

Ramu Alias Ram Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-24-2006

Reported in : 2006CriLJ4363; RLW2007(3)Raj2498

Judge : Shiv Kumar Sharma and; Chatra Ram Jat, JJ.

Appellant : Ramu Alias Ram Kumar

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. Ramesh, a vagabond, who spent major part of his life on the footpath of MGD) School was found dead lying in a pool of blood on the same footpath. The appellant (another vagabond) was nabbed for committing murder of Ramesh and put to trial before learned Special Judge (Sati Nivaran) Rajasthan and Additional Sessions Judge, Jaipur, City Jaipur, who vide judgment dated July 17, 2001 placing reliance on the sole testimony of a child witness convicted the appellant Under Section 302, IPC and sentenced him to suffer imprisonment for life and fine of Rs. 1000/- in default to further suffer rigorous imprisonment for one month.

2. Put briefly the prosecution case is as under:

In the morning of March 24, 2000 on seeing the dead body lying on a footpath, somebody informed police station Laikothi Jaipur over telephone. The police arrived and recorded parcha bayan (Ex.P-13) of Vikram Singh, Rickshaw Puller, according to which the appellant caused injuries with stone on the head of the deceased in the intervening night of March 23, and 24, 2000. On the basis of parcha bayan case Under Section 302, IPC was registered and Investigation commenced. Dead body was subjected to autopsy. Necessary memos were drawn. Statements of witnesses were recorded. The appellant was arrested and on completion of investigation charge-sheet was filed. In due course the case came up for trial before the learned Special Judge (Sati Nivaran) Rajasthan and Additional Sessions Judge Jaipur City Jaipur. Charge Under Section 302, IPC was framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 9 witnesses. In the explanation Under Section 313, Cr.P.C, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard the contentions raised before us and with the assistance of learned Counsel perused the record.

4. Death of deceased Ramesh was undeniably homicidal in nature. As per autopsy report (Ex.P-4) following ante mortem injuries were found on the dead body:

1. Lacerated wound of size 1.5 x x muscle deep at little finger of right palm reddish in colour.
2. Abrasion 3 x 1 cm at Lt. fore arm.
3. Abrasion 1 x 1 cm at Lt. leg.
4. Lacerated wound of size 8 x 3 cm placed at Lt. side forehead brain matter coming out.
5. Lacerated wound 2 x cm at right side forehead and right eye blow.
6. Abrasion 6x3 cm at nose and right cheek.

In the opinion of Dr. N.L. Disania (PW 4) the cause of death was coma as a result of head injuries.

5. It may be noticed at the outset that informant Vikram Singh left Jaipur, Just after the incident and he could not be traced. The prosecution case thus, in the absence of Vikram Singh, is founded on the testimony of one vagabond and a rickshaw puller viz. Banti alias Mohd. Safiq (PW 8) and Vinod (PW 7). Banti alias Mohd. Shafiq (PW3) was boy of 14 years on the date of his examination before the trial Court and the trial Court before tendering him oath, did not examine him whether he understood the danger and impiety of falsehood. In his deposition Banti stated that around 2.30 a.m. while he was sleeping Ramu gave stone blow on the head of Ramesh. In the cross-examination he however stated thus:-

(Vernacular matter omitted.... Ed.)

6. Vinod (PW7) deposed that since he was a rickshaw puller he knew Vikram Singh. They along with Ramesh and Ramu used to visit tea-stall of Mirchu. On the date of incident around 8-9 p.m. Ramesh and Ramu got themselves drunk and picked up quarrel. He (Vinod) and Vikram Singh then left the place and proceeded on their rickshaws. In the morning of next day Vikram Singh told him that Ramu killed Ramesh with stone.

7. Chhagan Singh, IO (PW9) In his deposition stated that on March 24, 2000 at 8.30 a.m. some unknown person informed him over telephone that a person was lying dead on the footpath of MGD School and blood was oozing from his head. After entering the information in Daily Rojnamcha, he rushed to the place of occurrence, where Vikram Singh met him and gave details about the incident. He then recorded parcha bayan of Vikranm Singh. In his cross-examination he stated as under:

(Vernacular matter omitted. Ed.)f

8. Salient feature of the case may be summarized thus:

(i) Prosecution did not examine informant Vikram Singh.

