

Shiv Ratan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Dec-05-1979

Reported in : 1979WLN(UC)474

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Criminal Appeal No. 193 of 1975

Appellant : Shiv Ratan

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

S.N. Deedwania, J.

1. Appellant Shivratana has preferred this appeal against the judgment of the Additional Sessions Judge, Bikaner, dated March 14, 1975 against his conviction and sentence under Section 326 and 324, IPC.

2. The facts alleged by the prosecution are these. On 7 3 74 at about 10 30 pm. Chandraprakash, Ramprakash and Jethmal were returning to their houses from public-park. When they reached in front of Sardul School, appellant Shiv Ratan with his two or three companions assaulted them Shiv Ratan struck a knife blow on the right shoulder of Ram Prakash, while he was sitting on the carrier of a

cycle. He got down from the cycle' Thereafter Shivratan gave another knife blow on the lower part of the abdomen of Jethmal. Ramprakash grappled with Shivratan. They fell down. The appellant then inflicted a knife blow on the pubic part of Ramprakash. Chandraprakash caught hold of the knife by his left hand, but Shivratan snatched it away with force. This caused an injury on the palm of Chandra Prakash. Shivratan then caught hold of the bushirt of Chandraprakash and inflicted two knife blows on his neck. Thereafter, the appellants ran away. The injured hired a Tonga and went to the hospital. The police was informed and PW 7 Bhajansingh recorded the statement Ex.P/1 of Chandraprakash and on its basis recorded the first information report of incident and registered the case. During the investigation, the injured were medically examined & a knife was recovered from the possession of the appellant. Some days after, Jethmal succumbed to his injuries. The post-mortem examination of the dead body was conducted. It is also the prosecution case that 00 11-8-74 dying declaration of Jethmal was recorded. After completing the investigation, the police filed a challan in the court of the Chief Judicial Magistrate, Bikaner, who committed the case to the Sessions for trial. The appellant was also charged for an offence under Section 302, IPC for committing murder of Jethmal. However, learned Additional Sessions Judge acquitted the appellant for the offence of murder and convicted him in the manner stated above.

3. I have heard the learned Counsel for the appellant and the learned Assistant Public Prosecutor for the State and perused the record of the case carefully,

4. It was argued by the learned Counsel for the appellant that the learned Additional Sessions Judge was in error in convicting the appellant solely on the testimony of Chandraprakash PW1 as it was found lacking in various respects. He did not explain the numerous injuries caused to the appellant. He could not stand the test of the cross examination and had to admit that he did not see the appellant inflicting the injuries on Jethmal. In the first information report, it was alleged that the appellant in the company of two or three persons attacked Chandraprakash and others. However, at the trial only the appellant was found to be implicated. The investigation was unfair and available independent witnesses to the incident were withheld. This led to the presumption that the independent

witnesses would not have supported the prosecution case.

5. I have considered the contentions carefully and in my opinion In this case it is not safe to convict the appellant only on the basis of the testimony of Chandraprakash.

6. No doubt, the prosecution also relied upon the alleged dying declaration of Jethmal, however, the learned Additional Sessions Judge gave cogent reasons for disbelieving the same and came to a positive finding that Jethmal never gave a dying declaration, Ex P/17 dated 10-8-74. I agree with the reasons which led the learned Additional Sessions Judge to come to this finding Jethmal was not in a fit condition to make a statement on 8th or 9th August, 1974 as is evident from the endorsements on Ex D/4 and Ex D/3, wherein it is stated that Jethmal was not in a fit condition to give the statement No doubt, Bhajansingh stated that in his opinion, the condition of Jethmal was good on the tenth and he could make a statement. At 6.00 p. m. Jethmal was not in a position to give the statement, as it evident on endorsement Ex D/5. If Bhajansingh, SHO had really recorded the statement Ex. P/ 17 of Jethmal at about 10 00 a m., surely before recording the statement he would have contacted the doctor to ask for his opinion and would have naturally recorded the statement in his presence More over, as a prudent police officer Bhajansing would have surely tried to get the dying declaration recorded by a Magistrate. The witness stated that the statement Ex P/17 was recorded in presence of the doctor. However. Dr. Harbans Singh did not corroborate him, Ex.P/17 It was the duty of the prosecution to record the statement of Jethmal, at least in the presence of Dr. Harbans Sing, after obtaining his certificate of fitness. From perusal of Ex P/17, it also appears that it was not possible for Jethmal to have given such a statement. Again from a comparison of Ex.P/17 and Ex.P/1, it is evident that the both are couched almost in similar expressions. This was more or less impossible. I, therefore, entirely agree with the findings of the learned Additional Sessions Judge that Jethmal never gave dying declaration, Ex.P/17 and it has been falsely introduced by the prosecution.

