

Vela Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-12-1992

Reported in : 1992(1)WLN230

Judge : Kanta Bhatnagar and; Rajendra Saxena, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 262 of 1986

Appellant : Vela

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Rajendra Saxena, J.

1. This appeal has been filed against the judgment dated 12.6.1986 passed by the learned Sessions Judge, Udaipur, whereby he found the appellant guilty for the offence under Section 302 I.P.C. and sentenced him to life imprisonment and a fine of rupees fifty, in default to further undergo rigorous imprisonment for two years.

2. Briefly the case projected by the prosecution during the trial can be summarised like this:

P.W.10 Nana and P.W.7 Partha sons of Nola are the cousins of appellant's father Kama. It is alleged that on 3.7.1984, the dead body of Bhanwaria, aged about 12 years and the only son of appellant Vela, was found in a well near village Thoba Bada. In this connection proceedings under Section 174 Cr. P.C. were initiated by the S.H.O., Police Station, Oгна. It is alleged that appellant Vela suspected that P.W.10 Nana had murdered his son. It is the case of the prosecution that on 10.10.1984 at about 10 A.M. when P.W.7 Partha along with his nephew Dharma son of P.W.10 Nana while returning from village Koliari, after selling the wood collected by them when they reached near the fields of P.W.12 Lal Khan, appellant Vela armed with a dharia came towards them from the opposite side, It is further alleged that the appellant raised his dharia to inflict a blow on Dharma, but the latter ran away. Appellant hotly pursued him and crossing the hillock/he dealt dharia blows on the neck and head of Dharma in the field of Rao Sahab. The said occurrence was witnessed by P.W.7 Partha from the top of the hillock. Dharma fell down and succumbed to the injuries. Thereafter, appellant Vela fled away. It is the case of the prosecution that P.W. 13 Nana son of Jumma had also reached the place of occurrence. Partha asked him to look after the dead body and went to his village Upretta, where he informed about the incident to P.W.10 Nana and others. Thereafter, he along with P.W.10 Nana and others came to the place of occurrence. Thereafter Partha went to Police Station, Falasia, which is about ten kilometers away from the place of occurrence and on the same day at about 4 P.M. submitted a written report [Ex.P.4]. P.W. 14 Sajjan Singh, S.H.O. registered the case under Section 302 I.P.C. vide F.I.R. Ex. P. 5 and rushed to the spot the same evening. He prepared the panchnama of the dead body [Ex.P.6] and seized & sealed samples of blood-stained and the control soil samples. He also prepared the site-plan and its memo Ex.p.7. It is the case of the prosecution that on 11.10.1984 at about 1.30 P.M. appellant Vela went to Police Station, Jhadol and requested for his security. Report No. 298 (Ex.P.8) was, therefore, scribed in the General Diary of Police Station, Jhadol. On 12.10.1984, the appellant was arrested in this case. On 13.10.1984 at about 11 P.M., the appellant voluntarily gave information under Section 27 Evidence Act vide memo Ex. P.10 and got the blood-stained dharia Article 1 recovered at his instance on 14.10.1984 hidden inside the dense grass near the hillock known as 'Dhola Dav', which was seized

and sealed. The Serologist of the State Forensic Science Laboratory Rajasthan, Jaipur after examination vide his report Ex.P.3 found the blood-stained earth and blood-stained clothes of the deceased stained with human blood. However, since the blood stains on the dharia Article 1 were disintegrated, origin thereof could not be determined.

3. P.W.1 5 Dr. S.K. Bhatnagar, Medical Officer, Primary Health Centre, Jhadol, who conducted the post mortem examination on the dead body of the deceased on 11.10.1984 vide his report (Ex.P.11) found the following injuries:

- (i) An incised wound 1'x1/4' x 1/4' at the base of the right thumb;
- (ii) Incised wound on the right side of the mandible 3' x 2' x 1' cutting the jugular vein and cerotid;
- (iii) Incised wound measuring 6' x 4' x 4' posteriorly on the angle of neck;
- (iv) Abrasion 3' x 2' on the right loin;
- (v) Abrasion 3' x 2' on the right shoulder.

