

Ramanuj Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-22-1995

Reported in : 1996CriLJ1790; 1996(2)WLC191

Judge : N.C. Kochhar and; Arun Madan, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 309; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 157

Appeal No. : Cr. (Jail) Appeal No. 81 of 1994

Appellant : Ramanuj

Respondent : State of Rajasthan

Advocate for Def. : Sumitra Goyal, Public Prosecutor

Advocate for Pet/Ap. : Ghanshyam Brijwasi, Adv. and; Rajesh Kandwal, Amicus Curiae

Disposition : Appeal allowed

Judgement :

N.C. Kochhar, J.

1. The appellant was prosecuted in case FIR No. 91 /1989, of Police Station - Govindgarh, with the allegations that he had committed offences punishable under

Sections 302 and 309 of the Indian Penal Code (IPC), in the Court of the learned Sessions Judge, Jaipur District, Jaipur, who, vide the impugned Judgment dated 7th February, 1994, has convicted him under Section 302, IPC and vide the impugned order of the same date, has sentenced him to undergo imprisonment for life and to pay a fine of Rs. 100/-, or in default of payment of fine, to undergo simple imprisonment for a further period of one month. The prosecution story was as under :-

2. On 7th July, 1989, Mukesh Sharma (PW

1) had come to Police Station - Govindgarh and had submitted a report (Ex. P. 1), to the SHO, Prahlad Singh (PW

12) (the Investigating Officer), stating that at about 11 -30 a.m. that morning, while he was sitting with Bajrang Jat, at his 'Chhappar', situated on the main road, his younger-brother, Srinivas, came running to him and told him that their father had been killed by Ramu Kaka (the appellant) and thereupon, he (PW

1) came to his house near the well at 'Mahanto-ki-Dhani', where he found his father lying dead on the floor inside the room and blood coming out of his head and the appellant standing with a blood-stained 'Khusha' in his hand, and at his asking as to what had happened, the appellant told him that he had killed his (PW l's) father and that unless he ran away from there, he would kill him also and thereupon, he came running to his residential house and informed this fact to his mother and to his uncle, Ramgopal, and that his father had been killed due to a dispute regarding land and his deadbody was lying at his house in the 'Dhani'. The SHO made an endorsement at the foot of Exhibit-P/I and registered the case vide formal FIR No. 91/1989 (Ex. P.

2) and proceeded to the spot, where, he found the deadbody of Raghavdas (the deceased), father of the PWs 1 and 2, lying dead and blood, scattered around the place. He also found the appellant, sitting in the same room and having injuries on his person. He prepared the site-plan (Ex. P.

3) of the place of occurrence and took photographs (Exs. P. 4 to P. 8), showing the deadbody lying at the spot from different angles. The Investigating Officer sent the appellant to Government Health Centre, Govindgarh (the Health-Centre), where, a request for conducting post-mortem examination of the deceased, at the spot, was also sent. In the Health-Centre, Dr. Rakesh Kaushik (PW 10), examined the appellant at about 2-10 p.m. and found him to be conscious and his general conditions to be satisfactory, his blood-pressure to be 130/80 and pulse-rate to be 110/Mand he further found that the appellant could walk but was complaining of weakness. He (the doctor) found one lacerated wound, measuring 5' x 3/4' x 1/2' x 1/4', in the middle of his scalp and the midline skin was separated towards inner side of wound on the right side, besides four abrasions of the sizes of 4', 5', 5' and 3 1/2', almost parallel to each other at the back of neck, stretching towards right side. He opined that both the injuries were caused by blunt weapon and that the injuries of abrasions, were simple in nature, but advised X-Ray examination for determining the nature of the injury on the scalp. He prepared his report (Ex. P. 20). The X-Ray examination of the appellant was done in the SMS Hospital, Jaipur, where, no fracture was found and the report (Ex. P.

29) was made in this respect.

3. After examining the appellant and preparing the report (Ex. P. 2.0), the doctor proceeded to the spot, where, he found the deadbody of the deceased, which was well-built and fairly nourished, wearing a 'Lungi' and lying flat in a small 'Kachcha' room in the field and a pool of blood near the head and in an area of about 2-3 feet from the head on one side. On external examination, he found the following injuries on the person of the deceased :-

'1. Lacerated wound and fracture 7-8' long x 1 1/2' at scalp almost in midline deep enough as the brain-matter comes out from the wound rupturing all membranes and bones. Extends from frontal to occipital region. Fracture of skull in this area.

2. Depressed multiple fracture of skull on right side of frontal, temporal maxillary bones and the socket of the right eye-ball and nasal bridge skin over the wound not significantly remarkable, bruise of right eye-ball area.

