

Ram Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-22-1991

Reported in : 1991WLN(UC)567

Judge : N.C. Kochar and; N.L. Tibrewal, JJ.

Appeal No. : D.B. Cr. Appeal No. 200 of 1989

Appellant : Ram Kumar

Respondent : State of Rajasthan

Judgement :

N.C. Kochar, J.

1. The appellant was prosecuted under Section 302 IPC in the Court of Additional District & Sessions Judge No. 2, Alwar, in Sessions Case No. 33/87. The learned Additional Sessions Judge, after completion of the trial held the appellant guilty under Section 302 IPC for committing murder of Harbhajan vide judgment dated 28.3.89 and sentenced him life imprisonment and a fine of Rs. 100/-. In case of default of payment of fine, the appellant was awarded further RI for one month. Feeling aggrieved against the aforesaid conviction and sentences, the appellant preferred an appeal through jail. Mr. Sajjan Singh Naruka was appointed Amicus-Curiae by the Court.

2. The incident took place on 28.11.77 at about 10 am. The report of the incident was launched by Genda S/o Bhurelal P.S. Malakhera, on the same day at 5.45 pm. The prosecution case as given out in the report is that at about 10 am. Harbhajan S/o informant's brother Ram Kishan had gone towards the jungle with his cattle. His daughter Ms. Moorti (PW 2) was also with him. At about 11. Ms. Moorti returned home weeping and informed that Harbhajan was murdered by the appellant Ram Kumar with a 'farsy' in the field of one Balia Sweeper. It was also stated in the report that the co-accused Chaju was also there with a 'lathi'. It was then stated in the report that Smt. Dhapa. Smt, Singari Goojri and Smt. Shyama Dhoban were working in the field of Balia at that time and they have seen this incident. On getting this information, the informant Genda went to the field of Balia where he found Harbhajan with injuries on his person. Harbhajan was alive, but unconscious. He also found Smt. Singari, Smt. Dhapa, Smt. Shyama, Ramkishan, Rampal and Ramprasad present there. The injured Harbhajan was taken to hospital for treatment in a camel cart, but he died in the way. Thereafter the informant went Alwar and lodged the report.

3. After registration of the case, the police started investigation. During investigation, site-plan was prepared, blood stained earth and simple earth were taken from the place of incident. The post-mortem of the dead body was got conducted. After recording the statements of the witnesses and completing other formalities, a charge sheet was filed against the co-accused Chaju. The charge sheet against the appellant was also filed under Section 299 Cr.P.C. as he was absconding and could not be found by the police. Chaju was prosecuted in the Court of Additional Sessions Judge No. 2, Alwar and the learned Additional Sessions Judge, after completion of the trial, acquitted him vide judgment dated 30.4.79.

4. Thereafter the appellant was arrested on 1.8.87, hence, a supplementary charge sheet was filed against him. After being committed, the appellant was tried in the Court of Additional Sessions Judge No. 2, Alwar. A charge under Section 302 IPC was framed against him by the learned Additional Sessions Judge. During the trial, prosecution examined as many as seven witnesses, namely, PW 1 Genda who is the informant and the real brother of the deceased. PW 2 Smt.

Moorti daughter of Genda, who is an eye witness of the incident, PW 3 Bhagwan Sahai, who reached at the place of incident just after the incident and found the appellant Ram Kumar with a 'farsy' in his hand PW 4 Smt. Shyama, another eye-witness of the incident. PW 5 Dr. Prahlad Swaroop Agarwal, who conducted the post-mortem of the dead body, PW 6 Kanwar Singh Sub-Inspector and PW 7 Kishan Singh S.H.O. P.S. Malakhera. The eye witnesses Ramkishan and Mst. Dhapa had died earlier, as such, their statements, which were recorded earlier, were taken on record of this case. The learned Trial Court after the completion of the trial, convicted and sentenced the appellant as stated above. The learned Counsel for the appellant argued that the report was lodged after inordinate delay, as such the prosecution case becomes highly doubtful. He further contended that there was enmity between the parties for a dispute with regard to a land and the appellant has been falsely implicated on account of the said enmity. He further argued that the witness have made improvements from their previous statements and there are material contradictions and inconsistencies in their statements. In the alternative it was also argued that the offence under Section 302 IPC is not made out against the appellant.