All these injuries were in ante-mortem in nature. The doctor opined that the cause of death was due to syn-cop caused by extensive bleeding and that the death had taken place about 24 hours prior to the post mortem examination. After investigation, the Investigation Officer submitted a charge-sheet against the appellant before the Munsif & Judicial Magistrate, Jhadol, who after necessary formalities committed the case to the learned Sessions Judge, Udaipur.

4. The appellant was charged for the offence punishable under Section 302 I.P.C, to which he pleaded not guilty. The prosecution examined as many as 15 witnesses. The appellant in his plea record under Section 313 Cr. P.C. generally denied the circumstances appearing against him in the prosecution evidence and asserted that he had gone to Jhadol for filing a suit against Partha in respect of agricultural land, where he was arrested at the office of Dy. Superintendent of Police. He refuted that he had suspected the deceased Dharma and P.W.10 Nana for the murder of his son. He also denied the alleged factum of recovery of dharia

Article I at his instance. However, he did not examine any witness in his defence. The learned Sessions Judge by the impugned judgment convicted the appellant under Section 302 I.P.C. and sentenced him in the manner detailed above. Hence this appeal.

5. We have heard the learned Counsel for the appellant and the learned Public Prosecutor for the State at length and carefully perused the relevant record in extenso.

6. Shri Mahesh Loda vehemently contended that the prosecution has miserably failed to prove the alleged motive of the crime against the appellant. According to him P.W.7 Partha is a highly interested and unreliable witness and that his testimony has been wrongly relied upon by the learned trial Judge. He submitted that the alleged eyewitness P.W. Lal Khan did not know the appellant, Partha as well as the deceased prior to the alleged incident and that admittedly no identification parade was got conducted. According to him, Lal Khan was not an eye-witness, that his statement is replete with material contradiction and as such his testimony was valueless. He has cited Kanan and Ors. v. State of Kerala : 1979 CriLJ919 , wherein it has been held that where a witness identifies an accused, who is not known to him, in the court for the first time, his evidence is valueless unless there has been a previous test identification parade to test his power of observations and that it will be wholly unsafe to rely on the bare testimony of such a witness.

7. Shri Loda further submitted that another alleged eye-witness P.W.13 Nana son of Jumma is a false and fabricated witness, whose name even does not find mention in the FIR [Ex.P.5]. He has cited Muluwa and Ors. v. State of Madhya Pradesh : 1976 CriLJ717 , Phool Chand v. State of Raj. AIR 1977 SC 315 and Babu Singh and Ors. v. State of Raj. 1978 RRC 267, wherein the well crystalised principle of law has been reiterated that an infirm witness does not become reliable simply because he has been corroborated by number of witnesses of the same brand; for, evidence is to be weighed and not counted.

8. Shri Boda also contended that the recovery of dharia Article 1 was doubtful, because it was made from a open place and that the origin of blood also could not

be detected as per report of the Serologist. He contended that this possibility can not be ruled out that P.W.7 Partha might have committed the murder of Dharma and falsely implicated the appellant to grab his land. Lastly, in the alternative, he argued that since injuries sustained by the deceased were of simple nature, it can not be conclusively held that the appellant had intentionally committed the murder of the deceased. On the other hand at the worst, the allegations against him constitute an offence of committing culpable homicide not amounting to murder, which is punishable under Section 304 part II I.P.C. He submitted that the accused has been under detention for last more than seven years and as such in the circumstances of this case, the punishment for the period already undergone by him, is quite sufficient and adequate.

