

Suresh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-17-2004

Reported in : RLW2004(3)Raj1839

Judge : Shiv Kumar Sharma and; F.C. Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal Jail Appeal No. 569 of 2000

Appellant : Suresh

Respondent : State of Rajasthan

Advocate for Def. : Rizwan Alvi, Public Prosecutor

Advocate for Pet/Ap. : N.L. Gupta, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

F.C. Bansal, J.

1. The instant appeal stems from the judgment dated July 4, 2000 passed by learned Special Judge (Sati Niwaran) cum Additional Sessions Judge, Jaipur City, Jaipur whereby appellant Suresh has been convicted under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and a fine of Rs.

1,000/- and in default of payment of fine to further undergo rigorous imprisonment for three months.

2. Briefly stated the prosecution case is that on 8.12.98 at 12.30 p.m. oral report Ex.P11 was lodged by PW12 Omprakash S/o Late Shri Sohan Lal, by caste-Jangid, R/o-House No. 46, Khatiwada, Station Road, Jaipur at Police Station Jalupura, Jaipur City wherein it was interalia stated that on receiving information from a boy today at around 11.30 a.m. he went to the shop of his brother Ramesh. He found Ramesh unconscious in front of the shop. It was also found that Suresh Harijan who had inflicted injuries on the person of Ramesh was caught by Yaseen Khan. Thereafter he took his brother Ramesh to S.M.S. Hospital where he was declared dead by the doctor. On the basis of the oral report Ex.P11, the SHO P.S. Jalupura registered a case under Section 302 IPC and investigation commenced. In the course of the investigation the SHO, P.S. Jalupura who investigated the case, reached on the spot and prepared Site Plan Ex.P2. Appellant Suresh was arrested on the spot vide Arrest Memo Ex.P1. Blood smeared soil, control soil, one broom and one hammer were seized from the spot and the Investigating Officer prepared Seizure Memos' Ex.P6, Ex.P5, Ex.P4 and Ex.P3 respectively. 'Panchnama' Ex.P10 of the dead body was prepared by the I.O. in the mortuary of S.M.S. Hospital, Jaipur. Blood stained clothes which the deceased was wearing at the time of the incident were also seized and sealed vide Seizure Memo Ex.P9. Post-mortem examination on the dead body of Ramesh was conducted by PW11 Dr. H.L. Bairwa, Medical Jurist, S.M.S. Hospital, Jaipur at 9.50 a.m. on 9.12.98 and he prepared Post-mortem Report Ex.P18. Statements of the witnesses were recorded under Section 161 Cr.P.C. On completion of investigating the charge-sheet was laid in the Court of Additional Chief Judicial Magistrate No. 2, Jaipur City who committed the case to the Court of Sessions Judge, Jaipur City. In due course the file was transferred to the Court of Special Judge (Sati Niwaran) cum Additional Sessions Judge, Jaipur City for trial.

3. Learned Additional Sessions Judge framed charge under Section 302 IPC against the appellant who denied it and claimed trial. To prove the charge, the prosecution examined as many as 14 witnesses. Thereafter the appellant was examined Under Section 313 Cr.P.C. who pleaded innocence. It was further stated

by him that Yaseen Khan had caused the death of Ramesh and the incident was witnessed by him and his wife. He was falsely implicated in the case. In defence DW1 Santosh (wife of the appellant), DW2 Ramesh and DW3 Raju were examined by the appellant.

4. The learned Additional Sessions Judge after hearing the final submissions, convicted and sentenced the accused-appellant as indicated here-in-above.

5. We have heard learned Amicus Curiae for the appellant, Learned Public Prosecutor and have also scanned and scrutinized the material on record.

6. PW11 Dr. H.L. Bairwa stated that on 9.12.98 he was posted as Medical Jurist, S.M.S. Hospital, Jaipur and on that day at 9.50 a.m. on the request of P.S. Jalupura he conducted the post-mortem examination on the dead body of Ramesh S/o Sohan Lal, aged 37 years, by caste-Jangid, R/o-39, Anand Vihar, Jaipur and found the following injuries:-

EXTERNAL INJURIES

(1) Lacerated wound 6 x 2cm. x bone deep oblique and slightly curved with dark reddish clotted blood over centre of forehead.

