

Ramswaroop Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jul-15-1994

Reported in : 1995CriLJ1707

Judge : P.N.S. Chouhan and ;D.K. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 52 of 1988

Appellant : Ramswaroop

Respondent : State of Madhya Pradesh

Advocate for Def. : Dilip Naik, Dy. Adv. General

Advocate for Pet/Ap. : Rajendra Singh, Adv.

Disposition : Appeal dismissed

Judgement :

P.N.S. Chouhan, J.

1. Appellant Ramswaroop challenges his conviction Under Section 302, IPC and sentence of imprisonment for life awarded by Additional Sessions Judge, Panna, vide judgment, dated 12-1-1988, in S.T. No. 52/86.

2. On 8-9-1986, an incident took place in the field known 'Rariya' belonging to Gambheer Singh (P.W. 1) within the jurisdiction of Gunaur Police Station, District Panna, in which the gun in the hands of the appellant was fired and deceased Chhuteraja was hit in the neck as a result of which he died, is not in dispute. It is also not disputed that the relations of the deceased and Gambheer Singh were inimical with the appellant as Gambheer Singh and deceased had actively supported Ayodhya Prasad in the election who defeated his rival the appellant. A few days prior to the incident, there was a quarrel between the deceased and Hari Bai who is related as SAMDHAN with the appellant.

3. The prosecution case is that after the quarrel between the deceased and Hari Bai a Panchayat was convened in the village and controversy was amicably settled. On 8-9-1986, at about 16.30 hours, Gambheer Singh, his younger brother Chhuteraja the deceased, Nanhoo Raja, Bhola and Saukhi were ploughing 'Rariya' field. In the nearby field belonging to Sironj, Hakkiyan (PW 3) was grazing bullocks. Kallu (PW 2) was cutting JARVA close by. The appellant came with his 12 bore double barrel gun along with Hari Bai from the side of the village. They stood in the embankment of 'Rariya' field. The appellant called Gambheer Singh. When Gambheer Singh came to the appellant, the latter told him that he was going to leave the village for good. At this time, deceased Chhuteraja and Nanhoo Raja and had also come at the spot. Gambheer Singh tried to pacify the appellant saying that he should not think of leaving the village as quarrels do take place frequently and that was not a reason for one to leave the village. At that time, Hari Bai exhorted the appellant to shoot the Thakuran (Thakurs) and the appellant raised his gun and fired at Chhuteraja. He was hit at the neck region as a result of which he fell down. When Gambheer Singh expressed his shock over what had happened, the appellant tried to aim his gun towards him. Gambheer Singh, however, caught hold of the barrel of the gun. He was helped by Nanhoo Raja. The appellant on being relieved of the gun ran away towards Tikariya whereas Hari Bai fled towards Hinauta. Out of those who had come there, viz., Bhola, Saukhi, Kallu and Hakkiyan, the last two were examined as prosecution witnesses. Chhuteraja was found dead by them. Gambheer Singh then went to the police station at a distance of 12.00 kms. along with his elder brother Arjun Singh and lodged the first information report (Ex.P-1) at 20.30 hours the same day. Crime was registered.

The Investigating Officer reached on the spot, held inquest and sent the dead body for post-mortem examination. Dr. M.L. Kasera (PW 4) held autopsy and vide report Ex.P. 7 found:

'An oval shaped lacerated penetrating wound on left side neck 1' below the mendisla. Dimension of the wound- length 2'- vreadth 1,1/4 and depth 3'/2.' Margin of the wound an inverted and ecchymozed the surrounding skin and soft tissues are blackened The direction of the wound is oblique traversing medically down wards and posteriorly ended at cervical vertical column.'

It was a gun shot wound in which seven pellets were found embedded 4th, 5th and 6th vertebra were fractured. These bones were fractured in many pieces. Trachea was excessively damaged. Chhutte Raja, as per doctor's opinion, had died of excessive haemorrhage resulting from the said injury causing shock and syncope. In the course of investigation, appellant's 12 bore gun, a belt containing live cartridges, cloth bag a pair of slipper and a pair of Pajama were seized from the scene of the occurrence. The gun so seized was sent for expert examination and was found to be in order with trace of recent discharge in one of the barrels. Chhutte Raja's death having been caused by this gun shot not being disputed, the Ballistic Expert's Report does not appear to be of any great importance. Ex.P-6 is the map of spot prepared by Investigating Officer, Shri B.M. Swami (PW-7). Another sketch map of the spot Ex.P-6 was prepared by Lallu Prasad Patwari (PW-9).

