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Ramkishan Vs. the State

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Court : Madhya Pradesh

Decided On : Nov-30-2000

Reported in : 2001CriLJ2280

Judge : C.K. Prasad and ;Miss. Usha Shukla, JJ.

Acts : Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cr. A. No. 803 of 1989

Appellant : Ramkishan

Respondent : The State

Advocate for Def. : S.K. Gangrade, P.L.

Advocate for Pet/Ap. : S.L. Kochar, Adv.

Judgement :

1. Appellant being aggrieved by his conviction for offence under Section 302 of the Indian Penal Code and sentence of imprisonment for life by judgment dated 10th March, 1989, passed by the Second Addl. Sessions Judge, Sagar, in Sessions Trial No. 88/86, has preferred this appeal.

2. According to the prosecution, on 22-3-1985 at 8.30 p.m. Dhaniram was standing in his courtyard to take food, appellant who at the relevant time was a Naik in T.A.

Battalion and was living as tenant in the adjoining house came armed with gun and enquired as to why he has abused his daughter. At this, the deceased Dhaniram replied that he had not abused her at which appellant fired from his gun which hit on his right rib. As a result of the injury Dhaniram fell down. At that time, Purshottam (PW 5), brother of the deceased and Hukumchand were standing there and neighbours Pyarelal and Hemraj also came there. Appellant fled away from the place of incident. Thereafter, Dhaniram was taken to the hospital by his brothers and also neighbours where he was declared dead. Purshottam thereafter gave report (Ex. P/10) to the Cantt. Police Station which led to the registration of case against the appellant. P.W. 7 P.D. Mehar, Officer Incharge of the Police Station came to the hospital and prepared the inquest report. Gun shot injury was found in the inquest. The dead body was ultimately sent for postmortem examination which was conducted by P.W. 3 Dr. Girish Kumar Dubey. During the course of investigation, the Investigating Officer P.W. 7 P.D. Mehar seized blood stained earth and empty cartridge from the place of occurrence. The Investigating Officer also searched the house of the appellant and seized identity card having the photograph of the appellant and certificate granted by the Army authority. Appellant remained absconding and ultimately was arrested on 16-4-1986 at Gwalior and on his memorandum, gun licence was seized.

3. In the post-mortem examination, the doctor found followmg injuries on his person :--

(1) A punctured wound star shaped on the back right side just below the angle of right scapular piearcing the right lung and upper part of right liver of 2 mm diameter irregular margin. Ante-mortem in nature by penetrating object.

(2) Punctured wound on the right side of chest just below the right nipple 3/4' diameter nearabout circular opening into chest cavity. Inside structure of chest cavity seen. Probe can be passed from wound No. 1 to wound No. 2 obliquely.

In the opinion of the doctor, the two injuries on the right side are inter-connected obliquely and seem to be caused by gun. He has further found that wound of entry is on the back and exit on the chest valve below nipple. In the opinion of the doctor, the cause of death was shock because of profuse haemorrhage and injury

to right liver. The post-mortem was conducted on 23-3-1985 at 12.15 p.m. and according to the doctor, death had taken place 12-24 hrs. from the time of post-mortem.

4. Police after investigation, submitted charge sheet against the appellant before the learned Magistrate and the case was ultimately committed to the Court of Sessions for trial. Appellant denied to have committed any offence and although In his statement Under Section 313 of the Code of Criminal Procedure, he has admitted the seizure of the licence as also possession of the gun. However, his plea is that on the day of incident he had kept the gun in his house and has gone to the market and his children had gone to answer the call of the nature, in the meanwhile, somebody had picked up his gun and fired and a false case has been instituted against him. He has further stated that when he came to know about the lodging of the false case, he went from one place to another in search of the gun and later on he was arrested by the Police.

5. Prosecution in support of its case has altogether examined 8 witnesses. No defence witness has been examined. P.W. 1 Param is a seizure witness, P.W. 2 Buaram Tiwari is Assistant Sub-Inspector of Police who has arrested the appellant and prepared the arrest memo. P.W. 3 Dr. Girish Kumar Dubey is the Autopsy surgeon who has conducted post-mortem. P.W. 4 Arvind Kumar is a Constable who has handed over the dead-body to the doctor for post-mortem examination. P.W. 5 Purshottam ad P.W. 8 Pyarelal are the eye-witnesses to the occurrence. P.W. 6 although during the course of investigation has claimed to be an eye-witness to the occurrence but has been declared hostile by the prosecution. P.W. 7 P.D. Mehar was the officer incharge of the Police Station and has investigated the case and recorded the statement of the witnesses.