(2) Lacerated wound 2 x 1 cm. x bone deep oblique over lateral part of right side eyebrow and forehead. Dark reddish clotted blood.

(3) Lacerated wound 1 x 1/2cm. x bone deep oblique right side forehead, fresh clotted blood and 1cm. above from injury No. 2.

(4) Lacerated wound 4 x 2cm. oblique over left side parietal region near parietal prominence of scalp, fresh clotted blood with diffuse swelling all over scalp part.

(5) Lacerated wound 6 x 2-1/2cm. oblique and over left side of temporo-occipital region and crossing left ear pinna and part of left ear pinna involved in middle part.

(6) Seven abrasions of size 3 x 2cm. to 1/2 x 1/2cm. over left side cheek at places.

INTERNAL INJURIES

Scalp-As mentioned and subscalp haematoma all over, Dark reddish in colour.

Skull: (1) Depressed fracture 3 x 2cm. comminuted of bones of depressed fracture area. There was dark reddish clotted blood with underneath extra dural haematoma present.

(2) Fracture of right anterior cranial fossa bone with dark reddish clotted blood.

Membranes-Subdural haematoma all over brain area present.

Brain: (1) Laceration 1 x 1/2 x 1/2cm. on right side frontal lobe.

(2) Multiple contusions 3 x 2cm. to 1 x 1/2cm. placed over both cerebral hemispheres and both cerebellum at places, haematoma dark reddish in colour.

7. Dr. Bairwa further stated that in his opinion the cause of death was coma brought about as a result of injuries to the skull and the brain as mentioned in post-mortem report. He also stated that all the injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. He prepared Post-mortem Report Ex.P18.

8. From the aforesaid testimony of PW11 Dr. H.L. Bairwa it has been established beyond reasonable shadow of doubt by the prosecution that deceased Ramesh met with the homicidal death.

9. Now we come to the ocular evidence of the prosecution. PW3 Yaseen Khan stated that on 8.12.98 at about 11.00 a.m. he was sitting on the roof of his house. On hearing outcry from the side of park he saw that someone was inflicting injuries with hammer on the head of Ramesh who was lying on the ground. Thereafter he ran and reached in the park where he found that blood was oozing from the injuries of Ramesh. He further stated that on seeing him the appellant started fleeing. He chased and caught hold him. On being asked the assailant said that his name is Suresh. In the meanwhile so many persons gathered there including Omprakash (brother of the deceased), Mohd. Saddiq, Deepak and Ibrahim. Ramesh was taken to the hospital by his brother Om Prakash in a taxi. He informed the police about the incident on telephone. No other eye-witness was

examined by the prosecution.

10. The first contention of learned Amicus Curiae was that the appellant cannot be held guilty on the testimony of sole eye-witness PW3 Yaseen Khan. Learned Amicus Curiae further contended that PW3 Yaseen Khan was the real culprit and he had caused injuries on the person of Ramesh which resulted in his death. Learned Amicus Curiae contended that at the time of the incident the appellant and his wife were going on the road and to save himself Yaseen Khan caught the appellant and implicated him falsely in the case. It was submitted by learned Amicus Curiae that this fact stood proved from the evidence adduced by the appellant in his defence.

11. We have given our thoughtful consideration to the aforesaid submissions made by learned Amicus Curiae. In *Amrik Singh v. State of Rajasthan*, 1993 Cr.L.R. (SC) 768 the Apex Court held that:-

'It is settled law that the evidence has to be weighed and not counted. The testimony of a sole eye-witness, whose testimony suffers from no infirmity whatsoever, can by itself form the basis of conviction. We have found Trilok Kumar (PW2) to be a highly reliable, witness whose testimony suffers from no blemish at all. His testimony has also received corroboration from the medical evidence and other evidence. In another case, *State of Haryana v. Manoj Kumar*, 1993 Cr.L.R. (SC) 688, the Apex Court held that Rohan (PW14) is the sole eye-witness of the fatal knock down by the accused. But, that cannot be held to be an infirmity of the prosecution case. A conviction can be based and the verdict of the Court can rest even on the testimony of a sole witness, if the Court is fully satisfied that such witness is a truthful witness and his presence at the time of occurrence has been proved beyond reasonable doubt'.