4. The defence is that after the quarrel between deceased Chhutte Raja and Hari Bai, the latter had gone to the Police Station to make a report but was dissuaded from doing so. She had pledged her silver ornaments with a goldsmith, named, Jhalla, in this connection. On the date of incident, the appellant had gone to Gunaur to redeem the said ornaments. He had his licensed 12 bore double barrel gun with him. From Gunaur he returned by bus upto Hinauti and therefrom he was going to his village Khalpura on foot. After crossing the Nala he was called by Gambhir Singh. The appellant went to him and was then surrounded by Gambhir Singh, Chhutte Raja, Nanhoo Raja, Saukhi and Bhola all of whom were armed with lathis. On being questioned by Gambhir Singh the appellant told that he had

gone to Gunaur where he had some work with Jhalla Sunar. On this Gambhir Singh said that he had gone there to initiate a case relating to the quarrel with Hari Bai. Thereupon, the deceased said the appellant should be caught hold of and taken to the field to be thrashed. Chhutte Raja and Nanhoo Raja caught the appellant and Gambhir Singh kicked him from behind. He was thus dragged to the 'Rariya' field. While he was being so dragged his cloth-bag which he was carrying as he had gone to bring back Haribai's pledged ornaments, slippers and belt of cartridges fell down in the field. Gambhir Singh, Nanhoo Raja and Chhutte Raja grappled with the appellant while two of their associates were standing with lathis in their hands. Gambhir Singh and his companions tried to snatch the gun from the hands of the appellant who was trying to resist in course whereof it got discharged accidentally and then fell down from appellant's grip. Somehow, the appellant got released and ran for his life. He was chased by Gambhir Singh and Nanhoo Singh. After covering a distance of 150 yards the appellant found that his Pajamas obstructed his pace. He, therefore, took off and dropped the Pajamas there and kept running. On reaching Gunaur Police Station he narrated the incident to the 'Daroga' who told him that the report will be taken down next day. The appellant then proceeded to Panna but the Superintendent of Police was not there. The appellant, therefore, spent his night in front of the office of the Superintendent of Police where the 'Daroga' came and took him saying that his report was to be taken down.

5. Appellant's learned counsel argued that the sketch map of the spot (Ex. P-5) proved by Shri B. M Swami (P. W.7) shows that the pair of Chappals belonging to the appellant were found lying at a distance of 12 yards, at point No. 6 towards southwest of the scene of the incident. Very close to point No. 6 is point No. 9 where the belt of cartridges belonging to the appellant was found lying but appellant's pair of Pajama were found lying at point No. 8 towards north of the scene of occurrence on the bank of Nala. Since the evidence is that the appellant ran towards north after the gun fire, all the belongings of the appellant would have been found lying in one direction from the scene of occurrence. The fact that some of the articles were found lying south-west of the place of occurrence fully supports the defence version that the appellant while returning from Ganaur was caught hold of by Gambhir Singh and his associates and was dragged in the Ruriya field

where during the course of the scuffle for appellant's gun an accidental fire claimed the life of the deceased. This story is further corroborated by the fact that after the accidental fire the appellant ran for his life and since it had rained that day and the field through which he was passing was muddy he found it difficult to run efficiently and, therefore, had to discard his obstructing pair of Pajama which were found towards the north of the scene of occurrence the direction towards which the appellant had run. Had the defence story not been true there was hardly any reason for the appellant to have discarded his pair of Pajama at that point unmindful of the fact that he was thus rendered seminaked. The argument proceeds that this conclusion is further fortified by the testimony of defence-witness, Pannalal (D. W.

1) who claimed that he travelled in the bus along with the appellant from Gunaur up to a point ten kilometres from Hinoti where both of them got down from the bus and the appellant went towards his village Khalpura and this witness proceeded towards Hinoti. This witness is also clear that on that day the appellant was carrying his gun and a cloth-bag besides the belt containing live cartridges. As per this witness he was informed by Narayandas of village Hinoti that a quarrel had taken place between the appellant and Chhutte Raja at Khalpura and Chhutte Raja had died. The emphasis is that the learned trial Judge could not assign any convincing reason to discard the, testimony of this independent defence witness. The learned counsel further contends that considering the impact of the fact of pair of chappals and Jhola being found towards southwest of the place of incident, Gambhir Singh a signatory of sketch map Ex. P6 during cross-examination denied the correctness of the map and asserted that the pair of chappals and Jhola were found lying towards north of Rariya field where the incident took place (Para 11). This witness has admitted the fact that on the pertinent day there was mud in the field (Para

13) due to rains. Had the prosecution case been true when the appellant is said to have called Gambhir Singh there was no reason for the later to have unyoked his plough before coming to hear the appellant. Gambhir Singh in first information report has stated in portion marked 'B' that he came to the appellant after unyoking his plough which he denied during cross-examination, in para 17 of his statement.

Kaloo (P. W.

