

Raju Vs. State of Rajasthan

Raju Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/757190

Court : Rajasthan

Decided On : Apr-09-2007

Reported in : RLW2007(3)Raj2476

Judge : Shiv Kumar Sharma and; Guman Singh, JJ.

Appellant : Raju

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Guman Singh, J.

1. Raju, the appellant herein was put to trial before the Court of Additional District and Sessions Judge (Fast Track), Ajmer, in Sessions Case No. 76/2001. The learned trial Judge vide his judgment dated 26.3.2003, convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and also imposed fine of Rs. 3,000/- and in default of payment of fine to further undergo three month's simple imprisonment.

2. The brief facts of the case are that on 28.6.2000, a written report was lodged at Police Station, Civil Lines, Ajmer, by the complainant Shri Nand Lal, s/o Lal Chand (elder brother) stating therein that on 28.6.2000 in the morning he was sleeping

out side his house situated at Ghunghra Ghati, Ajmer. He got up on hearing the voice of his son Raju who was uttering that he had killed Latesh, the handicapped sister of Nandlal. He saw that the clothes of his son were stained with blood and he was coming out of the room of Banshi Lal. Nandlal then went to the room of Bansi Lal and on peeping inside the door, he saw blood inside the room. Then he asked Raju to sit there and in the meanwhile his brother Brij Lal also came to the place and Raju also uttered the words that he had killed Latesh before him. On going inside the room, both of them found that their sister Latesh, who was disabled and could not walk, was already dead and she had injuries on her head and mouth. On the aforesaid report, a case under Section 302 IPC was registered at the Police Station and investigation was handed over to the Sub-Inspector Surendra Singh, by the S.H.O. After completion of the investigation, challan was filed against the accused under Section 302 of the Indian Penal Code. The accused Raju was charge sheeted for the offence under Section 302 IPC and after the trial, the learned trial Judge convicted and sentenced the accused appellant as indicated herein above.

3. The prosecution has examined as many as 19 witnesses. Thereafter the statement of the accused under Section 313 Cr.P.C. was recorded. He has not led any evidence in defence.

4. We have given our anxious consideration to the submissions advanced before us and scrutinized the record.

5. The death of Latesh was indisputably homicidal in nature. As per Post Mortem Report Ex. P. 35, the following ante-mortem injuries were found on the dead body:

1. Incised Wound- The wound is on face higher up on left side, extending from Rt. Cheek to left ear from below nose, cutting the cheeks, upper lip and left ear (leaving left ears upper 1/3) then whole wound passing downwards cutting through the junctions of jaw possibly, oropharynx all neck structure obliquely and 2nd vertebrae of neck through and through. On neck on Rt. Side 6 cm tag of skin present by which the face is intact only, which is bifurcated as shown above and her picture below all structures are clear cut wound total circumstance 35 cm.

2. Incised Wound 1 cm x 0.5 cm x muscle deep on palmar aspect of left middle finger on lower pharynx.

3. Incised wound Rt. thumb 2.5 x 0.5 cm x muscle deep on upper part back.

4. Incised Wound 4 cm x 2 cm x muscle deep Rt. Shoulder amply and obliquely.

5. Incised Wound 8 cm x 3 cm on back of left supra occipital regions, with clear cut injuries, Transversely.

6. As per autopsy, the cause of death was stated to be shock as a result of Ante-Mortem Injury No. 1 which was sufficient to cause death in ordinary course of nature.

7. In assailing the impugned judgment, learned Counsel for the appellant urged following points:

(i) The only eye witness Neha (PW. 7) is a child, aged seven and half years, whose testimony is unsafe to base conviction;

(ii) The written information from Nandlal (PW. 6) was procured by Police at 6.30 p.m. On the day of occurrence while the alleged incident took place at 6.30 a.m. in the morning and the investigation had already commenced at 6.30 a.m.;

(iii) The corroborative evidence including that of the witnesses who immediately reached at the place of occurrence is not sufficient to link the appellant with the crime; and

(iv) the motive of the crime is missing and in the facts and circumstances of the case benefit of doubt should go to the appellant;

8. Per contra, learned Public Prosecutor has supported the conviction of the appellant and it has been canvassed that the prosecution has proved the case through eye witness Neha (PW. 7) and other members of the family who immediately reached at the spot and found the accused in blood stained clothes and the fact that he made an extra judicial confession in their presence.

