

Ganesh Vs. State of Rajasthan

Ganesh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/763454

Court : Rajasthan

Decided On : Jul-17-2003

Reported in : RLW2004(1)Raj248

Judge : N.N. Mathur and; K.K. Acharya, JJ.

Acts : [Evidence Act, 1872](#) - Sections 6 and 32(1); Indian Penal Code (IPC) - Sections 300, 300(3) and 302

Appeal No. : D.B. Criminal Appeal No. 605 of 2001

Appellant : Ganesh

Respondent : State of Rajasthan

Advocate for Def. : K.R. Bishnoi, Public Prosecutor

Advocate for Pet/Ap. : Shambhu Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Mathur, J.

1. The instant appeal has been filed against the judgment dated 31st July, 2001 passed by Additional Sessions Judge (Fast Track), Sirohi convicting the appellant of offence under Section 302 I.P.C. and sentenced to undergo imprisonment for

life and also to pay a fine of Rs. 400/-; in default of payment of fine to further under go one year's rigorous imprisonment.

2. The factual scenario as emerged from the trial is that on 7.6.95 P.W. 6 Raman along with his deceased brother Bhamra Ram was on his way to the residence of his aunt for attending a marriage party. At about 10:00 P.M. when they reached to an open place known as 'Chavra' in village Hadmatiya the appellant Ganesh armed with Kulhari abruptly appeared along with Narain Singh and Dalpat Singh and mounted attack giving a Kulhari blow from the sharp edged side on the head of Bhamra Ram, on account of which he fell down. Hearing the cries, his mother rushed to the scene of occurrence. The deceased Bhamra Ram disclosed to his mother that it was the Ganesh who inflicted Kulhari blow on his head. After some time the deceased succumbed to the injury. A written report Ex. P6 of the incident was lodged by P.W. 6 Raman Lal at Police Station Anadra on 7.6.95 at 11:00 P.M. The police after usual investigation laid charge-sheet against the appellant for offence under Section 302 I.P.C.

3. The appellant denied the charges leveled against him and claimed trial. The prosecution in support of the case examined as many as 27 witnesses. The appellant in his statement under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against him. During the trial P.W. 2 Agra, P.W. 4 Laxman, P.W. 7 Smt. Bhikhi Bai, P.W. 8 Ramesh Singh alias Bhopia, P.W.9 Govaram, P.W. 10 Lalaram, P.W. 12 Raman, P.W. 13 Narain, P.W. 14 Teja, P.W. 18 Devaram and P.W. 19 Dhanna Ram did not support the prosecution case and as such they were declared hostile. Out of the three eye-witnesses i.e. P.W. 6 Raman, P.W. 3 Bhimaram and P.W. 8 Ramesh, the trial court relied upon only on the statement of P.W. 6 Raman as the testimony of P.W. 3 Bhima Ram was not found to be creditable and P.W. 8 Ramesh was declared hostile. Statements of P.W. 5 Mst. Hanja, P.W. 1 Smt. Sharda, P.W. 11 Smt. Soni, P.W. 15 Uda and the recovery of blood stained trouser and T-shirt of the appellant provided corroboration to the statement of P.W. 6 Raman. In view of the overwhelming evidence the trial court held the appellant guilty of murder of Bhamra Ram. Accordingly, by the impugned judgment, the trial court convicted and sentenced the appellant in the manner already noticed.

4. Assailing the conviction, it is contended by Mr. Shambhu Singh learned counsel appearing for the appellant that no reliance can be placed on the testimony of the alleged eye- witness namely P.W. 6 Raman as he is interested and inimical witness. It is also submitted that the statement of P.W. 5 Mst. Hanja to the effect that deceased disclosed to her that it was the appellant Ganesh who inflicted injury to him by Kulhari cannot be construed as a dying declaration. In the alternative it is submitted that it is a case of single injury, as such no intention to commit murder can be inferred and the conviction cannot travel beyond offence under Section 304 Part II I.P.C. On the other hand the learned Public Prosecutor has supported the judgment of the trial court.

