

Meghji Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : May-18-1983

Reported in : 1983WLN(UC)91

Judge : M.C. Jain and; S.C. Agarwal, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 247 of 1977

Appellant : Meghji

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Shri. S. D.Vyas

Disposition : Appeal allowed

Judgement :

M.C. Jain, J.

1. The appellant Meghji was tried for the murder of Nakuda son of Lachhia, alleged to have taken piece in the night intervening 23-10-76 and 24-10-1976, at about 10-00 p.m. on the way between the fields of Jeewana and Hukma. It is said that after taking their meals the deceased Nakuda and his brother Mogiya (PW 4) have proceeded to their field for keeping a watch on the ground-nut crop After taking their meals, they started at the evening. Mogiya (PW 4) had a limp in one of his leg, so he was 50-60 paces behind his brother Nakuda. He heard the cries of

his brother Thereupon, he immediately reached near him and saw the appellant inflicting Kulhari blows on his brother. On his alarm, his father Lachhia and uncles Hamira and Jiwana had arrived at the spot. When Hamira and Jiwana arrived, the accused was running away from the scene of occurrence. Kamala (PW 1) was informed by Hurma (Surma) at about 11 or 12 in the night. The motive for the murder issued to be that the accused had a suspicion that his wife has a illicit intimacy with the deceased and because of that a quarrel had taken place last year. Kamla (PW 1) lodged a verbal report at the Police Station, Pipal Khunt, District Banswara, at 11.00, A.M., dated 24-10-1976. On her report, case under Section 302, IPC, was registered by the SHO Mustaffa Khan (PW 9). He visited the spot and prepared the Panchnama Fx P/4, Site inspection memo (Ex. P/5) & site-plan (Ex.P/6). He seized blood stained earth from the spot vide memo Ex. P/7 & the Sapha & the shoes of the deceased were also seized, the seizure memo whereof is Ex, P/8. At a distance of about 45' from the place of occurrence a pair of shoes, said to belong to the accused, was also seized by memo Ex. P/9. On 28-10-1976 the accused was arrested and his arrest memo Ex. P/10 was prepared. At the time of his arrest, it was noticed that his Dhoti and Pachhari were having stains of blood, so these clothes were seized vide memo Ex. P/11. On the information Ex. P/14, given by the accused, a blood stained Kulhari was recovered at the instance of the accused vide recovery memo Ex. P/12 on 18-10-1976. The Investigating Officer also got the autopsy conducted. The post-mortem report is Ex. P/16 Dr. PL. Bhardwaja (PW 11) found as many as six injures on the person of the deceased. He further noticed the defused hamstoma at the scalp layer at the site of injury No 6. The membrana was connected and there was entra dural and intra-dural hamstoma. He also found fracture of left parietal bone and left temporal and Zygomatic bone and injury to vessels and soft tissues, membrane and brain at the site injury No. 3. Blood cloth over the tissue and inside the brain, were also noticed. Injuries No. 3 and 6 individually were sufficient in the ordinary course of nature to cause death, as stated by the Doctor in his statement. The sealed packets were sent for chemical examination. The chemical examination revealed that the Kulhari and the clothes of the accused had blood stains and the Serological examination revealed the presence of the human blood over the kulhari. As regards his clothes, the blood stains were found disintegrate, so their

origin could not be determined. After conducting investigation from the witnesses, challan was produced against the accused. The accused was ultimately tried by the Sessions Judge, Banswara.

2. The accused was charged for the offence under Section 302, IPC, to which he pleaded not guilty and claimed to be tried. At the trial the prosecution ex-mined PW.1 Kamla, PW 2 Hamira, PW. 3 Siwana, PW. 4 Mogiya, PW. 5 Ramlal, PW. 6 Surma alias Hurma, PW. 7 Lachhia, PW. 8 Punia, PW. 9 Mustaffa Khan, PW. 10 Baxi J am, and PW. 11 Dr. P.L. Bhardwaj. In his statement under Section 313, Cr. PC the accused denied the prosecution case in entirety In his defence he examined three witnesses, namely, DW.1 Kamji, DW.2 Khatiya, and DW.3 Dhuliya. According to their version, they visited the place of occurrence and on their asking the people said that they do not know as to who had killed the deceased. After hearing the arguments, the learned Sessions Judge, Banswara, convicted & sentenced the accused, as aforesaid, relying on the evidence of PW. 4 Mogiya PW. 7 Lachhia. The rest of the witnesses, namely PW. 1 Kamla. PW. 2 Hamira, PW.3 Jiwana, PW.5 Ramlal, Motbir, and PW. 6 Surma (Hurma), did not support the prosecution and were declared hostile. The learned Sessions Judge further placed reliance on the evidence of recovery and corroboration sought from the Articles, which were found blood stained and corroboration was also sought from the medical evidence.

