

Ramsingh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-08-2001

Reported in : 2002(1)MPHT33

Judge : Rajeev Gupta and ;U.N. Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B, 302 and 324; Arms Act - Sections 25 and 27

Appeal No. : Criminal Appeal No. 367/89

Appellant : Ramsingh

Respondent : State of Madhya Pradesh

Advocate for Def. : R.A. Robertson, Adv.

Advocate for Pet/Ap. : Neera Khera, Adv.

Disposition : Crl. appeal dismissed

Judgement :

Uma Nath Singh, J.

1. The appellant has preferred the instant criminal appeal against the judgment and findings dated 18-1-1989, passed by the learned Special Judge and First Additional Sessions Judge, Tikamgarh, in Special Session Trial No. 34/84,

whereby the accused has been convicted for offence under Section 302, IPC and sentenced to life imprisonment.

2. Briefly narrated the facts of the case are that on 10-5-84 in the night at about 10.00 p.m., accused Ramsingh went to the house of deceased Heera, and asked for Ghee which being out of stock, was declined. A little thereafter, accused Ramsingh again came to the house of the deceased and took him along on pretext of discussing something, upto the house of Nandu Lohar and shot him in his chest. As a result, Heera collapsed and met instant death. The First Information Report was lodged by Balchandra (P.W. 1) son of the deceased on 11-5-84 at about 5.00 o'clock. The post-mortem of the dead body was conducted on 11-5-84 at 4.15 p.m. by Dr. H.G. Chinchaidkar, Assistant Surgeon (P.W. 5). The accused was arrested on 13-5-84 by Girar police of District Lalitpur in Uttar Pradesh from village Piparia and from his possession one S.B.B.I. gun and ten cartridges were seized. During investigation it was revealed that prior to the incident accused Ramsingh had entered into conspiracy with other accused Mohan Singh, Halke and Hallesingh alias Baldeo Singh for causing death of the deceased. This conspiracy part was over heard by Bhadur Singh (P.W. 10) and Arjun Singh (a former Sarpanch) (P.W. 14). The eye-witnesses of the incident as per prosecution story are Balchandra (P.W. 1), Sukki Singh (P.W. 2), Udal (P.W. 7) and Uday Bhan Singh (P.W. 9). After usual investigation charge-sheet for offence under Sections 302/120B of the IPC and Section 25/27 of the Arms Act against accused appellant Ramsingh and under Section 120B, IPC against other accused Mohan Singh, Halke @ Govind Singh and Hallesingh @ Baldeo Singh was put up before the Trial Court. The accused persons denied the charges and pleaded false implication due to enmity.

3. The Trial Court on appreciation of prosecution evidence on record came to the conclusion that on 10-5-84 in the night Heera was done to death in Village Bhaswari by causing gun shot injury. However, the learned Trial Judge found that conspiracy part of the offence not worth believing as there was enmity between Arjun Singh (P.W. 14) and accused Baldeo Singh on account of election of Village Panchayat. Accordingly, the learned Trial Judge did not find the offence under Section 120B proved against the accused persons. The evidence of eye-witnesses Sukki Singh (P.W. 2) and Udal (P.W. 7) were found unimpeachable as regard

causing gun shot injury to deceased Heera Lodhi by accused Ramsingh. Consequently, the learned Trial Judge found accused Ramsingh guilty of offence under Section 302, IPC and sentenced him to life imprisonment. The charge against the accused under Sections 25/27 of the Arms Act was dropped on account of lack of jurisdiction of the Trial Court as the gun and cartridges in question had been seized in District Lalitpur (U.P.).

4. During the hearing of the appeal, Ms. Neena Khera, learned counsel for the appellant took us through the records of the case and pointed out infirmities in the evidence of eye-witnesses Sukki Singh (P.W. 2), Udal (P.W. 7) and Uday Bhan Singh (P.W. 9) mainly on the ground that Sukki Singh (P.W. 2) has deposed that Balchandra (P.W. 1) is not an eye-witness whereas Udal has admitted existence of village faction. Ms. Neena Khera also submitted that the time of incident being night it was not possible to identify the accused.

5. On the other hand, Shri R.A. Robertson, learned counsel for the State submitted that the Trial Court has not taken into account the statement of Balchandra (P.W. 1), and, therefore the submission of the learned counsel for the appellant that he was not an eye-witness hardly has any significance, It was also argued on behalf of the respondent/State that on account of village faction, the conspiracy part of the case has been disbelieved. In Para 11 of his statement Uday Bhan Singh (P.W. 9) categorically deposed that it was a moonlit night and the light was sufficient enough to identify the accused. The prosecution case is also strengthened by the fact that the FIR contained the names of three eye-witnesses and the eye-witness accounts are corroborated by seizure of weapons. The evidence of doctor proving the nature of injury caused by the firearm lends unequivocal support to the prosecution case.

