

Pemla Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Dec-14-1982

Reported in : 1982WLN(UC)374

Judge : S.C. Agrawal and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 743/76

Appellant : Pemla

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Kanta Bhatnagar, J.

1. This appeal is directed against the judgment dated August 26, 1 76 passed by the Sessions Judge by which the appellant Pemla was convicted for the offence under Section 302 of the Indian Penal Code and sentenced to imprisonment for life and a fine Rs. 200/-, in default of payment of fine to undergo two months rigorous imprisonment.

2. Succinctly narrated the facts of the case leading to the trial of Pemla and the present appeal are as under. The she-goats of Kana, husband of deceased Smt. Mani used to enter the field of appellant Pemla and for that reason deceased Smt.

Mani and Navli, wife of appellant Pemla had quarrelled. On May 26, 1975 there was not exchange of words between the two ladies. At about 7.00 P.M. Pemla appellant, armed with a muzzle loading gun went to the house of Kana (P.W.3) situated near his own house. He reprimanded Smt. Mani about her picking up quarrel with his wife. Thereafter the appellant fired the gun towards Smt. Mini causing injuries to her. Raja, son of Vaja (P.W.1) and Roda son of Kana (P.W.2) were present there in the courtyard outside the house of Kana along with the deceased at the relevant time. On hearing the report of the gun fire Kana rushed to the place. He was informed by his injured wife that it was Pemla who had fired the shot at her and that she would not survive. Kana went to Ratna (P.W.5), and informed him about the occurrence. Ratna went to the police Station Ogana to lodge the report. Jang Bahadur (P.W.7), the Station House Officer Police Station Ogana reduced into writing Ex.P.16, the information furnished by Ratna (P.W.5) and reached the site at 12.00 P.M. on May 26, 1975. The Station House Officer went to village-Gejbi at the house of Kana and proceeded with the investi(sic)ation. He prepared the injury report Ex P.2 and the site inspection memo and the site plan Ex P.15. The blood smeared clothes of the deceased were taken in possession vide memo Ex P.3 and 4. on May 28, 1975 Dr. Madan Mohan Gopal (P.W.6) of Primary Health Centre, Jhadol conducted the autopsy over the dead body of Smt. Mani and prepared the post mortem examination report Ex.P. 10. The Doctor noted the following external injuries on the dead body:

(A) There are five lacerated wounds present in Epigetric region. The edges are everted dried Black omentum is coming out in one of wounds marked No.3 as shown in Fig. Wounds are circular, diameter of each is 1/2, skin in between the wounds is 1/4 'size. No.1 wound is 1' away from wound no.2. Skin around the wound is not tattooed. Blackened, depth of the wounds not measured as they are penetrating in the cavity.

(b) There are there small lacerated wounds present in the Lt. laternal aspect of lower half of Abdomen and iliac crest region size of each is 1/4' x 1/4' Depth not measured as they are connected with cavity. Distance between each wound is 2' making a triangle, edges of the wounds are everted.

On dissection of the dead body doctor observed the condition of the patient under:

ABDOMEN

1. Walls. On dissection walls are congested 5' diameter of the Epigestic wound.
2. Epritonem: Wounds already described present in Epigestice region but size is 3/4' diameter of each wounds.
3. Mouth Pharynx and Esophagus Healthy.
4. Stomach and its contents:

Stomach is fully lacerated with multiple small and big sized wounds appearing like a seive Nyuk in the lower half of the stomach is empty and congested, Blood clots would be recovered from stomach but no pellet or shots.5. Small intestines and their contents:

There are three small perforations present in the ileum The intestine is congested in 6' length, The wounds are as follows in Frg. Distance between A & B is 1', Distance between B & C is 2'.6. Large intestines and their cor(sic)tents:

Lt. descending colour in lower portion is showing three lacerated circular wounds size 1' diameter. They are 2' apart one from another. Intestine is congested 6' length near the wounds.