9. In support of his arguments on the point of testimony of child witness, the learned Counsel for the appellant has placed reliance on Nirmal Kumar v. State of U.P. : 1992 CriLJ1426 and Chhagan Dame v. State of Gujarat 1994 CRI L.J. 56, wherein the testimony of child witness was not found safe to base conviction on being found tutored and also for want of corroboration in the facts and circumstances of the said cases.

10. Since the conviction of the appellant is based on the testimony of child witness Neha (PW. 7) aged seven and half year along with others who stand in corroboration, we deem it necessary to narrate the principles governing appraisal of testimony of child witness, as under:

11. Privy Council in Mohammed v. King AIR 1946 P.C.J.) indicated thus:

In England where provision has been made for the reception of unsworn evidence from a child it has always been provided that the evidence must be corroborated in some material particulars implicating the accused. But in Indian Acts there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence, court can act upon it. It is sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.

12. Further, Dr. Kenny Downing (Professor of 'Laws of England' Cambridge University) in his book 'Outlines of Criminal Law' (age 386), stated as under:

Children are most untrustworthy class of witnesses, for whom of a tender age as our common experience teaches us, they often mistake dreams for reality, repeat glibly as of their own knowledge what they have heard of others and greatly influenced by fear of punishment, by hope of reward and desire of notoriety.

13. Considering the need of corroboration in case of testimony of a child of tender years, the Apex Court in Rameshwar Kalyan Singh v. State of Rajasthan reported in : 1952 CriLJ547 , the Apex Court observed as under:

In my opinion, the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the judge. In a jury

case he must tell the jury of it and in a non-jury case he must show that it is present to his mind by indicating that in his judgment. But he should also point out that corroboration can be dispensed with if, in the particular circumstances of the case before him, either the jury, or when there is no jury, he himself, is satisfied that it safe to do so. The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, and in jury cases, must find place in the charge, before a conviction without corroboration can be sustained. The tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, in likelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case.

14. Considering the fact that the child may be swayed by what others tell him, the evidence of child witness must be evaluated carefully. The Apex Court in *State of U.P. v. Ashok Dixit* reported in : 2000 CriLJ1436 has observed as under:

Law is well settled that evidence of a child witness must be evaluated carefully as a child may be swayed by what others tell him and as an easy prey to tutoring. Wisdom requires that evidence of a child witness must find adequate corroboration before it is relied on.

15. On critical appraisal of the evidence produced by the prosecution it would be revealed that Nand Lal (PW. 6), Banshi Lal (PW. 9) and Brij Lal (PW. 14) are real brothers and they used to live in the house at Ghughra Ghati, Ajmer situated at a distance of 1 km from the Police Station, Civil Lines. The deceased Latesh aged 31 years was the disabled real sister of Nand Lal and his two brothers. After the death of parents, she used to live with his brother Banshi Lal (PW. 9). On the day of incident at 6 a.m. deceased Latesh was sleeping in the room of Banshi Lal, where three infant children of Banshi Lal including Neha (PW. 7) were also sleeping. As Banshi Lal (PW. 9) was out of Ajmer, his wife Smt. Lila (PW. 15) was at the house and she had gone to defecate outside and as such the incident of killing Latesh by the appellant by inflicting Kulhari blows on her head and face was