5. We have scanned the prosecution evidence carefully and considered the rival contentions. On careful scrutiny, we find the statement of P.W. 6 Raman of intrinsic merit. He is the brother of deceased Bhamra Ram. He stated that at about 10:00 P.M. he along with his deceased brother Bhamra and Ramesh were on way to attend the marriage of the daughter of his Mausi (mother's sister). When they reached at Chavra (an open place in village) the appellant Ganesh abruptly appeared and mounted a Kulhari blow on the head of his brother Bhamra on account of which he fell down. His cry attracted his mother Mst. Hanja and sister Sharda on the scene of occurrence. On inquiry by his mother Bhamra disclosed that it was the appellant Ganesh who inflicted injury on his head by Kulhari. The appellant escaped leaving Kulhari on the spot. Bhamra died after some time. The cross examination moved mostly around the fact of rivalry between the parties on account of panchayat elections. In the cross examination, he admitted that he had not disclosed the fact that Bhamra was sleeping in his lap when his mother arrived. Further cross examination is with regard to the participation of Dalpat Singh and Narain Singh in the assault. Suffice it to say nothing substantial has been elicited to discredit the testimony of this witness. In our opinion, the statement of P.W. 6 Raman is natural and trustworthy. His statement cannot be discarded, simply because he is the brother of deceased.

6. The statement of P.W. 6 Raman, further finds corroboration from the statements of P.W. 1 Mst. Sharda, P.W. 5 Mst. Hanja, P.W. 11 Mst. Soni and P.W. 15 Uda. P.W. 1 Mst. Sharda is the sister of deceased Bhamra Ram. As per the version

given by her, on the fateful day at about 9:30 P.M. Ramesh arrived at their house. After taking dinner the deceased Bhamra Ram, Ramesh and P.W. 6 Raman left the house for attending the marriage of daughter of her Mausi (mother's sister). Soon after they left the house the shouts were heard. She along with her mother rushed to the place of occurrence. Her brother Bhamra was seen lying in the lap of her another brother Raman. There was a wound on the back side of head of Bhamra. On inquiry by mother, her deceased brother Bhamra disclosed that Ganesh had inflicted Kulhari blow on his head. She further stated that the said statement was made by the deceased to her mother in presence of her another brother Raman and Ramesh. He died after some time, She also found a blood stained Kulhari lying on the spot. There was light on the Electric Pole. She further stated that election dispute was the cause of murder of her brother. There is lengthy cross examination, but nothing substantial has been elicited to discredit the testimony of this witness.

7. P.W. 5 Mst. Hanja is the mother of the deceased Bhamra Ram. She stated that at about 10:00 P.M. her deceased son Bhamra with another son Raman and Ramesh left the house for attending the marriage of her sister's daughter. At the time, when they left the house, she along with her elder daughter Sharda was at the house. Hearing the shouts of her son Raman, she along with Sharda rushed to the Chavra. She found that her son was lying in the lap of Raman. She took Bhamra in her lap. There was a wound caused by Kulhari on the back side of his head. There was blood on his clothes. Her son Bhamra disclosed that there were three person out of which Ganesh was the person who inflicted injury on his head by Kulhari. She further stated that at the time her deceased son disclosed about the assault by Ganesh her daughter Sharda, her son Raman and Ramesh were also present at the scene of occurrence. Blood stained Kulhari was also lying on the spot. Her son Raman left the spot for lodging the F.I.R. at Police Station Anadra. According to her the election dispute was the cause of assault. Ganesh belongs to the party of Dalpat Singh and Narain Singh whereas they belonged to the party of Govind Ram. In the cross examination, she admitted that some cases were pending prior to the date of incident between them and Dalpat Singh & Narain Singh. The entire cross examination is directed towards the election dispute. She admitted that in her earlier statement Ex. D3 she did not tell the

names of two other accused persons.

8. P.W. 11 Mst. Soni is the grand mother of deceased Bhamra Ram. She stated that hearing the shouts she proceeded towards Chavra where she found Bhamra lying dead. There was injury on his head and blood on his bushirt. When she reached at the Chavra Mst. Hanja, Mst. Sharda and Raman were present on the spot. A Kulhari was also lying on the spot.

9. P.W. 15 Uda is the father of the deceased Bhamra Ram. He stated that he was informed on his field about the murder of his son Bhamra. He rushed to the Chavra where the dead body of his son was lying. His wife Mst. Hanja and son Raman were present on the spot. Some more people of the village had assembled. His wife disclosed that their son was murdered by Ganesh. A Kulhari was lying near the dead body.

