

Dinesh Kumar Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/762625

Court : Rajasthan

Decided On : Jul-18-2005

Reported in : RLW2005(4)Raj2533; 2005(4)WLC205

Judge : V.K. Bali and; Vineet Kothari, JJ.

Acts : Indian Penal Code (IPC) - Sections 299, 300, 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 569 of 2001

Appellant : Dinesh Kumar

Respondent : State of Rajasthan

Advocate for Def. : Nirmala Sharma, Addl. Govt. Adv.

Advocate for Pet/Ap. : A.K. Gupta and; Alka Bhatnagar, Adv.

Judgement :

V.K. Bali, J.

1. Dinesh Kumar the sole appellant herein, as per prosecution case is said to have intentionally caused death of Karni Ram on 18.3.1999 at 08.00/08.15 a.m. First Information Report with regard to incident was lodged on the same day within an hour so at 09.00 a.m. by Karni Ram himself which was recorded by Pane Singh,

I.O. who was examined as P.W. 13. Special Report with regard to incident reached to the concerned Magistrate on 18.3.1999 at 11.30 a.m. Karani Ram succumbed to the injuries received by him on 30.3.1999. The appellant after trial has since been held guilty for offence under Section 302 IPC and sentenced to undergo life imprisonment as also to pay fine of Rs. 2,000/- and in default of payment of fine, to further undergo six months rigorous imprisonment vide order dated 24.7.2001 recorded by the Additional Sessions Judge (Fast Track), Sikar. It is against this order that the present appeal has been filed.

2. During the course of trial, the prosecution examined Dr. T.S. Choudhary as P.W. 5 who had conducted post-mortem on the dead body of Karani Ram. The post-mortem report (Ex.P.4) reveals following injuries received by Karani Ram.

1. Healed scar 2.5 cm. in length at left side chest laterally.
2. Healed scar 2 cm. in length at chest posterior left side.
3. Healed scar 1 cm. at left lumbar region posterior in length.
4. Healed scar 4 cm. in length at left hypochondrium below costal margin.

3. The Doctor stated while appearing as witness in the Court that he had conducted post-mortem on dead body of Karani Ram on 30.3.1999. In fact, he was a Member of the Board constituted for conducting post-mortem, the Chairman of which was Dr. G.R. Tanwar. Karani Ram had died at 05.15 p.m. on 30.3.1999. He was admitted in the Hospital on 18.3.1999 at 04.40 a.m. When admitted in the Hospital, he was conscious but was scared. His pulse rate was 70 per minute, whereas, the blood pressure was 100/70. An operation was conducted upon him at 10.15 a.m. on 18.3.1999. In the opinion of the Doctor, the death was because of excessive bleeding due to shock and ante-mortem injuries sustained by him. In his cross-examination, he stated that as per post-mortem report, whatever injuries have since been sustained by the deceased, had been healed. On external examination, there was no such injury which could result in death. The death, was due to internal hemorrhage. This could be called as secondary hemorrhage. He admitted that death could be by some other reason due to long lapse of time. He

did not rule out the possibility of excessive bleeding either because of carelessness of the patient or because of some defect in the operation. Karani Ram when admitted in the Hospital on 18.3.1999 was medico legally examined. His injury report has been proved as (Ex.P.5). He received following six injuries:-

1. Incised wound 2.5 cm. x 1 cm. at chest oblique with muscle deep left side laterally bleeding.
2. Incised wound 2 cm. x 1 cm. deep in thoracic oblique cavity at left side chest posterior with air sucking.
3. Incised wound 1.5 cm x 1 cm. muscle deep verticle at left lumber region laterally.
4. Incised wound 4 cm. x 2 cm. x deep in abdominal transverse cavity at left hypochondrium below coastal margin.
5. Lumber abrasion 8 cm. x 1/4 cm. at upper lip left side.
6. Linear abrasion 2 cm. x 1/4 cm at left supra scapular region.

