

Bhanwariya and anr. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Mar-06-1984

Reported in : 1984WLN(UC)79

Judge : D.L. Mehta and; S.S. Byas, JJ.

Appeal No. : D.B. Criminal Appeal Nos. 413 and 564 of 1979

Appellant : Bhanwariya and anr.

Respondent : State of Rajasthan and anr.

Disposition : Appeal dismissed

Judgement :

S.S. Byas, J.

1. These are two appeals arising out of the judgment of the learned Sessions Judge, Merta dated August 2, 1979. By the said judgment the learned Sessions Judge convicted the accused Bhanwariya under Sections 302 and 458, IPC and sentenced him to imprisonment for life on the first and three years rigorous imprisonment under the second count. The accused has come-up in appeal to challenge his conviction and sentence while the State has come up in appeal for enhancement of the sentence on, the ground that the accused is a previous convict under Section 304 Part II, IPC.

2. In brief, the prosecution case is that the deceased-victim Ghasi and the accused are relatives inter se being the descendents of a common grandfather. The relations between the two families were not happy. On the contrary they had become extremely strained. The accused had earlier caused the death of the victim's mother, for which he was tried and, convicted under Section 304, Part II, IPC. At about 10.00 P.M. on September 30 1978, the deceased victim Ghasi was sleeping in the Chausala of his house in village Dharu Tehsil Nagaur. PW 2 Smt. Gopuri, PW 3 Smt. Sourti, PW 7 Tikuram, PW 8 Mangal and PW 9 Laxman Ram were also sleeping nearby in the court-yard of the same house. The accused all of a sudden secretly came with a Jambhiya in his hand and thrust it in the abdomen of Ghasi. Ghasi sustained a wound and there was profuse bleeding from it. He raised cries, hearing which the above-named persons got awoke. They saw the accused running away from the place of occurrence. Some other persons of the village also assembled there. PW 4 Damaram who is a Sarpanch of the village Panchayat, prepared written report Ex P 2 and sent it with PW 7 Tikuram to Police Station, Khinvsar. Tikuram reached there at about 1.30 A.M. in the same night and presented it. The police registered a case under Sections 307 and 448, IPC against the accused and proceeded with investigation. Before the police could arrive on the spot, Ghasi succumbed to the injury. Section 302 IPC was, therefore, added during, investigation. The Station House Officer Kalu Ram arrived on the scene of occurrence on October 1, 1978 and prepared the inquest report of the victim's dead body. He also inspected the site and seized the blood-stained soil from then. The Gudra, Rali, Dhoti etc. which were found bloodstained were also seized and sealed. The post mortem examination of the victim's dead body was conducted on October 1, 1978 by PW 1 Dr. P.P. Gandhi, the then Medical Jurist, Government Hospital, Nagaur. He noticed the following injury:

Incised wound 4' x 1.5' x whole thickness of anterior abdominal wall placed on the epigastric and upper umbilical regions to the left of mid plane running obliquely from above downward and laterally. Whole of gut and omentum were seen coming out of it.

In the opinion of Dr. Gandhi, the cause of death was internal haemorrhage due to rupture of liver and gastric and intestinal (transverse colon) perforations due to

injury with a sharp weapon. The post mortem examination report prepared by him is Ex. P1. The accused was arrested and in consequence of the information furnished by him Jambhiya was recovered. On chemical examination blood was found on it. Kana Ram, the father of the accused, was also arrested as it transpired during investigation that he was standing a little distance away from the site of the occurrence. On the completion of investigation the police presented a challan against the accused appellant and his father Kanaram in the Court of Judicial Magistrate, Nagaur who in his turn committed the case for trial to the court of Sessions. The learned Sessions Judge framed charges under Sections 458 and 302, against the accused-appellant and under Sections 458 and 302/34, IPC against accused Kanaram. Both the accused denied the guilt and claimed to be tried. In support of its case the prosecution examined ten witnesses and filed some documents. In defence the accused adduced no evidence. On the conclusion of trial, the learned Sessions Judge found no incriminating material against accused Kanaram. He was consequently acquitted. The learned Sessions Judge held the charges duly proved against the accused-appellant Bhanwariya. He was consequently convicted and sentenced as mentioned at the very outset. Hence this appeal by the accused. Aggrieved with the quantum of sentence imposed on the accused-appellant the State has come-up in appeal for enhancement.

3. We have heard Shri Doonga Singh, learned Counsel for the accused appellant and the learned Public Prosecutor Shri Niyazuddin Khan. We have also gone through the case file carefully.

4. It would be proper and convenient to take up the appeal of accused Bhanwariya first. Learned Counsel for the accused did not challenge the cause of death as stated by Dr. P.P. Gandhi (PW 1). We have also gone through his testimony and find no good or cogent reasons to distrust his opinion about the cause of death of Ghasi. It may be noticed that according to Dr. Gandhi, the injury found on the victim's body was sufficient in the ordinary course of nature to cause death. This fact will have to be borne in mind while deciding the nature of offence.