(ii) The only eye-witness produced by the prosecution is Banti alias Mohd. Shafiq (PW8), who was a boy of 14 years on the date of his examination in the trial Court. He admitted in his cross-examination that he was sleeping and got up only after the incident.

(iii) Banti alias Mohd. Shafiq, prior to his examination was not subjected to strict examination by the Court whether he possessed sufficient knowledge of the nature and consequences of an oath.

9. Coming to the finding of learned trial Court we notice that conviction of appellant is based on the sole testimony of Banti alias Mohd. Shafiq (PW8), who was a child of 14 years on the date of his examination and the learned trial Court without strictly examining him as to his understanding about truth and falsehood, administered him oath. Under Section 118 of the Evidence Act all persons are competent to testify, unless the Court considers that by reason of tender years extreme old age, disease, or infirmity, they are incapable of understanding the questions put to them and of giving rational answers. All grounds of incompetency have been swept away by this section, under which competency of witnesses is the rule and their incompetency is the exception. Admissibility of evidence is not solely dependent on competency of witness. A witness may be competent within Section 118, yet his evidence may be inadmissible if he states his opinion or belief instead of facts with his knowledge or gives hearsay evidence.

10. Privy Council in *Mohamed Sunal v. King* AIR 1946 PC 3 indicated thus:

In England where provision has been made for the reception of unsworn evidence, from a child it has always been provided that the evidence must be corroborated in some material particulars implicating the accused. But in Indian Acts there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence, Court can act upon it. It is sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.

11. It is well settled that the testimony of a child witness should only be accepted after the greatest caution and circumspection. The rationale for this is that it is

common experience that a child witness is most susceptible to tutoring. Both on account of fear and inducement, he can be made to depose about things which he has not seen and once having been tutored, he goes on repeating in a parrot like manner what he has been tutored to state.

12. In his book Outlines of Criminal Law (Page 386) Dr. KENNY DOWNING (Professor of 'Laws of England' Cambridge University) stated as under:

Children are most Untrustworthy class of witnesses, for whom of a tender age as our common experience teaches us, they often mistake dreams of reality, repeat glibly as of their own knowledge what they have heard of others and greatly influenced by fear of punishment, by hope of reward and desire of notoriety.

13. In Prakash v. State of M.P. 1992 Cri LJ 3703 (SC) their Lordships of the Supreme Court held that simply because the witness was a boy of 14 years it will not be proper to assume that he is likely to be tutored.

14. Even though no procedure is Laid down as to the manner of recording the testimony of child witness, we are of the opinion that the Court should record the evidence of a child witness in a question answer form. An infant may be sworn in a criminal prosecution provided such infant appears on strict examination by the Court to possess a sufficient knowledge of the nature and consequences of oath.

15. Rameshwar Kalyan Singh v. State of Rajashtan : 1952 CriLJ547 the Apex Court observed that in the case of a child, it depends on the capacity of the child, his appreciation of the differences between truth and falsehood as well as his duty to tell the former. The decision of this question rests with the trial Judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence. The trial Judge may resort to any examination which will tend to disclose the capacity and intelligence and in the case of an oath, his understanding of the obligation of an oath.

16. Having closely scanned the testimony of Banti alias Mohd. Shafiq (PW8) from the point of view of trustworthiness we find that he had not seen the incident. He himself admitted in his cross-examination that at the time of incident he was

sleeping. Even if we hold that on the date of his examination he was matured enough and competent to* testify, he cannot be adjudged as truthful witness and conviction could not be recorded on the basis of his sole testimony. Learned trial Court committed illegality in placing reliance on his testimony.

17. For these reasons, we allow the appeal and set aside the conviction and sentence awarded to appellant vide impugned judgment dated July 17, 2001. We acquit the appellant of the charge Under Section 302, IPC. The appellant, who is in jail, shall be set at liberty forthwith, if not required to be detained in confinement, in any other case.

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