7. As regards the recovery of knife, the learned Additional Sessions judge was of the opinion that its recovery was not free from doubt. This question need not be

examined in view of the fact that the knife was not found stained with human blood.

8. This leaves us with the solitary statement of Chandraprakash PW 1 as other injured Ramprakash, PW 6 had turned hostile. It was argued by the learned Assistant Public Prosecutor for the State that Ramprakash turned hostile as he was nephew of the appellant. This may be correct or not, but the fact remains that this witness has not supported the prosecution case and is rather supporting the defence.

9. It was then contended that PW1 Chandraprakash is not a reliable witness in as much as, he did not explain 17 injuries caused to the appellant. The prosecution did not dispute that when Shivratan was examined on 8-8-74 at 10 20 a.m., he had as many as 17 injuries on his person. Bhajansingh admitted that he got the injuries on the person of Shivratan medically examined. From injury report, Ex D/1 it is established that the appellant has as many as 17 injuries on his person. PW1 Chandra Prakash did not explain how the appellant received these injuries. Of course, he has deposed to about the grappling of Ramprakash, PVV6 and Shivratan appellant. However, the injuries could not be as a result of grappling and falling down on the ground. The nature of the injuries suggests that they were caused by some weapon like the chain of a cycle. The learned Additional Sessions Judge had to concede. 'it may be true that some members of the complainant party caused injuries on the person of the accused with cycle chain'. The learned Additional Sessions Judge also observed that Chandraprakash may be untrue when he stated that he did not inflict any injury to Shivratan. In my opinion therefore, it is evident that this witness is prevaricating on a material part of the prosecution case. The Supreme Court thus observed in the case of *Lakshmi Singh v. State of Bihar* : 1976 CriLJ1736 .

In the murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

There may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. The principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear & cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

10. I, feel that this is not a case where the non-explanation of the injuries would not destroy the prosecution case. The injuries received by the appellant are not minor and superficial. The prosecution evidence to prove the case against the appellant consists of only one witness and it can not be said that his credence is not affected by the omission on his part to explain the injuries to the appellant. It is a case where prevarication on this important aspect of the case leads to the inference that the prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version of the incident.

11. I have gone through the statement of Chandraprakash and it does not inspire confidence. There does not appear any strong motive to commit the crime. It is difficult to place any reliance on the statement of Ramprakash PW6, and Chandraprakash PW1 stated that he was returning from the public park on one cycle, which he was pedaling and Ramprakash was sitting on the carrier. Jethmal was pedaling the other cycle. Jethmal came from behind and inflicted a knife blow

to Ram Prakash. They got down from the cycles and tried to escape. Then appellant gave a knife blow in the stomach of jethmal. Thereafter, the appellant caused a knife blow on the pubic region of Ramprakash. The appellant then grappled with Ram Prakash but somehow they got separated. The appellant then caught hold of his bushist and gave two knife blows to his neck. He tried to catch hold of knife and in an attempt the palm of his left hand was injured. Thereafter, the appellant scaped and they went to the hospital I have considered the statement carefully, which apart from the infirmity that it does not explain the injuries on the person of the appellant suffers from the following infirmities:

1) The statement of the witness as to the manner in which, he received the injuries is rather contradicted by the medical evidence. PW3 Dr. Surendra Kumar stated that the injuries on the mastoid region on Chandraprakash could not be received if the victim and the assailant were facing each other. The injury on the flexer of Chandraprakash could be received while warding off the attack of the weapon but could not be received by catch of the weapon.

2). In the first information report, the appellant stated that Shivratan appellant was accompanied by 2 or 3 persons and they attacked them. This is at variance from the statement of the witness at the trial and the witness could offer no plausible explanation for this material variance.

