

Bhamji Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-03-1987

Reported in : 1987(1)WLN405

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Appeal No. 82 of 1982

Appellant : Bhamji

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Bhoot

Disposition : Appeal dismissed

Judgement :

Ashok Kumar Mathur, J.

1. This is an appeal against the conviction and sentence of the accused under Section 302 I.P.C. by the learned Sessions Judge, Banswara by his judgment dated 17-12-1981/18-12-1981.

2. The facts giving rise to this case are that on 28-6-81 deceased Jeetra was working in his field. His field is 200 feet away from his house. PW 14 Kali wife of deceased Jeetra was also sitting at her house and feeding her daughter. PW 15

Dalia who has a field adjoining to the field of deceased Jeetra was also working in his field. PW 5 Wesa daughter of deceased Jeetra was also working in the field. It is alleged that deceased Jeetra was well versed in witch craft. Accused Bhamji apprehended that his daughter, prior to this incident, died on account of the witch craft of deceased Jeetra. Therefore, he entertained a doubt that he has caused the death of his daughter. On the fateful day i.e. on 28-6-1981 accused Bhamji along with his wife and daughter came at the field of deceased Jeetra and first belaboured him with lathi on account of which he fell down. Thereafter he went to his house and brought a Kulhari and gave Kulhari blows on deceased Jeetra as a result of which he expired. Some people came on the scene of occurrence and found that deceased Jeetra has already expired. Thereafter, PW 10 Heeralal was sent to the police out post, but no body was available at the out post. Thereafter, the daughter of deceased Jeetra went to the police out post and informed about the incident. Head Constable came on the scene and thereafter the Patel of the village also reached. A report was also sent to the Police Station, Kalinjara, which is on record as Ex.P. 6.

3. On the basis of this report, a case was registered against the accused and investigation was taken up. The police prepared the inquest report Ex. P 1 and a site inspection memo. The body of the deceased was sent for post mortem and the accused was arrested by arrest memo Ex. P 10. The accused gave information on 28-6-1981 regarding Kulhari and the same was recovered at his instance from his house vide Ex. P 17. Thereafter, the accused also gave another information about the lathi and the same was also recovered at his instance vide Ex. P 18. After close of the investigation, the accused was sent for trial under Section 302 I.P.C.

4. The prosecution examined as many as 23 witnesses and got a large number of documents exhibited.

5. The learned Sessions Judge, after recording the necessary evidence and hearing both the parties, found the accused guilty under Section 302 I.P.C. and sentenced him to life imprisonment with a fine of Rs. 100/- and in default of payment of fine to undergo further undergo one months simple imprisonment. He

found the statements of PW 14 Kali and PW Dalia (eye-witnesses) as reliable. He also found the extra-judicial confession made before PW 4 Pannama and PW 16 Nandlal by the accused as reliable. Aggrieved against this the accused has preferred this appeal before this Court.

6. Learned Counsel for the appellant has stressed that there is a direct conflict between the eye-witnesses and the medical testimony. Therefore, the testimony of the eye-witnesses should be discarded. Secondly, learned Counsel has further submitted that the extra-judicial confession made before PW 4 Pannama and PW 16 Nandlal by the accused is not reliable as the same is not a voluntary one. Therefore, it should not be acted upon.

7. The main prosecution case is that the deceased was indulged in wicked craft. Therefore, the accused was annoyed with him and he belaboured the deceased in two instalments. Firstly he gave lathi blows and when the deceased fell down he went to his house and brought a Kulhari and gave Kulhari blows on the accused as a result of which the deceased expired. Though the prosecution has examined PW 14 Kali, wife of the deceased PW 15 Dalia, PW 5 Wesa and PW 17 Sawla as eye-witnesses of the incident. The learned trial Judge believed that only PW 14 Kali, wife of the deceased and PW 15 Dalia as reliable eye-witnesses.

8. We have gone through the statements of all the four witnesses and we find that the testimony of PW 14 Kali and PW 15 Dalia is reliable one. PW 14 Kali was sitting hardly 200 feet away from the place of occurrence as the field of the deceased was hardly 200 feet away from his house. PW 14 Kali has deposed that the deceased was dealt with by the accused and she came running to save him (the deceased), but without any result Similarly, PW 15 Dalia also came to rescue of the deceased as his field is adjoining to that of the deceased. Mr. Bhoot, learned Counsel for the appellant submits that according to the two versions given by these two witnesses it is apparent that the nature of the injuries on the body of the deceased does not stand corroborated by the medical evidence. Learned Counsel submits that the deceased has received 16 injuries and as per the version given out by the witnesses the accused gave only 3-4 Kulhari blows on the deceased. As against this there are 8 incised wounds on the person of the

deceased. Therefore, this contradiction between the testimony of eye-witnesses and the medical testimony automatically discredits the testimony of these eye-witnesses. In this connection, learned Counsel has invited our attention to Mohar Singh and Ors. v. State of Punjab : 1981 CriLJ998 and State of Rajasthan v. Mangilal and Ors. ILR (1980) 30 Raj. 1022.

