SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Dhanna and anr. Vs. the State

Dhanna and anr. Vs. the State

SooperKanoon Citation : sooperkanoon.com/752401

Court : Rajasthan

Decided On : Nov-13-1950

Reported in : AIR1951Raj37

Judge : Nawalkishore, C.J. and; Bapna, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 300; Code of Criminal Procedure (CrPC) , 1898 - Sections 288; Evidence Act, 1872 - Sections 118

Appeal No. : Criminal Appeal No. 49 of 1950

Appellant : Dhanna and anr.

Respondent : The State

Advocate for Def. : Mansharam, Govt. Adv.

Advocate for Pet/Ap. : J.G. Sethi and; L.N. Chhangani, Advs.

Disposition : Appeal allowed

Judgement :

Nawalkishore, C.J.

1. The accused Dhanna s/o Jeevraj and Jawana s/o Lakha were tried by the learned Sessions Judge, Bikaner, for causing the death of Dhanna s/o Pema under Section 302/34, Penal Code, and convicted and sentenced to rigorous

imprisonment for life each.

2. This appeal has been preferred by them against the above order of the learned Sessions Judge and argued on their behalf by Mr. J. G. Sethi, Bar-at-law, of the Punjab High Court at considerable length and Mr. Mansharam, the learned Government Advocate has addressed us on behalf of the State.

3. According to the prosecution story, the two accused and a third person, namely, Phoola, Biahnois by caste and residents of neighbouring villages, attacked the deceased Dhamia on the night between the 22nd and 23rd of July 1949 while he was asleep with his son Rajaram in his field which is situate at a distance of about three milea from the village The motive for this attack is stated to be the strained relations between the parties. It is alleged that Jawana and Phoola accused owed Rs. 1400 to the deceased and on their refusing to pay, four or five persons interceded but the accused put forward a cross claim against the deceased to the tune of Rs. 1100 alleged to have bean taken by him from the wife of Jawana and stated that the amount due from them to the deceased will be liquidated as soon as the latter paid his dues. The deceased denied having borrowed any money and thereupon, the accused also refused to pay. The result was that the deceased sued Jawana and Phoola and Dhanna accused appeared as Jawana's witnessea, and the suit was dismissed. Jawana accused prosecuted the deceased under Section 406, Penal Code, and although Dhanna and one Manphool (it is not known whether he is the same person as Phoola accused) appeared as hia witnesses. This prosecution failed and the deceased was acquitted on 13-7-1919, that is, 9 days before the occurrence. While the factum of act criminal case is fully established on the record as a copy of the judgment has been produced, the same cannot be said about the civil suit which is alleged to have been instituted by the deceased. A copy of the judgment has not been produced and P. W. 4 chaoga, who deposed to it, admitted that he had only heard about it. P. W. 1, Laloo, referred to this litigation in the first information report and also in his statement on oath but admitted that he had no personal knowledge and had only heard about it, P. W. chhoga also stated that the accused Dhanna and the deceased had fought with each other and Laloo also mentioned in the first information report that the deceased had beaten Dhanna accused five or six days before the occurrence.

Beyond admitting that he had made the first information report, he did not depose to this particular matter in his statement. Be that as it may, the prosecution case is that on account of the civil and criminal litigation, the relations between the accued and the deceased were fan from happy and that accordingly, actuated by feelings of revenge, the accused joined hands for the purpose of attacking the deceased. It was a pitch dark night and rain had fallen a few days before. It is stated that sometime during the day, on 22-7-1349, the deceased and his son Rajaram, aged 12 years, had gone to the field for the purpose of ploughing it. After finishing with the ploughing, both of them decided to spend the night in the field . Accordingly, after taking their food, they slept on the same cot. At a distance of about 100 Poandas, there is another field belonging to Amiohand who had also gone there in order to plough it and p. w. 3 Ramchand had joined for the purpose of helping him. At about midnight, Dhanna and Jawana, armed with litthia and Phoola armed with a Sela, went to the field of the deceased and inflicted a large number of injuries on his person. It is alleged that as soon as the accused persons reached the spot, they felled both the deceased and his son from the cot and began to be labour the deceased. rajaram began of cry and thereby attracted p. w. 3 Ramchand and Amichand to the spot. They saw that all the three accused were giving blows to the deceased and inflicting injuries on his person and Rajaram was standing nearby and weeping. These parsons reprimanded the accused and thereafter they left. The deceased died at daybreak, According to the evidence, his hands and feet were fractured and he was bleeding and his death was due to shock and haemorrhage caused by multiple grievous injuries. Rajaram was sent to the village and he informed Laloo and Harbhaj of what had happened. P. W. 1 Laloo, Harbhaj and a number of other persons visited the field and after confirming the information about the murder of Dhanna, Laloo went ahead to the Police Station for the purpose of lodging the report. The Thana is about nine miles from the field and this distance was covered on camel back. The first information report, Ex. p-1, which is a detailed document was lodged at 12 noon on 23-7-1949. Investigation was taken in hand and the dead body was sent for postmortem which was conducted by Dr. Jogendra Singh on 24-7-1949 at 5-45 P. M. The deceased was a healthy person and 30 years of age and according to the post-mortem report, had received 22 injuries in various parts of the body with a sharp edged weapon, while two injuries