9. On the other hand, the learned Public Prosecutor argued that case No. 4/84 under Section 174 Cr. P.C. was registered at Police Station, Onga regarding the unnatural death of appellant's son Bhanwaria in July, 1984, that P.W.s Dhanna, Bhuta, Kala, Partha and Nana son of Nola have consistently deposed that the appellant suspected that the P.W.10 Nana was responsible for the murder of his son Bhanwaria and as such the motive for committing the murder of deceased Dharma was well proved. Shri Choudhary submitted that Partha was truthful witness and the learned trial Judges, have not committed any illegality in relying on his testimony. According to him, P.W. Lal Khan's field was situated near the place of occurrence, that his name finds mention in the F.I.R. that P.W.7 Partha had disclosed his name to him immediately and after the occurrence and hence non-conducting of the test parade was not at all fatal in this case. He submitted that the learned trial Judge has disbelieved the testimony of P.W. 13 Nanason of Jumma, and relied on the statements of Partha and Lal Khan which stand well corroborated by the medical evidence, and that the recovery of the weapon of offence dharia Article 1 at the instance of the appellant was well proved by the prosecution evidence. He asserted that the appellant had hotly chased the deceased, who ran away to save his life and that thereafter inflicted as many as three dharia blows on the vital parts of his body. This fact manifestly proves appellant's intention to commit the murder of Dharma. Hence the offence committed by the appellant was under Section 302 I.P.C. and not under Section 304 Part II I.P.C.

10. We have given our most anxious and careful consideration on the rival contentions.

11. In this case, the prosecution has examined three eye--witnesses, namely P.W.7 Partha, P.W.12 Lal Khan, and P.W.13 Nana son of Jumma. The learned Sessions Judge giving cogent reasons has held that the presence of P.W.13 Nana at the time of alleged occurrence was doubtful. Hence, he has rightly disbelieved the testimony of this witness.

12. P.W.7 Partha deposed that he along with his nephew Dharma had gone to village Koliari on the day of alleged occurrence to sell the woods collected by them. He stated that Since they wanted to go to Udaipur and were short of money, they had gone to sell their woods to village Koliari and did not go to nearby villages than Koliari. This explanation is quite natural and convincing because the woods collected by them could fetch more price at Koliari. Hence, there was nothing unnatural on the part of Partha and deceased Dharma to have gone to village Koliari to sell their woods.

13. P.W.7 Partha deposed that after selling their woods. They were coming back for their village Upretta, that at about 10 A.M., when they reached near the field of Lal Khan, they saw accused Vela coming towards them armed with a dharia. He further deposed that the accused raised his dharia to inflict a blow towards Dharma, thereupon, the letter ran away to save his life. He stated that the accused ran after Dharma. He also followed them and asked the accused not to kill Dharma. He further deposed that Dharma and accused Vela went towards the other side of the hillock, that in the mean time he also reached on the top of the hillock and that from there, he saw the accused inflicting dharia blows on the head & neck of Dharma. He further deposed that blood oozed out from Dharma's injuries, who fell down and died, on the spot. He stated that at that time Lal Khan was also present in his field and had seen the said occurrence. He told that after inflicting the injuries, the accused fled away from place of occurrence along with his dharia Article 1 he stated that in the meanwhile P.W.1 3 Nana son of Jumma also came there and that he left him near the dead body of Dharma and went to village Upretta, which was about 10 Kms. away from the place of occurrence. He

stated that he informed about the said incident to his brother P.W.9 Nana son of Calla and others who accompanied him and came to the place of occurrence. He deposed that thereafter he went to Police Station, Palasia and submitted written report Ex. P.4. P.W.7 Partha has further stated that accused Vela's son Bhanwara had died due to drowning about 4-5 months prior to the alleged incident and that in that case, the accused suspected that P.W.10 Nana son of Nola, who is the father of the deceased...was responsible for Bhanwara's death. This witness has been cross-examined at length. In his cross-examination, he deposed that he had seen the alleged incident from the top of the hillock, which was about 300 feet away from the place of occurrence. He identified dharia Article 1, which was recovered at the instance of the accused appellant. In his cross-examination, he also stated that the appellant had dealt a dharia blow from its reverse side on the back of Dharma near the road, but this act does not find mention either in the F.I.R. Ex.P.5 or in his Police statement Ex.D.2 or his Statement recorded under Section 164 Cr. P.C. Ex. D.5. It appears that Partha has exaggerated on this count, but only for this reason, he cannot be held as an untruthful witness. To our mind, the testimony of this witness has not been shaken and remained intact, despite a lengthy and searching cross-examination. The appellant is admittedly the cousin of Partha, while the deceased was his nephew. In such circumstances, this witness was equally related to them. In our considered opinion, the learned trial Judge has correctly evaluated the testimony of P.W.7 Partha and not committed any illegality in holding him as a truthful witness and relying on his testimony.