9. In the present case, it has to be borne in mind while appreciating the testimony of these two eye-witnesses that they are rustic villagers and it is too much to expect from them to give a graphic statement of the whole of the incident. Mst. Kali, PW 14 is the wife of deceased and she has witnessed the incident from a distance of hardly 200 feet. Similarly, PW 15 Dalia has his field adjoining to the field of the deceased. He was also working in his field at the time of the incident. Therefore the presence of both these witnesses at the scene of occurrence appears to be natural. It is only a manner of narration that while they are saying that 3 or 4 axe blows were given by the accused on the deceased that should not be taken to mean virtual number of blows. It is difficult to count the number of blows when the accused was hell bent to beat the victim lying on the field. Thus, simply because the number of blows does not so numerically tally with the medical evidence the testimony of these two eye-witnesses cannot be discarded. The presence of these two witnesses cannot be doubted and likewise witnessing of the whole incident. Simply on account of large number of injuries on the body of the deceased will not discredit the testimony of these eye-witnesses.

10. Learned Counsel has also argued that there are no lathi injuries on the person of the deceased. That is not correct. The contusions found on the body of the deceased amply showed that these injuries could be caused by lathi and the Doctor has deposed that these injuries can be caused by lathi. Mr. Bhoot, learned Counsel for the appellant has also invited our attention to Mohar Singh's case AIR 1981 SC 1578. But in this case there was a major contradiction between the testimony of the prosecution witnesses and the injuries found on the deceased. In this case the accused assaulted the deceased with spades. The Doctor who has held the autopsy of the deceased has clearly stated that the injuries could be caused only by a Kassi. In these circumstances the benefit of doubt on account of the ocular and medical evidence was given to the accused. But that is not the case

here. Here the prosecution witnesses have deposed that the accused has dealt axe and lathi blows. There are incised and wounds contusions on the body of the deceased Therefore the testimony of the eye-witnesses and the medical evidence is not so variant with each other so as to give benefit of doubt to the accused.

11. Next, the learned Counsel also attacked the finding of the trial court that the learned Judge has also relied upon the extra-judicial confession of the accused. PW 5 Pannama is a mid-wife (nurse) who has gone to attend the ailing child of the accused and he has confessed before her that he has killed the deceased. Similarly, he has also confessed before PW 16 Nandlal.

12. We have gone through the testimony of these two witnesses and we are of the opinion that the testimony of PW 4 Pannama appears to be reliable as she has no axe to grind either with the accused or the deceased. She had gone to attend the ailing child of the deceased and before her the accused has confessed that he has murdered the deceased. There is no reason to disbelieve the testimony of this witness.

13. Learned Counsel submits that the extra-judicial confession made before these witnesses by the accused is not voluntary as it was not necessary for the accused to have talked to her about the incident. Be as it may, it was open for the accused not to have disclosed, but he has voluntarily disclosed to PW 4 Pannama who had gone to attend the accused's ailing daughter. It is also wrong to say that this confession is not voluntary. No reasons have been shown to us as to why this extra judicial confession is not involuntary.

14. In State of Madhya Pradesh v. Dayaram Hemraj (3) a confession was recorded by the Magistrate in the form of questions and answers and while recording confession the accused was virtually cross-examined and what ever he said was in answer to leading questions put by the Magistrate. Moreover, the extra-judicial confession made by the accused was containing several discrepancies regarding the persons to whom the confession was made and the occasions when the confession was made and what precisely was said by the accused. In these circumstances, the High Court rejected both the confessions namely, the judicial confession as well as the extra judicial confession and the

same was affirmed by their Lordships of the Supreme Court. Thus, this case cannot afford any assistance to the accused appellant. Likewise, Mangilal's case ILR (1980) 30 Raj. 1022 is also distinguishable on facts and this also does not afford any assistance to the accused.

15. Recently, their Lordships of the Supreme Court in State of U.P. v. M.K. Anthony : 1985 CriLJ493 has observed as under:

While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, draw-backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the Investigating Officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

Thus, in the light of the observations made by their Lordships in M.K. Anthony's case AIR 1985 SC 48 it is apparent that PW 14 Kali and PW 15 Dalia are reliable to connect the accused with the commission of the crime. Likewise the extra-judicial confession made before PW 4 Pannama is also reliable and trust worthy.

16. In the result, we do not find any merit in this appeal and the same is dismissed. The conviction and sentence passed by the learned Sessions Judge is confirmed.