

Rambabu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-30-1991

Reported in : 1991WLN(UC)192

Judge : Farooq Hasan, J.

Appeal No. : S.B. Cr. Appeal No. under Section 374 (2) and Cr.P.C. No. 105 of 1983

Appellant : Rambabu

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Farooq Hasan, J.

1. This appeal is directed against the judgment dated 21st February, 1983 passed by Additional Sessions Judge, No. 2, Alwar where by he convicted the accused-appellant for the offence under Section 307 and 324 IPC and awarded a sentence of four years R.I. with a fine of Rs. 500/- (In default, further to undergo six months R.I.).

2. Brief facts giving rise to this appeal are that F.I.R. was lodged by one Shri Radha Ram on 10-9-1982 at about 10 p.m. at the Police Station wherein it was

alleged that Bodan and Udaram (complainant) were sitting outside their house in their Mohalla (Akhepura); and at that time appellant Rambabu, who also resides in the same Mohalla, asked Bodan and Udaram as to what were they talking. On this Udaram and Bodan told him that they were talking about their family affairs. On that Rambabu got angry and asked them to stop talking but Bodan and Udaram were talking continuously. Rambabu was taken away by his mother and brother to his house. After about ten minutes of this incident, Rambabu came back with a knife in his hand. His mother and brother also came at the scene of incident. Thereafter, the appellant (Rambabu) gave a knife blow on the chest of Udaram and when Bodan intervened to save Udaram then Rambabu gave a knife blow on the chest and abdomen of Bodan. The first informant (Budharam) while trying to save Udaram and Bodan, also sustained injuries on his left hand. At the intervention of Rambabu's mother, Rambabu ran away from the place of incident.

3. On the aforesaid F.I.R., the police registered a case under Section 307/34 IPC and commenced its investigation. After completing the investigation, the police filed a challan against the appellant (Rambabu) for the offence under Section 307, 324 and 323 IPC. The learned trial Court framed charges against the appellant for the aforesaid offences which were denied by the appellant and claimed to be tried.

4. The prosecution, in support of its case, produced as many as 14 witnesses. The accused appellant was examined under Section 313 Cr.P.C. and he gave a written statement. According to the accused appellant the facts, stated in the F.I.R., were totally false and the true facts were to the effect that on 10-9-1982 at about 9 p.m. Udaram and Bodan both came at the shop of appellant's (Rambabu's) father who is a license dealer of liquor. Both Uda and Bodan drank liquor and when the father of the appellant demanded the money they started abusing the father of appellant. On the first floor of the shops their residence where the accused-appellant resides with his family. After hearing the abuse hurled by Udaram and Bodan, the appellant and his younger brother came down and took Udaram and Bodan into their house in which his brother as well as his mother helped him. Immediately after sometime Udaram and Bodan came again at his shop abusing and demanding liquor. Appellant's (Rambabu) mother and younger brother and one or some other persons were sitting in the shop at that time and when they refused to

supply liquor then Udaram and Bodan started beating to the appellant, thereafter, the appellant took Udaram and Bodan to their house where they started beating to the accused-appellant. On this his brother Ghanshyam, mother, father as well as one more other person came there to intervene. Ghan Shyam was having one stick in which there was 'Gupti' which Bodan snatched but 'gupti' remained with Ghan Shyam. Udaram and Bodan also wanted to beat Ghan Shyam and, as such, to save himself and the accused, Ghanshyam inflicted 'gupti' blow of Udaram and Bodan in the exercise of his right of private defence of his person. Two witnesses have been produced in defence. After hearing the arguments of both the parties, the learned trial Court found the appellant guilty as aforesaid and passed sentences against him.

5. Heard learned Counsel for the parties and perused the entire record. The learned Counsel for the appellant submitted that the genesis of the offence alleged by the prosecution is absolutely false because there was no occasion for the appellant to make a protest to Udaram and Bodan for the talks which they were having while sitting before their house.

6. As per the prosecution version, in case Bodan and Udaram have refused the appellant for not having any talk and continued their talks then this cannot be a reason for enraging or provoking the appellant and thereafter invoking in the incident. The learned Counsel for the appellant, therefore, submits that in the facts and circumstances of the present case it becomes necessary to consider and decide as to what was the real cause of quarrel which admittedly happened between the parties.