5. We have gone through the statements of PW 2 Mst. Moorti and PW 4 Ms. Shyama. Who were eye-witnesses of the incident PW 3 Bhagwan Sahai is the witnesses who reached the spot after hearing the noise and found the accused appellant and the co-accused Chaju present there and appellant was having 'farsy' in his hand at that time. PW 1 Genda also came to the spot after getting information of assault of Harbhajan. In his statement he tried to make improvement that when he reached at the place of occurrence, he saw the accused appellant running, though this fact was not mentioned either in the AIR lodged by him or in his previous statement, Exhibit D/12. PW 2 Ms. Moorti is an eye witness of the incident. She has testified that she was going with her 'she buffalos' towards the river and Harbhajan was following him and Mst. Shyama PW 4. was going ahead. She further stated that at the very-moment they reached the field of Balia Sweeper. Then the accused appellant gave a farsy blow to Harbhajan while the co-accused remained standing with a 'lathi'. She further stated that Mst. Dhapa and Smt. Singari had also witnessed the incident from the field of Balia. She further stated that when they tried to prevent Ram Kumar for assaulting

Harbhajan then he threatened them. She further stated that thereafter she came to her father Genda and intimated about the incident. She also gave out that Harbhajan was taken in a camel cart to the hospital but he died in the way. This witness has been cross-examined at length but nothing substantial has become to discredit her statement and the participation of the appellant in beating to the deceased Harbhajan. Some contradictions were point out to this witness between her statement recorded in the Court and the previous statement, but those contradictions are not so significant and such contradictions may come as the witness was examined after 10 years of the incident.

6. PW 3, Bhagwan Sahai was present in his field and after hearing the noise, he came to the place of occurrence and found the appellant with a 'farsy' and the co-accused Chaju with a 'Lathi' in their hands. Both the persons then ran away towards the river. In cross-examination he stated that he told all these facts to Ramkishan, and Genda had gone to lodge the report. He further stated that he was also alongwith Harbhajan when he was being taken to hospital in a camel cart, he denied that he named Suraj and Ramsa also as assailants of Harbhajan. He further stated that after his arrival on the spot Mst. Moorti had gone to call her parents. PW 4. Smt. Shyama Dhobi is the next eye witness of the incident. She has stated on oath that she was going with her she buffalos. Harbhajan and Mst. Moorti were following her. Mst. Moorti cried that Harbhajan has been cut, then she saw that the appellant Ram Kumar was inflicting 'farsy blows' on Harbhajan, further stated that Ram Kumar gave 'farsy blows' on the leg and back of Harbhajan.

7. PW 5, Dr. Prahlad Swaroop Agarwal conducted the post-mortem of the dead body. He found the following injuries on the person of the deceased:

Ckgjh%

1- dVk gqvK ?kko nkfgus ?kqVus o Vkax ij tks iwjh rjg ls dV dj fl QZ dqN [kky ls tqM+k gqvK Fkk] o blh ds lkFk rgen Hkh blh LFkku ij dVk gqvK Fkka

2- dVk gqvK ?kko 8 xq.kk 3&1@2 lseh- xq.kk ekal is'kh lhus ij cka;h rjQ] ftlds lkFk cfu;ku 'k VZ Hkh dVh gqbZ Fkh A

3- dVk gqvk ?kko 4 xq.kk 1&3@4 lseh- xq.kk ekal is'kh nkfguh da/ks ds ihNs A

4- gsekVkse 4 xq.kk 3 lseh- nkfguh rjQ flj ij

vUn:uh%

ckgj pksV uEcj 1 ds uhps nkfgus ?kqVus dh gfM~M;ka dVh gqbZ Fkh A ekaal isf'k;ks ds o jDr tek gqvk Fkk A

The doctor further opined that the cause of death was due to excessive bleeding and shock on account of injury No. 1 and other injuries. In cross-examination, he stated that the depth of injury Nos. 2 and 3 have been written upto muscle deep and that both these injuries were simple in nature.

8. The learned Trial Court has made a critical analysis of the aforesaid statements I recorded in the Court. The learned Trial Court believed the statements of Mst. Moorti and Mst. Shyama Dhobi. In our view, the learned Trial Court has rightly appreciated the evidence and no error has been committed in placing reliance on the testimony of Mst. Moorti and Mst. Shyama. The names of these witnesses were disclosed immediately after the incident in the report lodged by Genda.