witnessed by Neha (PW. 7) aged seven and half years. On perusal of her testimony it is clear that on asking certain general questions, the Court has noted that she understood the questions asked and knows what to reply. In the examination in chief, the witness has deposed that her mother had gone for defection and she went to sleep with his brother Monu and Prasant and then the accused Raju came and inflicted Kulhari blows on head, neck and both shoulders of Latesh (her aunt) sleeping nearby and then kept the Kulhari inside and cried that he had killed, he had killed. The witness had addressed the accused as 'Raju Bhaiya' as he was her cousin and she has also identified him in the Court. She has withstood the test of cross-examination and has replied that her father had told her before coming to the Court that she should not give wrong statement in the Court. The testimony of this child witness is consistent and she being a natural witness of the occurrence she has given a vivid description as to how incident took place. There is no reason to disbelieve her testimony as there is no reason why she should falsely implicate the appellant who is her cousin while he was as much related to the deceased Latesh as she herself was. The testimony of this witness has been further corroborated by Brij Lal (PW. 14) and his two sons Mohit (PW. 17) and Sangit (PW 18), who had rushed to the place of incident, found that the accused Raju was in the hold of Nand Lal (PW. 6) whose clothes were stained with blood and was stating in loud that he had killed Latesh with Kulhari. Lila (PW. 15) has also supported the fact that on return after defecating outside, she came to know of the incident and the appellant Raju was in the hold of Brij Lal (PW. 7) and Nand Lal (PW. 6). Likewise, Santosh (PW. 16) has also corroborated the fact that on reaching at the spot she saw the accused in the hold of Nandlal and he was stating that he had killed Latesh with Kulhari.

16. Nandlal (PW. 6) is the only witness who has not supported the aforesaid version of the prosecution story as he is the father of the appellant Raju and has been declared hostile. In his statement he has deposed that Ex. P. 4 written report was procured from him under duress by the police at the Police Station. This version has not been supported by any other witness. On perusal of the statement of Keshar Singh (PW. 12) SHO, it is clear that he has not been asked any question that the written report (Ex. P. 4) was procured under duress or that the same was received at 6.30 in the evening instead of 6.30 in the morning. Therefore, as

against the argument on behalf of the appellant it appears the entry 'p.m.' at the end of police endorsement seems to have been made by way of inadvertence as the F.I.R. Ex. P. 5 which was chalked on the basis of the written report (Ex. P. 4) mentions the time of receipt at 6.35 a.m. and, therefore, this anomaly pertaining to 'p.m.' in place of 'a.m.' is not of much consequence in the facts and circumstances of the case.

17. While advertent to the point of motive, it may be mentioned that PW. 9 Banshi Lal with whom deceased Latesh before her death used to reside, has clearly indicated that the deceased Latesh used to get pension after death of her father who had been Railway employee and as such Nand Lal (PW. 6), his brother used to demand Rs. 1000/- out of the pension amount and had threatened that in case it was not done, she (Latesh) along with Banshi Lal (PW. 9) and his wife could be murdered. However, Hon'ble Apex Court has held in *Molu and others v. State of Haryana* : 1976 CriLJ1895 , that where the direct evidence is worthy of credence, the question of motive becomes mere academic as observed below:

It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Some times the motive is clear and can be proved; sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is credit-worthy and it is believed by the Court which has placed implicit reliance on them the question whether there is any motive or not becomes wholly irrelevant. (Para 11)

18. In view of the above back drop, we find the testimony of Neha (PW. 7) to be worthy of credence after the same has been corroborated by the testimony of the witnesses who reached at the spot and found the appellant with blood stained clothes and that he had made extra judicial confession in their presence. In this regard, we also find that the F.S.L. report (Ex. 36) about finding of same blood group on the shirt of the appellant, Kurta and Salwar of the deceased and 'Kulhari' further lend support to the prosecution.

19. Having carefully scanned the impugned judgment of learned trial Court we see no infirmity in it.

20. For these reasons, we find no merit in the instant appeal and the same accordingly stands dismissed. Conviction and sentence of the appellant under Section 302 IPC is maintained.

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