

Tulsi Das Vs. the State

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Court : Rajasthan

Decided On : Jan-28-1974

Reported in : 1974WLN(UC)255

Judge : V.P. Tyagi and; J.P. Jain, JJ.

Appeal No. : D.B. Criminal Appeal (Jail) No. 494 of 1970

Appellant : Tulsi Das

Respondent : The State

Disposition : Appeal allowed

Judgement :

J.P. Jain, J.

1. This appeal is directed against the judgment dated 13.6.1970 of the Sessions Judge, Udaipur, whereby the appellant has been convicted Under Section 302 I.P.C. and sentenced to life imprisonment for causing the murder of his step-son Radhu Das.

2. The prosecution case is that Geeta (P.W. 6) left her first husband Mangidas and came with Tulsidas accused in 'Nata' She brought Radhudas, her son aged four years, from her first husband Mangidas in the new home. On 22.1.69 Tulsidas went to attend a feast in the village Mavli with his step son Radhu Das and his

nephew Bhagga son of Deva. It has not come in evidence whether Tulsidas actually attended the feast or not but he came back to his village Dhana Mandap. His step-son Radhu Das was sick and ultimately died. He was buried in the village in the presence of some villagers of the neighbourhood. While the persons, who attended the burial of Radhudas were sitting near a tank after having taken bath, Dhoola (P.W. 1) came from his field and asked them as to why they were sitting there. He was informed that Radhudas had died. Dhoola stated that Radhudas had not died a natural death and he has been murdered by Tulsidas. This gave rise to suspicion in the minds of the villagers. Some people collected in the village in the night and at the instance of Gulab Singh (P.W. 4), Nawal Singh (P.W. 10) wrote out a report to be lodged at the police station. The report Ex. P/2 was signed by Gulab Singh (P.W. 4), Dhoola (P.W. 1), Devisingh and Bhera Patel. It was stated in that report on behalf of the villagers that Radhudas is reported to have been murdered by Tulsidas on 22-1-1969. This report was lodged at the police station Mavli at 10 a.m. on 23.1.69. The police registered a case Under Section 302 and Section 201 I.P.C. against Tulsidas and the investigations were started. The dead body of Radhu Das was exhumed from the grave and it was sent for post mortem examination. Dr. Chiranjiv Lal Paliwal, Medical Officer, Government Dispensary, Mavli, did the autopsy at 5.40 p.m. on 23.1.1969. The post-mortem report is Ex. P/1. According to the report there were three wounds, two abrasions, two bruises, and three blisters and the nose was found bleeding. According to the opinion of the doctor the cause of death was haemorrhage and shock resulting from multiple injuries. He also opined that the injuries were caused by blunt object. He could not say, if the blisters were ante-mortem or post-mortem but all the injuries were reported to be simple. After completing the investigation the accused was prosecuted in the court of Munsiff Magistrate, Mavli, who committed the accused to the court of session to be tried Under Sections 302 and 201 I.P.C. The accused denied his guilt. It was pleaded that his step-son fell ill in the morning of 22.1.69 and he had died a natural death. It was pleaded by him that Dhoola (P.W. 1) and Gulab Singh (P.W. 4) were on inimical terms with him. At the trial the prosecution examined 15 witnesses, out of whom Dhoola (P.W. 1) and Mangi (P.W. 2) were cited as eye witnesses. The accused Tulsidas has also examined Kesar Singh (D.W. 1), Trilok Singh (D.W. 2) and Vijay Singh (D.W. 3). The learned

Judge placed reliance on the prosecution evidence and held Tulsidas responsible for the murder of Radhudas. Accordingly he was convicted Under Section 302 I.P.C. and sentenced to life imprisonment. He was acquitted of the charge Under Section 201 I.P.C.

3. This appeal is from Jail and no one has appeared on behalf of the accused-appellant. We have perused the evidence with care with the assistance of the learned Deputy Government Advocate appearing on behalf of the State. In short, the prosecution case as disclosed by the evidence is that Radhu Das a boy of about four years was thrown on the ground twice by the accused Tulsidas and it caused various injuries on the person of Radhudas resulting into his death. This is said to have been done by the accused on his way to village Mavli near the field of Dhoola Nai (P.W. 1) between Dhana Mandap and village Mandap. In support of this case Dhoola & Mangi (P.W. 2) a girl of six years of age have been examined. Dhoola was on his field at about 4 p.m. when he saw the accused passing that way to village Mavli. He stated as follows: at about, four when the accused was going from his house, to a Brahmnis's house for attending a death feast, in village Mavli. Along with him his brother's son named Bhaggu as well as Radhu Das were also going. I saw that the accused lifted Radhudas and threw him on the ground. He lifted him above human height. I asked the accused not to beat the child. The accused replied that he will murder him that day and bury him in the ground. The accused proceeded further and took Radhu Das with him. After he had gone about 60 steps, he again threw Radhu Das in the same way on the ground after lifting him. The accused then caught hold of Radhu Das and placed him on his own back and went away. I then began to plough my field. Before evening I went to the tank to take bath. On the bank of the tank 5-10 persons were sitting. Out of them I asked Gulab Singh as to what was the matter to take the bath. I told him that Radhu Das had not died a natural death but had been murdered by Tulsidas by throwing him down on the ground. I then returned to Mandap village and collected the villagers.