12. In *Munshi Prasad v. State of Bihar*, (2002) 1 SCC 351 it was held by the Apex Court that:-

'It is the quality of the evidence and not the quantity, which is required. The crux of the issue being has the prosecution been able to bring home the charges with the evidence available on record, if the evidence on record is otherwise satisfactory in

nature and can be ascribed to be trustworthy, an increase in the number of witnesses cannot be termed to be a requirement for the case'.

13. In view of the aforementioned decisions of Hon'ble the Supreme Court, we cannot accept the contention of learned Amicus Curiae that the trial Court could not record the conviction of the appellant on the basis of the testimony of sole eye-witness PW3 Yaseen Khan. Having scanned the testimony thoroughly and carefully, we have come to the conclusion that Yaseen Khan is wholly reliable and his testimony suffers from no infirmity. Apart from that, there is other evidence on record which corroborates his testimony.

14. PW1 Deepak Goyal stated that he owned a transport company in front of the place of occurrence which was situated at a distance of 20 to 25 feet from the place of occurrence. Though it was not stated by him that he had seen the appellant causing injuries on the person of the deceased but he stated that Yaseen Khan came at his transport company alongwith the appellant and made him to sit there. Yaseen Khan also informed the police and after 5-10 minutes police reached on the spot. PW2 Mohd. Saddiq deposed that on hearing outcry when he came out of his house he found Ramesh lying unconscious in a pool of blood. It was also stated by him that Yaseen Khan was catching hold of appellant Suresh. Omprakash also came there and he took Ramesh to the hospital in a taxi belonging to Ibrahim. In his cross-examination he also stated that persons who had collected there, stated that Ramesh was caused injuries by Suresh. PW12 Omprakash who is the brother of the deceased, stated that on receiving information from a boy he reached on the spot and found his brother unconscious in front of his shop. Blood was oozing from his wounds. It would be pertinent to mention here that the aforesaid park is situated in front of the shop of the deceased. Omprakash further stated that persons present on the spot told him that Suresh had caused injuries with hammer to Ramesh. Omprakash also stated that Yaseen Khan was catching hold of appellant Suresh near transport company. Thereafter he asked Yaseen Khan to inform the police about the incident stating him that he was taking Ramesh to the hospital. It was further stated by Omprakash that in the hospital Ramesh was declared dead by the doctor. Thereafter he went to the police station and lodged oral report Ex.P11.

15. From the testimony of PW1 Deepak, PW2 Mohd. Saddiq and PW12 Omprakash, the presence of PW3 Yaseen Khan on the spot at the time of the incident stands proved and it is also established that the appellant was caught red-handed by PW3 Yaseen Khan. The appellant did not say to Deepak or Ibrahim or Omprakash on the spot that he was not the real culprit and PW3 Yaseen Khan had inflicted injuries to Ramesh. This fact proves that the appellant was the real culprit who had caused injuries on the person of the deceased and PW3 Yaseen Khan is a truthful witness and it has been established beyond reasonable doubt from his testimony by the prosecution that the appellant had inflicted injuries as mentioned in the Post-mortem Report Ex.P18 on the person of the deceased with hammer which resulted in his death after a few hours.

16. We have thoroughly perused the evidence adduced by the appellant in his defence and we are of the considered view that because of the aforesaid reasons the defence evidence does not inspire confidence and is liable to be rejected.

