

Tola Ram Vs. State

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Court : Rajasthan Jodhpur

Decided On : Aug-12-2015

Appellant : Tola Ram

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ::: 1.

D.B.Criminal Appeal No.531/2007 Tola Ram versus State of Rajasthan 2.

D.B.Criminal Appeal No.458/2007 Trilok Singh versus State of Rajasthan Date of order : 12th August, 2015 PRESENT HON'BLE Mr.JUSTICE GOPAL KRISHAN VYAS HON'BLE Mr.JUSTICE VIJAY BISHNOI Mr.K.R.Bhati with Mr.Devendra Singh Dev, for the appellants.

Mr.JPS Choudhary, Public Prosecutor.

<><><> (PER HON'BLE G.K.VYAS, J.: Both the above appeals are filed by the accused appellants under Section 374 (2) Cr.P.C.against the judgment dated 28.5.2007 passed by learned Addl.

Sessions Judge, Anupgarh, District Sr.Ganganagar in Sessions Case No.22/2005 (17/2005) arising out of FIR No.75/2005 of Police Station Anupgarh, District Sriganganagar whereby the learned trial Court convicted and passed sentences against the accused appellants as under: 2 S.No.Name of Accused Offences u/s

Punishment 1.

Tola Ram u/s 302 IPC Life imprisonment and a fine of Rs.5,000/- in default of payment of fine to further undergo two yearRs.SI u/s120-B IPC Life imprisonment and a fine of Rs.500/-, in default of payment of fine to further undergo three months' SI u/s 27(1) of Three years S.I.and a fine of Arms Act Rs.1,000/- in default of payment of fine to further undergo three months' SI.

2.

Trilok Singh u/s 302/109 Life imprisonment and a fine IPC of Rs.5,000/- in default of payment of fine to further undergo two yearRs.SI Life imprisonment and a fine u/s120-B IPC of Rs.500/-, in default of payment of fine to further undergo three months' SI Three years S.I.and a fine of u/s 29(b) of Rs.1,000/- in default of Arms Act payment of fine to further undergo three months' SI.

All the sentences have been ordered to run concurrently.

As per brief facts of the case on 01.5.2005 at about 12.15 a.m.PW-11 Om Prakash S/o Hanuman Ram submitted a written report Ex.P.26 before the Police Station Anupgarh, District Sriganaganagar in which it was alleged that Tola Ram S/o Kishna Ram resident of Chak 10-K was beating his wife on 27.2.2005, therefore, wife of Tola Ram came to his house and in the evening returned back to her home.

Accused Tola Ram made quarrel in the house with his wife and mother in whole of the night.

Today in the morning he went to chak 25-A for the purpose of employment under the famine scheme flouted by the Gram Panchayat, in the evening at about 5 p.m.when he was 3 going on the way with his father towards his house in the mid-way when they reached near Masjid, they show that Tola Ram S/o Kishna Ram came their armed with gun (Topidar) from village and loudly called my father Hanumanram that yesterday you have intervened in my family matter to rescue my wife, therefore, I will give you lesson and made fire upon my father Hanumana Ram with the intention to commit murder and after causing gun shot injury, the

accused appellant ran away from the place of occurrence and his father fell down on spot due to the gun shot injury.

In the above written FIR submitted by the eye witness Om Prakash S/o deceased Hanuman Ram, specific allegation of murder was levelled against the accused appellant.

On the basis of the above written report submitted by PW-11 Om Prakash, an FIR No.75/05 was registered under Section 307 and 341 I.P.C.read with Section 27 of the Arms Act against the accused appellants at police Station Anupgarh, District Sriganganagar.

After registration of above FIR, the accused appellant Tola Ram was arrested by the police and body of Hanuman Ram was taken to the hospital for treatment but he died before reaching hospital, thereafter Section 302 I.P.C.was added in place of Section 307 I.P.C.4 In the investigation, an another story was taken on record by the Investigating Agency wherein it was alledged that incident was committed by the accused Tola Ram with the help of accused Trilok Singh, Rai Sikh, who has provided his licensed gun to the accused Tola Ram for committing murder of deceased Hanuman Ram.

The Investigating Officer after usual investigation submitted the charge-sheet against accused Tola Ram under Section 302, 323 and 341 of I.P.C.and Section 27 (1) of Arms Act but kept investigation pending under Section 173 (8) of Cr.P.C.against accused Trilok Singh.

The accused appellant Trilok Singh was absconding, therefore after surrender subsequently his charge-sheet was submitted on 22.10.2005 under Section 302 and 120-B I.P.C.and Section 29)b) of Arms Act in the Court of Judicial Magistrate, Anupgarh and after taking cognizance by the learned Magistrate, the case was committed to the Sessions Court, Sriganganagar for trial.

The learned Sessions Judge transferred the case to the Court of Addl.

Sessions Judge (Fast Track).Anupgarh for the purpose of trial.