had been caused with a blunt weapon. In the opinion of the Doctor, these two injuries could also be caused by a fall on a hard substance. At the time of the post-mortem, decomposition had set in and since there was no injury on a vital part of the body, in the opinion of the doctor, the deceased might have escaped death if he had bean treated properly. The post- mortem report, Ex. P-6, showed the following injuries:

(1) Penetrating wound l' x 1/2' at the acute angle of the right eyebrow reaching up to the eye-ball penetrating it resulting in the collapse of the eye.

(2) Penetrating wound 1/4' x 1/4' just at the upper been of the sternum reaching up to the bone.

(3) Penetrating wound 1/2' x 1/2' x 1/2' on the dorsum of the left hand in its middle.

(4) Penetrating wound 13/4' x 1/2' on the left arm reaching up to the bone resulting in its fracture in its middle.

(5) Penetrating wound 3/4' x 1/2' at the back of the left elbow reaching up to the bone.

(6) Penetrating wounds four in numbers quite near to each other about 3/4' x 1/4' each in the front of the left leg resulting in communicated fracture of both bones left leg near its middle.

(7) Penetrating wound 1/4' x 1/4' just below the left knee reaching up to the bone.

(8) Penetrating wound 1/2' x 1/2' on the right forearm on the media dorsal aspect resulting in fracture of both bones in its middle.

(9) Penetrating wounds eleven in number varying from 1/4' x 1,1/2' x 1/4' in the front, middle and lateral aspect of the right leg resulting in comminuted fracture of both bones in their middle

(10) Right side chest lower part in mid axillary region some swelling and some coagulated blood found in the S.C. Tissue-no fracture, (ll) Contusion 2 1/2' x 1/2' just below the right ear in the mastoid region. Some swelling and congested blood

in S.0. Tissue-seen no fracture.

4. The three accused were challaned under Section 302, Penal Code, in the Court of the City Magistrate, Bikaner, who committed them to take their trial under that section in the Court of the Sessions Judge. Phoola accused is absconding and accordingly, evidence was produced regarding the participation of the two accused namely, Dhanna and Jawana only in the commission of the offence. The accused denied having committed the offence and Jawana after admitting the litigation with the deceased stated that on the day of the occurrence, he was at Tandurwala. Dhanna accused simply denied having committed the offence. They produced two witnesses in defence. The prosecution produced P. W. 2, Rajaram P W 3, Eamchand, as eye-witnesses and P. W. 7 Mangalji and p. W. 8 Mahabatsingh who had Been the accused before and after the occurrence near the place of occurrence. The prosecution also produced evidence regarding the recovery of lathiea-one from Jnwana's house at his instance and the other from Jawana's fencing at Dbanna's instance. The lathiea were, however, not blood stained. The witnesses alleged having identified these lathies as having been plied by Dhanna and Jawana but the learned Sessions Judge rightly disbelieved them on this point He, however, believed P. W. 2 Rajaram and p. W. 3 Ramchand and also P. Ws. 7 Mangalji and 8 Mahabatsingh and convicted and sentenced the accused as stated above.

5. It may be pointed out that the deceased Dbanna and the three witnesses, namely, P.W. 1 Laloo, P. W. 2 Rajaram and P. W. 3 Ramchand are near relations as will be clear from the following pedigree-table which has been collected from the statements of these witnesses :

RIDMAL

|----------|

Roopa Vishna

| |----------|

Girdhari Harbhaj Daughter

| | |

Ramchand Laloo Dhanna (Deceased)

