

Mamu Lal Vs. State

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Court : Delhi

Decided On : Dec-21-1994

Reported in : 1994IVAD(Delhi)474; 1995CriLJ979; 1994(31)DRJ272

Judge : Dalveer Bhandari, J.

Acts : Indian Penal Code (IPC) - Sections 307

Appeal No. : Criminal Appeal No. 63 of 1977

Appellant : Mamu Lal

Respondent : State

Advocate for Def. : Raman Sawhney, Adv.

Advocate for Pet/Ap. : P.P. Grover, Sr. Adv. and; Jitender Sethi, Adv.

Judgement :

1. The accused appellant Mamu Lal has been convicted by the learned Additional Sessions Judge under Section 307 I.P.C. and has been sentenced to four years rigorous imprisonment. The appellant aggrieved by the judgment of the Additional Sessions Judge has preferred appeal to this Court.

2. Brief facts which are necessary to dispose of this appeal are recapitulated as under :

3. That at 8.20 p.m. on 31st January, 1976 according to the prosecution at Regarpura, Karol Bagh, Delhi, Harichand and Chiranjilal caught hold of one Niranjana while the appellant inflicted injuries. Niranjana was admitted to the hospital on 31st January, 1976 and was discharged on 18th February, 1976. He was further readmitted to the hospital on 14th March, 1976 in an unconscious condition and he died on 4th April, 1976.

4. According to the doctor, the cause of death was meningitis which may have been developed because of the infected wounds on the back of the deceased. The deceased was alcoholic and used to wear very dirty clothes. While the deceased was in the hospital some tests were conducted and the report is Exhibit PW 17/J. This report shows that the stomach and intestine spleen and kidney and blood gave positive test for ethyle alcohol. The report also shows that alcohol was present in the blood of the deceased to an extent of 313.5 mgs per 100ml of the blood. These reports clearly indicate that the deceased was addicted to alcohol. The alcohol was present in his blood even after he had been in the hospital for 16 days. That means, even while the appellant was admitted in the hospital, he used to take liquor.

5. The main question which arises for consideration of this Court is whether in the present facts and circumstances of this case, an offence under Section 307 I.P.C. is made out against the accused/appellant

6. Kishorilal P.W. 1, Bhima Ram, P.W. 2 are the eye witnesses. They have tried to prove the prosecution case that the knife injury was caused by the accused/appellant. These witnesses have not named the other two accused Hari Chand and Chiranjilal. They have not mentioned about their participation in this crime. Learned Additional Sessions Judge had not relied on the testimony of both these prosecution witnesses on the ground that since Harichand and Chiranjilal were admittedly known to these witnesses, then why the names of these two accused were not disclosed by both Kishorilal and Bhima Ram. The trial court after examining the testimony of both the witnesses came to the conclusion that in absence of getting the accused identified properly there is practically no evidence against them and consequently Hari Chand and Chiranjilal were given

benefit of doubt.

7. The conviction of the accused/appellant is primarily based on the testimony of these two witnesses who were discarded as far as the other two co-accused are concerned.

8. Mr. P. P. Grover, learned counsel appearing for the appellant submitted that no reliance can be placed on testimony of these witnesses who were disbelieved by the trial court as far as other two accused are concerned.

9. The learned counsel for the petitioner submitted that there was no bone injury. He placed reliance on the testimony of PW. 14, Dr. J. Chatterjee who has stated that he did not find bone injury on the body of the deceased.

10. He further submitted that no reliance can be placed on the testimony of Dr. M. Kr. Gupta. He submitted in his examination that 'I had found the injury on the person of Niranjana patient dangerous.' In the cross examination the same doctor has stated that there was no major vessel cut. He further admitted that he did not examine the patient. It was submitted by the learned counsel for the petitioner that the doctor had not examined the patient and he did not indicate on what basis, he came to conclusion that the injury caused by the accused to the deceased was dangerous in nature. The testimony of Dr. Gupta also has to be rejected for the simple reason that he has not conclusively proved how the injury was dangerous in nature.

11. Learned counsel for the petitioner submitted that Kishori Lal PW-1 was not a chance witness. He was residing in the same neighborhood which is clear from the address given by him in his statement. As a matter of fact, he had brought the accused-appellant to the hospital. The fact that he had known the accused for a long time and his close relationship was deliberately withheld by him from the Court. therefore, in overall evaluation of his testimony, he cannot be said to be a trustworthy witness.

12. There is no recovery of knife - the weapon of offence.

13. Learned counsel submitted that there are serious infirmities in the testimony of prosecution evidence and it would not be safe to base conviction on the testimony of such witnesses.

14. I have carefully considered the submissions of learned counsel for the parties. The testimony of Kishori Lal, PW-1, and Bheema Rao, PW-2 have been discarded by the learned Addl. Sessions Judge and he gave benefit of doubt to the other two accused Hari Chand and Chiranji Lal because of the testimony of these two witnesses.

15. The testimony of Dr. N. K. Gupta, PW-12 is also not trustworthy. Without examining the patient, he had mentioned that injury was dangerous in nature. Dr. Gupta had also not given any other basis for reaching to that conclusion. In my considered opinion, it would not be safe to base conviction on the testimony of PW-1 and PW-2 and Dr. N. K. Gupta P.W. 12.

16. Consequently, the accused-appellant is given benefit of doubt. Appeal is accordingly allowed and the appellant is acquitted. The accused/appellant shall be released forthwith, if not required to be detained in any other case.

17. Appeal allowed.