7. A look at the record shows that the appellant also sustained injuries and that the learned trial Court did not give any specific finding as to at whose fault the occurrence took place or there was sufficient reason for the appellant to have caused injuries on the person of complainant party. A number of submissions have been made by the learned Counsel for the appellant.

8. on the other hand, the learned Public Prosecutor supported the judgment of the learned trial Court and submitted that looking to the facts and circumstances and the act of the accused the learned trial Court was justified in finding the appellant

guilty for the offence under Section 307 and 324 IPC and passing sentence against him.

9. As said earlier, in the instant case genesis of the offence has not been put forwarded by the prosecution in its real nature. A look at the record shows that the learned Additional Sessions Judge erred in holding that from the statement of Budha Ram, Uda, Bodan, Babulal and Mangilal, it is established that when Bodan and Uda were talking while sitting on the platform outside their house, at that time Rambabu came there and quarrel with the aforesaid persons but at that time Rambabu was sent back. The testimony of the aforesaid witnesses recorded by the learned trial Court are self-contradictory and Babulal and Mangelal who were cited by the prosecution as eyewitnesses have not supported the version given by Budha Ram, Uda and Bodan. In view of these circumstances the learned trial Court erred in placing reliance on the testimony appearing in the statements of Babulal and Mangelal. Further that the trial Court erred in holding that from the statements of Budha Ram, Uda and Bodan, this fact is established that after some time of the dispute Rambabu came back to the house of Bodan and Uda and immediately thereafter inflicted knife blows on the chest of Uda and Bodan. Further that the appellant, inflicted blows by knife on the abdomen of Bodan. A close scrutiny of the statement of these three witnesses would reveal that they are not reliable and their statements are self-contradictory. All these witnesses were highly interested and this possibility cannot be ruled out that these witnesses wanted to falsely implicate the appellant. Further the statement of Dr. P.S. Agrawal cannot be said to be supporting the prosecution case to the extent that the injuries on the person of Bodan and Udaram were inflicted by the accused appellant because the appellant is alleged to have been armed with knife. A look at the injury report (Ex. P.15 and P.16) shows that Bodan and Udaram sustained injuries by blunt object and the prosecution failed to explain as whose instance, these two persons sustained injuries by blunt object when the appellant was armed with knife. The injuries caused by blunt object on the person of Udaram, Bodan and Budha, therefore, it makes the prosecution case highly doubtful and it can therefore be said that the statement of eye witnesses and the doctor are not consistent and are discrepant, the benefit of which would definitely go to the appellant.

10. From the perusal of the record it also appears that the relation between the appellant and injured persons were strained and there was an old enmity between them. The learned Addl. Sessions Judge disbelieved the defence version by holding that the defence has failed to establish the type of enmity and however no evidence has been produced by the accused to prove enmity. It was not necessary to produce any witness to show that Budharam and accused were having enmity. The defence is not required in criminal law to prove its case beyond doubt but is only expected to create a suspicion in the mind of the Court. There is evidence on record to show that the relation between Budharam and Udaram were inimical. The learned trial Court further erred in holding that the statement of Budharam and Mangelal would be relied upon to show the first incident of quarrel between appellant on the one hand, and Udaram and Bodan on the other. Both these witnesses have been declared hostile by the prosecution. Further they have categorically stated that they have not seen Rambabu inflicting knife blows on the person of Bodan and Udaram. Thus the statements of Babulal and Mangilal do not support the prosecution case. The learned trial Court further erred in holding that in view of the statement of doctor Aggrawal that the injuries No. 1 and 2 on the person of Bodan were grievous in nature and as such endangered the life of Bodan. From the statement of Dr. Aggrawal it would be clear that the condition of Bodan at the time of his examination was absolutely normal and that the injuries were not such which could have been sufficient in the ordinary course of nature to cause death of Bodan.