3. The Doctor recovered one pellet 1/2' in spherical with a flat surface from wound in the iliac region. In the opinion of the Doctor the death was by lacerations of the stomach and perforations of small and large intestines and Haemorrhage. The pellet extracted from the dead body was sealed and the sealed packet was handed over to the police. The Station House Officer Jang Bahadur (P.W.7) arrested the appellant vide memo Ex.P.5. The appellant, while under custody, furnished information to the Station House Officer for getting recovered his muzzle loading gun. In pursuance of that information, gun Ex. 1 was recovered. The licence Ex.P.17 in the name of the appellant was also recovered from him by the Station House Officer. The articles recovered during the course of investigation were sent for chemical examination and to the Forensic Science Laboratory,

Government of India. The report of the Chemical Examiner is Ex.P.12, that of Serologist Ex.P. 13 & that of the Assistant Director Central Forensic Science Laboratory is Ex.P. 14. After completion of necessary investigation, charge sheet against the appellant was filed in the Court of Munsif and Judicial Magistrate no.3, Udaipur. The learned Magistrate finding a prima facie case exclusively triable by the court of Sessions, committed the appellant to the Court of Sessions Judge, Udaipur. The learned Sessions Judge charge sheeted the appellant for the offence under Section 302 of the Indian Penal Code and recorded his plea. On denial of the guilt by the appellant, the learned Judge proceeded with the trial. Prosecution examined seven witnesses in all to substantiate its case. The appellant in his statement under Section 313 of the Code of Criminal Procedure totally denied the allegations levelled against him. He admitted Ex.1 Gun to be his licenced gun. Two defence witnesses were examined to state that it was not Pemla rather some body else who had fired the gun causing the death of Mst. Mani. That, they had seen Raja son of Hara and one another person with him running from the house of Kana just after the incident.

3. The learned Judge placed reliance on the prosecution witnesses and held the appellant guilty. He therefore, passed the judgment under appeal.

4. The appellant has filed this appeal through the Superintendent Central Jail, Udaipur. As he was unrepresented, Mr. Basti Chand Advocate was appointed Amicus Curiae to plead on his behalf.

5. We heard Mr. Bastichand, learned Amicus Curiae and Mr. H.N. Calla, learned Public Prosecutor for the State.

6. The learned Amicus Curiae has assailed the findings of the learned Judge on the ground that prosecution has not brought true facts on record. It has been strenuously contended that the interested witnesses have been believed where as the defence version coming from the statement of Roopa, father of deceased supported by the testimony of independent witness Roda son of Bhera (D.W.2), has been discarded without giving cogent reasons for the same.

7. Prosecution has led direct as well as circumstantial evidence to connect the appellant with the commission of the crime. The direct evidence is that of Raja, son of Vaja (P.W.1) and Roda son of Kana (P.W 2). The circumstantial evidence is the dying declaration of Mst. Mani to her husband in the presence of the two eye witnesses. Another circumstance is Kana seeing the appellant running away with the gun from behind His house. The recovery of the muzzle loading gun in pursuance of the information furnished by the appellant and the licence in his same is yet another circumstance brought on record by the prosecution. The quarrel between the deceased and the wife of the appellant is said to be the motive for the commission of the crime by the appellant.

8. The learned Counsel for the appellant has argued that even if there was any quarrel regarding the goats damaging the crop, it is not believable that the appellant would have committed the murder of Mst. Mani on such a trivial point. There is evidence of Kana about the quarrel between the two ladies and Smt. Mani informing the witness about the same. This is also the prosecution case that three or four days prior to the incident, there was a quarrel between the ladies on the same point. Roda (D.W. 2) has also supported the prosecution on the point & has stated that there used to be hot altercation between the two ladies because of the she goats entering the field of Pemla, He has further stated that even on the date of occurrence, there was a quarrel between Sent. Mani deceased and Smt. Navli wife the appellant It does appear to be strange that a person would take such a drastic step of committing the murder on the petty matter of quarrel between the ladies on such a trivial point, but motive is mostly the subjective condition of the mind and the doer of the act alone can know as to what transpired in his mind at a particular time. In case prosecution establishes by cogent convincing evidence the commission of the crime by the accused, presence or absence of the motive or the incident taking place on a petty matter would not matter much.