14. P.W.12 Lal Khan deposed that at the time of alleged occurrence, he was in his field. From the siteplan as well as the statement of other witnesses, it stands well established that the field of Lal Khan is situated nearly the road, which goes from Koliari to Upretta and near the place of occurrence. This fact also finds mention in the F.I.R. Therefore, the presence of P.W.12 Lal Khan in his field at the time of alleged occurrence was quite natural. Lal Khan admitted that he did not know the appellant, P.W.7 Partha as well as the deceased Dharma previously. He however stated that immediately after the occurrence when Partha returned, the latter disclosed his name to him. He stated that he saw Partha and the deceased going towards Upretta, that at that time he saw the accused appellant coming from the opposite side, who had a dharia with him. He deposed that at that time, the

appellant told that his son had been murdered, that he started quarrelling with Partha and the deceased and that thereafter all the three persons went on the other side of the hillock. He clearly stated that he did not see the appellant inflicting the dharia blows. He also stated that he had not seen the appellant after the alleged occurrence and had seen him only in the court. The learned sessions Judge has simply held that this witness had only corroborated the initial stage of the alleged occurrence.

15. In *Kanan v. State of Kerala* : 1979 CriLJ919 , it has been held that where a witness identifies an accused, who is not known to him in the court for the first time, his evidence is absolutely valueless unless there has been a previous test parade to test his powers of observation. Since Lal Khan did not know the appellant previously and no test identification was conducted, the learned Sessions Judge has wrongly relied on the testimony of Lal Khan, which was valueless and insignificant. But even if the testimony of P.W.12 Lal Khan is not taken into consideration still then appellant's conviction can be based on the credible and unimpeached testimony of eye-witness Partha, which has also been substantially corroborated the medical evidence.

16. In *Shrishail Nageshi v. State of Maharashtra* : 1985 CriLJ1173 , it has been held that ordinarily, the evidence of a truthful eye-witness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for his acceptance on the truthfulness of other items of evidence such as recovery of the weapon of offence at the instance of the accused. More over keeping in view the provisions of Section 3 of Evidence Act, the conviction can be based on the solitary testimony of a truthful witness.

17. We have carefully gone through the rulings cited on behalf of the appellant, namely *Muluwah v. State of Madhya Pradesh* : 1970 CriLJ895 , *Phool Chand v. State of Rajasthan* AIR 1977 SC 315 and *Balu Singh v. State of Rajasthan* RCC 267, wherein it has been held that the evidence of an infirm witness does not become reliable merely because it has been corroborated by number of witnesses of the same brand; for, evidence is to be weighed not counted. We respectfully agree with this proposition of law. But as mentioned earlier, in our considered

opinion P.W.7 Partha is a truthful witness, whose testimony has remained unshattered and unshaken and as usual there is no cogent reason to disbelieve him.

18. The learned Sessions Judge has already reject the statement of P.W.13 Nana son of Jumma. We have also not relied on the testimony of P.W.12 Lal Khan because he did not know the appellant previously and no test parade was conducted to point out his powers of observation. In such circumstances, the aforementioned rulings have no application in this case and these render little assistance to the appellant.