3). The witness in the cross-examination faltered and admitted that he did not see the appellant causing injuries to Ramprakash and further admitted that he did not notice the causing of injury to jethmal. After the initial assault he ran ahead to 200 ft. and could not say as to who caused injuries to whom. The witness has therefore perjured on the most material aspect of the case as to who were caused the injuries by the appellant. He claimed to be an eye-witness of the causing of injuries and from cross-examination, it appears that at best, it was his inference.

12. In view of these infirmities noticed in the statement of the witness, I am of the opinion that he does not belong to the category of wholly reliable witnesses and it is even difficult to label him as a partially reliable witness. To my mind, he is a wholly unreliable witness and it is not possible to place any reliance on his testimony. It is thus observed in Shivaji Sahebrao and Ors. v. State of

Generally speaking oral testimony in this context may be classified into three categories, namely (1) wholly reliable (2) wholly un-reliable and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the Court equally has no difficulty in coming to its conclusion. It is in the third of cases, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

13. The investigating agency is also not fair in as much as it tried to introduce a false piece of evidence in the form of dying declaration of Jethmal. In is an admitted position that the various persons saw the incident. PW1 Chandraprakash admitted that at the place of the incident, two shops of the Panwalas were open and further stated that he could not say whether any other person witnessed the incident. How ever, on this point, he was contra-dicted by the 6rst information report Ex. P/I G to H, wherein he stated that the incident was seen by the Panwalas and other persons going on the road. The witness had to admit that he narrated this fact correctly in the first information report. Thus, the witness admits the presence of independent witnesses at the scene of the incident PVV7 Bhajansingh, SHO, Investigating Officer, stated that apart from the injured on 14-8-74 he also recorded the statement of 3 eye-witnesses Gopaldass, Narayan and Bherulal. He gave a lame excuse that they were not cited as the prosecution witnesses because they did not claim to know the injured & the assailants. This may be so, how ever, these witnesses could have unfolded the sequence of the events and true version of the incident. In my opinion, it is a case, where adverse inference should be drawn against the prosecution for the omission to examine the independent witnesses to the incident. I am supported in my view by the observations in *Habeeb Mohammed v. State of Hyderabad* : [1954]1SCR475 .

It is bounden duty of the prosecution to examine a material witness, particularly when no allegation has been made that, if produced, he would not speak the truth

Not only does an adverse inference arise against the prosecution case from his non production as a witness in view of illustration(g) to Section 114 of the Evidence Act, but the circumstances of his being withheld from the court casts a serious reflection on the fairness of the trial.

14. I have already observed that there does not appear to be any serious motive on the part of the appellant to commit the crime. If the statement of Ramprakash is believed, it tends to support the defence version, Chandraprakash admitted that the appellant had no enmity with them. However, he stated that Ramprakash used to say that his relation with his uncle were not good. This could hardly constitute any motive for the crime on that fateful evening. Sometime, the proof of motive plays important part in supporting the prosecution evidence and gives additional assurance to the findings of the court. Its absence would demand closer scrutiny of the prosecution case. It was thus, observed in *Hardeosingh v. State of Rajasthan* 1977 RLW 107-

The proof of motive satisfies the judicial mind about the likelihood of the authorship of the crime, but its absence only demands deeper forensic search and cannot undo the effect of evidence, otherwise sufficient. Motives of men are often shrouded in mystery, they are subjective, submerged and un-amenable to easy proof. Where there is a clear proof of motive for the crime, that lends additional support to the findings of the court that the accused was guilty, but the absence of clear proof of motive does not necessarily lead to the contrary conclusion. The fact that the prosecution was not able to discover such an impelling motive would not reflect upon the credibility of a witness proved to be a reliable one.

15. Taking into consideration, the various circumstances and infirmities in the prosecution case, I am of the view that no reliance could be placed on the statement of Chandraprakash PW1. He is wholly unreliable witness. He has not come out with a clean and true version of the incident. It will be highly unsafe to base the conviction of the appellant on the strength of such a statement. I am of the opinion, the prosecution could not bring home the guilt to the appellant beyond reasonable doubt.

16. In the result, the appeal is accepted and judgment of the Additional Sessions Judge, Bikaner is set aside & appellant Shivratan is acquitted of the offences under Sections 326 and 324, IPC. He is on bail and need no surrender to his bail-bonds, which are hereby discharged.

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