4. Injuries No. 5 and 6 were simple in nature and even as per prosecution were not caused by the appellant. The coloms with regard to nature of injuries 1 to 4 have been kept blank. X-Ray Report (Ex.P.8) revealed no body injury. Cumulative reading of the Injury Report and X-Ray Report would thus reveal that Karani Ram received as many as four incised wounds on vital part of his body.

5. Since Karani Ram had died on 30.3.1999, he was not available when trial commenced. His statement (Ex.P.12) was recorded in presence of Doctor who certified that he was fit to make statement which was treated as dying declaration by the Trial Court. The eye witnesses account was provided by Mr. Jhabar P.W.3 and Nemi Chand P.W.4. They fully supported the prosecution case. Mr. Jhabar P.W.3 stated that on 18.3.1999 he was standing at Sikar Bus Stand, Nemi Chand P.W.4 was with him. Karani Ram was also standing there. The appellant Dinesh Kumar came there and gave 4-5 blows with knife to Karani Ram. He stated that even though, he was not very close to him but injuries were given by the appellant

in their presence. In cross-examination, he stated that his place of residence may be 18 kms. away from the place of occurrence. He also stated that when he was standing there, he had not seen from which direction appellant Dinesh Kumar came. Karani Ram was already standing there. He also stated that he had not seen Dinesh Kumar with Knife. He had seen only him giving blows with knife to Karani Ram. They ran to save Karani Ram but Dinesh Kumar immediately after giving knife blows ran away from the place. Before he could reach, the appellant had already run away. He admitted that Karani Ram had earlier lodged a case against the appellant in which he was a witness. He then stated that he had told the police that the appellant had given knife blows in the stomach but the same has not been mentioned in his statement. Nemi Chand P.W.4 while supporting the prosecution case also stated in his examination in chief that he was told about the accused as Dinesh Kumar by Jhabar. In his cross- examination, he stated that Police Station, Sadar is in front of the place of occurrence. They had not carried Karani Ram to Sadar Police Station but had taken him to Hospital. He had not informed the police of Police Station, Sadar, Sikar. On the way to Hospital, they did not even lodge the report at Police Post of Kalyan Circle, Sikar. He admitted that he did not know Dinesh Kumar before occurrence. He admitted that after occurrence, he had seen the appellant in the Court only. He then stated that he had told police that appellant Dinesh Kumar had given knife blows to the deceased. In his statement (Ex.D2) why the same was not mentioned, he would not know. He then stated that he would know why it was mentioned in his statement that a young boy had given repeated blows with knife to the deceased in his statement. He then stated that it was not so mentioned because Jhabar P.W. 3 had told him that one who caused injuries was Dinesh Kumar. The prosecution also relied upon recovery of knife which was blood stained with blood group A. The recovery witnesses of knife are Jhabar P.W. 3 and Ranveer Singh P.W. 9 respectively. Panne Singh who was examined as P.W. 13 deposed with regard to steps taken by him while investigating the case. When examined under Section 313 Cr.P.C. the appellant besides denying incriminating material put to him pleaded false involvement in the case. He however led no evidence in defence.

6. Mr. Gupta learned Counsel for the appellant contends that Jhabar P.W. 3 who had his residence at a distance of 18 Kms. had no occasion to be present at the scene of occurrence. He disclosed no reason of his presence at such a distance from his house. He is thus, a chance witness. In fact, he has simply been introduced with a view to prop up the prosecution case. In fact, he was not present at the scene of occurrence. Even otherwise, he is an interested witness as he admits that with regard to another case lodged by Karani Ram against the appellant, he was a witness. In so far as Nemi Chand P.W. 4 is concerned, the counsel contends that he had not known the appellant. He named the appellant only on asking of Jhabar P.W. and therefore, no reliance can be placed on his testimony. The last contention of the counsel is that if this Court might come to the conclusion that the appellant alone, had caused injuries to Karani Ram, in that case, the appellant could not be convicted under Section 302 IPC. The offence committed by him could not go beyond Section 304-II of the IPC.