3. Fracture of two upper teeth, i.e., incisor and canine on right. Fracture of maxilla in hard palate of mouth wound not separable from the wound No. 2.'

On dissection of the deadbody, he found the following injuries :-

- '1. Brain-matter coining out due to injury on scalp.
2. Both the chambers of heart were empty.
3. Right jaw-bone was found smashed.
4. Undigested article found in stomach and gas in intestines.'

and opined that the cause of death was the head-injury and the injuries, caused to the brain-matter and that the injuries were ante-mortem in nature. He prepared the post-mortem report (Ex. P. 18).

4. After sending the appellant to Health-Centre, the Investigating Officer had prepared the 'Panchnama' (Ex. P. 14) in respect of the deadbody of the deceased. He took into possession the blood-stained and control-earth vide memos (Ex. P. 10 and Ex. P. 11). He found a blood-stained shirt of the deceased, lying near the spot and took it into possession vide memo (Ex. P. 12). He found some hair, lying at the spot, which he took into possession vide memo (Ex. P. 13). He also recorded the statements of the witnesses at the spot, and after the postmortem examination had been conducted on the deadbody of the deceased, it was handed over to the relations vide the receipt (Ex. P. 24). The Investigating Officer arrested the appellant at Police Station-Govindgarh on 9th July, 1989 and took into possession the blood-stained 'Dhoti' and 'Banyan', which he was wearing at that time, vide memo (Ex. P. 21). On 11th July 1989, the appellant got recovered one wooden 'Baisa', one 'Phaora', one wooden 'Phadi' and one iron 'Kusha' from the portion of his 'Dhanihouse, after making the disclosure-statement (Ex. P. 23).

5. All the articles, recovered from the person of the appellant, after his arrest and recovered at his instance, were converted into sealed parcels soon after their recovery and were deposited in the 'Malkhana' of the police station, wherefrom, they were sent to the Forensic Science Laboratory (FSL), where, they were

received on 11th August, 1989, vide receipt (Ex. P. 16). In the FSL, on chemical examination, it was found that the blood-stained earth, the shirt, the hair, the 'Lungi', the 'Pajama', the 'Phaora', the 'Lakdi', the 'Phadi' and the 'Kusha' were having human-blood on them but the group of the blood could not be determined due to its disintegration. On biological examination, the hair were found to be of human-origin. After receipt of the reports (Exs. P. 25 and P. 26) from the FSL and after completing the investigation, the challan was filed in the court of the learned Judicial Magistrate, Chomu, who committed the case to the Court of Session, where, the appellant was tried, convicted and sentenced, as noted above. Feeling aggrieved, the appellant sent this appeal, through the Superintendent, Central Jail -Jaipur, and Shri Ghanshyam Brij vasi was appointed as amicus curiae, to argue the case on behalf of the appellant, and later on, Ms. Rajesh Kandwal, Advocate, filed her memorandum of appearance, of her own and without any power-of-attorney from the appellant.

6. We have heard Shri Ghanshyam Brijvasi for the appellant, Ms. Sumitra Goyal, the learned Public Prosecutor for the State and have also perused the record of the case.

7. The learned counsel for the appellant, has contended that according to the prosecution-case itself and as has been stated by the Investigating Officer himself, the appellant was present at the spot, when the Investigating Officer had visited it on 7th July, 1989, but the appellant was arrested only on 9th July, 1989, when the blood-stained clothes are stated to have been recovered from him and that even the recovery of articles at his instance, namely, 'Phaora', 'Lakdi', 'Baisa', 'Phadi' and 'Kusha', is fictitious and according to the statement of Mukesh (PW 1), in his cross-examination, the police had arrived at the spot after about ten minutes of the occurrence and he had handed over the report (Ex. P. 1) to the police at the spot. It has been contended that the report, on the basis of which the police had come to the spot, has not been produced before the court and further that the fact that the appellant was present at the spot on 7th July, 1989 itself but was arrested two days thereafter, is sufficient to show that the FIR was not recorded at the time when it is shown to have been recorded and the real version has not been brought before the court. It has been contended that the statement of Prithvi (PW. 2),

made in the court that on seeing his father lying injured at the hands of the appellant, he ran away to inform his brother, without raising any alarm or without apprehending the appellant, shows unnatural conduct on his part and similarly, the statement of Mukesh (PW 1) that when he reached the spot, on his asking the appellant told him that he had killed his father and would kill him also, unless he ran from the spot and thereupon he ran to his house and informed his mother and uncle, is also unnatural, inasmuch as he also did not raise any alarm. It has also been contended that the prosecution had submitted the challan against the appellant under Section 309, IPC, also with the allegations that after committing the murder of the deceased, he had attempted to commit suicide by jumping into a well, but no evidence has come forward to show that he had jumped into the well with a view to commit suicide, inasmuch as no witness has been produced to state that he had rescued the appellant from inside the well, wherein he had jumped for the purposes of committing suicide, and in fact, except a bald statement made by Mukesh (PW. 1) that the appellant had jumped into a well, without explaining as to how he came out, no evidence has been produced and all these facts show that the appellant had been framed after suppressing the earlier version and that the FIR is a post-investigative document.

