

Durga Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-19-1999

Reported in : 1999CriLJ2792; 2000WLC(Raj)UC388

Judge : V.G. Palshikar and; Mohd. Yamin, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; Indian Penal Code (IPC) - Sections 35, 94 and 302

Appeal No. : Criminal Appeal No. 181 of 1996

Appellant : Durga Ram

Respondent : State of Rajasthan

Advocate for Def. : V.R. Mchta, Public Prosecutor

Advocate for Pet/Ap. : Chaitanya Gahlot, Adv.

Disposition : Appeal dismissed

Judgement :

Mohd. Yamin, J.

1. Durga Ram accused appellant was convicted for Killing Sheochand on 1-4-1994 at about 11 -00 a.m. in a field by an axe. lie has been sentenced to life imprisonment and a fine of Rs. 100/- and in default to undergo simple

imprisonment for 15 days. This conviction and sentence has been challenged in this appeal.

2. Briefly stated, Smt. Laduri, the wife of deceased, reported to SHO police station Taranagar on 1-4-1994 at 3-30 p.m. that a field of the family was situated about two miles away from road leading from Sahawa to Bhadra. A thatched hut was situated in the field. Her husband Sheochand had gone to the field at about 8 00 a.m. At about 12 O'clock Bajrang and Sanwannal, who are her grand-children, came from the field and informed that at about 11-00 a.m. when they were cooking food Sheochand had come to them. These boys were residing in a hut in (heir field which was situated on the northern side of Sheochand's field. According to these boys, Durga Ram accused appellant was also sitting nearby. Sheochand sat on the cot, took bread from them and started eating it with 'god Durga Ram who is the uncle of these boys took out an axe and started inflicting and giving repeated blows on the head as well as other parts of the body of Sheochand. Consequently, he fell down from the cot. These two boys frightened by the occurrence ran away. They saw from some distance that accused along with axe took to his heels. Smt. Laduri, came to know about the occurrence and started crying. Chananmal, Krishna Kumar, Khayali Ram, Gajanand and others collected and went to the field. When they returned they confirmed the murder of Sheochand. Deceased was the real uncle of Durga Ram. Durga Ram had no son. He had only daughters and, therefore, he used to ask the deceased to give his agricultural land.

3. This information was recorded in village Sahawa by the SHO Jeeta Ram PW-9 on the basis of deposition made by Smt. Laduri. He started investigation as soon as FIR No. 35/94 under Section. 302, IPC was registered. During investigation site plan Ex. P. 2 and panchayatnama of the body of the deceased Ex. P/3 were prepared. Blood smeared soil as well as control soil were collected and memo Ex. P/4 was prepared. Blood smeared clothes of the deceased were seized vide Ex. P/5. Memo of the condition of dead body Ex. P/10 was prepared. Post-mortem was conducted by PW-7 Dr. Mohd. Halim Khan. It was on 9-4-1995 (after more than a year) that the accused appellant was arrested. He gave information under Section. 27 of the Indian Evidence Act on 10- 4-1995 which was recorded in Ex. P/12. On the basis of his information recovery of weapon of offence was affected.

It had blood stains and was sent to the chemical examiner. After investigation challan was filed before the Magistrate having jurisdiction who committed the accused to the learned Sessions Judge, Churu. He transferred the case to learned Additional Sessions Judge.

4. Charge under Section. 302, IPC was read over and explained to accused appellant on 8-8-1995. He denied his indictment and claimed trial. Prosecution examined as many as 11 witnesses in support of its case. Then the accused appellant was examined under Section. 313, Cr. P.C. He did not produce any witness in defence. Learned Sessions Judge, after hearing both the parties, recorded the conviction and passed sentence against the accused appellant as stated above.

5. We have heard the learned counsel for the accused appellant as well as learned Public Prosecutor. We have reappreciated the evidence with the help of both of them.

6. Learned counsel for the accused appellant Shri Gahlot submitted that the two eye-witnesses PW-1 Bajrang and PW-3 Sanwarmal are related witness and are unreliable. He submitted that no person from the nearby fields came to the place of occurrence. According to him it is unnatural that nobody would be present in nearby fields in the circumstances when it was harvest season. He also submitted that it is alleged that deceased Sheochand was attacked while he was sitting on a cot yet the cot was not stained with a single drop of blood. He further submitted that there is no evidence to the effect as to who removed the dead body of Sheochand from the cot. He also submitted that the first information report Ex. P/6 is hit by Section 162, Cr. P.C. because PW-2 Smt. Laduri stated that she had gone to Chowki Sahawa and reported the matter to the police that being the first report, second one is inadmissible. According to him first information report has been withheld. So the second report Ex. P/6 should not be relied. He also submitted that late recovery of the weapon of offence does not connect the accused with the crime. So accused appellant deserves acquittal.

7. On the other hand, learned Public Prosecutor has controverted all these arguments and supported the judgment of learned trial Judge.