17. It was also argued by learned Amicus Curiae that as per the version of PW3 Yaseen Khan, wife of the deceased had also seen the incident but she was not examined by the prosecution and, therefore, only on the sole testimony of PW3 Yaseen Khan, the appellant cannot be held responsible for the murder of Ramesh. This contention has no force. The wife of the deceased was not the independent witness. Moreover it is the quality of the evidence and not the quantity, which is required to prove its case by the prosecution.

18. In *Sheelam Ramesh and Anr. v. State of Andhra Pradesh*, (2000) Cr.L.R. (SC) 30 the Apex Court observed that -

'Having examined all the eye-witnesses even if other persons present nearby not examined, the evidence of the eye-witnesses cannot be discarded. Courts are concerned with quality and not with quantity of evidence and in a criminal trial, conviction can be based on the sole evidence of a witness if it inspires confidence'.

19. Again in *Paramjit v. State of Haryana*, (2000) Cr.L.R. (SC) 511 it was observed by the Apex Court that-

'Also there is no substance in the submission that independent witnesses were not examined. The prosecution only needs to lead evidence sufficient to prove its case'.

20. In view of the aforesaid observations of the Apex Court it cannot be held that the prosecution has failed to bring home the charge levelled against the appellant merely on the ground that the wife of the deceased was not examined by the prosecution.

21. It was further contended by learned Amicus Curiae that the prosecution has failed to prove the motive of the appellant to commit the alleged crime and, therefore, it cannot be held that the prosecution has succeeded in proving its case beyond reasonable doubt. We are not inclined to accept this contention. In the instant case there is direct evidence of PW3 Yaseen Khan which proves that the appellant had caused injuries with hammer on the person of the deceased which resulted in his death.

22. The Apex Court in *Rajesh Govind Jagesha v. State of Maharashtra*, 2000 Cr.L.R. (SC) 1 held that 'the motive in a criminal case based upon ocular testimony of witnesses is not at all relevant.' This Court in *Gurucharan Singh and Anr. v. State of Punjab*, AIR 1956 sc 460 held that 'but it has repeatedly been pointed out by this Court that the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance.' Again in *Datar Singh v. State of Punjab*, AIR 1979 SC 1193 this Court reiterated that mere absence of a strong motive for committing the crime cannot be of any assistance to the accused if the offence could be proved by the evidence.' Where the direct evidence regarding the commission of offence is worthy of credence and can be believed, the question of motive becomes, more or less, academic, 'motive' may be relevant in a case based upon circumstantial evidence only, being one of the circumstance.' This Court in *Umed Singh v. State of Rajasthan*, 2002 Cr.L.R. (Raj.)185 has also expressed the same view. In the instant case the testimony of PW3 Yaseen Khan is trustworthy with regard to the involvement of the appellant Suresh and even if his motive to commit the alleged crime is held not to have been proved by the prosecution, he is not entitled to get acquittal.

23. The trial Court has convicted the appellant under Section 302 of the Indian Penal Code. As per the testimony of PW11 Dr. H.L. Bairwa, five lacerated wounds were found on the dead body of the deceased Ramesh. On dissection of the body, depressed fracture of skull bone, fracture of right anterior cranial fossa bone, subdural haematoma all over brain area, laceration on right side of frontal lobe of brain and multiple contusions over both cerebral hemisphere and both cerebellum were found. All the injuries were ante-mortem in nature and they were sufficient in the ordinary course of nature to cause death.

24. For the aforesaid reasons, we have come to the conclusion that all these injuries were caused on the person of the deceased by the appellant with hammer. Deceased Ramesh succumbed to these injuries within a few hours. In view of the aforesaid injuries, the weapon with which they were inflicted and looking to other facts and circumstances of the case, we are of the considered view that the act was done by the appellant with the intention to cause death and also to cause such injuries which were sufficient in the ordinary course of nature to cause death. Therefore, he has rightly been convicted under Section 302 of the Indian Penal Code by the trial Court.

25. For these reasons, we do not find any merit in the instant appeal and the same stands dismissed. Conviction and sentence awarded to the appellant under Section 302 IPC are maintained.