

Bhaga Ram Vs. State of Rajasthan

Bhaga Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/759613

Court : Rajasthan

Decided On : Apr-10-1995

Reported in : 1995CriLJ3354; 1996(1)WLC604

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) , 1974 - Sections 154 and 374(2)

Appeal No. : Cri. Jail App. No. 371/91

Appellant : Bhaga Ram

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Appeal dismissed

Judgement :

V.G. Palshikar, J.

1. This is an appeal by the accused who has been convicted for an offence under Section 302 of the Indian Penal Code in sessions trial No. 12/88 by the Sessions Judge, Pali on 30th September, 1991.

2. The prosecution story in brief is that a first information report was lodged at 4 a.m. on 27th September, 1987 by one Pema Ram that in the night of 26th September, 1987 between 12.30 and 1 a.m., I was called by Basti Ram and Puka Ram saying that the accused is beating Andi, wife of Bhaga Ram present accused in the house of Andi's father, who is also the father of the reporting witness. It was then reported that the complainant ran away along with Basti Ram and Puka Ram to the house of their father, when they saw that accused Bhaga Ram was assaulting Andi with an axe, on seeing the witnesses, the accused ran away. The prosecution examined 17 witnesses to prove the prosecution case whereas one witness was examined by the accused in support of his claim of innocence.

3. In order to appreciate the several contentions raised by the learned counsel for the accused and the learned Public Prosecutor, it will be necessary to reappreciate the evidence on record. This is an appeal from the original order of conviction whereby, the accused is sentenced to imprisonment for life. In our opinion, reappreciation of evidence without considering the judgment of conviction is necessary for just and proper adjudication of an appeal under Section 374(2) of the Cr. P. C.

4. P. W. 1 Basti Ram is the first eye-witness who was aroused from his sleep by the shouts of the woman, he, therefore, came out of his house and saw that in the house of Rama Raika which was opposite to the house of witness, accused Bhagia (Bhaga Ram) was beating his wife Andi by fist. Another witness Puka Ram had also come out. These two witnesses, therefore, deemed it fit to call the brother of Andi that is Pema Ram and they, therefore, called him and Pema Ram arrived on their call. The witness then states that he had a torch and in the light of that torch, they saw accused beating Andi with an axe. The witness then states that he saw accused giving axe-blow to Andi on the head, neck and hand. It is then said by this witness that when they tried to enter the house, accused ran away. Andi was lying in the yard, she was bleeding and saying that she has been hit by her husband, then she died. Then the witness along with Pema Ram went to the Police Station, Pema Ram lodged the first information report. This witness has been duly cross-examined. The cross-examination of the witness has not yielded any material which requires the witness to be discredited and disbelieved as will

be seen hereafter. This eye-witness has been duly corroborated on material particulars by P. W. 1 and P. W. 3. There is, therefore, no reason to disbelieve this witness Shri M. L. Garg, learned counsel for the appellant submitted that there have been marked improvements in the testimony of this witness than the version which appears in the first information report. In the first information report, according to the learned counsel, there is no mention of the witness having torch and the others seen the incident in light of that torch. The introduction of torch in the hand of P. W. 1 is, therefore, of positive improvement showing concoction of the prosecution case requiring rejection of the testimony of P. W. 1. We are not impressed by this submission nor non-mention of torch in the first information report has this effect. The first information report is a report first made about occurrence or commission of an offence by known or unknown persons to the police under Section 154 of the Cr. P. C. It is not a detailed pleading made by complainant before a Court of competent jurisdiction. Consequently, omission of minor details regarding commission of the offence or regarding the witnessing of an offence, cannot render the testimony of witness untrustworthy. It has been a consistent view that first information report has only corroborative value, so considered the FIR lodged in this case does corroborate the witness P. W. 1 on all material particulars and hence, we accept the evidence of this witness.

