Kheta Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-10-1995

Reported in : 1995CriLJ3302; 1996(1)WLC373; 1995(2)WLN60

Judge : B.R. Arora and; V.G. Palshikar, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302; ;Code of Criminal Procedure (CrPC) - Sections 374

Appeal No. : Criminal Jail Appeal No. 282 of 1987

Appellant : Kheta

Respondent : State of Rajasthan

Advocate for Def. : R.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : Anand Purohit, Adv. and; T.R. Sodha, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

V.G. Palshikar, J.

1. This appeal is directed against the judgment and order passed by the learned Sessions Judge, Sirohi, in Sessions Trial No. 13/86 on 18th July, 1987, convicting the accused appellant Under Section 302 of the Indian Penal Code and

sentencing him to suffer imprisonment for life and a fine of Rs. 2,000/-. In default, rigorous imprisonment for three months.

2. The prosecution story, stated in brief, is that on 4-1-86, one Bholiya, an employee of Welcome Factory was coming home from his factory in the evening, after finishing his shift duty. When he was pasing by the field of Kala, accused Kheta came from behind and hit the deceased on the head by axe. The incident was witnessed by Hariya, PW/1 ' who lodged the F.I.R., in pursuance of which investigation was conducted and the accused was prosecuted for an offence Under Section 302 of the Indian Penal Code.

3. The prosecution examined as many as 15 witnesses to prove the prosecution case. On appreciation of this evidence, the learned Sessions Judge came to the conclusion that the prosecution has proved beyond reasonable doubt, the guilt of the accused, He, therefore, convicted him Under Section 302 I.P.C. and sentenced him to suffer imprisonment for life as aforesaid. This order is impugned in this appeal by Mr. Anand Purohit, learned counsel appearing as amicus curiae for the accused. He submitted, after taking us through the entire evidence, that the prosecution has failed to prove the guilt of the accused and he is, therefore, liable to be acquitted, he then submitted that the witnesses examined by the prosecution as eye-witnesses were highly interested eyewitnesses. They were partisan and the prosecution has deliberately suppressed independent evidence. There is, thus, no trust-worthy evidence to establish the case of the proseuction and, therefore, the accused is liable to be acquitted. It was then submitted by the learned counsel that the occurrence took place in January 1986 and admittedly it was evening time. It was, therefore, improbable to identify the accused, as the assailants in the twilight which may or may not be there in the evening. According to the learned counsel, therefore, there is failure to identify the accused and consequent conviction becomes unsustainable in law.

4. It was then contended by the learned counsel that the learned trial Judge himself has rejected the recoveries made from the accused and yet proceeded to convict the accused which, according to the learned counsel, is improbable in law. The next submission made by Mr. Purohit was that atleast 30 to 40 people living in

the same village work in Welcome Factory, along with the deceased and it is improbable to believe,, therefore, that he would return from the Factory alone.

5. The learned Public Prosecutor, defending the conviction, maintained that it is natural that the witnesses who saw the occurrence are interested persons, for they will be persons who will naturally be around the scene of offence. Merely because the witnesses are interested, it cannot be said that they are liable to be disbelieved. The learned Public Prosecutor, then, submitted that the axe was recovered from inside the house of the accused and was admittedly identified by the witness PW/2 Ladura. There is no reason for the Sessions Judge to disbelieve the recovery. Even assuming that it was so, the testimony of eye-witnesses in itself is sufficient to maintain the conviction.

6. In order to appreciate the rival contentions, it would be necessary to reappreciate the evidence rendered in this case. It is open for this Court to come to an independent conclusion and appreciation of evidence, irrespective of the findings given by the learned Sessions Judge. The scope of appeal Uder Section 374 of the Code of Criminal Procedure is well settled. We, sitting in appeal over the judgment of the Sessions Court, has complete power for reappreciation of evidence. We, therefore, scrutinised the entire evidence on record, as also other documents on record to re-appreciate the entire proceedings.

