

State Vs. Kumbha Ram and Ors

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Court : Rajasthan Jodhpur

Decided On : Nov-16-2015

Appellant : State

Respondent : Kumbha Ram and Ors

Judgement :

D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.Date of Judgment : 16.11.2015 PRESENT HON'BLE MR JUSTICE GOPAL KRISHAN VYAS HON'BLE MR JUSTICE VIJAY BISHNOI Mr JPS Choudhary - Public Prosecutor Mr Kunal Gehlot for Mr Sunil Beniwal for accused-respondents BY THE COURT: [PER HON'BLE BISHNOI,J.].This appeal is directed against the judgment dated 09.04.1996 passed by Judge, Special Court, Scheduled Castes/Scheduled Tribes (Prevention of Atrocities Cases).Jodhpur (for short 'the trial court' hereinafter) in Sessions Case No.54/1996, whereby the trial court has acquitted the accused-respondents - Kumbharam, Hukmaram, Bharuram and Tikuram from the offences punishable under sections 147, 302, 324, 325/149, 323 IPC and also acquitted the D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.2 accused-respondents - Rooparam, Momtaram and Birmaram from the offences punishable under sections 147,

302/149, 324/149, 325/149, 323/149 IPC.

Brief facts, necessary for disposal of this appeal, are that on 01.09.1994 at about 8:40 P.M., PW.6 Kheta Ram son of Shera Ram submitted a written report to the Station House Officer, Police Station, Osian, inter alia, alleging therein that today at about 10:00 A.M., his father Shera Ram took his brother Jetha Ram, who was ill, to Osian Hospital in the cart of Momtaram son of Meethu Ram Meghwal.

Momtaram also accompanied them and in the evening at 6:00 P.M., while returning from Osian, when all of them reached the agricultural field of Birmaram, then suddenly Kumbharam, Hukmaram sons of Sonaram, Momtaram son of Birmaram, Tikuram son of Gajaram, Bharuram son of Andaram residents of Khabra Khurd, who ambushed themselves, attacked his father Sheraram with lathis and kassis.

His father fell down from the cart then Birmaram son of Prabhuram and Rooparam having lathis also came there, they were also involved in the D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.3 conspiracy.

When the accused-persons were assaulting his father, then Momtaram and his brother Jetharam ran away from there, reached his house and informed him, therefore, he came to submit report.

It is further stated in the complaint that the accused-persons assaulted his father with the intention to kill him and he is lying injured at the scene of crime.

In the complaint, it is further stated that the reasons for assaulting his father was some dispute related to the engagement of daughter of Birdaram.

In the complaint, it is further stated that on account of fear, he did not go to the scene of crime.

On receiving this report, the police has registered FIR No.126/1994 at Police Station, Osian against Kumbharam, Hukmaram both sons of Sonaram, Momtaram son of Birmaram, Tikuram son of Gajaram, Bharuram son of Andaram, Birmaram

son of Prabhuram and Rooparam son of Gajaram for the offences punishable under sections 307, 324, 323, 147, 148, 149 IPC and started investigation.

After investigation, the police has filed charge-sheet against the accused-respondents Kumbharam, Hukmaram, D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.4 Rooparam, Tikuram, Bharuram and Momtaram for the offences punishable under sections 147, 148, 302, 323, 324 and 325 read with section 149 IPC and has also filed charge-sheet against the accused Birmaram for the offence punishable under sections 147, 148, 302, 323, 324 and 325 read with section 149 IPC.

The case was later on committed to the Sessions Court, Jodhpur and the same was further transferred to the trial court.

The trial court has framed charges against the accused-respondents Kumbharam, Bharuram and Tikuram for the offences punishable under sections 147, 302, 324, 325/149 and 323 IPC and framed the charges against the accused-respondents - Roopraram, Momtraram and Birmaram for the offences punishable under sections 302/149, 324/149, 325/149 and 323/149 IPC.

The accused- respondents have denied the charges and claimed trial.

To prove the charges against the accused-respondents, the prosecution has produced as many as 15 witnesses and also exhibited several documents.

The statements of accused-respondents were recorded under section D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.5 313 Cr PC, however, no witness was produced in defence.

The learned trial court after hearing the Special Public Prosecutor and counsel for the accused-respondent and after pondering over the evidence produced by the prosecution has acquitted the accused-respondents from the aforesaid offences vide impugned judgment.

Assailing the impugned judgment, learned Public Prosecutor has argued that the trial court has grossly erred in disbelieving the testimony of PW.5 Momtaram, who

was the eye-witness of the incident and has clearly stated that the accused-respondents have brutally assaulted Sheraram on account of which, he died.

It is further argued that the prosecution has proved the charges against the accused-respondents by producing the eye- witness but the trial court has erred in disbelieving the testimony of the said eye- witness in illegal manner.

Learned Public Prosecutor has submitted that the prosecution has proved that Sheraram died on account of injuries sustained on his body by exhibiting the post mortem report Ex.P/14 and by producing the prosecution witnesses PW.11 Dr Bhimpal D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.6 Gahlot.

It is contended that when the evidence to the effect that the accused-respondents had assaulted Sheraram on 01.09.1994 and on account of injuries inflicted by them, Sheraram died, is available on record, the learned trial court has grossly erred in acquitting the accused-respondents and, therefore, the impugned judgment is liable to be set aside.

Per contra, learned counsel appearing on behalf of the accused-respondents has argued that the prosecution has failed to prove beyond reasonable doubt that the accused-respondents have assaulted Sheraram and on account of which, he died and therefore, the learned trial court has not committed any illegality in acquitting the accused-respondents vide impugned judgment.

