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**Raghosingh Vs. State of M.P.**

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**SooperKanoon Citation** : sooperkanoon.com/511229

**Court** : Madhya Pradesh

**Decided On :** Sep-06-1996

**Reported in** : 1997CriLJ2804

**Judge** : R.D. Shukla and ;Shambhoo Singh, JJ.

**Acts** : Indian Penal Code (IPC), 1860 - Sections 147, 148, 149, 302, 307 and 323

**Appeal No.** : Cri. Appeal 133/96

**Appellant** : Raghosingh

**Respondent** : State of M.P.

**Advocate for Def.** : A. Desai, Adv.

**Advocate for Pet/Ap.** : A.N. Pradhan, Adv.

**Disposition** : Appeal allowed

**Judgement** :

**R.D. Shukla, J.**

1. Appeal is directed against the judgment and order dated 9-2-1996 of Add1. Sessions Judge, Agar district Shajapur passed in S.T. No. 246/94 where by accused-appellant has been convicted Under Section 148, IPC for being armed with deadly weapon as a member of unlawful assembly; Under Section 302/149,

IPC on two counts for having committed murder of Gangaram S/o Raisingh and Umraosingh S/o Gangaram in pursuance of common object Under Section 323, R/w 149, IPC for causing simple injuries to Karansingh in pursuance of common object on 17-1.0-1986 at 2.30 p.m. in. village Amba and sentenced to imprisonment of two years, imprisonment for life on two counts and imprisonment for one year respectively.

2. The prosecution story in brief is that on the date of incident Gangaram his son Umraosingh were harvesting the crop of Tuwar pulse from their field situated by the side of village road leading to Bijaynagri Accused-appellant along with Narainsingh, Bhagwansingh, Rugnath and Sajjansingh came on the spot. They all were armed with Farsi (sharp edged cutting weapon) lathis and gun. All of them assaulted Gangaram and Umraosingh. Ganga Ram died on the spot. Karansingh, brother of Umraosingh was also present on the spot. He was also assaulted. Thus, Umraosingh and Gangaram sustained injuries. They raised alarm. The persons of village assembled there. Assaillants left the place. Umarosingh who had sustained injuries narrated the story to his sister Mankuwarbai. Thereafter Umraosingh and Karansingh were taken to Police Station Barod in a bullock-cart.

Umaraosingh lodged Report Ex.P/10 (P/14 in S.T. No. 80/87 and 115/91) as he sustained injuries, he was admitted in the hospital at Barod. He was given first aid and treated. Dr. G.S. Sharma (PW. 2) recorded dying declaration of Umraosingh who died during his stay in the hospital. Karansingh was also examined as to his injuries and treated.

3. Shri Rajkumar Sharma (PW 6) recorded FIR Ex.P/10 (Ex.P/14) and registered offence Under Sections 302, 307, 147, 148, 149 of IPC vide Crime No. 123/86.

Umraosingh died the same evening at about 8.30 p.m., as such information regarding his death was sent to Police Station on the same night. Shri Rajkumar Sharma (PW 6) thereafter recorded Ex.P/11 vide Crime No. 124/86 and registered separate offence Under Sections 147, 148, 149, 302, IPC for the death of Umraosingh.

4. Inquest Report of the body of Gangaram after issuing notice was prepared in the morning of 18-10-1986. Similarly inquest report of the body of Umrao Singh was prepared after issuing notice on the same day i.e. 18-10-1986. Shri Sharma visited the spot on 18-10-1986; prepared site map 42x.P/3 and seized stained and controlled earth from two places vide Ex.P 18 and Ex.P/19.

5. Other accused persons i.e. Bhagwansingh, Narainsingh, Rugnathsingh, Sajjansingh were arrested immediately after the incident. Recoveries of weapons including gun were also made.

6. Present accused-appellant Raghosingh was arrested on 10-11-1986 vide Ex.P/1. One Farsi was seized at his instance vide Ex.P/19.