10. One of the most important piece of evidence in this case is that the deceased spoke to his mother P.W. 5 Mst. Hanja in presence of Raman and Mst. Sharda that it was Ganesh, who inflicted Kulhari blow on his head. Section 32(1) of the Evidence Act renders a statement relevant, which was made by a person who is dead. The cases in which cause of death comes into question, its admissibility depends upon one of the two conditions, either such statement should relate to the cause of death or it should relate to any of the circumstance of transaction which resulted into his death. The Apex Court in Ratan Singh v. Himachal Pradesh (1), observed that in such circumstances three aspects have to be considered:-

(1) Whether the said statement of the deceased would fall within the Section 32(1) of the Evidence Act so as to become admissible in evidence?

(2) Whether when witnesses have testified in court regarding utterance of the deceased can be believed to be true?

(3) Whether deceased would have corrected identified the assail ants?

11. There can be no doubt that the words spoken by the deceased to the effect that Ganesh inflicted Kulhari below on his head has a direct connection with the cause of his death. P.W. 5 Mst. Hanja testified in court regarding utterance of the

deceased finds corroboration from the statement of P.W. 6 Raman and P.W. 1 Mst. Sharda. There is unanimity between the 3 witnesses that the deceased Bhamra made the said utterance to Mst. Hanja in presence of Raman and Sharda. There is nothing on the basis of which it can be said that the deceased could not identify the assailant. They were known to each other prior to the date of incident is not in dispute. There was an electric pole near the place of incident and as such there was sufficient visibility to identify the assailant. Thus, we are of the view that the statement of the deceased before Mst. Hanja falls within the purview of Section 32(1) of the Evidence Act. As held by the Apex Court in Ratan Singh's case (supra), even apart from Section 32(1) of the Evidence Act the aforesaid statement of the deceased can be admitted under Section 6 of the Evidence.

12. There is yet another piece of evidence which provides corroboration i.e. presence of human blood on the clothes of the appellant. In pursuance of the discloser statement Ex. P41 blood stained Pent and T-shirt belonging to the appellant was recovered vide Ex. P42. The clothes were packed & sealed on the spot in Packet F. P.W. 21 Ranjit Singh and P.W. 22 Deva Ram are the witnesses of recovery. Both the articles were sent to the Forensic Science Laboratory for analysis. We are not dealing with the link evidence as the learned counsel has not challenged the same. Suffice is to say that the Packet which was packed and sealed on the spot remained intact till it was delivered in the Forensic Science Laboratory. The Serologist found the blood on the Pent and T-shirt of human origin. Another significant aspect is that the clothes of the appellant Ganesh and the blood smeared soil, blood controlled soil and the clothes of deceased are found to be stained with the same blood group i.e. A, B. The appellant has failed to give any explanation as to the presence of human blood on his clothes. Thus, it can be safely concluded that it was the appellant Ganesh, who inflicted the fatal blow by Kulhari on the head of deceased Bhamra which resulted into his death.

13. As regards exact nature of offence committed by the appellant, learned counsel relying on the decision of the Apex Court in Shanker alias Kalu v. State of M.P. (2), submitted that as it is a case of single injury the case does not travel against the appellant beyond offence under Section 304 Part II I.P.C. We have read the decision of the Apex Court referred to by the learned counsel. In the said

case occurrence took place suddenly without any premeditation. Further the judgment does not indicate the dimension of the injuries. Thus, the case cited by the learned counsel is of no assistance to the appellant.

14. We have carefully perused the post-mortem report which mentions the injuries sustained by the deceased, as follows:-

'A 9 cm x 5 cm x 4 cm deep incised wound present on left side occipital region. Occipital bone was cut. On opening skull membrane at occipital was cut. Brain tissue in the same area of occipital lobe was cut.'

It will, thus, appear that injury inflicted was a very serious one and was given with great force on a most vital part of the body viz. the head. In the opinion of the doctor the injury was sufficient in ordinary course of nature to cause death. There is nothing to show that incident took place all of sudden. The appellant arrived at the scene of occurrence with full preparation and gave a forceful blow on the vital part of the body of the deceased resulting into his death on the spot. In our judgment, the case falls in Clause (3) of Section 300 I.P.C. and as such the appellant has been rightly convicted for offence under Section 302 I.P.C.

15. In view of aforesaid discussion, we find no merit in the instant appeal and the same is dismissed. The appellant is in Jail. He will serve out the remaining part of the sentence.