The trial Court registered the case as Sessions Case No.22/2005 (17/2005) and after hearing arguments for the purpose of framing charge on 27.2.2006, framed the charges under Section 302 and 302/34, 341 and 341/34, 5 323 and 323/34 and 120-B I.P.C.along with Section 29 (b) of the Arms Act against the appellants but they denied the charges levelled against them.

In the trial conducted by the trial Court in all statements of 17 prosecution witnesses were recorded, thereafter, statement under Section 313 Cr.P.C.of the accused appellants were recorded, in rebuttal, no evidence was produced by the accused appellants, therefore, the final arguments were heard by the trial Court.

The learned trial Court after hearing arguments from both the sides held appellants guilty and punished the accused appellants for the aforesaid offences vide judgment dated 28.5.2007.

The accused appellants being aggrieved from the aforesaid judgment passed by learned Addl.

Sessions Judge, Sriganaganagar prefer these appeals to challenge the aforesaid judgment.

Learned counsel for the appellants vehemently argued that the judgment of the learned trial Court is totally erroneous because almost all the eye witnesses and author of FIR turned hostile and did not support the prosecution case, therefore, the judgment impugned deserves to be quashed.

6 It is also argued that all the eye witnesses turned hostile and did not support the prosecution story but learned trial Court convicted the accused appellant Tola Ram on the basis of the recovery of weapon inspite of the fact that witness of recovery turned hostile and did not support the prosecution case, therefore, in absence of any trustworthy evidence, the conviction and sentence passed by the trial Court vide judgment dated 28.5.2007 is not sustainable in law.

While attacking upon the finding given by the trial Court, it is submitted that although the charge-sheet was filed on the basis of the evidence of eye-witnesses but learned trial Court gave finding that the prosecution has proved its case on the

basis of circumstantial evidence and evidence of medical science.

Learned trial Court held accused appellants guilty only on the basis of presumption and so called inference drawn by the presiding officer, therefore, finding of guilt is not sustainable.

With regard to allegation of conspiracy against the accused appellant Trilok Singh, it is submitted that without any evidence, the trial Court gave finding that the licensed gun was handed over by the accused appellant Trilok Singh to accused appellant Tola Ram so as to commit murder of Hanuman Ram without any intention.

The accused 7 appellant Trilok Singh himself surrendered before the trial Court because while filing challan against Tola Ram, the investigation under Section 173 (8) Cr.P.C. was kept pending against the accused appellant Trilok Singh.

Learned counsel for the appellants submits that the conviction is based upon the circumstantial evidence, recovery of gun and on the basis of the report of FSL is not sustainable in law because prosecution has failed to prove its case because all the eye witnesses turned hostile, therefore, the conviction based upon the circumstantial evidence or upon the presumption of the learned Sessions Judge is not sustainable in law.

While inviting attention towards the fact that most of the witnesses turned hostile, it is submitted that the accused appellants have been convicted without any evidence so also the trial Judge has committed a grave error while altering the case from the evidence of eye witnesses to the evidence of circumstantial evidence.

As per the basic principle of law prosecution is required to prove its case beyond reasonable doubt but herein this case the prosecution filed the charge-sheet against the accused appellants on the basis of the testimony of eye witnesses whereas all the eye witnesses turned hostile and did not support the prosecution story in spite of that the trial Court 8 convicted the accused appellants on the basis of the circumstantial evidence, therefore, it is a case in which the trial Court has

convicted the accused appellants merely on the basis of the presumption and so called circumstantial evidence upon which the prosecution has relied upon for the simple reason that the charge sheet was filed on the basis of the direct evidence of eye witnesses but none of the eye witnesses supported the prosecution case, therefore, the judgment impugned may kindly be quashed and set aside.

Per contra, learned Public Prosecutor submitted that although all the eye witnesses turned hostile and did not support the prosecution case but it is a case in which the innocent person was murdered by gun shot injury inflicted by the accused appellant Tola Ram and in the FSL report, the opinion was given that the injury caused to the deceased Hanuman Ram was inflicted by the gun, which is said to be recovered from the accused appellant Tola Ram.

According to learned Public Prosecutor, it is a case in which the trial Court has performed its pious duty to convict the accused appellants for the charges levelled against them.

The prosecution produced the evidence of investigating officer and in whole of the statement he has proved the investigation conducted by him, therefore, there is no strength in the arguments of learned counsel for the 9 appellants that in the event of declaring all the witnesses hostile by the Court they are entitled for acquittal.

After hearing learned counsel for the parties, following facts are emerges for consideration :- (a) out of 17 witnesses, all the witnesses including eye witnesses turned hostile and not supported the prosecution case.

The author of FIR PW-11 Om Prakash S/o deceased Hanuman Ram turned hostile and did not support the prosecution story.

(b) It is also worthwhile to observe that wife of deceased Hanuman Ram PW-12 Laxmi Devi turned hostile and did not support the prosecution case.

(c) Eye witness PW-3 Jasveer Singh, PW-4 Shankar Ram, PW-7 Jag Ram, PW-9 Pala Ram and PW-13 Magaram turned hostile and did not support the prosecution case.