4. From this evidence, the witness gives a clear impression that Tulsidas was going towards the village Mavli to join the feast and while he was going he threw the child Radhu Das twice from human height and then he took him back on his

back and continued his journey. From this, the witness states that the accused murdered him, by throwing him on the ground. We are unable to accept this statement as a truthful one. If the accused wanted to kill the child by throwing him down on the ground he would not do it at a place where there were people in the vicinity to see him doing it. That apart, if the accused killed the child in that manner, he would not like to go to join a feast with the dead child. The witness further stated when he asked the accused not to beat the child the accused gave his mind clearly that he wanted to murder him and would bury him in the ground. This is a kind of statement which cannot be believed. No person with any sanity in his brain would say this that he is going to kill the child he was going with, on his way to join a feast. It is difficult to believe that while going to village Mavli he would kill the child on way and take him to the village where he was going to join a feast. We have also noticed the conduct of this witness when he said that inspite of the fact he knew that Tulsidas with intent to murder, threw the child on the ground twice, he kept himself occupied in ploughing the field and did not go to inform the mother of Radhu Das. He could not assign any reason as to why he had not chosen to go to inform the mother of Radhudas or take any step to save the child.

5. Another witness is Mangi (P.W. 2), a niece of Dhoola. She was aged 6 years when she entered the witness box. According to this witness she was going to her field carrying lunch for her father. Tulsidas was coming behind her. The two boys were ahead of Tulsidas. According to her Radhudas was dropped twice from a height. Admittedly she was ahead of the party following her. We very much doubt if she could rightly see as to in what manner Radhu Das was thrown down on the ground by Tulsi Das. She does not as well support Dhoola when Dhoola stated that the accused himself told him that he would kill Radhudas and bury him in the ground. Mangi also did not inform her father as to what she saw on her way to the field. In the cross-examination she admitted that she did not see when Radhu Das dropped for the first time. Another important discrepancy that we take note of, is that according to Mangi the accused dropped the child a second time, after he travelled another eight steps, then he took the child on his back, and went towards the village, whereas Dhoola stated that Tulsidas was coming from the village, he threw the child a second time after he covered another 50 steps, on his back, and then put the child on his back, and continued his journey towards the village Mavli.

The testimonies of these two witnesses do not carry an impress of truth. We do not feel persuaded to accept that Radhu Das died on account of the fact that he was thrown down by the accused twice.

6. The medical evidence establishes that the deceased had one wound on the fore-head, one on the right shoulder, and one on the left shoulder. The nose was also found to be bleeding. There were also three blisters, on the dead body besides bruises and abrasions. According to the doctor if the child was lifted and dropped from a height to a rough and hard surface, the child could sustain injuries on the right and the left side. According to the eye witnesses Radhudas was dropped twice. None of these two eye witnesses stated that the ground on which he was thrown by Tulsidas was rough and hard surface. They have not stated about the injury on his fore-head. Some witnesses of the prosecution deposed that the injury on the fore-head was sustained by Radhudas a week prior to the incident. But Dr Paliwal (P.W. 3) is definite that it could not be of more than 36 hours prior to the post mortem. He fixes its duration, the same as those of the other injuries except those of blisters. He even repudiated his police statement A to B in Ex. D/2. The blisters on the deceased also remain unexplained. Looking at the medical evidence the prosecution has failed to prove beyond doubt that Radhu Das met his death by having been thrown down on the ground.

7. On the record, there is no other direct evidence to connect the accused with the crime. We will, (sic) notice the statement of Gulab Singh (P.W. 4). He stated that when Dhoola met him for the first time and levelled the charge that Radhudas was murdered by Tulsidas, he did not say as to how the murder was (sic). This witness further deposed that in view of the stand taken by Dhoola the village tonight that if a report is not made to the police and if Dhoola lodged a report, all the persons who joined the burial would be entangled. This discloses the object of making the written report Ex. P/2 by Gulab Singh. Sunder Das (P.W. 9) is another witness whose testimony deserves consideration. He does not support the prosecution and in a way demolishes the prosecution case. Sunder Das is the step-brother of Tulsidas. He is admittedly on inimical relation with Tulsidas yet he admitted that he also went to Mavli to join the feast at Bhanwar Lal's place. He met Tulsidas and the two boys, Radhu Das and Bnagu at Morli-ka-Badiya. He saw Tulsidas sitting

there and Radhudas was on his shoulders. On inquiry from the witness, Tulsidas told him that Radhudas was not well. The witness also stated that no part of the boy was bleeding and there was no injury on how. If Radhudas had been thrown down, as stated by the eye witnesses, he must have had injuries, & they could not have escaped the notice of Sunder Das. He advised Tulsidas to go back to the village. On the return of the witness to the village he found that Radhudas has died. He also heard a rumour in the village that Radhudas was murdered by the accused. There is no other circumstantial evidence to support the prosecution case. After having scrutinised the evidence carefully, we are of the opinion that the prosecution has not been able to establish that Radhudas was thrown by Tulsi Das and the child was killed in that manner. We have disbelieved both the eye witnesses Dhoola (P.W. 1) and Mangi (P.W. 2), for the reasons given here in before. The learned trial Judge has fallen into an error in placing reliance on those eye witnesses without examining their testimony in detail.

8. In the result the appeal succeeds and it is hereby allowed. Tulsi Das is acquitted. His conviction and sentence Under Section 302 I.P.C. are set aside. He shall be released forth with, if not required in any other case.