

Heeralal Vs. State

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Court : Rajasthan

Decided On : Aug-07-1990

Reported in : 1991(1)WLN329

Judge : K. Bhatnagar and; Y.R. Meena, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 105 of 1984

Appellant : Heeralal

Respondent : State

Advocate for Pet/Ap. : Mr. Doongar Singh

Disposition : Appeal dismissed

Judgement :

K. Bhatnagar, J.

1. This appeal is directed against the judgment dated 2.2.84 passed by the learned Sessions Judge, Udaipur, by which appellant Heeralal was convicted to imprisonment for life and a fine of Rs. 100/-.

2. Briefly stated the facts of the case are that on 22.6.83 at 6 a.m. Bhagga (PW 3) lodged a report at Police Station, Kurawer to the effect that in the intervening night of 30th May, 1983 and 31st May, 1983, Bhera, while sleeping in the court-yard of

his house was murdered by sword by Heeralal, his nephew and the eye witness to the occurrence was Vakti, wife of deceased Bhera.

3. In the bus from which Bhagga had gone to Kurabad, Heeralal appellant was also travelling. At the instance of Bhagga he was apprehended by the police and was arrested vide memo Ex.P.7 At the time of his arrest he is said to be having a sword with him which the police took in possession. The shoes which Heeralal was wearing at the time of his arrest were also taken in possession by the police. SHO, Raghuveer Singh (PW 10) of Police Station, Kurabad, went to the side and prepared necessary memos. He took in possession the blood soaked clothes of the deceased. Post-mortem Examination was conducted by Dr. Roshanlal Joshi of Primary Health Centre, Kurabad on 31.5.83. The doctor noted one incised wound 6'x3' oblique on the neck. The cut was bone deep. In the opinion of the doctor, the cause of death was shock and haemorrhage on account of the injury on the neck of deceased Bhera. The Post-mortem Examination Report is Ex.P.9.

4. The accused under arrest furnished information for getting recovered scabbard of the sword. In pursuance of the information, SHO, Raghuveer Singh, recovered the sword from the house where accused was residing. The blood soaked clothes of the deceased, the blood stained earth, control soil, the sword and the shoes of the accused were sent for chemical examination. The report of the Chemical Examiner is Ex.P.10. The blood on all the articles sent for chemical examination, except the control soil was found to be human blood. The blood group of the sword, blood smeared soil, Dhoti and Angochha of the deceased and the pair of shoe said to be recovered from the appellant were found to be stained with 'O' Group blood.

5. Upon completion of necessary investigation, chargesheet against the appellant was filed in the Court of Judicial Magistrate No. 2, Udaipur. The learned Magistrate finding it a case exclusively triable by a Court of Sessions, committed the case to the Court of Sessions Judge, Udaipur. The learned Judge chargesheeted the appellant and recorded his plea. He denied the charges and claimed to be tried. In order to substantiate its case, prosecution examined 11 witnesses in all. In his statement Under Section 313, Cr. P.C., the appellant denied the charges levelled

against him and stated that his father was murdered by Bhera and his brother and because of enmity he has been falsely implicated in the case. No defence witness was examined. The learned Judge placed reliance on the prosecution evidence and passed the judgment Under Appeal.

6. We heard Mr. Doongar Singh, learned Counsel for the appellant and Mr. Shankarmal Singhvi, learned Public Prosecutor for the State.

7. The prosecution has examined Vakti (PW 1), wife of the deceased, as eye witness to the occurrence and has brought circumstantial evidence in the form of recovery of sword (Article 5), scabbard (Article 4) and the pair of shoe (Article 3) from the possession of the appellant. The learned Counsel for the appellant strenuously contended that in the dead hour of night Vakti could not be in a position to identify the assailant and, therefore, conviction of appellant on her solitary testimony cannot be said to be justified. Regarding the recovery of the shoes, the contention of the learned Counsel is that when the learned Judge has not held the circumstance of recovery of sword from the accused as an evidence against him, the recovery of shoes through that very memo should not have been relied for convicting the appellant.