7. We have heard the learned Counsel representing the parties and with their assistance examined the record of the case. Whereas, we find no merit whatsoever in the first contention of the learned Counsel as noted above, alternative contention of the learned Counsel for the appellant needs to be accepted even though, half way through. It may be recalled that the occurrence had taken place on 18.3.1999 at 08.00/0815 a.m. The matter was reported to the police by none other than Karani Ram himself within 45 minutes to one hour. It is a case of prompt lodging of the first information report which in itself, would be a circumstance to place reliance upon the same. There is no denial of the fact, and it could not be disputed during the course of arguments that the statement made by Karni Ram which was recorded by the I.O. in presence of a Doctor who, declared Karani Ram fit to make statement could be treated to be a dying declaration. It is well settled by now that the dying declaration if believed would alone be sufficient to sustain conviction even though the same may not be having any corroboration. The Court, looks in for corroboration of dying declaration only as a matter of prudence and not as a matter of law. The dying declaration made by Karani Ram is fully corroborated by the medical evidence. Karni Ram while making statement had mentioned that on the eventual day, he was going to Jaipur for his work. When, after he came to Sikar and after selling the milk was going to his village and

for which purpose he was standing at Nawalgarh Bus Stand, Sikar and was waiting for a jeep that Dinesh Kumar with whom there was already a dispute and for which reason there was enmity came with a knife in his hand and he gave him four knife blows. The incised wounds found on the body of Karni Ram, as reported by the Doctor were four in number. Dying declaration by Karani Ram as mentioned above, is thus corroborated by medical evidence. We find no reason whatsoever for eye witnesses Jhabar and Nemi Chand P.W.3 and 4 respectively making a false statement. It may be true, that the house of Jhabar may be at a distance of 18 kms. but it may be remembered that occurrence is of 08.00/08.15 a.m. this is a time for everyone to go to their respective place of work. The presence of Jhabar P.W.3 at the scene of occurrence appears to be natural. The mere fact that Nemi Chand did not personally know Dinesh Kumar having seen him for the first time would not mean that he had not seen the occurrence. Nemi Chand P.W.4 appears to be a truthful witness who admitted of coming to know the name of appellant for the first time from Jhabar. Being belonging to the same village of the appellant, if he was to exaggerate the prosecution version, he could easily say that he had know the appellant before the occurrence. The first contention of the learned Counsel for the appellant with regard to non-presence of P.W.3 and P.W.4 and for that reason rejection of the whole prosecution case has to be repelled.

8. In so far as nature of offence is concerned, it may be recalled that Karani Ram on 18.3.1999 had received four blows on vital part of his body but ultimately succumbed to injuries on 30.3.1999. When admitted in the Hospital, he was medico legally examined. He was found to have sustained six injuries on his person. Injuries No. 5 and 6 as mentioned above, were simple in nature. Karani Ram himself, had stated that he was given four blows. When admitted in the hospital he was fully conscious. His pulse rate and blood pressure were normal. The Doctor declared him fit to make statement. He could not have gone wrong in making a mention of number of injuries sustained by him. The first four injuries mentioned in the injuries report were thus the only injuries that were caused by the appellant to Karani Ram. No opinion, with regard to injuries No. 1 to 4 was given by the Doctor at the time of examining Karani Ram. It was for the reason that the Doctor wanted to first examine the X-Ray Report. The said report (Ex.P.8) reveals no bony injury. Learned Counsel for the appellant appears to be right that the

