

Naresh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : May-09-2002

Reported in : 2002(4)MPHT553; 2002(4)MPLJ241

Judge : Rajeev Gupta and ;S.L. Jain, JJ.

Acts : [Evidence Act, 1872](#) - Sections 3, 25, 27 and 60; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 256/91

Appellant : Naresh

Respondent : State of M.P.

Advocate for Def. : S.K. Rai, Panel Lawyer

Advocate for Pet/Ap. : G.R. Deshmukh, Adv.

Disposition : Appeal dismissed

Judgement :

S.L. Jain, J.

1. This appeal is directed against the judgment and findings recorded by the learned IIInd Additional Sessions Judge, Raisen, in the Sessions Trial No. 66/89 whereby the accused/appellant has been convicted under Section 302 of the

Indian Penal Code and sentenced to undergo imprisonment for life together with fine of Rs. 2,000/-, in default whereof, to undergo R.I. for six months.

2. Succinctly narrated, the prosecution case is that the deceased Rammu aged about 15 years was the brother of complainant Santosh Kumar (P.W. 3) and son of Kriparam (P.W. 5). On the date of incident, the deceased went to his field for grazing the cattle as usual. Rammu used to come back to his home for lunch between 12 to 1 P.M. However, on the date of incident, Rammu did not turn up for taking his lunch upto 3 P.M., making his brother Santosh Kumar become anxious and left for his field to check his whereabouts. Rammu was not found in the field. Therefore, Santosh Kumar went towards Nala in search of his brother. To his horror, he saw accused Naresh stabbing Rammu with a knife in abdomen. When Santosh Kumar raised an alarm accused took to heels. Santosh Kumar found that his brother Rammu was dead. Hearing the cries of Santosh, Hargovind (P.W. 1) reached at the place of occurrence and saw the accused near the place of incident.

3. According to the prosecution version, after committing murder of deceased Rammu, the accused himself went to Police Station, Bareilly and confessed to have committed the murder of Rammu. Report of accused was recorded in Rojnamcha Sanha No. 521, a copy whereof is Ex. P-20-C. Complainant party also left for Police Station, Bareilly to lodge the FIR, but in the way they came across the police party of said police station. Police party reached the house of Santosh Kumar where Dehati Nalishi (Ex. P-2) was recorded on the information received from Santosh Kumar. Dead body of Rammu was seized from the place of occurrence. Inquest Panchnama was prepared. The post mortem examination of the deceased was conducted by Dr. P.D. Gogiya (P.W. 10). Dr. Gogiya found the following injuries on the body of the deceased :--

(1) Swelling about 2' x 1' over the scalp.

(2) Incised wound over the abdomen, 3' x 3' x abdomen deep. Intestine was coming out of the wound.

(3) Incised wound of left side of middle line of abdomen measuring 3' x 3' x abdomen deep. Intestinal loop was also cut.

Dr. Gogiya has opined that the cause of death is shock due to haemorrhage. He has further opined that the duration of death was 20 to 25 hours next before the post mortem examination.

4. During investigation, spot map Ex. P-3 was prepared. One Panchha, one pair of shoes and one stick were seized near the dead body vide Ex. P-4. Blood stained and plain soil was seized from the place of occurrence vide Exs. P-7 and P-8 respectively. Accused was arrested on 12-9-88. One bush-shirt, one pant and one baniyan were seized from the body of the accused. Some blood stains were found on the shirt seized from the accused, memorandum of the statement of accused under Section 27 of the Indian Evidence Act was recorded vide Ex. P-11 and at the instance of the accused one knife was seized.

5. After investigation, a charge-sheet was filed and a charge under Section 302 of the IPC was framed against the accused. The accused abjured guilt and pleaded false implication by the police.

6. The Trial Court, relying predominantly on the evidence of Santosh Kumar recorded the aforesaid conviction and sentence against the accused.

7. Heard Shri G.R. Deshmukh, learned Counsel, appearing for the State. Shri Deshmukh led us through the record and contended that the evidence of Santosh Kumar is unnatural and suspicious and conviction cannot rest on his evidence.

8. On the other hand, the learned Panel Lawyer has supported the judgment of the Trial Court and claimed that the prosecution has proved the guilt of the accused beyond reasonable doubt.

9. Homicidal death of deceased Rammu is proved from the evidence of Dr. P.D. Gogiya (P.W. 10), who found the ante-mortem injuries which have already been described in the earlier part of the judgment. He has clearly opined that the cause of death of deceased Rammu was shock due to haemorrhage. Therefore, the finding of the learned Trial Judge to this effect is affirmed.

10. Now, the question which remains for consideration is : whether it was appellant Naresh who caused the death of deceased Rammu ?

11. Prosecution has relied on three pieces of evidence : (1) the testimony of the self claimed eye-witness Santosh Kumar, (2) recovery of knife at the instance of accused; and (3) the report lodged by the accused at Police Station, Bareilly, recorded at Rojnamcha Sanha No. 521, dated 11-9-88 (Ex. P-20-C).

12. Taking the last piece of evidence first the report Ex. P-20-C cannot be used against the accused. It is nothing but the confessional statement of the accused made to police which is hit by Section 25 of the Evidence Act. This prohibition contained in Section 25 of the Evidence Act should be applied very strictly. The intention of Legislature in enacting Section 25 was to deter the police from extorting confession by rendering such confession inadmissible in proof. Section 25 is intended to hit at an evil to guard against the danger of receiving in evidence testimony from accused person who may stand to suffer pressure from the police personnel. Confession made to a police officer by a person not an accused even if he subsequently becomes an accused is not admissible in evidence. When the FIR given by the accused to the police officer is in the nature of confession and inculcates him, it can not be used against the accused in evidence. In *Agnoo Nagesia v. State* (AIR 1966 SC 119) it has been held that confessional FIR by the accused to the police cannot be used against him in view of Section 25. [See also *Khatri v. State* (AIR 1972 SC 922)]. The first information report which has been written at the instance of a person who is accused of an offence is inadmissible in evidence unless some recovery in pursuance of the statement is made and that part only is admissible in evidence which leads to such recovery (See *Ram Bai v. State*, 1996 Cr.LJ 1512). Therefore, the learned Trial Judge has committed a serious error in relying on Ex. P-20-C to base the conviction of the appellant/accused.