3. We have heard Shri S. D.Vyas learned counsel for the appellant, end Shri M.C. Bhati, learned Public Prosecutor, for the State.

4. Mr. S. D Vyas, learned counsel for the appellant, vehemently contended that the learned Sessions Judge committed a grave error in placing reliance on the testimony of Motiya (PW.4) and Lachhia (PW. 7), more particularly when the remaining witnesses, who appeared at the scene of occurrence or to whom the occurrence was immediately narrated, have: not supported the prosecution and have turned hostile. Primarily, the case hinges on the evidence of Mogiya, as admittedly Lachhia had not witnessed the occurrence. He was attracted to the scene of occurrence on hearing the alarm of Mogiya. With regard to the testimony of Mogiya, Mr. Vyas strenuously urged that the evidence of this witness has been

cooked up. He does not appear to have witnessed the occurrence. His one leg is not normal and according to Lachhia, he left the house after his brother Nakuda had already left the house. It was a dark night of Aravahya. It was not possible for him to have identified the accused in the darkness. Anxiety to have clear perception and identification of the accused appears to be there, as in his statement Ex.D/1, what he has stated is that Hamira had a light and it was in that light that he identified the accused. With regard to portion A to B of his police statement Ex.D/1, he has, at the trial, stated that he cannot say whether he made mention of observance in the light, which Hamira was having with him. He also pointed out that the shoes of the accused are said to have been found from place 'B' shown in the site plan, which is of a distance of 43 paces from the place of occurrence. The point 'B' is towards the north of the place of occurrence and on the southern boundary of Lachia's field. The witness has stated that after the occurrence the accused ran away towards Surma's field in the west. This shows that Mogiya did not witness the occurrence, also he would have said that the accused first proceeded towards north and when the east-west way meets the north-south way, the accused took a turn towards west. As this is not in his statement, so it should be taken that Mogiya did not witness the occurrence, Mr. Vyas submitted that as there was suspicion against the accused for the deceased having illicit relations with his wife, charged of murder has been foisted against the accused on account of suspicion.

5. We have carefully considered the above criticism levelled against the testimony of Mogiya. Undoubtedly, it is a serious question, which requires anxious and deeper consideration as to whether Mogiya at all witnessed the occurrence and grasped the identify of the assailant? Was it possible for him to have identified the assailant, particularly, when he states that he could not say whether in his police statement he made mention of the light with Hamira, in the flash of which he identified the accused. The testimony of the witness is further to be tested in view of the fact that Hamira (PW 2) has not at all supported the prosecution and does not say that he visited the place of occurrence soon at the time of the occurrence and that he had any light with him. It may be stated that the appellant was very well known to Mogiya and the appellant was not a stranger to him. Both the brothers left the house, as stated by Lachhia, father of the deceased and Mogiya

(P.W. 4). Undoubtedly, Mogiya left the house after Nakuda, but that does not mean that he left the house after sometime. It appears that Mogiya followed Nakuda and was behind him on account of his infirmity in his one leg and according to Mogiya, his brother Nakuda was ahead of him about 50 to 60 paces. It is significant to note that as many as six blows were inflicted on the deceased. It can very well be said that either on the first blow or even earlier to that, the deceased must have raised an alarm. On hearing his alarm, it was natural for Mogiya to have rushed towards his brother and according to him, when he was at a distance of 6-7, he identified the accused, who was none else, other than his cousin brother. The witness pointed out the distance in the court. The distance was the from place from where he was giving his statement to the place where the Court was sitting. In our opinion, from such a distance it was not at all difficult to have identified the accused, particularly, the accused was a relation and very well known to the witness. A discrepancy had occurred in his statement and the statement of Lachia on the point as to who first arrived on his alarm, Mogiya stated that his father. Hamira and Jiwana arrived at the spot and in cross-examination he stated that first his father arrived and thereafter Hamira and Jiwana arrived. Lachhia (PW 7) in examination-in-chief stated that first of all he visited the place of occurrence and thereafter Hamira, Jiwana, Surma and Haria arrived. In cross-examination he stated that Surma, Jiwana & Hamira reached first, but they have all turned hostile. Sequence and the order, in which the witnesses appeared at the scene of occurrence, in the circumstances of this case, is not very material in view of the fact that Hamira and Jiwana have not supported the prosecution case and admittedly Lachhia had not seen the accused running Mogiya's statement may not be true, when he states that his father arrived first, followed by Hamira and Jiwana. But Mogiya's statement can be tested by the statement of Lachhia, who reached the place of occurrence and to whom the occurrence was narrated by Mogiya. He immediately gave out to Lachhia that Meghji had killed Nakuda with 'Kulhari'. Thus, Mogiya's statement gets corroboration from Lachhia. The distance between the house of Lachhia and the place of occurrence has not come in the evidence. Lachhia states in cross-examination that he heard the cries of Mogiya, after so much time, in which one may smoke a 'Biri'. It may be taken that the house was within the hearing distance. After hearing the shouts of Mogiya. Lachhia

