

Dilip Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-27-2008

Reported in : 2008CriLJ2684; RLW2008(3)Raj1929

Judge : Shiv Kumar Sharma and; Guman Singh, JJ.

Appellant : Dilip

Respondent : State of Rajasthan

Judgement :

Guman Singh, J.

1. In this appeal, appellant has challenged the judgment dated January 8,2003 of the learned Additional Sessions Judge, (Fast Track) Baran, whereby appellant Dilip was convicted and sentenced as under:

Under Section 302 IPC:

to suffer imprisonment for life and fine of Rs. 100/-, in default to further suffer simple imprisonment for one month.

2. It is the prosecution case that on November 27, 2001 at 9.30 p.m., informant Gopal Lal (PW. 9) handed over a written report at Government Hospital, Baran to A.S.I., Shri Noor Mohammed (PW. 8) who reached there on telephonic message about the incident. In the report, it was stated that the informant was at his

residence on the said day in the evening when his younger brother Bal Kishan was inflicted a stab wound on chest by his elder brother Kanhya Lal and his son Dilip Singh Rathore consequent upon an altercation regarding the demand of money allegedly due. The informant himself also sustained an injury on the finger at left hand while his elder brother Narain sustained a knife blow. The occurrence was witnessed by his 'Bhabhis' (brothers' wives). Bal Kishan was taken to hospital on cycle where he was declared dead. On that report, a case under Sections 302, 452 and 324/34, IPC, was registered and investigation commenced. Autopsy on the dead body was performed, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation, chargesheet was filed. In due course, the case came up for trial before the learned Additional Sessions Judge (Fast Track), Baran. Charges under Sections 302, 452 and 324 IPC, were framed against the appellant who denied the charges and claimed trial. The prosecution in support of its case, examined as many as 18 witnesses. In the explanation under Section 313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge after hearing final arguments, convicted and sentenced the appellant as indicated hereinabove.

3. A look at the post mortem report (Ex. 13) reveals that following ante mortem injury was found on the dead body of Bal Kishan:

Stab wound 2 x 1-1/2 cm Rt. side chest

2.5 cm above and medial to areola at clavicular line upper margin of wound retracted upward transversally in direction.

Depth and direction of wound - subcutaneous deep from entry to clavicle directed medially and upward. Then it punctures the dome of Rt. pleura and finally cut the Rt. carotid vessels at the base of neck.

In the opinion of Dr. Pratap Singh Yadav (PW. 14), the cause of immediate death was traumatic shock due to injury to Rt. carotid vessels.

4. It is contended by the learned Counsel appearing for appellant that eye witness informant Gopal Lal (PW. 9), his brother Laxminarain (PW. 10) and Smt. Hemlata (PW. 11), have not assigned inflicting knife blow to deceased Bal Kishan by the appellant and they have been declared hostile and hence it would not be safe to base conviction on the uncorroborated testimony of Smt. Manju (PW. 5) who had no occasion to see the occurrence. It is lastly contended that even if the prosecution case is accepted as it is, then also it does not travel beyond Section 304 Part II, IPC.

5. Per contra, learned Public Prosecution supported the impugned judgment and took us through the evidence adduced at the trial to show that the charges against the assailant, were established beyond doubt.

