

Prahlad Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-24-2006

Reported in : RLW2006(3)Raj1835

Judge : Shiv Kumar Sharma and; Shashi Kant Sharma, JJ.

Acts : Evidence Act; Indian Penal Code (IPC) - Sections 301 and 302; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : D.B. Criminal Appeal No. 646 of 2001

Appellant : Prahlad Kumar

Respondent : State of Rajasthan

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : Om Prakash Pareek, Adv.

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. The appellant was placed on trial in Sessions Case No. 37/2001, before learned Additional Sessions Judge (Fast Track) Gangapur City, District Sawai Madhopur, who convicted and sentenced him under Section 302 IPC to suffer imprisonment

for life and fine of Rs. 2000/-, in default to further suffer six months simple imprisonment.

2. The prosecution case is as under:

On September 16, 1999 at 2.30 AM informant Kamal Singh (Pw.4) submitted a written report (Ex. P-7) at Police Station Gangapur City stating therein that in the intervening night of September 15 and 16, 1999 while he was sleeping on the roof of his house along with his cousin Bhoor Singh (now deceased), Prahlad (appellant) came armed with axe to the roof around 1 AM and started inflicting blows with axe on the neck and hands of Bhoor Singh. When the informant raised alarm the appellant fled away. Bhoor Singh died on the spot and his dead body was lying on the roof. On that report a case under Section 302 IPC was registered and investigation commenced. Dead body was subjected to post mortem, statements of witnesses were recorded, accused was arrested, necessary memos were drawn and on completion of investigation charge sheet was filed. In course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Gangapur City. Charge under Section 302 IPC was framed. The appellant denied the charge and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation under Section 313 Cr.P.C., the appellant claimed innocence. One witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above

3. We have given our anxious consideration to, the submissions advanced before us and carefully scrutinised the record.

4. Death of deceased Bhoor Singh was indisputably homicidal in nature. As per postmortem report (Ex. P-11) following antemortem injuries were found on the dead body:

1. Incised wound 7 x 3 cm spiral shaped bone deep on lower right scapular region.
2. Incised wound 8x4 cm bone deep, spiral shaped on middle right scapular region.

3. Incised wound 10 x 4cm muscle deep spiral shaped on right upper scapular region.
4. Incised wound 8 x 2 cm bone deep Extending from middle of right ear to right side of neck.
5. Incised wound 15 x 5 cm horizontal on post occipital region (bone deep with brain matter come out).
6. Incised wound 5x4 cm beveled margin muscle deep on right deltoid region.
7. Incised wound 10 x 2 cm bone deep oblique extending from left maxillary region (1 cm lateral to left alainasic) upto upper aspect of right eye on forehead.

In the opinion of Dr. Shiv Singh (Pw. 9) the cause of death was hemorrhagic shock due to head injury.

5. Super structure of prosecution case is founded on the testimony of informant Kamal Singh (Pw. 4) who was the only eyewitness of the incident. Kamal Singh (Pw. 4) in his deposition stated that on the date of incident he and his cousin Bhoor Singh were sleeping on the roof of his house on a cot. Around 1 AM on hearing the cries of Bhoor Singh when he woke up he found Prahlad standing near the cot having axe in his hand and Bhoor Singh was lying on the cot in an injured condition. Prahlad gave axe blow on the left shoulder of Bhoor Singh after he (Kamal Singh) woke up and thereafter Prahlad ran away through the staircases. In the cross examination Kamal Singh admitted that Prahlad had suspicion about his wife's relation with him (Kamal Singh) but by mistake he had killed Bhoor Singh.

6. Learned Counsel for the appellant canvassed that Kamal Singh was not a reliable witness and conviction could not have been based on his testimony. Learned Counsel pointed out following infirmities in the testimony of Kamal Singh:

(i) In the FIR (Ex. P7) and in the statement under Section 161 Cr.P.C. (Ex. D-3) Kamal Singh stated that Prahlad inflicted three injuries with axe whereas in his deposition at the trial he said that after he woke up he saw Prahlad inflicting one axe blow.

(ii) In his cross examination Kamal Singh stated that his clothes got stained with blood but the clothes were not seized.

(iii) Kamal Singh admitted that it was a dark night, and assailant could not have been identified in the darkness.

(iv) Conduct of Kamal Singh in not catching hold of Prahlad was unnatural.

7. Having carefully tested the statement of Kamal Singh from the point of view of trustworthiness, we do not see any material discrepancy in it. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest a truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category into which a discrepancy may be categorized. While normal discrepancies do not erode the credibility of witness, material discrepancies do.

8. It is well settled that when ocular evidence is cogent, credible and trustworthy, minor variance, if any, is not of any consequence. Their Lordships of Supreme Court in *Krishnan v. State* : 2003 CriLJ3705 indicated that witnesses are the eyes and ears of justice. Eye witnesses account would require a careful independent assessment and evaluation for its credibility. The evidence must be tested for its inherent consistency and the inherent-probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the credit of the witnesses, their performance in the witness box; their power of observation etc.

9. From the cross examination of Kamal Singh nothing infirm could be elicited to cast a doubt on his testimony. Kamal Singh categorically deposed that there was sufficient light and he had seen the appellant inflicting blow with axe on the person of Bhoor Singh. We see no ground to discard the testimony of Kamal Singh.

10. In *Masalti v. State of A.P.* : [1964]8SCR133 Constitution Bench of Hon'ble Supreme Court held that under the Evidence Act, trustworthy evidence given by a

single witness would be enough to convict the accused persons.

11. In *State of Punjab v. Hardan Singh* : 2003 CriLJ5048 it was indicated that conviction on the testimony of a single witness was permissible where his testimony was creditworthy and convincing.

12. In *Yakub Ismile Bhai Patel v. State of Gujrat* : 2004 CriLJ4205 , it was observed that where testimony of a solitary witness inspires confidence conviction can be based on such testimony but the court should be cautious while examining such evidence and corroboration from other evidence can be sought.

13. In the instant case the testimony of Kamal Singh gets corroboration from the evidence of Ganesh (Pw.2), the uncle of the deceased, who had seen the appellant running after committing crime. Testimony of Ganesh could not be shattered in the cross examination. Evidence of Kamal Singh is further corroborated by the evidence of SHO Raghuraj Singh (Pw.13) who got the appellant arrested and recovered axe on the basis of disclosure statement of appellant. Then comes the testimony of B.B. Bhardwaj (Pw.12), who conducted investigation of the case. He deposed that during investigation he came to know that the appellant had suspicion about illicit relations of his wife with Kamal Singh, therefore he though wanted to kill Kamal Singh, but by mistake he killed Bhoor Singh. Learned Counsel for the appellant on the basis of this statement urged that since the appellant had no intention to kill Bhoor Singh offence under Section 302 IPC is not made out against the appellant. We find no substance in this submission in view of Section 301 of IPC, which provides that if a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither Intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which It would have been, If he had caused the death of the person whose death he intended or knew himself to be likely to cause.

14. The appellant is therefore guilty of committing offence under Section 302 IPC and the fact that he had mistaken the person killed for the person he had intended to kill would not affect his liability, for his criminality depends upon his intention, his

act and the effect of his act, and not upon the identity of his victim.

15. For these reasons, we find no merit in these appeals and the same stand accordingly dismissed. The conviction and sentence of the appellant under Section 302 IPC are confirmed.

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