsel for the appellant, that the prosecution had failed to establish that the accused was the assailant. Now, the prosecution case against the accused rests mainly on the dying declaration recorded by PW-10 Ramdas Gupta, Naib Tehsildar in the presence of PW-9 Dr. Deepak Kumar Bhatnagar. On the question as to whether conviction can be based on a dying declaration, we may usefully refer to the following observations of the Supreme Court in *Kusa v. State of Orissa* : 1980 CriLJ408 :

It is thus manifest that a person on the verge of death is most unlikely to make an untrue statement unless prompted or tutored by his friends or relatives. In fact the shadow of immediate death is the best guarantee of the truth of the statement made by a dying person regarding the causes or circumstances leading to his death, which are absolutely fresh in his mind and is untainted or discoloured by any other consideration except speaking the truth. It is for these reasons that the statute (The Evidence Act) attaches a special sanctity to a dying declaration. Thus, if the statement of a dying person passes the test of careful scrutiny applied by the Courts, it becomes a most reliable piece of evidence, which does not require any corroboration. Suffice it to say that it is now well established by a long course of decisions of this Court that although a dying declaration should be carefully scrutinised but if after perusal of the same, the Court is satisfied that the dying

declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and consistent, there is no legal impediment in founding the conviction on such a dying declaration even if there is no corroboration.

It is, therefore, necessary to scrutinize the dying declaration carefully in the light of the aforesaid observations.

5. Soon after the incident, PW-4 Devisingh arrived at the scene of occurrence. He deposed that he administered first aid to the injured and asked him as to who was the assailant. He further deposed that Poorsingh disclosed that he was assaulted by the accused. His testimony is corroborated by PW-5 Balusingh and PW-7 Nathu, the other villagers who had arrived at the scene of occurrence. The learned Counsel for the appellant was unable to point out any reason for disbelieving the testimony of these witnesses. Poorsingh was then taken to the hospital, where his dying declaration Ex.P.-6A was immediately recorded by PW-10 Ramdas Gupta, the Naib Tehsildar. He deposed that the injured was in a position to understand the questions put to him and that that fact was certified by PW-9 Dr. Deepak Kumar Bhatnagar, who was present at that time. There is nothing on record to suggest that the dying declaration was concocted or was made as a result of tutoring by some person. It is corroborated by the medical evidence on record is coherent and consistent. Having gone through the evidence in this behalf, we are satisfied that the dying declaration was true and the trial Court was justified in relying upon the dying declaration for holding that the accused was the assailant.

6. It was then contended by the learned Counsel for the appellant that the accused was insane and was, therefore, entitled to the benefit of the provisions of Section 84,1.P.C. Now it is well settled, as observed by the Supreme Court in *Amrit Bhushan Gupta v. Union of India* : 1977 CriLJ376 , the insanity to be recognised as an exception to criminal liability, must be such as to disable the accused from knowing the character of the act he was committing. The learned Counsel for the appellant relied upon the decision of this Court in *Rambharose v. State of M.P.*, 1974 Jab LJ 348. But that decision is distinguishable on facts. In that case, the Court came to the conclusion that the assailant was under a delusion that he was possessed of supernatural powers and that the deceased would come to life after

three days. In that case, the Court found that because of the disordered condition of mind, the accused was incapable of knowing that his act was either morally wrong or contrary to law. In the instant case, the only evidence on record is that some time prior to the incident and thereafter, the accused was treated in a mental hospital, as deposed to by D.W. 1 Dr. Ghodapkar. According to D.W. 1 Dr. Ghodapkar, the accused was not capable of knowing the nature of his act during the periods from 18-11-80 to 28-11-80 and from 23-6-81 to 27-6-81. There is, however, nothing on record to indicate that at the time when the accused committed the offence i.e. on 20-8-81, he did not know the nature of the act or that he was incapable of knowing that his act was either morally wrong or contrary to law. P.W. 6 Bhagwansingh, father of the accused, deposed that soon after the incident, when he questioned the accused as to whether he had assaulted Poorsingh, the accused initially kept quiet and then merely laughed. This conduct on the part of the accused does not indicate that the accused was unaware of the nature of the act he had committed. As disclosed in the dying declaration, the accused first assaulted the deceased with a stick and when the deceased fell down, the accused picked up the axe of the deceased and then assaulted him with that axe. The learned Counsel for the appellant contended that the prosecution had failed to prove any motive of the crime. It was also contended that the conduct of the accused in not absconding after the incident also indicated that he was unaware of the nature of the act. The contention cannot be upheld. Merely because the accused did not choose to abscond after the incident or merely because the prosecution was unable to prove motive of the accused in committing the crime, it could not be held that the accused was unaware of the nature of the act or was incapable of knowing that his act was either wrong/pr contrary to law. The trial Court, in our opinion, was justified in holding that the benefit of the provisions of Section 84, I.P.C. was not available to the accused. We, therefore, see no reason to interfere with the conviction of the appellant under Section 302, I.P.C.

7. The appeal, therefore, fails and is accordingly dismissed. The accused is on bail. He shall now surrender to his bail-bonds to serve out the sentence awarded to him.