reached the place of occurrence. As regards the argument that according to Mogiya the accused ran in the west towards Surma's field, it may be mentioned that from this statement it cannot be the very place, the direction of the running of the accused, was west. A clear question ought to have put to the witness that from the very place of occurrence he turned towards west. If such a question would have been put, the witness would have been in a position to state clearly as to whether he immediately proceeded to the western direction or he first ran upto some distance proceeded in the north and then ran towards the West. Surma's field is undoubtedly towards the west from the place of occurrence, but Surma's field does not end at the place occurrence, but proceeds ahead towards north, so, it may after covering some distance towards north, the accused might have run towards West. Thus, on the basis of the statement that the accused went towards West, it cannot be taken that the witness did not see the occurrence and did not see the accused running. From the perusal of the statement of Mogiya, we are convinced that the accused has not been involved simply on the basis of the alleged suspicion in the mind of the accused that the deceased has illicit intimacy with the wife of the accused and so choice has been made with regard to the accused for levelling the charge against him for the murder of Nakuda. To us, it appears that the deceased being near relation, the other witnesses have not supported the prosecution and Lachhia appears to be truthful when he states that the version given by the other witnesses as to what is the good of coming with the truth, as what ever has happened, has happened. In our opinion, the testimony of Mogiya is credible and dependable and it finds corroboration from the statement of Lachhia and it further gets corroboration from the medical evidence. As already stated, the deceased had as many as six wounds. Our attention has been invited by Shri Vyas to the testimony of Dr. P. L. Bhardwaj, who in his examination-in-chief, stated that the blade of the axe is approximately of 3' and the length of injury No. 3, is 4' so he opined that injury No. 3 cannot be caused by the axe Article 4, which has been recovered on the information and at the instance of the accused. Injury No. 3 is across the left ear. Looking to the site of the injury, in our opinion, it is possible that an injury greater in length, may appear even when it is caused by a weapon, whose blade is less in size. Although, such an explanation has not been given by Dr. Bhardwaj, but it appears that such a suggestion has not been given to

him. A slight slip of the weapon may increase its dimension, that is, its length. This discrepancy apart, Mogiya's testimony is very clear that the author of the injuries on the person of the deceased is the accused Meghji and the blows were inflicted with a Kulhari. Mogiya has not identified the Kulhari. It has not been put to him that the accused inflicted flows with Kulhari Article 4, Although the Kulhari is found stained with human blood and the clothes, which have been recovered from the person of the accused, have also been found stained with blood and the human blood could not be detected on account of disintegration, but we do not want to employ these circumstances in view of the fact that there is no complete evidence relating to the seals remaining intact right from the time of sealing of the packets, till they reached the Forensic Science Laboratory & on account of lack of this evidence, it will also not be proper to employ the circumstance that one of the those seized articles of the accused was found stained with human blood. We are not employing this circumstance also that the pair of shoes recovered from point 'B' belongs to the accused. In view of the fact that no attempt has been made to find out as to whether the pair of shoes recovered, fits in the feet of the accused. Had there been any material in this regard, then it can be said definiteness along with the evidence of Mogiya, that the shoes in fact belongs to the accused. Even without employing the above circumstances, we have absolutely no hesitation in our mind that from the evidence of Mogiya, corroborated by the statement of Lachhia and further corroborated by the medical evidence, it is amply proved that it was the accused Meghji, who caused Kulhari blows on the person of the deceased resulting in his instantaneous death & the motive for the alleged killing is also established from the evidence of Mogiya & Lachhia. Lachhia has also stated that a year before some quarrel had taken place on account of the alleged illicit intimacy. Though, in our opinion, the appellant has been rightly convicted of the offence under Section 302, I.P.C.

6. Consequently, this appeal fails and it is hereby dismissed.