P.W.3 P.W.1 |

Rajaram P.W.2

6. P. W. 1 Laloo and P. w. 3 Ramchand were cross-examined by the accused in order to establish that they were relations of the deceased and accordingly, highly interested witnesses. P. W. 3 Ramchand categorically denied his relationship with p. W. 1 Laloo. He, indeed, admitted that his grandfather's name was Roopa and that Roopa's father was Ridmal. He, however, stated that he did not know whether the name of the grandfather of Harbhaj was also Ridmal. Similar questions were put to P. W. 1 Laloo who stated that he did not know whether Girdhari and Roopa were P. W. 3 Ramchand's father and grandfather and whether the grand father of both Girdhari and Harbhaj was Ridmal. In the committing Magistrate's Court, Laloo had however admitted that Vienna and Roopa were the sons of Ridmal and he was accordingly faced with his previous statement. He adhered to the statement made him in the Session in the Sessions Court and as regards the other, he deposed that he had not made such a statement. He even went to the length of saying that he and Ramchand belonged to the same village but were not related to each other. In our opinion, while P.W. X Laloo and P. W. 3 Bamchand have deliberately lied and done their best to conceal their relationship with the deceased for the purpose of being treated as disinterested and independent witnesses, the statement made by Laloo in the Court of the Committing Magistrate was nearer, the truth and we have no hesitation in relying upon it and hold that both the witnesses are near relations of the deceased. Since independent testimony is not forthcoming in the case, we will have to examine the testimony of these witnesses carefully, and not accept it as true until it has been properly checked and found to be satisfactory. This is all the more necessary in view of the fact that these witnesses appear to be only too willing to depose to details as pat in their mouth by those into rested in the prosecution without making sure about their accuracy. His Lordship then discussed the evidence and proceeded as under :] Although the learned Sessions Judge relied upon their testimony, the statements made by the

m cannot be easily held to pass for truth and we do not wonder that the learned Government Advocate has conceded frankly that he is not prepared to rely upon them There is one more factum to which we must advert before delving into the arguments addressed at the bar and this relates to the tracks found on and near the e spot. [****] The track evidence has not been developed on the record, and according to Mr Sethi, this was due to the fact that it was not favourable to the prosecution. Such then is the unhappy condition of the evidence in this case and as stated already, it will not do, merely to look at the case from the surface. It is absolutely essential, in our opinion, that the evidence produced by the prosecution must be subjected to every possible cheek provided by law or material on the record and should not be relied upon until we are satisfied that it is incompatible with the innocence of the accused.

7. The learned Government Advocate has urged that the prosecution version is supported by two witnesses, namely, P.W. 2 Rajaram and p. W. 3 Ramchand. The presence of Rajaram is proved by the statements of P.W. 3 Ramchand and p. W. 1 Laloo as mentioned in the first information report as the person who had conveyed the information to him. Rajaram has given the entire version from beginning to end and there was very little cross-examination. Similar was the argument with regard to the statement of P W. 3, Ramchand who had reached the spot on hearing the cries, seen the injuries being inflicted and sent Rajaram to the village while he himself remained with the deceased. His presence was admitted by p. w. 3 Rajaram and also by p. w. & Chhoga who had reached the spot after the incident. His name was also mentioned in the first information report. If this were all in the case, the prosecution version might be said to have been established on the record. Mr. Sethi has, however, by a lengthy and able argument, shown that the statements of these witnesses, highly interested as they are, cannot be relied upon. The fact regarding Ramchand having lied so far as relationship was concerned was very much emphasized by him during the course of his arguments. This, however, by itself is not sufficient for holding that he had also lied while narrating the principal events, as the maxim falsus in uno falsus in omnibus has long been exploded. We will therefore examine the entire deposition carefully. [His Lordship discussed the evidence of the alleged eye witness and proceeded as follows]: A complete lack of details regarding the manner in which the fight began

and the part played by the deceased is another factor which makes it very difficult for a Court of law to hold that the witness was present on the spot and had seen the occurrence.

8. Mr. Sethi has farther contended that one important cheek regarding the truthful character of the statement made by P. Ws. 2 and 8 is furnished by the medical evidence. According to these witnesses, all the three accused had given a beating to the deceased. A reference to the post-mortem report, Ex. P-6 and the statement of p. W. 6 Dr Jogendrasingh shows that 22 out of 24 injuries were penetrating or what is the same thing punctured wounds, caused by means of sharp edged weapons while only injuries Nos. 10 and 11 bad been caused by lathies and with regard to these, the Doctor's opinion was that they may have been caused by a fall. If the statements of the eye-witnesses had been correct and if it were true that all the three accused were giving the beating, there would have been a sufficient number of injuries caused by lathies as well. The medical evidence discloses that the two accused practically played no part while Phoola, who was armed with a sharp edged weapon, was busy inflicting the injuries all the time. The learned counsel for the appellants has contended that since the statements of the witnesses are not supported by the evidence of the medical export, it must be held that they were not there on the spot and had not seen the occurrence. We consider that there is force in this contention as well. Where an interested witness makes a verbal statement as regards the existence of certain facts, and it is possible for the Court to put it to a test in the light of checks available on the record, it should not be easily accepted unless it is corroborated and stands the test' The important check available in this case consists of the post-mortem report and since it shows aim that all the injuries inflicted with sharp-edged weapons, the statements of the witnesses that all the three accused were inflicting injuries when they saw them cannot be accepted as true and must be rejected as false. The learned Government Advocate has argued that injuries Nos. 6 and 9 consisted of comminuted fractures underneath the penetrating wounds and that these could not but have been caused by lathies. It is a strange coincidence that the fractures existed under the penetrating wounds but how is it possible for this Court to hold that the fractures had been caused by lathi blows inasmuch as p. W. 6 Dr. Jogendra Singh's statement is clear to the effect that they had been caused by