10. The two witnesses viz. Raja son of Vaja and Roda son of Kana are said to be present in the court-yard outside the house of Kana at the relevant time. Both these witnesses have stated about Smt. Mani being there. Another witness Raja son of Heera who is also said to be present at the relevant time has not been

examined by the prosecution because despite effort his attendance could not be procured. The criticism levelled by the learned Amicus Curiae against the two eye witnesses examined by the prosecution is that they happened to be the relatives of the deceased and therefore, were interested in the prosecution. Roda son of Kana is the son of deceased, Raja son of Vaja has admitted that Kana, husband of the deceased happens to be his uncle in law. The presence of the son of the deceased in the house was most natural. The fact of Raja residing in the same village in the same vicinity has not been disputed. The mere fact of the witnesses being relatives of the deceased would not be sufficient to discard their testimony. All that is required is the close scrutiny of their statements.

11. The two eye witnesses cannot be branded as chance witnesses Immediately after the incident when Kana, on hearing the report of the gun fire had reached there, these two witnesses were found there. Even after a lengthy cross-examination nothing could be elicited from their deposition so as to throw any doubt on the veracity of what they had stated.

12. This being the position Kana being there immediately after the incident has been proved by his evidence as well as that of the two eye witnesses. He has proved the dying declaration of Smt. Mani, that it was Pemla who had injured her by gun shot. Kana has also stated that when on hearing the report of the gun fire he rushed to his house, he had had seen the appellant with a gun behind his house and then running away from there. The eye witnesses have also supported Kana regarding the dying declaration of Smt. Mani.

13. The very important circumstance against the appellant is the recovery of the muzzle loading gun Article I in pursuance of the information furnished by him. The licence of the gun in his name has also not denied the licence of the gun Article I being in his name. The report of the Ballistic Expert is that the gun referred to him was in working order and had been fired through though he would not give any time of ns last firing. The pellet extracted from the body of Smt. Mani was also sent to the Ballistic expert The expert has opined that the pellet referred to him could have been fired from the gun under reference. The eye witnesses have also identified Ex. 1 to be the gun used by the appellant for the commission of the

crime.

14. The learned Amicus Curiae emphatically argued that there is no reason to discard the testimony of the two defence witnesses. Roopa (D.W.1) is the real father of the appellant. He has stated about Pemla (appellant) and Roda (D.W.2) being at his house when the report of the gun fire was heard. According to him on coming out of the house they had seen Raja son of Hara and one other man running from the house of Kana. Roda son of Bhera (D.W.2) has supported Roopa to this extent that at the relevant time both of them were thereat the house of Roopa and Pemla was also there. He had also stated about their coming out of the house on hearing the report of the gun fire and seeing Raja son of Hara and one other person having gun in his hand running away from there, Both there witnesses have stated about Raja son of Vaja and Roda son of Kana reaching the site after reaching there.

15. It is pertinent to note that no question about the presence of these persons at the site has been put to the two eye witnesses viz. Raja son of Vaja and Roda son of Kana or to Kana who had claimed to have reached there immediately after the gun fire. Roopa has denied the fact of any quarrel between his daughter-in law, wife of the appellant and Smt. Mani regarding the goats damaging the crop, Roda son of Bhera (D.W.2) has stated that there used to be a quarrel between the two ladies and on the date of the occurrence itself they had quarrelled, He has also admitted Pemla reprimanding Smt. Mani for picking up quarrel with his wife, though he has expressed ignorance on the point as to whether after reprimanding Pemla had fired the gun towards Smt. Mani. The statements of the two defence witnesses do not inspire any confidence. Apart from it, the defence version is not consistent. Looking to suggestions to the eye witnesses in cross examination the defence plea appears to be that it was a case of accidental firing. A specific question has been put to the eye witnesses that they had tried to snatch the gun from the appellant when he had gone to the house of Smt. Mani to reprimand her and in that process of snatching, the gun went off. The defence version coming forth in the statements of the two defence witnesses is not at all reconcilable with the aforesaid questions put to the prosecution witnesses. We are aware of the principle that the weakness of defence does not lend strength to the prosecution

and it has to stand on its own legs. We have examined the prosecution evidence keeping this principle in mind As discussed above, the two eye witnesses have given credible evidence and their statements have been rightly made basis of conviction by the learned trial Judge. Similarly the evidence of Kana regarding the dying declaration supported by the eye witnesses inspires confidence.

16. From the above discussion, we are inclined to hold that the learned trial Judge has appreciated the evidence in proper perspective and the conclusion arrived at by him does not call for any interference.

17. Consequently, the appeal having no merits is dismissed.

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