6. For proper appreciation of rival contentions, it is necessary to scan through the evidence on records. Balchandra (P.W. 1) S/o deceased Heera deposed that accused Ramsingh had come to his father (Heera) for Ghee which was declined as it was out of stock in his house. Thereafter, appellant Ramsingh went away and after a little while, he again came back and while taking Heera along on the pretext of some discussion, for about 25-26 steps from his house he fired a gun shot from

close range hitting in his chest. Balchandra (P.W. 1) rushed to Heera who murmured something and died on the spot itself. This witness lodged the report Ex. P-1 at Police Out Post, Baragaon, He has stood the test of rigorous cross-examination on behalf of the accused. He denied the defence suggestion that he implicated the accused persons at the instance of one Arjun Singh (P.W. 14). He also denied that accused Ramsingh had not shot his father in his presence. He categorically admitted in cross-examination that as he had heard the gun shot, he stated that the gun was fired. He also denied to have consulted other witnesses Udal Lodhi (P.W. 7) and Sukki Singh (P.W. 2), either before lodging the report or thereafter.

7. The other witness Sukki Singh (P.W. 2) stated that at the time of incident, he was sitting with deceased Heera and Udal (P.W. 7) near his house. He corroborated the demand of the one kilogram Ghee by accused Ramsingh from deceased Heera, and also that Heera took the deceased along for a few steps and then shot him dead. This witness had described that accused Ramsingh had used a single barrel gun. He stated that after accused Ramsingh had fled away, he called Balchandra (P.W. 1) from his house, although in his police statement he stated that Balchandra (P.W. 1) was sitting with him. In his cross-examination he further stated that he had seen the gun being fired at deceased Heera. He denied the defence suggestion that he had not seen the incident and he was giving false statement.

8. Prem Narayan (P.W. 3), a Police Constable, had brought the gun and cartridges seized by the Girar Police (U.P.) from accused Ramsingh, which was subsequently seized as per Ex. P-2.

9. M.R. Yadav (P.W. 4) is the Deputy Jailer of Lalitpur (U.P.). When accused Ramsingh was lodged in connection with some other case he had permitted his arrest by Sub-Inspector, S.S. Tomar Kedarilal (P.W. 6) is the Patwari who prepared the spot map Ex. P-6.

10. Udal (P.W. 7) stated in his examination-in-chief that at the time of sun set he was sitting in front of his house with Balchandra (P.W. 1) and Sukki (P.W. 2). Deceased Heera was also there. It was the time when accused Ramsingh passed

through his house and called Heera. They walked together for about 20 steps and then accused Ramsingh fired a gun shot hitting Heera in his chest. Deceased Heera collapsed and the accused fled away from the spot. They went near the deceased Heera and saw that he was bleeding. Heera breathed twice and died. This witness in his cross-examination corroborated the fact that accused had demanded Ghee which, being out of stock, had been declined by the deceased and soon thereafter, the accused had come back again and shot him dead. This witness is particular in stating in Para 9 of his cross-examination that accused Ramsingh and deceased Heera has walked together upto the door of Nandu Lohar and there itself, the accused had fired the gun shot at the deceased. He stated that from his door he witnessed the incident and thereafter he rushed to the spot. Mst. Nauri Bai (P.W. 8) is the wife of the deceased who received information from her son Balchandra (P.W. 1) about the death of her husband deceased Heera.

11. Another eye-witness Uday Bhan Singh (P.W. 9) in his examination-in-chief stated that he witnessed accused Ramsingh causing gun shot injuries to deceased Heera Lodhi in front of the house of Nandu Lohar. According to him, the reason for opening fire was that Heera had not given money nor the Ghee demanded by the accused. This witness also stated that Sukki and Bandu Lodhi were the first to reach the spot and see that deceased Heera Lodhi instantly collapsed and died. This witness was at a distance of 10-15 feet from the spot of incident and was hiding behind a jujube tree. This witness also identified the accused in the Court as the assailant. He denied the suggestion of enmity on account of Halle Singh's election as the Sarpanch. He categorically denied the enmity with accused. He also denied that he had given any evidence against the accused Ramsingh in any other case and particularly in a case under Section 324, IPC. He stated that he was standing in front of the house of Devi Lohar when accused Ramsingh was talking to deceased Heera and had shot him dead. This witness has stood the test of rigorous cross-examination. He denied the suggestion that the time of incident being a dark night, he could not have identified the assailant. He voluntarily said that it was a moonlit night.