8. First we have to see whether the death of deceased was homicidal? PW-7 Dr. Mohd. Halim Khan who performed the post-mortem of deceased on 1 -4-1994 stated that the deceased had following injuries :-

(1) Incised wound, transversally situated, 12.5 cm x 2.5 cm x deep into cranial cavity over Lt. Frontal and lower part of Lt. parietal bone. Brain material is coming out of wound. Dark clotted blood and two broken pieces of bones are found at base of wound.

(2) Incised wound, vertically situated 10 cm x 3 cm x deep into cranial cavity, over Lt. parietal, temporal and Lt. neck of mandible cutting down the Lt. Ear in two parts, Brain materials is coming out of wound.

(3) Incised wound, transversally, situated 10 cm x 2.5 cm x 2.5 cm in size, over Lt. Zygomatic Arch, Lt. temporal bone and occipital bone, cutting down the Lt. ear in two parts transversally.

(4) Incised wound, transversally, situated 10 cm X 2.5 cm x 2.5 cm over Lt. Lateral aspect of middle of neck. Base of wound is full of dark clots.

(5) Incised wound transversally 3 cm x 2 cm x 1 cm over the Nape of the neck.

(6) Incised wound transversally situated 6 cm x 2 cm x 3 cm over the spine of Lt. scapula.

(7) Lacerated wound 2 cm x 1 cm x 1 cm over Lt. shoulder joint.

(8) Incised wound 3 cm x 2 cm x 1 cm over the posterior wall of Lt. Axilla.

(9) Abrasion 10 cm x 1/2 cm over Lt. scapula transversally situated and just below of injury No. VIth.

When the dead body was opened he found seven fractures as detailed below :-

(1) Fracture of left frontal bone.

(2) Multiple fracture of Lt. parietal bone.

(3) Multiple fractures of Lt. temporal bone.

(4) Fracture of Lt. Zeugmatic Arch.

(5) Fracture of Lt. occipital bone.

(6) Fracture of neck of Lt. mandible.

(7) Fracture of spine of Lt. scapula.

9. According to Dr. Mohd. Halim Khan the cause of death was due to extensive injuries to brain and great vessels of the neck. In view of this evidence there can be no doubt about homicidal death of deceased.

10. Now the question arises as to whether the accused appellant is the author of these injuries? PW-1 Bajrang has stated and is corroborated by his real brother PW-3 Sanwarmal that both of them were cooking food. Sheochand came and sat on a cot. As soon as Sheochand started taking food, accused appellant came, took out an axe hidden in a chaddar and started assaulting Sheochand. The accused appellant repeated blows resultantly Sheochand fell down from the cot. Both, of them were young boys of 15-17 years of age and ran away because they were frightened. They saw from a distance of about 10 paces that Sheochand was lying on the ground and was bleeding. Even then the accused appellant was giving blows. Then appellant ran away towards northern side along with axe and these two brothers came to the village and told the incident to Smt. Laduri. These two witnesses have been cross-examined at length but they could not be shattered and have maintained that it was the accused appellant who committed the murder of the deceased. They are corroborated by PW-2 Smt. Laduri in material particulars when she says that both of them had come and informed her about the occurrence. They informed her in presence of PW-4 Krishna Kumar, who also supports.

11. It was submitted by Shri Gahlot that the eye-witnesses viz. Sanwarmal and Bajrang are distant relations of the deceased and should not be believed. But this cannot be a ground to reject their testimony unless they are interested. Hon'ble Supreme Court in AIR 1981 SC 1390 : 1981 Cri LJ 1012, State of Rajasthan v.

Smt. Kalki, has differentiated between 'related' and 'interested' witnesses. A witness may be called interested only when he or she derives some benefit from the result of a litigation or in seeing an accused person punished. A witness who is a natural one and is the only possible eye-witnesses in the circumstances of a case cannot be said to be interested. In *State of Andhra Pradesh v. Punati Ramulu*, AIR 1998 SC 2644 : 1993 Cri LJ 3684 it has been observed that the evidence of such a witness should be scrutinized carefully. Keeping the observations in mind we have scrutinized evidence of these two eye-witnesses carefully and we are of the opinion that they are trustworthy and reliable. The defence suggested to them that they had murdered the deceased in presence of Smt. Deepli who was the daughter of Schochand. Their motive is said to be the enmity with Sheochand as he practised black magic on their father. This defence is palpably false as none of them could have done away with Sheochand in presence of his daughter Smt. Deepli. We find it proved from the statements of these two witnesses that it was Durga Ram accused appellant who killed Sheochand.

12. Non-presence of anyone in nearby fields is proved by PW-1 Bajrang and PW-3 Sanwarmal. These were the only possible witnesses to the crime. We have scrutinised their evidence and find that nobody was present in nearby fields. Nobody met them even when they were going to Laduri. From their evidence it is found that the incident took place so suddenly that the deceased had no time to cry. They were terrified by the action of the accused appellant and started running as soon as accused appellant started assaults. Even they did not cry because of fear. It is very natural. The main road is quite far off and no passer by could have seen the occurrence. So the argument of the learned counsel that the prosecution has not produced any such witness is without force. There was nobody. It were these two natural witnesses who have seen the occurrence.