7. After investigation accused persons including present accused-appellant were prosecuted vide S.T. No. 80/87 but this accused-appellant jumped bail and failed to appear; as such he was declared absconder and his case was separated. He was arrested again on 10-12-1994 A separate supplementary challan was filed against him which after committal was registered as S.T. No. 246/94.

8. Other accused persons i.e. Narainsingh, Bhagwansingh, Sajjansingh and Rugnathsingh were tried vide Sessions Case No. 115/91 and S.T. No. 80/87. All the four were convicted Under Sections 148, 302/149 on two counts i.e. murder of Gangaram and Umraosingh, 323 and 149 of IPC and sentenced to R.I. of two years' imprisonment of life on two counts and one year respectively vide judgment and order dated 4-3-1992.

On appeal filed by four aforesaid accused persons vide Criminal Appeal No. 162/92 accused Rugnath Singh, and Sajjansingh were acquitted while conviction of Narainsingh and Bhagwansingh was affirmed and their appeal was dismissed vide judgment dated 2-12-1994 of the Division Bench of this High Court (consisting of one of us i.e. Justice R.D. Shukla and Justice Shri J.G. Chitre).

9. The present accused appellant denied the guilt and pleaded false implication.

10. After trial he has been convicted and sentenced as above. Hence this appeal.

11. The contention of learned counsel for the appellant is that prosecution witnesses are not reliable. There is discrepancy as to the weapon used in the statements of prosecution witnesses so far as accused appellant is concerned, and, therefore, he deserves acquittal.

Second contention of learned counsel for appellant is that there is contradiction in the dying declaration made by Umraosingh by way of FIR and dying declaration recorded by Dr. Sharma (PW. 2) and oral dying declaration made to Mankunwarbai (sister of Umraosingh) who died during the hearing of Sessions Trial No. 80/87 and 115/91.

12. As against it learned counsel for State has submitted that accused has rightly been held guilty like other two accused persons who have ultimately been found guilty by this High Court as well.

The second contention of learned counsel for respondent State is that there is no discrepancy in the dying declaration made by Umraosingh which appears to be more truthful that person who sustained injuries can give better and reliable description about the-fact of injuries caised to himself.

13. We were taken to the evidence on record.

P.W. 1 Babukhan has not supported the fact of information about Farsi and recovery of the same from the possession of accused Raghosingh.

P.W. 3 Karansingh S/o deceased Gangaram has stated that Raghosingh caused injuries to his elder brother Umraosingh by stick of Farsi (i.e. wooden part fixed with the sharp edged part of the weapon); but in cross-examination at para 12 has stated that injuries to Umraosingh were caused from the sharp edged part of the Farsi.

14. From the medical evidence it is clear that Umraosingh has not sustained any incised wound. Had the injuries been caused from sharp edged part of Farsi, that must have resulted in incised wound and, therefore, there is inconsistency in the statement of Karansingh and Medical evidence.

15. P.W. 4 Dhulsingh has stated about having seen this accused running from near his field. He was having a Farsi fitted with stick. This accused was seen running along with Sajjansingh, Rugnathsing, Bhagwansingh and Narainsingh.

It is noteworthy that in Criminal Appeal No. 162/92 with respect to the same incident this court has found only two persons i.e. Bhagwansingh and Narainsingh guilty of the offence -of murder of Gangaram and Umraosingh. Rugnathsingh and Sajjansingh have been extended benefit of doubt as allegedly they were keeping guns at the time of incident but no gun-shot injury was found on the body of Gangaram and Umraosingh.

16. The case will have to be judged with the same standard as it arose out of same incident and transaction. Though it is true that every case has to be decided on the basis of evidence adduced in the case. There was separate trial of this accused and, therefore evidence adduced against him during trial only can be considered for upholding the conviction but the fact beneficial to the accused can be taken into consideration if that is, with respect to the same incident and transaction.

17. P.W. 5 Shyamsingh is a witness of dying declaration Ex.P/6/24 recorded by Dr. G.S. Sharma (PW. 2) who examined Umraosingh and recorded his statement.