6. Mr. S.L. Kochar appears on behalf of the appellant, Mr. S.K. Gangrade, P.L. appears on behalf of (the State of Mr. Kochar appearing on behalf of the appellant submits that the prosecution has not been able to establish any motive for commission of the crime, same makes the entire prosecution story doubtful. Mr. Gangrade, however, submits that the prosecution having established the genesis of occurrence as also the commission of crime by direct evidence, absence of

motive itself shall not render the prosecution case doubtful.

7. Having appreciated the rival submission, I find substance in the submission of Sri Gangrade. Here in the present case, appellant came in the courtyard of the deceased where his, brother Purshottam (PW 5) and Pyarelal (PW 8), a neighbour, were present who have clearly stated that the appellant enquired as to why the deceased had hurled abuses, which was denied by him and thereafter appellant fired at the deceased. Thus we find that the eye-witnesses have given the genesis of occurrence and the role played by the appellant and in our opinion, in such circumstance absence of motive shall not make the prosecution story doubtful.

8. Mr. Kochar then submits that there is vital contradiction in the evidence of the eyewitnesses P.W. 5 Purshottam and P.W. 8 Pyarelal as to the place where the bullet allegedly fired by the appellant hit: the deceased. In this connection, he has drawn our attention to the evidence of P.W. 5 in paragraph 1 wherein this witness has stated that bullet hit the ribs and the deceased fell down whereas according to P.W. 8, the bullet, hit on the back a little right to the vertebral column and passed through. We do not find any substance in this submission of Sri Kochar. P.W. 5 has stated that: the bullet hit the deceased on the ribs and this witness has nowhere stated that it caused injury on the front. We do not find any major contradiction in the evidence of P.W. 5 and P.W. 8 as to the place where the bullet hit so as to discredit their evidence on this ground.

9. Mr. Kochar, then, submits that P.W. 5 and P.W. 8 being interested witnesses, their evidence is fit to be discarded on this ground alone. Mr. Gangrade, however, submits that P.W. 5 Purshottam is the brother of the deceased whereas, P.W. 8 is the neighbour and the evidence of the witnesses cannot be discarded only on the ground that they are interested witnesses.

10. Having appreciated the rival submissions, we do not find any substance in this submission of Sri Kochar. True it is that P.W. 5 is the brother of the deceased but this fact it self will not render his evidence untrustworthy. Evidence of these persons has to be appreciated with care and caution and on careful examination of their evidence, we are of the opinion that they have spoken truth and as such their

evidence cannot be discredited on this ground alone.

11. Mr. Kochar, lastly submits that according to the prosecution itself neighbours had collected at the place of incident and there non-examination by the prosecution clearly shows that the prosecution wants to conceal the true story which makes the prosecution story doubtful. We do not have the slightest hesitation in rejecting this submission of Sri Kochar. P.W. 5 is the brother of the deceased and is an eye-witness to the occurrence. It is not the number but the quality of the evidence which is required to be seen. For the reasons which we shall indicate hereinafter, the evidence of P.W. 5 and P.W. 8 inspires confidence and as such, non-examination of the other neighbours does not create any doubt in the prosecution case. P.W. 1 has clearly stated in his evidence that appellant came in the courtyard of the deceased and enquired from hin as to why he has hurled abuses, which was denied by the deceased. Thereafter, this witness has clearly stated that appellant fired from his gun which hit the deceased. P.W. 8 Pyarelal has also supported the prosecution case. The evidence of these eye-witnesses finds support from the evidence of P.W. 3 Dr. Girish 'Kumar Dubey who has found entry and exit wound and has clearly suggested that the injuries found on the deceased were caused by gun. Thus the evidence of eye-witnesses is corroborated by the medical evidence. We do not find any reason to discredit the prosecution case.

12. In the result, we do not find any merit in the appeal and it is dismissed accordingly.

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