SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Gopi Vs. State of Rajasthan

Gopi Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/759720

Court : Rajasthan

Decided On : Apr-07-2003

Reported in : RLW2003(4)Raj2545; 2003(3)WLC364

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal (Jail) Appeal No. 527 of 1999

Appellant : Gopi

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecuter

Advocate for Pet/Ap. : D.K. Garg, Amicus Curiae

Disposition : Appeal allowed

Judgement :

Sharma, J.

1. The appellant was indicted before the learned Additional Sessions Judge, Ramganjmandi, District Kota in Sessions Case No. 223/98 for having committed murder of Prakash vide judgment dated June 4, 1999. Learned Additional Sessions Judge found the appellant guilty and convicted and sentenced him under

Section 30 of the Indian Penal Code to suffer imprisonment for life and a fine of Rs. 100/-, in default to further undergo six months simple imprisonment.

2. The prosecution case as projected during trial is that Pema PW.1 on May 17, 1997 at 10:00 A.M. orally informed Police Station Kanwas that Prakash aged 10 years after the death of his parents was residing with Gopi, his real uncle for the last 2-1/2 years. On that day in the morning around 5:00 A.M. Gopi's son Jhujhar came rushing to him and informed that Gopi axed Prakash. The informant immediately reached to the spot and found Prakash dead, lying in a pool of blood in the chowk.

3. Police Station Kanwas registered a case under Section 302 of the Indian Penal Code and investigation commenced. Site was inspected. Inquest Report was drawn. Autopsy on the dead body of Prakash was conducted. Statements of the witnesses under Section 161 Cr.P.C. were recorded. The appellant was arrested and vide Arrest Memo Ex.P.9 as man as 14 injuries were found on the person of the appellant. Vide Ex.P.10 appellant allegedly gave disclosure statement on the basis of which axe got recovered. On completion of investigation charge-sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge, Ramganjmandi. Charge under Section 302 IPC was framed against the appellant who denied the charge and claimed trial. The prosecution in support of its case examined as many as 12 witnesses. In the explanation recorded under Section 313 Cr.P.C. the appellant claimed innocence. No witness was examined in defence. Learned trial Judge on hearing the final submissions, convicted and sentenced the appellant as indicated here-in-above.

4. We have heard the submissions advanced before us by learned Amicus Curiae and learned Public Prosecutor and carefully scanned the material on record.

5. As per Post-mortem Report Ex.P.13 deceased Prakash sustained three injuries as under :-

(1) Incised wound 7' x 4' x 4' deep to bone, all muscles, nerves and vessels cut down on the right side of neck- longitudinally oblique upto back of scalp.

Incised wound 6' x 3' x 4' on left side of neck obliquely transverse-all muscles, vessels of blood and nerves cut down.

Incised wound 2' x 2' x 2' on left side of chin.

As per the testimony of Dr. Dileep Vijayverghiya PW.6, who conducted autopsy, the injuries were ante-mortem in nature and cause of death was shock due to multiple injuries causing haemorrhage. It is thus established that the death of Prakash was homicidal.

6. Coming to the evidence of informant Pema PW.1, we find that although in the First Information Report he stated that it was Jhujhar who informed him about the incident but at the trial he became the eye witness of the occurrence and deposed that he himself had seen the appellant inflicting axe blows on the person of Prakash. In the cross-examination he stated that report lodged by him in the police station was not read over to him and he did not put his thumb impression on the report at the police station. He disowned the F.I.R. as well as his police statement (Ex.D1). He further stated that appellant fled away having axe with him and when villagers caught hold of appellant he was armed with axe. He however admitted that the appellant has agricultural land in village Garda which came in his possession after the arrest of appellant. He also admitted that after the death of the parents of Prakash, the appellant himself proposed to look after Prakash and Prakash and other children used to live with the appellant. This witness was disbelieved by the learned trial Court.

7. Only witness which supports the case of prosecution is Jhujhar PW.3 who is the son of the appellant. When his statement was recorded he was 12 years of age. In his deposition Jhujhar stated that his father inflicted two axe blows on the neck of Prakash. He also stated that Pema had also seen the occurrence. In his cross-examination he admitted that after the death of his mother all the three brothers used to reside with the appellant. He admitted that on the date of recording his evidence he was residing with Pema. He also deposed that Pema used to quarrel with the appellant about the land. Learned trial Court placed reliance on the statement of Jhujhar despite his being the child witness.

8. In regard to testimony of a child witness, their Lordships of the Supreme Court in State of U.P. v. Ashok Dixit and Anr. (1), indicated that evidence of a child witness must be evaluated carefully as a child may be swayed by what others tell him and is an easy prey to tutoring. Wisdom requires that evidence of a child witness must find adequate corroboration before it is relied on.

9. We have to, therefore, cautiously scan the testimony of Jhujhar carefully. As already noticed by us. Jhujhar is the son of appellant and on the date when his evidence was recorded he was residing with informant Pema and was under his influence. It also appears from the record that entire immovable property of the appellant after his arrest is in the possession of Pema. The prosecution has not led any evidence as to what could have been the motive of appellant behind the murder of Prakash who after the death of his parents, was lovingly looked after by the appellant. A person, who was affectionately looked after the child could not have killed him mercilessly without any reason. The prosecution in our view, has failed to establish the genesis of occurrence. The conduct of informant Pema at the trial demonstrates that he was adament to implicate the appellant at any cost. That is why on his tutoring Jhujhar disposed at the trial that Pema had seen the incident. The incident has occurred in the wee hours and it is not unlikely that at the time of incident Jhujhar was asleep and Pema made him understood that it was appellant who had killed Prakash.

10. We find that Jhujhar was swayed by what Pema told him. Pema is the only person who could be benefited by the confinement of the appellant. Thus we do not find the evidence of Jhujhar as trustworthy. In absence of any corroboration from the record we find ourselves unable to place any reliance on the testimony of Jhujhar who is a child witness and possibility of his being tutored by Pema can not be ruled out as he was under the influence of Pema on the date of recording of his evidence.

11. There is yet another infirmity in the prosecution case. Rajendra Prakash Sharma PW.5, the investigating Officer did not explain the injuries sustained by the appellant. It is difficult to believe that the said injuries were sustained by the appellant at the time of the incident as the deceased who was a boy of 10 years

could not have caused those injuries. Recovery of axe at the instance of the appellant is farce as the axe was found lying near the dead body.

12. The infirmities noticed by us in the instant case may be summarized thus :-

(i) The motive of appellant behind the killing could not be established.

(ii) FIR which is foundation of the prosecution case, has been disowned by Pema.

(iii) Pema became eye-witness at the trial and also disowned his earlier police statement.

(iv) Testimony of Jhujhar, a child witness, has not been corroborated by the independent evidence.

(v) Jhujhar was under the influence of Pema at the time, his statement was recorded by the trial Court.

(vi) Axe was found lying near the dead body and recovery of axe at the Instance of the appellant is not proved.

(vii) The injuries sustained by the appellant have not been explained by the prosecution.

13. As a result of the above discussions, we have no option but to give benefit of doubt to the appellant.

14. We, therefore, allow the appeal of the appellant and set aside the impugned judgment dated June 4, 1999 of the learned Additional Sessions Judge, Ramganjmandi, District Kola whereby the appellant was convicted and sentenced under Section 302 of the Indian Penal Code. We acquit the appellant of the charge under Section 302 1PC. The appellant is in jail. He shall be set at liberty forthwith, if not required in any other case.

15. We record our appreciation for the assistance rendered by Mr. D.K. Garg, learned Amicus Curiae.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com