injuries sustained by Karani Ram were all simple in nature. P.W. 5 Dr. T.S. Choudhary stated that the cause of death was excessive bleeding and shock. He did not specifically state that the injuries found on the dead body of Karani Ram were sufficient to cause death in the ordinary course of nature. In his cross-examination, he admitted that all wounds of Karani Ram had since been healed when he died. He again admitted that the cause of death was secondary hemorrhage. He also did not rule out the possibility of death on account of some other reason because of lapse of time. He also did not rule out the possibility of excessive bleeding due to carelessness of patient or defect in operation. Dr. G.R. Tanwar who was examined as P.W. 6 stated that when Karani Ram was admitted in the Hospital on 18.3.1999 he confirmed that death of Karani Ram was because of excessive bleeding and shock. Even though, he stated that injuries shown in (Ex.P.5) and perusal of X-Ray Report as also notes of surgeon would reveal that injuries sustained by Karani Ram were sufficient to cause death in the ordinary course of nature, he admitted in the cross-examination that he had not mentioned in (Ex.P.4 and P.5) that injuries as depicted were sufficient to cause death in the ordinary course of nature. He also admitted that all injuries sustained by Karani Ram had been healed. There was no question of such injuries bleeding. He further stated that he could not tell as to whether the secondary hemorrhage was caused because of injuries received by Karani Ram or for any other reason. He also did not rule out the possibility that excessive bleeding could be because of some other complication or because of some old wound which may not be related to these injuries. At the end he admitted that death was because of excessive bleeding.

9. The death of Karani Ram after twelve days of the incident apart it, is proved that all injuries sustained by Karani Ram were simple in nature and his death was because of excessive bleeding even though, P.W. 6 Dr. Tanwar stated that the healed wounds could not bleed. As per learned Counsel for the appellant knife, weapon of offence was not produced in the Court. This factual position is not disputed by the learned P.P. No definite conclusion on the basis of medical evidence as mentioned above, can be drawn that injuries sustained by Karani Ram were sufficient to cause death in the ordinary course of nature but Dinesh Kumar had caused as many as four knife blows on vital part of the body of the deceased Karani Ram. The appellant by causing such injuries can well be saddled

with such intention that by causing injuries he knew, the same may cause death.

10. Section 299 of the Indian Penal Code defines 'Culpable Homicide'. The Scheme of the Code is that the first genesis, 'Culpable Homicide' is defined and then 'Murder' which a species of culpable homicide is defined. What is left out of culpable homicide after special characteristics of murder have been taken away from it is culpable homicide not amount to murder. Every murder is culpable homicide but every culpable homicide is not murder. Subject to the five exceptions of Section 300, every act, which falls within one or more of the four clauses of that Section is murder and also falls within the definition of culpable homicide is Section 299, Every act, which falls within any one or more of the four clauses of Section 300 in respect of which there co-exist one or more of the sets of circumstances, described in the five exceptions is by that act taken out of Section 300 but the act continues to be within Section 299, and since it is not murder, It is culpable homicide not amount to murder. Every act that falls within Section 299 and does not fall within Section 300, since it is not murder is culpable homicide not amount to murder. Culpable homicide is practically in three degrees. The first degree of culpable homicide is the lowest which is punishable with fine only and with imprisonment upto limit of ten years or with both the punishment for this degree of culpable homicide is punishable under Section 304-I IPC. The second degree of culpable homicide is a middle degree and that is punishable with imprisonment upto a limit often years or with imprisonment for life. The same is punishable under Section 304-I IPC. The third degree of culpable homicide is highest degree which is a murder and punishable with death or imprisonment for life. The same is punishable under Section 302 of the Indian Penal Code.

11. The facts as fully detailed above, would cover the matter in middle degree of culpable homicide. The appellant in our view, cannot be held guilty for murder, even though, he has to be held guilty for culpable homicide not amount to murder. Keeping in view the degree of probability of death on account of injuries caused by the appellant, we are of the view, that the case of the appellant would fall under Section 304-I IPC.

12. In view of our discussions made above, this appeal is partly allowed whereas, the order of conviction and sentence recorded by the learned Additional Sessions Judge (Fast Track), Sikar is set-aside, the appellant however, is held guilty for offence under Section 304-I IPC. The ends of justice would be served if he is sentenced to undergo rigorous imprisonment for a period of eight years. The appellant shall also pay a fine of Rs. 10,000/- which if paid shall be given to the heirs of the deceased. In case of default of payment of fine, the appellant shall further undergo rigorous imprisonment for one year.

So ordered.

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