8. As noted above, according to the case of the prosecution, Mukesh (PW. 1) had come to the police station at about 1 p.m. and thereafter, the Investigating Officer had recorded the formal FIR (Ex. P. 2), on the basis of the complaint (Ex. P. 1), presented to him by Mukesh and after registering the FIR, the Investigating Officer had gone to the spot and had found the appellant present there. The Investigating Officer, admittedly, did not arrest the appellant before 9th July, 1989. The injury-report (Ex. P. 20) records that the appellant was brought to the police station, with the Requisition No. 2546 dated 7th July, 1989. This document does not indicate the number of the FIR, i.e., in which case, the appellant had been referred to the doctor. Neither the requisition in question nor has its copy been produced on the record to show that he FIR had been recorded by the time that the appellant had been sent for medical examination. Similarly, there is no satisfactory explanation as to why the appellant was not arrested by the police when there were clear allegations of his having committed the murder, in the form of report (Ex. P. 1) and the FIR (Ex. P. 2) and as to why his clothes were not taken into possession till 9th

July, 1989. The statement of Mukesh (PW. I) that the police had come to the spot, where he had handed over the report (Ex. P. I) after about ten minutes of the occurrence, has also remained unchallenged. Section 157 of the Code of Criminal Procedure, 1973, provides that when an information regarding commission of some cognizable offence, is received by the Officer Incharge of a police station, he has to record it in the Register of FIRs and has to send forthwith a copy thereof, to the concerned Judicial Magistrate and has to proceed to the spot, or to direct one of his subordinate officers to proceed to the spot, and as has been held by a Division Bench of this Court, of which, one of us (N. C. Kochhar), J. was a member, in case : Surajmal v. State of Rajasthan (DB Criminal Appeal No. 321/1993, decided on 29th August. 1995). the acts of sending of the copy of the FIR to the Magistrate concerned and proceeding to the spot, should be simultaneous. The endorsement on the copy of the FIR, shows that it was presented to the learned Additional Chief Judicial Magistrate, at his residence, at 6 p.m., on 9th July, 1989. Taking into consideration all these facts, the argument that the FIR is a post-investigative document, cannot be said to be ill-founded.

9. Girdhari Singh (PW 13), who was the Incharge of the Malkhana from 7th July, 1989 to 11 th August, 1989, has not deposed a word about any article having been deposited in the Malkhana under sealed cover or otherwise on 11 th July. 1989, and the only witness of the recovery, examined in court, is Ghasi Ram (PW 5), who has not supported the case of the prosecution that the appellant had got recovered the above-said articles from his house. He has deposed that the police had taken out all those articles and that at the asking of the police, he had attested the recovery-memo (Ex. P. 16). In cross-examination, he denied having made the statement that the appellant himself had taken out those articles and had handed them over to the police. According to this witness, the articles were not sealed at the spot, and as noted above, there is no evidence regarding the Investigating Officer having deposited those articles in the Malkhana. The argument that the injuries on the person of the deceased, could not have been caused by using the four weapons of the offence, is also not without substance. Moreover, the recovery of the above-said articles, is of no assistance to the prosecution for the reason that the blood-group of the deceased and of the appellant has not been proved on record and admittedly, both of them were having injuries on their persons and no

blood-group was found on the above-said weapons.

10-11. For the reasons, mentioned above, it appears to,us that the FIR is a post-investigative document and the police with a view to explain the injuries on the person of the appellant, had made out a case, without substance that he had tried to commit suicide by jumping into a well, after committing the offence and that the investigation has not been fair. It is. therefore, not possible to hold that the prosecution has succeeded in proving the case beyond reasonable doubt. The learned trial court, in our view, ignored the above-said important factors and erred in holding the appellant guilty of the offence under Section 302. IPC.

12. Consequently, we accept this appeal, set aside the conviction and sentence, imposed on the appellant and acquit him. He is in jail and should be released forthwith, unless wanted in some other case.

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