13. Non presence of blood-stains on cot is explained by prosecution as per evidence of Bajrang and Sanwarmal when they say that no cloth was spread on the cot and that Sheochand fell down from the cot as soon as appellant started assaulting him. Even then PW-4 Krishna Kumar, who went at the place of occurrence, found that there were some blood stains on the cot. The stains might

be so light that they were not visible to other witnesses. The Investigating Officer PW-9 Jeeta Ram stated that there were no blood stains on cot. This contradiction is not material. Dead body of Sheochand was lying two feet away from cot when Investigating Officer Jeeta Ram PW-9 reached the place of occurrence. Blood was found on the ground by the Investigating officer from where he collected blood smeared soil. It was naturally to be found there as the dead body was lying on the ground.

14. The argument of the learned counsel for defence that the dead body was manipulated because the deceased was assaulted on cot and body was lying on ground has no force simply because it is proved by the eye-witnesses that Sheochand fell down from the cot and they say that Sheochand was assaulted when lying on the ground. The statement of Investigating Officer PW-9 Jeeta Ram that deceased was not assaulted while lying on ground is not to be accepted as he is not an eye-witness.

15. So far as inadmissibility of FIR is concerned, we are of the view that the argument of the learned counsel is devoid of force. PW-2 Smt. Laduri who was stunt by sudden news of the sudden death of her husband was hanky panky. She might have run to the police chowki. It is not proved that she told in details of incident to the in charge of police chowki Sahawa which was situated in her village. The prosecution has proved by producing PW-6 Jesraj that the information was received at police station Taranagar by wireless from Sahawa that a murder had taken place. It has also been stated by PW-9 Jeeta Ram, SHO, that a message was received at police station Taranagar at 2- 40 p.m. that a murder had taken place about 2 kms. away from the Sahawa Bhadra Road. The information was incomplete, therefore, PW-9 Jeeta Ram went to Sahawa. He contacted Smt. Laduri widow of Sheochand at her house where her statement was recorded at 3-30 p.m. It is Ex. P/6. When complete information was not received at Chowki Sahawa or at police station Taranagar orally or in writing, the argument of the learned counsel for the appellant that the first information report has been withheld is of no help to the appellant. Even if it was so, we have no reason to disbelieve the eye-witnesses Bajrang and Sanwarmal who are corroborated by PW-4 Krishna Kumar and PW-2 Smt. Laduri in material particulars. PW-4 Krishna Kumar ,

reached the house of Sheochand (he is a neighbor) when he heard cries from the house of Smt. Laduri. This witness along with Chanan, Gajanand, Khayaliram, Harchand, Hari Ram and Bissu went to the place of occurrence where at about 3-00p.m. some policemen had come. It has been submitted that when the policemen reached the place of occurrence at 3-00 p.m., it means that the information had reached to the police much before 3-00 p.m. and it might be Laduri who had informed. PW-9 Jeeta Ram had received information at police station Taranagar at 2-45 p.m. from police chowki Sahawa. It was incomplete. Presence of policemen at the site at 3- 00 p.m. is not strange as when Chowki Sahawa had itself known about an incident, protection of the. dead body and place was necessary. The S.H.O. Taranagar might have instructed the police to reach there to protect and preserve evidence. PW-2 Smt. Laduri who is not an eye-witness might have gone as she has stated and cried and told that her husband was done away with. Therefore, presence of policemen at 3-00 p.m. at the place of occurrence is not surprising. But it does not mean that a detailed report in writing had reached the police station. The report Ex. P/6 was made to the SHO at 3-30 p.m. and thereafter the investigation started. Therefore, the accused appellant does not get any benefit out of these arguments.

16. The next argument of the learned counsel was that the recovery of weapon of offence does not connect the accused appellant with the crime. The occurrence took place on 1-4-1994 while recovery of weapon of offence has been made on 10-4-1995 vide Ex. P/8. This delay of more than 12 months is explained by the prosecution by saying that the accused appellant was absconding and challan was submitted in his absence. We are of the view that in this case even if the recovery was taken to be correct it does not help the prosecution as no report of Forensic Science Laboratory is available, though the weapon of offence was sent for examination.

17. In such cases when there are eye-witnesses motive is not material but even then the prosecution has been able to prove that the accused-appellant who is the son of the brother of deceased used to ask him to give his land to him as appellant had no son and even deceased had no son. There is evidence to the effect that the accused appellant asked the deceased many a time and once he said that he

would kill if the land was not given to him. The eye-witnesses against whom motive is alleged by defence were not going to be benefited by murder of Sheochand. It was the accused-appellant who nurtured ill-will and ultimately killed Sheochand. The prosecution has been able to prove beyond doubt that the accused-appellant wanted to do away with deceased Sheochand, he did so in presence of the two eye-witnesses viz. Bajrang and Sanwarmal by inflicting repeated blows of axe which caused such injuries to the deceased which were sufficient in ordinary course of nature to cause his death. Learned Sessions Judge has rightly convicted and sentenced the appellant.

18. There is no force in this appeal and we dismiss the same.

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