18. This document has been marked as Ex.P/ 6 in this trial against present accused appellant Raghosingh (S.T. No. 246/94) and was originally exhibited as Ex.P/24 in S.T. No. 80/87 and 115/ 91. In that statement Umraosingh has not named this accused. He has stated that he was harvesting his crop, Narainsingh, Bhagwansingh (whose conviction has been sustained in appeal referred above) and Rugnathsingh and Sajansingh have caused injuries to him. On a question as to who was the. fifth man, he replied that he does not know the fifth man. On again being questioned he named only four persons. He has not given the name of this accused appellant Raghosingh.

19. In the FIR recorded by Rajkumar Sharma (PW. 6) vide Ex. P. 14 (document Ex.P/10 exhibited in S.T. No. 80/87 and 115/91 there is a mention of the name and overt act of this accused appellant. In the FIR lodged by Urnraosingh which has

rightly been admitted as dying declaration, there is allegation that Raghosingh came with stick fitted with Farsi. However, Dr. Sharma (PW. 2) recorded dying declaration subsequently. There is discrepancy as to the overt act of this accused in the two dying declarations; one recorded by the Police Officer Shri Sharma (PW. 6) vide Ex. P/10/14 and the other recorded by Dr. Sharma (PW. 2) vide Ex. P/6/24.

20. Dying declaration by way of FIR Ex.P/10/ ' 14 was recorded at 7.30 p.m. Umraosingh was thereafter sent to hospital for treatment and medical examination. Dr. Sharma (PW 2) has recorded dying declaration on the same day but has not given the time. However, this must have been recorded after recording of FIR and, therefore, this dying declaration i.e. Ex.P/6/24 was later in time. It has been recorded by a Gazetted responsible officer not interested in the success of prosecution in any way. It is a matter of common experience that Police Officers many a time in their over zeal of success of prosecution do padding and improvements in the prosecution story and the evidence, and, therefore, it is safer to rely on the dying declaration recorded by Dr. Sharma which was later in time.

21. This is not the case of prosecution that at the time of recording of dying declaration by Dr. Sharma (PW. 2) Umraosingh was not in his proper senses. Dr. Sharma has certified the fact of Umraosingh being in a fit condition to make statetment. The prosecution has itself relied on this document and, therefore, now it cannot be allowed to retract and say that the dying declaration recorded by Police Officer Shri Sharma (PW. 6) is more reliable.

22. Even otherwise where two inferences can be drawn from certain set of facts, one which is in favour of the accused and goes to prove the innocence of accused ought to be accepted.

In our considered opinion therefore the prosecution has failed to bring home the guilt so far as the present accused appellant Raghosingh is concerned. He is, therefore, also entitled to benefit of doubt as extended to two other accused persons in Criminal Appeal No. 162/92.

23. Since the presence of Raghosingh itself has become doubtful it would be highly unsafe to convict him for murder of Gangaram or for causing injuries to Karan Singh as Karan singh is a near relation of Gangaram and Umraosingh.

24. There is yet another evidence adduced by the prosecution that the seizure of Farsi at the instance of accused Raghosingh and its being found stained with blood as per Chemical 1 Examiner's Report Ex.P/25 filed in Cri. Case (S.T. No. 80/87 and 115/91) but the presence of human blood has not been confirmed by Serologist's Report Ex.P/24-A. Since these two reports i.e. Ex.P/24-A and Ex.P/25 ave not been produced during trial against present accused-appellant in S.T. No. 246/94 and therefore,it is doubtful whether that can be read against accused-appellant. However, even after reading those documents we do not find sufficient evidence to connect accused-appellant with the crime.

25. The presence of blood on Farsi may be because of many other reasons. Since presence of human blood is not confirmed the recovery of Farsi by itself would not be sufficient to connect the accused with the crime.

26. As a result appeal succeeds and is hereby allowed. Accused-appellant is acquitted of all charges. He is in jail. He be set at liberty forthwtih if not required in any other case.

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