9. The argument of the learned Counsel for the appellant that the report was lodged at the P.S. after a long delay is not acceptable. It may be stated here that the incident took place at about 10 or 11 AM. The informant, Genda, came to the place of occurrence, then a camel cart was arranged. The injured was taken to the hospital but he died in the way. Thereafter the report was lodged at P.S. Malakhera, which is about twelve miles from the pake of occurrence. The report was lodged on the same day at 5.45 PM and in our considered view, there was no delay in lodging the report. The story given in the report appears to be quite natural and believable.

10. In our view, the learned Trial Court committed no error in holding that the appellant assaulted Harbhajan with a 'farsy' and on account of the injuries sustained by him, he died.

11. Now the next question is what offence is made out against the appellant? From the perusal of the post-mortem report, it is clear that three injuries have been caused by a sharp edged weapon, out of which injuries No. 2 and 3 have been opined to be simple in nature having no depth or the depth upto muscles. Injury No. 1 was grievous and vital which was on the right knee and it appears that sufficient force has been used in inflicting the said injury. The learned Counsel for the appellant submitted that no attempt was made by the appellant to inflict any injury on the vital part of the deceased and all the three injuries are on the non-vital parts out of which two are quite simple. According to the learned Counsel no immediate motive of the incident has been given and it appears that the incident took place all of a sudden, as such, it cannot be said that the appellant intended to murder Harbhajan or intended to cause such bodily injury to be sufficient to cause death in the ordinary course of nature. The learned Counsel has placed reliance on Duli Chand v. The State of Rajasthan 1984 Cr.L.R. (Raj. 281 and Harsukh and Anr. v. The State of Rajasthan 1984 Cr.L.R. (Raj.) 685. In Duli Chand's case (supra), the deceased had the following External injuries:

(i) Incised wound 3 c.m. x 1 c.m. scalp above right eye brow depth.

(2) Lacerated wound 1 x 1/2 cm. submental region.

(3) Stab wound horizontal 2 cm. x 1 cm. x. 5 cm. deep with well defused edges, blood and air bubble coming out.

The Court held that the offence under Section 302 IPC is not made out but 304 Part II, IPC is made out.

12. In Harsukh and Anr.'s case (supra), the deceased had sustained as many as twenty six injuries and there were four fractures. The conviction of the accused under Section 302 IPC was set aside, but he was convicted under Section 304 Part II, IPC was made out as under: except one on the Head, which was simple in nature. The occurrence took place at a lonely place and if the accused intended to cause his murder, there was none to restrain them from doing so. In these circumstances, the non-inflicting of injuries on the vital parts of the deceased victim strongly (illegible)us that the accused did not intend to commit his murder.

The circumstances drive us to the conclusion that accused Harsukh and Shiv Karam wanted to give a severe beating to the deceased victim. However, as the death has resulted, knowledge can be attributed to them that they did an act which was likely to cause.

13. We have given our thoughtful consideration to the above submission made by the learned Counsel for the appellant. From the facts narrated above, it is clear that the prosecution has not explained the background of the incident and the immediate motive for causing the injuries to the deceased by the appellant. Motive is relevant for determining as to whether the accused intended in committing murder or not. There is no evidence to show the circumstances under which the incident took place. There is also no evidence that the appellant knew that the deceased Harbhajan shall be coming through the said way or that he was waiting for him. As per the medical report, only three injuries have been caused by sharp edged weapon and all the three injuries were on the non-vital parts. As per the opinion of the doctor, injury Nos. 2 and 3 were simple in nature and it is only the injury No. 1 which is said to be fatal on the right knee. Though the injury No. 1 indicates that sufficient force have been used in inflicting the injury. In these background, whether it can be said that the appellant is guilty in committing murder under Section on 302 IPC.

14. In our opinion, from the above facts and the fact that the appellant did not choose the vital parts of the body while inflicting the injury/injuries, it can safely be inferred that the appellant did not intend to commit murder of the deceased Harbhajan. From the above facts it can also not be inferred that the appellant intended to cause the particular injury on the right knee so as to bring the case in Clause III of Section 300 IPC. However, looking to the gravity of the injury and the force used in inflicting the same, it can be safely inferred that the accused appellant had the knowledge that his act was likely to cause death of the victim. The case is, therefore, covered by III clause of Section 299 IPC and the appellant is guilty for the offence under Section 304 Part II, IPC, instead of 302 IPC.

15. The net result of the above discussion is, that the appeal is partly allowed. The conviction of the appellant under Section 302 IPC is set aside, instead he is

convicted under Section 304 Part II, IPC, and the sentence from life imprisonment is reduced to 7 years RI. The sentence of fine is maintained.

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