

ismail Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-26-1979

Reported in : 1979WLN(UC)432

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Criminal Appeal No. 41 of 1975

Appellant : ismail

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

S.N. Deedwania, J.

1. Appellant Ismail has preferred this appeal against the judgment of the Additional Sessions Judge, Alwar, dated January 1, 1975 for his conviction under Section 307 IPC and the sentence of 5 years' rigorous imprisonment and a fine of Rs. 200/-, in default of payment of which further rigorous imprisonment for six months¹.

2. The prosecution case was under : On 6.10.1973 complainant Paltu went to the fields of Ginni and Ramchander in village Shikarion ka bas for ploughing them with his tractor. He was accompanied his half brother Ashraf. At about 4.30 p.m. when

he was still at his work, Dalmor came there along with a number of persons in a tractor. The appellant shortly afterwards also came there armed with a 12 bore gun on his scooter. Dalmor had a pistol with him while his other companions were also variously armed. They threatened the complainant with his life and then the appellant fired his gun at him. Paltu sustained pellet injuries on his left leg. Some of the pellets also hit the tank of the tractor. The incident was seen by Ashraf, Ginna and Ram Chander. Complainant Paltu went away in his tractor directly to police section Sadar Alwar and lodged the FIR of the incident at 6.15 pm. A case was registered and the investigation began. Paltu was examined by Dr.P.S. Agrawal on the next day for his injuries. PW10 Ram Singh who was on that date the Incharge of the Police Station, registered the report, got the tractor photographed and took the dhoti of paltu in his possession. PW9 Laxminarayan recovered the gun from the possession of the appellant. After completing the investigation the challan was filed in the court of Additional Munsil Magistrate, 1st Class No. 1, Alwar who committed the case to the court of Sessions. The learned Sessions Judge believed the prosecution evidence and convicted the appellant.

3. I have heard the learned Counsel for the appellant and the learned APP.

4. PW1 Mohar Singh, PW2 Ginni, Ramchander had turned hostile. The other three witnesses namely PW5 Kailash Singh, PW7 Paltu and PW8 Ashraf supported the prosecution case. It was argued by the learned Counsel for the appellant that the Sessions Judge was in error in not discarding the testimony of Kailash Singh. His name did not find place in the FIR and also he was examined quite a few days after the incident. In my opinion this argument ought to prevail. There is no cogent explanation as to why the name of this witness was not disclosed in the FIR and why he was examined by the police after so many days of the incident. It may be stated that this witness appears to be under some influence of Paltu otherwise he would not fall in line with the statements of Paltu and Ashraf. He also stated that Dalmor first fired with the pistol and then Ismail fired thrice with his rifle but only one fire could injure Paltu. The story of three fires and the fact that Dalmor also fired a pistol is not reliable as would be apparent from the discussion of the evidence of Paltu and Ashraf. I am, therefore, of the view that the statement of PW5 Kailash Singh cannot be used to corroborate the testimony of Pw7 Paltu or

PW8 Ashrat. It was vehemently contended by the learned Counsel for the appellants that the core and substratum of the prosecution case stood deserted. The appellant had inimical relations with Paltu and Ashraf and, therefore, he was sought to be falsely implicated. No doubt the FIR was lodged at the earliest but it also reflected the attempt of Paltu to implicate a number of innocent persons. I have considered the argument carefully.

5. It appears that the case of the incident was the enmity between Paltu and Dalmor. Ismail in his examination under Section 313 Cr.PC deposed that Paltu, Chahak, Rala and Jumma murdered his father. He was a witness in that case and, therefore, was being falsely implicated. PW7 Paltu admitted that Dalmor was murdered and Chahak and Jumma were convicted for the same. In FIR a mention of this enmity was also made. However, the enmity is a double edged weapon. It can lead to a false implication but also usually is an adequate motive for the crime. Therefore, nothing turns on this aspect of the case.

6. I have carefully considered the argument of the learned Counsel for the appellant that Paltu and Ashraf could not be believed because they were trying to implicate Dalmor and some other innocent persons. In view of this fact they could not be said to be the witnesses of truth and it would be unsafe to base any conviction on the basis of their testimony in the absence of any corroboration from independent source. It was not a case where the truth could be separated from falsehood in the statement of Paltu and his half brother Ashraf, I have given anxious consideration to the argument. In the first information it was stated that Dalmor came at the field in his tractor with several persons including Rahimkhan, Kalakhan and others. Dalmor exhorted to kill and then Ismail fired a gun at Paltu which hit his leg. The police did not believe this part of the FIR. and only prosecuted Ismail. PW7 Paltu stated at the trial that Ismail came with Rahimkhan. Then a tractor arrived. It was driven by Dalmor. Several persons were sitting in the trolley. Dalmor fired a revolver but it did not hit him. Then Ismail fired injuring his left leg. Ismail fired another shot at him but it did not cause him any injury. In FIR Ex P7 this witness has not stated about the revolver fired by Dalmor. It is also missing from his police statement Ex DI. In Ex.P7 there is mention of two fires while in the police statement Ex DI the witness attributed three gun fires. The same infirmity

can also be noticed in the statement of PW8 Ashraf, his half brother. However, it is difficult to say whether Dalmor came on the field in a tractor or not. He was not facing the trial, but this part of the prosecution story in my opinion can safely be separated that Ismail fired a gun at Paltu. To that extent the statement of Paltu and Ashraf is supported from the FIR which was promptly lodged. It is inconceivable that Paltu was capable of giving out altogether a false story. That apart the injuries on the tractor and the leg of Paltu also corroborate the prosecution case. Though PW1 to PVV3 had gone hostile, they also corroborate to some extent the prosecution case. PW1 Mohar Singh stated that Ismail was driving the tractor in the field of Ginna. The appellant came there from towards the town of Alwar. Paltu directed his tractor towards Ismail and tried to surround him. At that time Ismail was on his legs and when he feared his crushing, Ismael fired. Obviously the witness is not speaking the whole truth in view of his earlier police statement to the contrary. But one fact stands out from his statement that it was Ismail who fired at Paltu. The time and place of the incident as deposed to by this witness is also in confirmity with the testimony of PW7 and PW8. PW2 Ginna had gone hostile but at least he established the fact that at about 4 of 5 p.m Paltu was ploughing the field with his tractor. The statement of the witness that he did not see Ismail firing at Paltu is unreliable as his statement Ex P 2 to the police was to the contrary. The same criticism would apply to the statement of PW8 Ramchander. I have considered the statement of PW7 Paltu and PW8 Ashraf. In my opinion truth can be easily separated from falsehood in their statements, their testimony to this extent that Ismail fired a gun at Paltu with an intention to murder him. I, therefore, find no cogent reason to take a different view than that of the trial court.

7. As regards sentence it was argued that sentence of five years in the circumstances of the case was excessive. Appellant had been on bail for the last four years. He had some motive of retribution in firing the shot. The injuries caused were also not very serious. I think there is some force in the argument and the interest of justice would be met if the substantive sentence is reduced to three years.

8. I, therefore, dismiss the appeal and maintain the conviction under Section 307 IPC of the appellant but reduce the substantive sentence of rigorous imprisonment

of five years to three years RI. The appellant is on bail and shall surrender to his bail bonds to serve out the sentence.

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