12. Bhujbal (P. W. 11) is a witness of the inquest. Bhadur Singh (P.W. 12) a witness to seizure of the gun and cartridges from the accused was declared hostile as he did not prove the seizure but admitted his signature on the seizure panchanama. Virendra Kumar Yadav (P.W. 13) was also declared hostile as he admitted his signature on Ex. P-2 but denied the seizure of gun and cartridges in his presence. S.S. Tomar (P.W. 15) was the officer incharge of Police Station, Budera. He had arrested the accused from Lalitpur Jail as per Ex. P-4. R.S. Parihar (P.W. 16) is the Assistant Sub-Inspector who being the incharge of the police out post Baragaon had recorded the report Ex. P-I lodged by Balchandra (P.W. 1). He had also seized the gun from the accused as per Ex. P-2. Baburaja @ Sardar Singh (P.W. 17) is a witness who admitted his signature on Ex. P-3 but denied the seizure. Nandu Lohar (P.W. 18) resiled from his police statement and was declared hostile. Abdul Samad Khan (P.W. 19), is the Head Constable who had registered the First Information Report on receipt from police out post Baragaon. Ibrahim Khan (P.W. 20) was posted as the arms clerk in the office of the District Magistrate, Tikamgarh. He proved the prosecution sanction granted by then District Magistrate Shri Salya Prakash under Sections 25/27 of the Arms Act, R.S. Vadoniya (P.W. 21), Sub-Inspector of Police was the incharge of Police Station, Budera who conducted the investigation in the case.

13. In the FIR Ex. P-I (A) the name of the accused Ramsingh is mentioned as the assailant with detailed description about the manner of assault. It also contained the names of eye-witnesses namely Sukki Singh (P.W. 2) and Udal (P.W. 7), who witnessed the incident. On minute scrutiny, statements of the eye-witnesses Sukki Singh (P.W. 2) and Udal (P.W. 7) are found to be quite natural and unimpeachable as they being the neighbours saw the incident and rushed to the spot immediately after bearing the gun fire. Even if the statement of Balchandra (P.W. 1), as Trial Court has done, as regards witnessing the incident is not counted upon, the foundation of prosecution story remains unshaken. The eye-witness accounts of Sukki Singh (P.W. 2) and Udal (P. W. 7) amply corroborate each other and also vouch for the identity of the accused which is proved beyond doubt. The manner and weapon of assault as contained in the FIR, as also the post-mortem report lend unqualified support to the prosecution case which is based on the substantive evidence of eye-witnesses and that of Dr. H.G. Chinchaidkar, Assistant Surgeon

(P.W. 5), who has found the following injuries on the body of the deceased.

'Gun shot wound on the front of chest one inch diameter, at the level of 4th and 5th left ribs, on Xiphisternum little left to the mid line'.

In the opinion of the doctor, the cause of death was syncope due to heavy amount of blood loss from extensive laceration of heart and lungs caused by bullet and gases of explosion from a gun fired from very close distance.

The doctor also stated that the gun shot was fired from close range. In the post-mortem report Dr. H.G. Chinchaidkar found blackening of skin around the wound.

14. The Apex Court in the case of Swaran Singh v. State of Punjab, (2000) 5 SCC 668, in Para 25 held that-

'The evidence of P.W. 1 and the post-mortem report was to the effect that the single wound on the right side of the chest of Shamsher Singh and several wounds on Amar Singh were blackened. 'Blackening is caused by smoke deposit. Smoke particles are light. They do not travel far. Therefore, smoke deposit, i.e., blackening is limited to a small range'. [See Forensic Science in Criminal Investigation & Trials (3rd Edn.), p. 280; Fisher Svensson, and Wendel's Techniques of Crime Scene Investigation (4th Edn., p. 296)]. The fact that the firing was at close range supports the evidence of the eye-witnesses and runs contrary to the defence account of the incident. The situs of the wounds found by P.W. 1 on the deceased also bear out the eye-witnesses' testimony of the incident.'

15. The Apex Court further in the case Jagdish v. State off Haryana (AIR 1998 SC 732) in last 17 lines of para 14 held that :--

'..... The manner in which Pritam Lal Choprawas murdered by firing pistol shot from behind as indicated by the said two eye-witnesses also stands corroborated from the medical evidence about the nature of the injury suffered by the said deceased. Therefore, the complicity of the appellant Jagdish in committing the murder of the deceased has been clearly established. The prosecution case about hatching a conspiracy by Chaudhary Ram has not been established by any

convincing evidence but on that account, the direct evidence against the accused Jagdish in committing the said murder cannot be discarded as sought to be contended by Mr. Sachher. We, therefore, find no reason to interfere with the order of conviction and sentences passed against the appellate and the appeal, therefore, fails and is dismissed.'

16. In the premises discussed hereinabove, we do not find any merit in the instant criminal appeal which fails and is hereby dismissed. Accordingly, the impugned judgment and findings recording conviction and sentence for offence under Section 302 of the IPC is affirmed.

17. Criminal Appeal dismissed.

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