5. P. W. 2 Puka Ram is the eye-witness who accompanied P. W. 1. This witness states that he and P. W. 1 called Pema Ram and on his arrival, proceeded towards the house of Rama wherein the light of the torch in the hand of Basti Ram they saw accused giving axe-blow to Andi. The axe-blow was given by the accused on the neck, hands head and shoulders of the deceased. On being asked, Andi said that she was hit by the accused, thereafter, she died. A perusal of the testimony of this witness will show that he on all essentials corroborates P. W. 1. In his cross-examination he has stated that Pema Ram came running and he may have taken 10-15 minutes to come. This witness is sought to be discredited on the ground that he states that Pema Ram took 10-15 minutes to come and it is impossible to believe that the accused continued to assault his wife Andi for a period of 15 minutes, continuously such beating would have reflected in physical injury on the body of the deceased. The contention consequently, is that the witness is made up was not factually an eye-witness and eye-witness should

therefore, be disbelieved. We would like to point out here that this is reproduction of the evidence by the sessions Court in narrative fashion. It is an answer given to a question which could be leading in nature. The witness when asked as to whether Pema Ram took 10-15 minutes to reach the spot, the witness answered in affirmative. The witness in such circumstances cannot be disbelieved solely because it does not take 10-15 minutes to reach the spot from the house of Pema Ram. It is pertinent to note that P. W. 1 has stated that he and Puka Ram called Pema Ram and who arrived on their call. It will thus be seen that the witnesses did not leave the spot to call Pema Ram. Beyond this, there is no reason for warranted by the learned counsel for disbelieving this witness.

6. P. W. 3 is Pema Ram who lodged the FIR and who is brother of the deceased Andi who was married to the accused. This witness also stated all those things which have been stated by the P. W. 1 and P. W. 2. He submits that he was called by Basti Ram that he went there and in the light of torch of Basti Ram saw accused assaulting Andi with an axe. He says that he saw the accused giving axe blow on the head, hand and neck of the deceased. The accused ran away on seeing the witnesses. Andi was lying on the ground and said that she was hit by the accused and then she died. The cross-examination is fruitless. It will thus be seen that three eye-witnesses' have given sufficiently detailed version of the murderous assault by the accused on the deceased Andi, their testimony corroborates each other and thus, the prosecution has proved beyond reasonable doubt that the accused was the person responsible for the homicidal death of the deceased Andi.

7. P. W. 4 is the mother of the deceased, she is not an eye-witness and therefore, nothing turns on her testimony. P. W. 5 is the father of the deceased, he is also not an eye-witness and therefore, nothing turns on his deposition. P. W. 6 turned hostile and, therefore, need not be considered. P. W. 7 is a panch witness who proves the site map Ex. P. 2. P. W. 8 is the person who prepared the site map. P. W. 9 is another panch witness who witnessed the arrest of the accused. P. W. 10 is declared hostile and, therefore, need not be considered. P. W. 11 is declared hostile and therefore, need not be considered. P. W. 12 is declared hostile and therefore, need not be considered. P. W. 13 is the person who recorded the first

information report. P. W. 14 is the Station House Officer. P. W. 15 is the Photographer who looks the photographs of the dead body, he has duly proved the photographs taken by him of the deceased person. A perusal of these photographs prove beyond reasonable doubt that the deceased Andi was killed by axe-blows that an extremely brutal injury by axe was caused on the neck of the Andi (see Ex. P. 6) which in the ordinary course of nature was sufficient to cause immediate death. Thus, in our opinion, the prosecution has proved beyond reasonable doubt a homicidal death of Andi at the hands of her husband.

8. P. W. 16 is the Doctor who conducted the post mortem and was opined that the death was caused by the injuries referred by him. P. W. 17 is the police constable who took certain articles to the F. S. L. P. W. 18 is Bidad Singh who deposited the certain articles in the 'Malkhana'. P. W. 19 is the 'Malkhana' In charge. The defence witness is also inconsequential.

9. From going the discussion of the evidence on record, it be seen that there is no doubt that the deceased Andi was murdered by the accused. It was then contended by the learned counsel that there is no evidence to connect the axe to the killing of the deceased. Even if there is no such evidence the photographs Ex. P. 6 proved beyond reasonable doubt that the killing by an axe and an axe was recovered from accused. There is thus, no substance in this appeal and the same is, therefore, dismissed.