11. The learned trial Court found the appellant guilty under Section 307 IPC on the ground that the appellant inflicted injury on the vital part of the injured but it is not a sufficient ground to hold a person guilty under Section 307 IPC but something more is required to be proved by the prosecution because it is a settled proposition of law that before holding a person guilty under Section 307 IPC the prosecution is required to prove beyond doubt that the act has been completed and the injury inflicted by such person was sufficient in the ordinary course of nature to cause death. A bare perusal of the report of the injuries sustained by Bodan would reveal that these were not such which could have been sufficient in the ordinary course of nature to cause death. Further the prosecution also failed to establish beyond doubt that the accused appellant had any intention to commit murder of Bodan or

he had knowledge that the injuries inflicted on the person of Bodan were sufficient in the ordinary course of nature to cause death.

12. It is thus clear that none of the ingredients of Section 307 can be said to have been proved in the instant case and as such accused-appellant could not have been held guilty for the offence under Section 307 I.P.C. The learned trial Court has further erred in holding that normally a penetrating wound on the abdomen is fatal for life and is likely to cause death. This finding of the learned trial Court is not based on any material evidence but is based on such conjectures and surmises. On this point, Dr. Agarwal was the only competent person who could have given a definite opinion. P.W. 13, Dr. Agarwal, in his statement, deposed that be foration of peritoneum or plerea could have endangered the life. He further deposed that he could not definitely says that the injuries were caused only by knife but they could be caused by knife or similar instruments and Bodan was conscious throughout the examination and was able to speak and write. It is thus clear that the condition of Bodan at the time of examination was absolutely normal and the condition of Bodan did not at all deteriorate after sustaining the injuries, so in the light of statement of Dr. Agarwal (PW 13) this inference cannot be drawn that the injuries sustained on the person of Bodan or Udaram were sufficient in the ordinary course of nature to cause death and looking to the general condition and nature of injuries, this inference cannot also be drawn that the accused-appellant had any intention to commit murder of Bodan or Udaram.

13. The learned trial Court also seriously erred in not properly considering the fact that the prosecution has failed to explain the injuries on the person of accused. It was the duty of prosecution to explain the injuries sustained by the accused. Failure to do so casts a serious doubt regarding the truthfulness of the prosecution case and in these circumstances the learned trial Court could have given benefit of doubt to the accused-appellant. For these observations reliance can be placed on the following reported cases A.I.R. 1976 S.C. 2263 and 1982 R.C.C. 303.

14. The learned trial Court further erred in not properly considering that according to the prosecution case it is the incident which took place at 10 p.m. in the night but the F.I.R. was lodged at 12-30 a.m. The prosecution has not given any reason

about this delay. The learned trial Court has seriously erred in relying upon testimony of P.W. 1, P.W. 4, P.W. 5, and P.W. 11 because none of these witnesses have been able to explain the delay in lodging the F.I.R.

15. The learned trial Court seriously erred in not properly considering that there were material contradictions in the statement of Budharam, Udaram and Bodan recorded by the learned trial Court and the statement recorded by the Police under Section 161 Cr.P.C. So, looking to the material contradictions found in the statement of aforesaid witnesses, the testimony of these witnesses becomes highly doubtful.

16. As said earlier, both the parties i.e. appellant and prosecution have given a different version. From the above discussion it appears that the genesis of the offence explained by the accused appellant is more reasonable than that of the informant because there was every possibility that the occurrence took place because Udaram and Bodan after purchasing the liquor from the shop of the appellant's father could have refused to make the payment and further demanded the liquor without making any payment. So this can be a cause of quarrel or scuffle between the parties. It is a settled principle of law that when suspicion in the prosecution story is apparant on the record then accused should be given the benefit of doubt as is observed in the case reported 1985 RCC p.237 and that benefit of the doubt should also be given when the evidence of the prosecution is not consistent and is contradictory in nature as is observed in the case reported in 1979 RCC p.234.

17. In view of the foregoing discussions, I am of the opinion that the prosecution utterly failed to bring home guilt to against the accused-appellant beyond reasonable doubt and therefore the learned trial Court erred in convicting the accused-appellant.

18. For the reasons given above, this appeal is, therefore, allowed and I set aside the judgment of the learned trial Court dated 21-2-1983 and the accused appellant (Rambabu S/o Keshav Deo) is acquitted from the charges levelled against him. The appellant is on bail and need not surrender. His bail bonds stand cancelled.