(d) The witness of recovery of gun PW-1 Malkit Singh and PW-2 Budh Singh turned hostile and did not support the prosecution case for recovery of gun at the instance of accused appellant.

10 It is true that the Investigating Officer PW-15 Bhanwar Lal, Dy.

Supdt.

Of Police and PW-16 Amarjeet Singh Chawla, SHO P.S.Anupgarh and PW-17 Vishnu stated before the Court that after complete investigation, challan was filed and they conducted the investigation fairly but none of the witnesses supported the prosecution story.

Doctor PW-10 M.L.Gupta stated before the Court that there were five injuries upon the body of deceased and out of five injuries, four injuries were caused by fire arm whereas in the FIR, allegation is only for one fire injury by the accused appellant.

Therefore, it is a case in which prosecution has failed to prove the allegation beyond reasonable doubt.

After perusing the entire evidence, it emerges from the evidence that none of the eye witnesses or the witness of recovery of gun supported the prosecution case but trial Court relying upon the testimony of investigating officer and medical evidence convicted the accused appellants solely on the ground that as per the facts the witnesses turned hostile due to compromise.

The charge-sheet was filed against the accused appellants on the basis of testimony of eye witnesses and recovery of gun but at the time of deciding the case, the learned trial Court while accepting that there is no direct evidence but on the basis of circumstantial evidence, the prosecution has proved its case 11 with regard to guilt of the accused appellant for the alleged offence of murder.

In our opinion, even if the finding of trial Court is accepted then also the trial Court was required to assess the case in the light of the fact whether as per evidence, the complete chain of facts is in existence or not because as per settled principle of law adjudicated by Hon'ble Supreme Court, if conviction is based upon the

circumstantial evidence then Court is required to see whether the prosecution has proved its case beyond reasonable doubt by leading the complete chain so as to hold the accused guilty.

In case of Sharad Birdhichand Sarda versus State of Maharashtra reported in AIR 1984 SC1622 the Hon'ble Supreme Court gave five golden principles to adjudicate the case on the basis of the circumstantial evidence.

Those five golden principles incorporated in para No.152 and 153 of the said judgment are as follows : A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established.

There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade & Anr.v.State of Maharashtra(') where the following observations were made: "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say.

they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

It is also worthwhile to observe that the conviction can be based upon the circumstantial evidence and recovery of weapon but in case of Mani versus State of Tamil Nadu reported in 2008 Cr.L.R.(SC) 306, the Hon'ble Supreme Court has held that discovery of articles and weapon is a weak type of evidence, therefore, discovery cannot be relied upon wholly for the conviction in such a serious matter of murder.

13 We have examined the entire evidence of this case.

In our opinion, although in absence of direct evidence, the trial Court has relied upon the circumstantial evidence but witness of recovery of gun PW-1 Malkit Singh and PW-2 Budh Singh turned hostile and not supported the prosecution case, therefore, the trial Court ought to have considered this important aspect of the case so as to adjudicate the serious case of murder.

In our opinion, when the witnesses of recovery are not supporting the prosecution case to prove the recovery of weapon and turned hostile then it creates serious doubt upon the prosecution case and in that eventuality, it is the prime duty of the trial Court to consider the fact that witnesses of recovery of weapon are not supporting the prosecution case.

We have also examined the medical evidence.

In the post-mortem report, as per the statement of Doctor PW-10 M.L.Gupta, four injuries of fire arm were found upon the body of deceased Hanuman Ram but none of the prosecution witnesses have supported the prosecution case.

The author of FIR stated in his statement recorded under Section 161 Cr.P.C.that one fire was made by the accused.

If one fire was made by the accused appellant then how four injuries were found upon the body of deceased.

Therefore, on this reason prosecution case becomes 14 doubtful.

In the totality of the discussion, we are of the opinion that the finding given by the trial Court on the basis of the circumstantial evidence in absence of direct evidence is not in consonance with law because the trial Court has completely ignored the most important fact that all the witnesses including witness of recovery of gun PW-1 turned hostile.

In view of above, it is a case in which benefit of doubt was to be given by the trial Court to the accused appellants but in absence of direct evidence, inspite of granting the benefit of doubt to the accused appellants, the trial Court convicted the accused appellants for alleged offence of murder on the basis of unfounded circumstantial evidence.

In view of above, both the instant appeals are allowed and the judgment dated 28.5.2007 passed by Addl.

Sessions Judge, Anupgarh District Sriganaganagar in Sessions case No.22/2005 (17/2005) is hereby quashed and set aside.

Accused appellant Tola Ram is in the custody, therefore, he shall be released forthwith and accused appellant Trilok Singh is on bail, therefore, his bails bonds are hereby cancelled.

15 Keeping in view, however, the provisions of Section 437A Cr.P.C.the accused appellant is directed to forthwith furnish a personal bond in the sum of Rs.20,000/- and a surety bond in the like amount each, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellants, on receipt of notice thereof, shall appear before Hon'ble the Supreme Court.

(VIJAY BISHNOI).J (GOPAL KRISHAN VYAS).J.

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