6. Having analysed the material on record, we noticed that deceased Bal Kishan and eye witnesses Gopal (PW. 9), Laxminarain (PW. 10) and Kanhyalal father of the appellant are real brothers and as such the appellant is their real nephew. While eye witnesses Smt. Hemlata (PW. 11) is wife of Gopal (PW. 9) and Smt. Manju (PW. 5) is wife of Laxminarain (PW. 10). The occurrence took place in the common lane in front of the house of the deceased and aforesaid eye witnesses and the appellant also lived in the adjoining separate portion as they all belonged to one family. Informant Gopal (PW. 9) himself sustained a stab wound 1-1/2 x 1/2 x 1-1/4 cm on back left side while Laxminarain (PW. 10) sustained one incised wound 2 x 1/2 x 1/2 cm on middle finger of left hand in the incident and that establishes their presence in the occurrence but they have been declared hostile as they expressed their ignorance as to who caused knife blow to Bal Kishan deceased in the crowd. Likewise, Smt. Hemlata (PW. 11) has also been declared hostile as she has denied to have seen the occurrence. Smt. Lalita (PW. 13) who is wife of deceased Bal Kishan has deposed that she was present in the house at the time of occurrence and she saw the appellant causing stab wound to her husband. She has been confronted with her police statement Ex. D. 3 wherein she had deposed that at the time of occurrence she had gone to village Sheopura and she came to know of the incident on return to Baran. Her presence is also not corroborated by any other eye witness. Thus, her presence at the place of occurrence is not established and her testimony is not of any assistance to the

prosecution. Now, Smt. Manju (PW. 5) remains to be the only eyewitness who supports the prosecution case of inflicting knife blow by the appellant to the deceased.

7. The presence of Smt. Manju (PW. 5) in the house at the time of occurrence, is established beyond doubt as she is wife of Laxminarain (PW. 10) who himself was injured in the altercation which took place between the members of the same family at the house and deceased Bal Kishan was stabbed just in front of the house. Thus, it was quite natural for this witness to come out and see the occurrence from the upper storey of the house along with Smt. Hemlata (PW. 5), wife of her husband's brother. Smt. Manju (PW. 5) has categorically deposed that the appellant had knife in his hand and Bal Kishan was lying on the ground and the appellant had assaulted him. In spite of searching cross examination, her testimony has not been shattered. It has been argued by the learned Counsel for the appellant that her police statements (Ex. D.1) were recorded about 25 days after the incident and as such she is not a witness of the occurrence. This argument is not of much avail as in the FIR (Ex. P. 6) lodged within 3 hours of the incident by Gopal Lal (PW. 9), it is mentioned that the occurrence was witnessed by his 'Bhabhis' (wives of elder brothers) and this refers to this witness as she is the wife of his elder brother Laxminarain (PW. 10) who himself was injured in the incident.

8. Having established the presence of Smt. Manju (PW. 5) and the fact that she saw the incident, there is no reason as to why she could falsely implicate the appellant as she is closely related to the deceased as well as the appellant. She has in fact chosen to depose exactly as to what she saw then to deflect by forgetting the victim of the criminal assault like other family members who turned hostile. Her testimony is further corroborated from the medical evidence as well as the fact of recovery of weapon of offence at the instance of appellant to which no explanation has been furnished by the appellant. Thus, we find her testimony to be sterling worth to base conviction. In *Tholam v. State of Tamilnadu* : 1984 CriLJ478 , Hon'ble Apex Court held that where the accused entertained no malice towards the deceased and gave one blow with knife on the spur of moment, no requisite intention to commit murder could be attributed and as such the accused was held

guilty of committing-offence Under Section 304 Part II, IPC, and a sentence of five years imprisonment was awarded.

9. In the case at hand, the appellant is real nephew of the deceased and they were living in adjoining houses and a single knife blow was inflicted in the altercation ensued about some money transaction. Since the appellant acted without pre-meditation and also did not behave in cruel or unusual manner, the requisite intention to commit murder cannot be attributed but it can be presumed that the appellant had the knowledge that the blow inflicted by him was likely to cause death of the deceased. Therefore, the appellant is found guilty of offence punishable under Part II of Section 304 IPC.

10. For these reasons, we dispose of the instant appeal in the following terms:

We partly allow the appeal and instead of Section 302 we convict the appellant under Section 304 Part II IPC. Looking to the fact that the appellant has already undergone confinement for a period of more than six years, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. Appellant Dilip s/o Kanhaiya Lal, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

The impugned judgment of learned trial Court stands modified as indicated above.

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