7. PW/1 is Hariya, who was an eye-witness to the incident dated 4-1-86. He is the person who has lodged the F.I.R. and proved the same. He saw accused coming from behind the deceased and saw the accused giving the deceased two axe-blows. The cross-examination of this witness has not resulted in discredeting the witness in any manner and in our opinion, the learned Sessions Judge was absolutely right in relying on the testimony of this witness.

8. The next witness PW/2 is Ladura, who also saw the incident and is, therefore, an eye-witness. He has corroborated PW/1 on all material particulars and has categorically deposed in his cross-examination that at the time when the occurrence took place, it was not dark, though sun was not shining at that time. A couple of minor contradictions do exist in the evidence of this witness. However, in our opinion, existence of such discrepancies in itself prove the truthful deposition

of the witness. It is always argued that if two witnesses agree with each other on every point and in every minor detail, they are liable to be rejected as tutored witnesses. An argument is also made that if there is discrepancies in the evidence of two witnesses, they are contradictory to each other, are liable to be disbelieved. In our opinion, such arguments are not available. We are of the considered opinion that each witnesses are to be valued or re-valued on his testimony alone, the question as to whether he is believable or not would depend upon corroboration of such statement as are made by the witness which come from evidence which may include the oral evidence of other eyewitnesses and documentary evidence such as First Information Report, the recovery reports, the postmortem examination etc. So considered, the evidence of this witness is duly corroborated by the testimony of PW/1. The statements made in the First Information Report, the injuries as are deposed to have been caused by the accused to the deceased, are found to have been caused in the post-mortem examination and we have no hesitation, therefore, in accepting the testimony of this witness as the whole truth.

9. PW/3 is Nava, father of the deceased, who learnt of the death of his son from PWs/1 and 2. His evidence mainly therefore, is, hearsay evidence and cannot help the prosecution in any manner.

10. PW/4 Rama has witnessed the recovery of axe from inside the house of the accused, he has identified Article 5 as the axe recovered from the house of the accused. However, the learned Session Judge has disbelieved this recovery and for the present, we need not appreciate the evidence of this witness in fetation to the recovery.

11. the next witness PW/5 Kala also pertains to the recovery of the axe but he has turned hostile and was cross-examined by the prosecution. The deposition of this witness also, therefore, need not be considered at this stage.

12. PW/6 Mahesh has turned hostile and is of no consequence. PW/7 is Sona Ram, Police Constable, who took six packets for depositing in the Malkhana with the Superintendent of Police. These packets were received by PW/8 in the office of Superintendent of Police.

13. PWs/9 and 10 are other Head Constables who proved the documents executed in their presence. PW/11 is Police Constable who recorded the First information Report. He was also a witness to the recovery of axe.

14. PW/12 is Hari Singh, who was Station House Officer, Police Station, Pindwara, and has seized the clothes of the deceased. PW/13 is the Doctor who conducted the post-mortem and has opined that death was caused due to the injuries sustained by the victim. There is no reason why this witness should be disbelieved.

15. PW/14 is yet another witness whose statement has no bearing on the prosecution. He and PW/ 15 were witnesses to the arrest of the accused, which is not disputed and nothing turns on his arrest.

16. This then is the state of evidence, on the basis of which conviction was recorded by the learned Session Judge. The re-appreciation that we have made of this evidence, leads us to a firm conclusion that there is no error committed by the learned Sessions Judge in finding the accused guilty of the offence Under Section 302 I.P.C. The fact that the accused gave exe-blows on the person of the deceased has been witnessed by PWs/1 and 2. Their testimony is found by us to be trust-worthy and even if the finding of the learned Sessions Judge regarding recovery of axe is accepted, we have no hesitation in holding the accused guilty of an offence Under Secion, 302 I.P.C, for causing intentional death of the deceased by axe-blows.

17. We, therefore, see no merit in the appeal and the same is, therefore, dismissed.