13. Now coming to the second piece of evidence, relied upon by the prosecution, Jagdish Prasad (P. W. 9) has stated that at the instance of accused a knife was seized but there is nothing to establish that it is the same knife which was used in committing murder of Rammu. Thus, this circumstance, in our considered view, is

not of much incriminating value.

14. Now coming to the first piece of evidence Santosh Kumar (P.W. 3) has stated that on the relevant date, his younger brother Rammu in the morning left home for grazing cattle. Usually, he used to return home between 12 to 2 P.M. for lunch, but on the date of incident when Rammu did not come to take his lunch till 3.00 P.M., he went towards his field in search of Rammu. When he reached the place of incident he saw Naresh stabbing the deceased by knife in abdomen. After dealing the knife blow Naresh ran away towards the field. According to the prosecution story, on hearing the shrieks of Santosh Kumar, Hargovind (P.W. 1) reached the place of occurrence and saw the appellant running away. But, Hargovind (P.W. 1) did not support the prosecution case and he was declared hostile.

15. Thus, there remains a sole eye-witness. It is true that even where there is a sole eye-witness of a crime, a conviction may be recorded against the accused concerned; provided the Court regards the same as honest, truthful and wholly reliable. Prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly, where such witness also happens to be closely related to the deceased.

16. Further Santosh Kumar appears to be a chance witness. The testimony of chance witness although not necessarily false but is probably unsafe and if such a person happens to be a relative of victim then he is viewed with suspicion. Such a piece of evidence does require caution and close scrutiny. (See *Gulichand v. State of Rajasthan*, AIR 1974 SC 276 and *Bahal Singh v. State of Haryana*, AIR 1976 SC 2032).

17. The evidence of Santosh Kumar does not appear to be reliable as it is not supported by other eye-witness Hargovind. It also does not find support from the medical evidence. Dr. P.D, Gogiya (P.W. 10) has stated that the deceased died due to haemorrhage. In such cases, instantaneous death does not occur. Dr. Gogiya (P.W. 10) has also admitted that had the deceased received immediate medical attention, he would have survived. He also suggested that the death was not instantaneous. Therefore, the version of Santosh Kumar that deceased was

stabbed in his presence and he died immediately cannot be believed. According to Santosh Kumar (P.W. 3) the death occurred at 3 P.M. on 11-9-88 and post-mortem was conducted on 12-9-88 at 11 A.M. According to Dr. Gogiya, there were maggots on the intestinal loop. It appears highly unlikely that maggots will be formed within only 20 hours of the death. This circumstance, indicates that the death did not occur at 3 P.M. on 11-9-88, as alleged by Santosh Kumar but it occurred much before that. It appears that some unknown person killed Rammu and accused has been implicated by planting Santosh Kumar as an eye witness.

18. Hargovind (P.W. 1) has stated that the dead body of Rammu was discovered at about 10 P.M. in the Nala. Mahesh (P.W. 4) has also stated in his cross-examination that at about 9 P.M. he was informed that son of Kriparam is not traceable. This suggest that till 10.00 P.M. the dead body could not he traced. There are other circumstances as well that throw a shadow of doubt on the prosecution version. Dehati Nalishi (Ex. P-2) was recorded on 12-9-88 at 0030 hours. It means there was as delay of about 9-1/2 hours. No explanation has come forward for this delay. Santosh Kumar could lodge the report only when the Station House Officer of Police Station, Bareli came to his place.

19. There are certain material contradictions and infirmities in the evidence of Santosh Kumar and his father Kriparam (P.W. 5). Kriparam (P.W. 5) has stated that on the relevant date, he went to weekly market of Raisen. When he returned home just before the sunset, Santosh informed him that Rammu was lying near the Nala and he has been killed by Naresh with knife. As against this, Santosh Kumar (P.W. 3) does not say that his father had been to weekly market. On the contrary, Santosh (P.W. 3) has stated that first of all he informed to the members of his family. According to Santosh he reached home within half an hour. Thus, he reached home at about 3.30 P.M. When his father was not at home how he could inform him about the incident.

20. The conduct of Santosh Kumar also appears to be doubtful. According to him, he did not inform the villagers regarding the incident till he reached home. He did not even inform the inmates of the house which came across him while returning from the place of incident.

21. Surprisingly, Santosh Kumar and his father Kriparam allowed the body of their near and dear deceased Rammu lying unattended in the Nala throughout the night.

22. Thus, the evidence of Santosh Kumar suffers from serious infirmity. He is a chance witness as he claimed to have reached at the place of occurrence in the nick of time when the assailant was dealing knife blows on the deceased in the Nala. We, therefore, unhesitantly hold that the evidence of Santosh Kumar is incredible and

23. In the result, the impugned judgment is not sustainable on facts as well as in law. The conviction and sentence recorded by the Trial Court cannot be sustained. Hence, the appeal is allowed and the conviction and sentence of the appellant are set aside and he is acquitted of the charge under Section 302 of the IPC. He be released from the jail forthwith, if not required in any other case.

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