sharpedged weapons. Further the lathi blows inflicted with a force sufficient to result in such injuries, would in fill probability be accompanied by contusions or contused wounds but admittedly these were not there, The learned Government Advocate urged that the body was in a state of decomposition at the time of the postmortem examination and owing to discoloration of the skin, contusions had disappeared. There is, however no support for this position on the record. [His Lordship referred to the evidence and continued as follows] This is another important cheek furnished by the record and on applying it to the statements on the record, we cannot but come to the conclusion that Ramchand and Chhoga are both indulging in lies.

9. Mr. Sethi next argued that the eye-witnesses would at least know the time of the Occurrence, and the time of the death of Dhanna and that if there was interval between the two and they were present, they would not allow him to bleed to death and apply such crude methods as were familiar to them for the purpose of stopping the continuous flow of blood which ultimately resulted in death. [After referring to the evidence his Lordship continued:] The learned counsel has tried to fix the time of the occurrence at somewhere near midnight by reference to the post mortem report according to which the stomach of the deceased was in a healthy condition but contained particles of semi digested food. The learned counsel argued from this that the deceased must have taken his food at about 8 O'clock and that it must have taken 3 to 4 hours for all the food to pass out of the stomach leaving behind only fatty foods which it takes longer to digest. Mr. Mansharam on the contrary has contended that the food must have been taken very late as other wise it would not have been in a state of semi-digestion at the time of the death. Here again, some assistance should have been taken from the medical expert if there was evidence as to when the deceased took his food and what he ate. It is a medico, legal question and as stated in Modi's Medical Jurisprudence, points to be noted is ascertaining the time of death are warmth or cooling of the body rigor mortis and several other factors. In addition to these, the time of death can be ascertained with some possibility from the degree of digestion of the stomach contents and from condition of the bladder and intestines as regards their contents. The degree of digestion of the contents, however, cannot always be relied upon in deter, mining the time of death, inasmuch as the power of

digestibility may remain in abeyance foe a long time, as mentioned by Modi, in states of privation, shock and coma food consisting of rice and dal has been found to remain in the stomach for about 40 hours without undergoing digestion. Accordingly it would be futile the appellate Court may feel satisfied as to try to fix even the approximate time of the Aim capacity of the child to give evidence. occurrence on the above data, when the witness themselves have failed to give as the required information. We have dealt with this aspect of the case in detail as the learned counsel developed at some length his contention that considerable delay had occurred in making the first information report. Since it is not possible to hold definitely at what time the offence was committed, it is equally difficult to say that delay had occurred in making the first information report.

10. So far as the evidence of motive is concerned, it is indeed weak but in the view taken by us, it is not at all necessary to deal with it

11. For all the reasons mentioned above, we find it very difficult to uphold the conviction of the accused on the record as it stands. The result is that this appeal succeeds and is and is accepted and the convictions and sentences awarded to the accused set aside, The accused are hereby acquitted and shall be set at liberty forthwith.

12. Before parting with the case, we may paint out that in criminal cases since the accused is presumed to be innocent till he is found to be guilty, statements of the prosecution witnesses should be forthright, give complete details without leaving gaps which may create doubts and should stand scrutiny in the light of cheeks available on the record or otherwise. The learned Sessions Judge in this case took a highly Superficial view and did not take the trouble of subjecting the sketchy oral evidence to various tests He even committed an illegality in referring to He record of the Committing Magistrate's Court for the purpose of holding that the prosecution had withheld Amichand because he had become hostile. The record of that Court is not evidence in the case and it was not open to the Sessions Court to draw any inferences on arrive at any conclusions on its basis.

13. Another mistake committed by the learned Sessions Judge was that before P. w, 2 Rajaram, a lad of 12 years of age, made his statement he simply cautioned

him to tell the truth and thereafter without satisfying himself, he proceeded to record the statement. Under Section 118, Evidence Act, it is imperative that the Court should test the competency of a child witness before examining him. It should indeed test his intellectual capacity by putting a few simple and ordinary questions and also judge the competency of the witness during the course of his examination and say something to that effect after the statement is over so that the appellate court may feel satisfied as to the capacity of the child to give evidence

Bapna, J.

14. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com