It is further argued that the testimony of sole eye-witness viz.

PW.5 Momtaram has rightly been disbelieved by the trial court because it was full of contradictions and improvements.

He further argued that the prosecution has failed to prove the motive of the alleged crime and also failed to prove the recovery of weapon from the accused-respondent and therefore, the trial D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.7 court has not committed any illegality in acquitting the accused-respondents.

Heard learned counsels for the rival parties and carefully scrutinized the record.

The prosecution has produced three eye-witnesses viz.

PW.5 Momtraram son of Mithuram, PW.7 Satyanarayan son of Govindram and PW.8 Smt.

Bhomi wife of Puraram.

The two eye-witnesses namely PW.7 Satyanarayan and PW.8 Smt.

Bhomi have not supported the prosecution story and turned hostile.

In their statements, both of them have stated that they did not know Sheraram and they have not seen the accused- respondents assaulting Sheraram.

Now the prosecution case rests upon the sole eye- witness PW.5 Momtaram son of Meethuram.

As per the complainant PW.6 Kheta Ram, he was informed about the incident by PW.5 Momtaram and Jetharam.

Momtraram in his statement-in-chief has stated that after the treatment of Jetharam, he along with Sheraram and Jetharam reached the agricultural field of Tikuram, where Tikuram and Bharuram and both sons of Sonaram, whose names are not known to him but D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.8 he identifies them by face, came there.

During the couRs.of recording his statement, he pointed towards accused- Kumbharam and stated that he stopped the cart and thereafter all the four persons started beating with Sheraram.

He further stated that Tikuram inflicted kassi blow on the back of Sheraram on account of which, he fell down and then all other persons assaulted him.

He further stated that thereafter Rooparam came there and asked him why he brought enemies in their field.

Thereafter, Momtaram and Birmaram came there and asked for assaulting, however, he did not see them assaulting Sheraram and Jetharam saw this.

He has further stated that he ran away from there but Jetharam remained in the cart and when the assaulting was over, he and Jetharam came to cart leaving Sheraram on the scene of crime and thereafter informed Khetaram that his father is lying there and asked him to report to the police.

He further states that thereafter he went to his house and when the police came there, he produced his blood stained turban to them.

In his cross-examination, PW.5 D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.9 Momtaram has admitted that he is a labour and has been visiting the house of Sherram since long.

He further states that he does not know the names of sons of Sonaram and he has never seen them.

He further states that when they reached the field of Tikuram, Birmaram and Momtaram came there running and they did not stop his cart, however, later on he denied that he had seen Birmaram and Momtaram at the scene of crime.

He has admitted that his vision is poor and his hearing is also poor, therefore, he does not know what conversation took place at the time of incident.

He has submitted that he had seen lathi in the hand of Tikuram but he cannot say who had inflicted the injuries and on what parts of the body of the deceased.

He denied that he had informed the police that accused-Kumbharam stopped the cart.

He further stated that he did not disclose the names of Sonaram's sons to the police but simply told their descriptions to the police.

He further stated that he remembered that Tikuram had inflicted one injury on Sheraram, however, he did not remember about other injuries.

He further stated that Tikuram inflicted the said D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.10 injury by kassi.

He has further stated that accused-respondent Momtaram and Birmaram came to the spot when he started to proceed from there.

In the later part of his cross- examination, he has admitted that so far as the acts done by the accused - Rooparam is concerned, the same is not mentioned in his police statement.

He has further admitted that he did not inform Khetaram about the acts of Rooparam.

From the above noted facts, it is clear that PW.5 Momtaram has specifically stated that he does not know the names of Kumbharam and Hukmaram, who are the sons of Sonaram.

He also states that Birmaram and Momtraram came there after the incident.

At one point of time, he has stated that Tikuram came there with lathi but thereafter stated that Tikuram assaulted Sheraram with kassi.

So far as role of Rooparam is concerned, he has not stated about the same in the police statement and has also admitted that he did not inform about the acts of Rooparam to Khetaram, who lodged the fiRs.information report on his information.

D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.11 From the above analyzing, it is clear that while deposing before the trial court, PW.5 Momtaram had contradicted his earlier statement recorded by the police and made several improvements and, therefore, the testimony of PW.5 Momtaram cannot be said to be reliable and the trial court has rightly disbelieved the same.

So far as recovery of the blood stained kassis and the clothes are concerned, the trial court has observed that the prosecution has failed to prove the fact that the blood contained on the above mentioned articles is of the same group or of the blood group of deceased Sheraram.

The trial court has also disbelieved the recovery of the said articles at the instance of the accused- respondents as the same was recovered from the places, which were not in conscious and sole possession of the accused-respondents.

After analyzing the prosecution evidence, we are of the opinion that the prosecution has failed to prove beyond reasonable doubt that the accused-respondents had assaulted the deceased Sheraram and on D.B.CRIMINAL APPEAL NO.383/1996 State of Rajasthan versus Kumbharam & ORS.12 account of that he died and, therefore, they have committed the offence of murder.

The trial court has rightly observed that the prosecution should prove that the accused-respondents must have committed the offence and not that the accused persons might have committed the offence.

In view of the above observations, we find that the appellant-State has failed to make out any case for interference.

Hence, the instant appeal preferred on behalf of the State fails and is hereby dismissed.

[VIJAY BISHNOI],J.

[GOPAL KRISHAN VYAS],J.

m.asif/-PS

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