2) has stated in para 15 of his statement that he had seen the appellant discarding his pair of chappals, Jhola, the belt containing cartridges and Pajama while running after the incident but the circumstances belie him as all these articles were not found lying towards north of the scene of occurrence. This witness denied seizures of the aforesaid pair of chappals, Jhola and belt containing live cartridges from the embankment of Sarina field which is at South-west from the scene of occurrence. For in the reasons aforesaid Hakkiyan alias Johariya (P. W.

3) has also denied portion marked 'A' of his case-diary statement (Ex. D.

2) where in he had stated that Chhutte Raja and Nannhoo Singh went towards the appellant after unyoking their ploughs. Dharampal (P. W.

6) though admitted the seizure of articles from Sarina field, has asserted that the said field is not in south-west of the scene of occurrence but towards north-west. This witness too is signatory of Ex. P.

6. Ex. P. 6 was prepared by I. O., G. M. Swami (P. W.

7) on information given by Gambhir Singh. Lastly it was argued that since all the eyewitnesses have consistently deposed that the acquitted accused Heerabai had come along with the appellant on the scene of occurrence and the appellant has fired the gun on the exhortation of this lady, therefore, in view of acquittal of Heerabai the said evidence could not have been accepted to convict the present appellant.

6. The best and dependable touchstone for rendering decision in criminal trial was, is and will remain broad human probabilities emerging from a particular case. It is on this touchstone that the evidence is to be tested. True it is that the defence is not obliged to prove its case beyond reasonable doubt as the prosecution is and accused may claim on acquittal on the basis of having presented a plausible case before the Court but the case of the defence must be found to be reasonably probable on the same touchstone which is used to assess the merit of prosecution evidence, i.e. broad human probabilities. It may be recalled that all the prosecution

witnesses have stated that when the appellant came on the embankment of Rariya field he called Gambhir Singh and when Gambhir Singh went towards him and the two were talking to each other the deceased Nanohoo Raja also left ploughing the field and went towards him. It is this point of time when the appellant is said to have fired the gun which hit the neck of the deceased. The nature of injury caused to the deceased and its direction are as important a circumstance in the case as any other, like seizure of appellant's pair of chhappals, cloth bag and belt containing live cartridges from the spot shown in Ex. P. 6. Direction of this injury clearly shows that the victim was standing at a lower level and the appellant was standing at a comparative height. That is why the pellets embarked in the neck region downwards obliquely hitting cervical vertebrae. The defence version that this injury was caused by accidental fire when the deceased and his associates were trying to snatch the gun from the appellant inside the Rariya field renders this sort of injury impossible. This we hold because if three men overpower one person and try to snatch his weapon in a field their relative positions can never be such when accidental fire would cause an injury of this nature. Dr. Madanlal Kasera (P. W. 4) in his cross-examination admitted the possibility of this injury being caused when the victim was standing below whereas the fire was shot from a comparative height. This is exactly the case of the prosecution. Therefore, the defence version; notwithstanding the aforesaid articles having been found towards the south-west of the scene of occurrence; is completely negated considering the relative positions of the victim and the assailant at the time of the incident as described by the appellant in his statement under Section 313, Cr. P. C. Though in the evidence there is no explanation as to why the pair of Chappals were not found towards the Nala where the appellant's trousers were found, yet there may be many reasons for it. For example, we do not know whether anybody was left on the scene of the occurrence after the incident to guard that the articles lying near the dead body were not disturbed. In such circumstances, after the departure of Gambhir Singh from the scene of occurrence the possibility remains that someone disturbed the placement of these articles and, therefore, on this ground alone, the evidence of the eye-witnesses is not liable to be discarded. Since the defence evidence is found to be completely incompatible with the medical evidence, it is not necessary to find reasons to discard the testimony of the solitary defence

witness before upholding the conviction. Then it may be mentioned that the evidence of D. W. 1 Pannalal is not wholly incompatible with the prosecution case as it is probable that the appellant after returning from Gunaur reached his village and then came on the scene of occurrence. It is not obligatory for the prosecution to explain each and every fact that may not fit well with its case (Appabhai v. State of Gujarat, AIR 1988 SC 696 : (1988 Cri LJ 848).

7. We allowed time to appellant's learned counsel to dispel out view on the incompatibility of the defence version and the medical evidence and all that could be said was that the appellant must have been on the embankment of the field and the victim at a lower level inside the field when the gun went off. But this far from being the defence version is the case of the prosecution. As per the defence the appellant was dragged inside the field when the gun went off. Thus, the appellant and the victim were on the same level when the gun went off and in that case, we reiterate, the injury found on the deceased considering the circumstances of the case and the immutable law of motion could never have been caused. When the defence version has been found to be inherently improbable the same will not become reasonable due to some infirmity in the prosecution evidence.

8. We are of considered view that merely because Heerabai has been acquitted, the appellant's conviction based on the same evidence, core whereof is found to be truthful, is not required to be compulsorily set aside.

9. In result, the appeal fails and is hereby dismissed.