19. During trial, the learned Counsel for the appellant had admitted the contents of the postmortem examination of the report Ex.P.10, subject to cross-examination. P.W.15 Dr. S.P. Bhatnagar fully proved the said report Ex. P.10 and in most unambiguous a clear terms deposed that the cause of death of Dharma was due to syncop caused by the injuries sustained by the deceased. He further stated that those injuries could be caused by dharis Article 1. The blade of dharia Article 1 is about 10 inches in length. According to the doctor the blade had blunt edge at some of its portion. But only for this reason, it can not be held that injuries numbers 1,2 & 3 sustained by the deceased could not have been caused by dharia Article 1, because it all depend on the impact and the particular portion of the edge/blade of the dharia, which actually comes in to contact with the body of the victim. Injury No. 1 sustained by Dharma was only one Inch in length, while injuries numbers 2 Section 3 measured three and six Inches respectively in length, while the length of the blade of the dharia Article 1 is ten Inches. Therefore, we do not find any force in the contention of shri Boda that injuries Numbers 1, 2 & 3 mentioned in postmortem report Ex.P.10 could not have been caused by dharie Article 1. By those injuries the jugular vein and carotid of the deceased were also out, which resulted in extensive bleeding. In the opinion of the doctor, those injuries were sufficient in the ordinary course of nature to have caused the death. In such circumstances, the sworn testimony of P.W.7 Partha stands fully corroborated by the medical evidence.

20. The recovery of dharia Article 1 at the instance of the appellant has been well proved by the consistent testimony of Motbir P.W.5 Taj Mohd., P.W.8 Mustafa and P.W. 14 Sajjan Singh P.W., they have all deposed that the accused get the dharia Article 1 recovered from the dense grass, which was about 2-3 Feetshigh and wherein the dharia was hidden. The dharia was recovered about fifty paces away from the place of occurrence. All these witnesses have stated that the dharia was stained with blood. However, due to disintegration its origin could not be found by chemical analysis. In such circumstances, the recover of dharis Article 1 does not help the prosecution substantially now here. Even if this piece of the evidence is ignore still then the conviction of the appellant does not warrant any interference.

21. The motive of the alleged clime is also well borne out from the testimony of P.W.4 Nana son of Hakra, P.W. 7 Partha and P.W. 10 Nana, who have stated that the appellant suspected that the deceased's father (Nana) was responsible for the murder of his son .Bhanwaria, Moreover when there is direct evidence, the motive paled into insignificance.

22. In *Malu v. State of Haryana* : 1976 CriLJ1895 , it has been reiterated that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive become more or less academic. It has been held that some times, the motive is clear and can be proved; some times, however, the motive is shrouded in mystery and that it is very difficult to locate the same. If, however, the evidence of the eye-witness is credit worthy and is believed by the court, which has placed implicit reliance, then the question whether there is any motive or not becomes wholly irrelevant. But in the instant case, the motive has also been fairly proved.

23. There does not exist even a range of evidence or any circumstance or reasonable probability to suggest that P.W.7 Partha might have committed the murder of his nephew Dharma. The argument of Shri Boda on this score is baseless and devoid of any substance.

24. There was no delay in lodging the FIR. Thus, there was no time for improvement or embellishment. The appellant hotly chased deceased Dharma, who ran away to save his life. Thereafter the appellant dealt three dharia blows in

quick succession causing three incised wounds on the neck and mendible of the deceased, which were vital parts of the body. Those injuries were sufficient in the ordinary course of nature to have caused the death. All these facts manifestly prove that the accused had an intention to commit the murder of the deceased and caused him such bodily injuries, which were sufficient in the ordinary course of nature to have caused the death. Thus, the only irresistible conclusion is that the act committed by the appellant did not amount to culpable bomicide amounting to murder but constituted the offence of culpable homicide amounting to murder punishable under Section 302 I.P.C.

25. Shri Boda has cited Malu v. State of Haryana : 1976 CriLJ1895 , Babu Singh v. State of Rajasthan 1978 RRC 267 and Ramesh Singh v. State of Rajasthan 1970 RPC 348, but the facts of those are clearly distinguishable and have no bearing on the case in hand. Therefore, not an iota of doubt lurks in our mind that the offence successfully brought home against the appellant, is punishable under Section 302 I.P.C. and not under Section 304 Part of I.P.C.

26. Hence, in our considered opinion, the learned trial Judge has correctly discussed, analysed and evaluated the prosecution evidence and rightly held the accused guilty for the offence under Section 302 I.P.C.

27. The up shot of the above discussion is that this appeal is devoid of any force and substance and same is hereby dismissed.