

Shanker Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-11-1998

Reported in : 1999CriLJ1783

Judge : V.G. Palshikar and; Bhagwati Prasad, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 147, 148, 149 and 302

Appeal No. : Criminal Appeal No. 167 of 1991

Appellant : Shanker

Respondent : State of Rajasthan

Advocate for Def. : Chandralekha, Public Prosecutor

Advocate for Pet/Ap. : P.R. Choudhary, Adv.

Judgement :

V.G. Palshikar, J.

1. The Criminal Appeal No. 167 of 1991 is directed against the order passed by the learned Additional Sessions Judge, Bhilwara, dated 29-4-91 convicting the accused-appellant under Section 302 of the Indian Penal Code in Sessions Case No. 38 of 1990. Criminal Appeal No. 146 of 1992 also challenges the same order in so far as it acquits the other accused persons. The facts giving rise to these

appeals, stated briefly are as under.

2. On February 27, 1990 there was a quarrel between the accused and the deceased and the accused persons fatally assaulted the deceased with four others, and, therefore, the deceased died a homicidal death. After due investigation prosecution was launched under Section 302 read with Sections 34, 147, 148 and 149, IPC against five accused persons. The learned Additional Sessions Judge on appreciation of the evidence on record came to the conclusion of guilt only against Shanker and proceeded to convict him under Section 302, IPC and sentenced him to suffer imprisonment for life as aforesaid. It is this order of the learned Additional Sessions Judge, Bhilwara which is assailed in this appeal on the grounds mentioned in the memo of appeal.

3. Summarised briefly, the grounds are that,-

(i) There is no evidence of independent nature on record to establish that the appellant was the only person responsible for homicidal death of the deceased. In fact there is no eye-witness account on which absolute reliance can be placed for coming to the conclusion of guilt.

(ii) It is then submitted that the statement of material witnesses have been recorded after inordinate delay as the first information report was lodged immediately after the occurrence of the offence and the delay which is inordinate in nature gives rise to a reasonable suspicion that the statements have been recorded after it was decided as to the manner in which they should be given. For this reason, it is alleged that the witnesses be disbelieved.

(iii) The entire order of conviction is based on the deposition of Kanhaiya Lal and Shyamlal and there being material contradictions in their evidence, the whole evidence is liable to be rejected. There is, therefore, no basis to maintain the conviction.

(iv) The learned Additional Sessions Judge has not taken into consideration the totality of circumstances and the evidence on record with the result that grave injustice is done to the accused by the conviction.

(v) The learned Judge should have seen that having rejected the testimony of these witnesses in relation to participation of other accused persons, the evidence of those very witnesses in relation to accused Shanker, the present appellant, could not have been accepted. The basic error has been made by the learned Additional Sessions Judge in approaching the case in this manner. He, therefore, prayed for an order of acquittal.

4. With the assistance of the learned counsel for the appellant and the learned Public Prosecutor we have re- appreciated the evidence on record and have considered the submission of the learned Public Prosecutor in relation to the acquittal as well.

5. P. W. 1 Kana claims himself to be an eyewitness and states that at about 2 in the afternoon he was going by the house of Panna Koli when he saw accused Nathu, Kesu and Godu holding the deceased and Shanker, the present appellant stabbed the deceased with knife and Ramesh, the other accused, who also is acquitted, was hitting him with lathi. The witness has candidly admitted that he has a weak eyesight and has not been able to withstand the cross-examination. P. W. 2 is declared hostile and his evidence, therefore, becomes inconsequential. P. W. 3 heard that Panna Lal has been murdered. He is, therefore, not an eye-witness but he claims to have seen the accused persons running away from the house of Panna Lal. The witness then says....

^eSus uy ds ikl ml le; iUukykydks ns[kk Fkk ftlds ck;s cxy ds uhps pkdsw yxk gqvK Fkk A og [kwu ls yFkiFk HkjkgqvK Fkk A eaSaus 'kadj dks pkdw gkFk esa fy;s Hkkxrs gq, ns[kk Fkk A**

He has then deposed that the clothes of the accused persons were stained with blood. In cross-examination this witness says that he does not know the clothes that were worn by the accused. The witness claims of seeing the accused running away but he is not corroborated on this point by the others.

6. Then the evidence is of P. W. 4 Habulal who is declared hostile and, therefore, his evidence becomes inconsequential.

7. P. W. 5 is Dr. Sunil Kumar who conducted the post-mortem on the body of the deceased. He has described the wounds that were caused on the body of the deceased. Injury No. 1 is on the head, injury No. 2 is on the left side of the head, injury No. 3 is on the left side of the neck, and injury No. 4 is on the ribs. The witness has stated that the injuries are different in nature and could have been caused by different weapons. P. W. 5 Dr. Sunil Kumar has stated the cause of death thus,-

^eSus e`rd dh e`R;q dk dkj.k ;gik;k Fkk fd bu pksVks dh otg ls vR;kf/kd [kwu cgus ds dkj.k ls e`R;q gqbZ Fkh ;spksV vyx fdLe ds gSaa tks vyx vyx rjg ds gfFk;kjksa ls vk ldrh gSa A**

8. P. W. 6 Chandra Prakash is the Police Constable who was Malkhana In-charge and talks of the custody of the knife. P. W. 7 Mohan Lal is a Panch witness who executed the panchnama of the dead body and P. W. 8 Hem Singh is the Investigating Officer. This entirely is the evidence. The testimony of the witnesses who arrived at the scene of the offence immediately and as also the eye-witnesses materially differs from the testimony of the doctor. The eye-witness says that he saw the accused Shanker stabbing the deceased Panna but does not describe the injuries. He admits that his eye-sight was weak. He then states that he saw that there was injury on the neck of the deceased. The witness even admits that he had not seen the remaining body of the deceased. It is interesting to note what the witness has to say in vernacular :

^eSaus iUukdks ns[kkk rks mldkxyk dVks gqvks Fkk mlds ckdh 'kjhj ij eaSaus gkFk ugha yxk;k vkSj u mlds ckdh 'kjhj dks eSaus ns[kkk Fkk A**

P.W. 3 Shyam Lal claims that he saw the body of Panna Lal immediately after the assault and he saw that the stabbed wound was below the armpit. He also does not speak of having noticed any other injury.

9. Taking into consideration the overall view of the matter we find it unsafe to convict the accused Shanker on the sole testimony of an eyewitness who admits his eyesight to be weak and does not depose of any of the injury that were inflicted nor what has been done by other accused persons. The learned Judge fairly

chose to acquit the other accused persons of all the offences. There is, therefore, no question of the appellant being convicted of murder when there are multiple injuries on the body of the deceased and the doctor states that the injuries are of different nature and can be caused by different weapons. When the entire ocular testimony points out to the accused giving one stab wound to the deceased. In such circumstances there is no obvious reason to interfere with the order of acquittal which is hereby maintained.

10. In The result ,the Appeal against acquittal fails and is dismissed and the appeal against conviction of appellant Shanker is allowed .he is acquitted of the charge under Section 302 of the Indian penal code. He be realased from jail forthwith if not required in any other case.

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