5. Before we proceed further, we may point out that the prosecution has led two sets of evidence viz. (1) the accused was seen running from the house of the

deceased-victim after inflicting the injury and (2) the dying declaration made by the victim before some persons.

6. In assailing the conviction of the accused it was vehemently contended by Shri Doongar Singh that both these sets of evidence are not sufficient to warrant the conviction of the accused. The five witnesses who have claimed to have seen the accused running away from the house of the victim were not in a position to correctly identify him. It was also argued that the victim sustained an incised wound in his abdomen. He himself should have, therefore, become unconscious then and there on the spot. As such he was not in a position to speak. The dying declaration was later on falsely introduced to create evidence against the accused. In reply, the learned Public Prosecutor supported the findings of the trial court and submitted that the presence of the accused at the spot stands proved by the evidence of the five witnesses. It was also argued that the presence of these five persons on the spot is not open to any doubt because three of them are the close relatives and the remaining two are his servants. Their presence on the spots, therefore, quite natural and their claim to have seen the accused running away is not open to any suspicion. It was further argued that as per the statement of Dr. Gandhi (PW 1) it cannot be inferred that the deceased-victim had become unconscious so as not to speak at all. We have given our thoughtful consideration to the respective submissions.

7. The prosecution has examined five witnesses viz. PW 2 Smt. Gopuri. PW 3 Smt. Souvti, PW 7 Tikuram, PW 8 Mangal and PW 9 Laxman Ram. As stated earlier three of them are the close relatives of the deceased-victim while the two are his servants. Each of them stated that they were sleeping in the Chausala of the victim's house. The victim was also

8. It is true that it was the night-time. But it was only 10.00 P.M. when the offence was committed. A mini-lamp (Chimney) of kerosene oil was lit there. The witnesses were therefore in a sound position to identify the accused while he was running away. The learned Sessions Judge accepted the testimony of these five witnesses as regards their seeing the accused running away. On a careful scrutiny of their evidence we are unable to take a view different from that taken by him.

9. There is then the dying declaration of the deceased-victim. All these witnesses referred to above have stated that when they reached the victim, he was alive and crying. He had a stab wound in his abdomen. He told them all that the accused had stabbed him and ran away. These five witnesses were again cross-examined on this point of dying declaration but nothing could be taken-out from them which may induce us to take that in fact the dying declaration was not made or that the dying declaration was later on falsely introduced.

10. A very valuable piece of corroboration comes from the First Information Report Ex. P2. It was presented at Police station at about Bf.30 A.M. in the same night. The police station is nearly 14 kilometre away from the place of occurrence. Looking to this distance can be safely said that the First Information Report was lodged promptly without any delay. In this FIR (Ex. P2) it has been clearly mentioned that the accused had stabbed in the abdomen of the victim and made good his escape. In our opinion, this promptness in lodging the First Information Report at the police Station affords a very valuable corroboration to the prosecution story and to evidence of the five witnesses referred to above.

11. We may point out that PW 4 Damaram is the Sarpanch of the Gram Panchayat. He also reached the spot within no time. He stated that Ghasi (victim) was groaning. The victim told him that he had been stabbed by the accused-appellant Bhanwariya with a dagger in his, abdomen. We are unable to conceive that holding a responsible post like that of the Sarpanch his witness would falsely speak against accused for no apparent reasons.

12. Thus, the two sets of evidence viz. (1) the evidence of the five eye witnesses referred to above and (2) the dying declaration of the victim together with the fact that the F.I.R. was lodged promptly without any loss of time, drive us to the irresistible conclusion that the accused and the accused alone was the perpetrator of the murder of Ghasi. He was rightly convicted under Sections 458 and 302, IPC. No interference is called for.

13. We will now address ourselves to the appeal of the State Government. It was vehemently contended by the learned Public Prosecutor that the proper sentence in the case is that of death. The accused has a discredit of causing the death of

victim's mother previous to this occurrence. He has thus caused the death of two persons in the same family. As such no leniency should be shown to him and the sentence of imprisonment for life be enhanced to that of death. We are unable to accept the submission of the learned Public Prosecutor. The offence was committed nearly 5.5 years ago in September, 1978. The accused is since then in jail. He was a young man of 23 years in age at the time of his conviction. The death sentence to be passed rarely and only when compelling reasons are there to do so. We do not find any compelling reasons to enhance the sentence. The appeal of State Government must, therefore, fail.

14. In the result, the conviction and sentence of accused Bhanwariya are maintained and his appeal is consequently dismissed. We also dismiss of appeal of the State for enhancement of sentence.

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