8. The learned Public Prosecutor controverting these submissions, submitted that there is no reason to disbelieve Vakti who was sleeping in the cot near the cot of the deceased. Regarding the shoes, the contention of the learned Public Prosecutor is that this is a reliable circumstance to connect the appellant with the commission of the crime.

9. It is well established that Vakti, wife of deceased Bhera was sleeping on a cot near the cot of Bhera in the fateful night. It is not the number of witnesses, rather quality of the witnesses which is to be kept in mind while deciding a case against a person. If a solitary witness can be held to be a witness of sterling worth, conviction can be based on his testimony. The night of the incident was moon-lit night. Vakti has categorically stated that in the moon light she had seen Heeralal running away from near the cot of her husband. We do not find force in the contention of the learned Counsel for the appellant that Heeralal not living in village Karakalla for the preceding four or five years, it could not have been

possible for Vakti to identify him. Heeralal happens to be the son of the brother-in-law (devar) of Vakti and, therefore, she was well acquainted with his face. She was a young woman of 32 years at the time of the incident and in the natural course of events, must be having good eye sight. In the moon light, it could be quite possible for her to recognize so near a relative from such a close range.

10. The learned Counsel for the appellant has assailed the testimony of Vakti also on the ground that the relations between her husband and assailant Heeralal not being cordial, she out of suspicion might have named him as a culprit. Strained relations may lead to false involvement in the case in certain matters but in the case like the present one when there was only one assailant and the witness had an occasion to see the assailant from near, the learned trial Judge in our opinion, was right in holding that Vakti had correctly identified the assailant of her husband. So far as the recovery of the sword is concerned, suffice it to say that the learned trial Judge has also not considered this circumstance against the appellant and in our opinion rightly so because Sohan Singh (PW 5) has not supported the version of SHO, Raghuveer Singh that when the assailant was arrested, he had a sword with him. However, if a particular recovery is not believed, it does not mean that the other recovery made according to the SHO in the same way should also be disbelieved if there is material to prove it. There may be cases in which the investigating officer out of enthusiasm and zeal for the success of the investigation may creat unbelievable evidence, as has been done in the present case regarding the recovery of the sword but that will not lead to the Court to discard other circumstances also brought on record by the prosecution when they stand established from reliable evidences. Sohan Singh (PW 5) has supported the recovery of shoes (Ex.P.7) which Heeralal was wearing at the time of his arrest. Bhagga has also stated that the appellant was wearing the shoes stained with blood when he was apprehended by the police and the police took the shoes in possession. The shoes according to the Serologist had human blood on them. Not only that, the group of blood on the shoes was the same which was that of the blood on the clothes of the deceased and the soil taken from the site.

11. The learned Counsel for the appellant next argued that Dr. Roshanlal Joshi (PW 11) has not stated about the injury being sufficient in the ordinary course of

nature to cause death but the learned trial Judge has observed like that and a question to that effect has been put to Heeralal while recording his statement Under Section 313, Cr. P.C. On going through the statement of Doctor, we do not find any statement to the effect that the injury sustained by Bhera was sufficient to cause death in the ordinary course of nature. What the doctor has stated is that the cause of death was shock and haemorrhage on account of the injury on neck sustained by Bhera, deceased. The learned Judge while recording the statement of the appellant Under Section 313, Cr.P.C. has mentioned this part of the statement of the doctor also. True it is that the learned Judge has added one sentence in the question which was not there in the statement of doctor, by way of routine it so appears, but that would not entitle the appellant acquittal because the case of the appellant was in no way prejudiced by that because in his reply to the question by the accused he has simply stated that he did not know.

12. In view of the above discussion, we are of the opinion that the learned Judge has rightly appreciated the evidence of the eye witness of the occurrence and on her statement, corroborated by the circumstance of recovery of blood stained shoes from the person of the appellant at the time of his arrest and the blood on them being of the same group as that of the clothes of the deceased and the soil at the site, conviction has been rightly based.

13. We, therefore, find no substance in this appeal and it is hereby rejected.