

Ramesh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-23-1987

Reported in : 1987(2)WLN161

Judge : Surendra Nath Bhargava and; Inder Sen Israni, JJ.

Appeal No. : D.B. Criminal Appeal No. 292 of 1986

Appellant : Ramesh

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Surendra Nath Bhargava, J.

1. This is an appeal against the judgment passed by the trial court convicting and sentencing the accused appellant under Section 302 and 448 IPC.

2. Rameshwar (PW 6) submitted a written report (Ex. P 5) to Station House Officer, Police Station, Mania, Dholpur on the basis of which FIR (Ex. P 7) was recorded at 10.15 p.m. In the report, it was mentioned that on that day at about 8 p m. in the evening, he heard some noise in the shop of Nawal Singh, so he along with Roshan Lal, Bhuri, Nawal Singh, Ram Prasad went to the spot, where Ramesh (accused appellant) with five other persons was beating Satish Chand

Patwari (deceased) by 'Hathoda', Basuli' etc., thereafter, accused persons dragged Satish Chand towards their house. These persons intervened and took Satish to the Police Station. On the way, Satish Chand expired. A case was registered under Sections 302, 147, 148, 149 1PC. After usual investigation, the case was challaned in the court of Magistrate, who committed the case to the court of Sessions, who after recording evidence, convicted and sentenced the accused appellant as aforesaid. Hence, this appeal.

3. Learned Counsel for the appellant has submitted that the learned Sessions Judge, Bharatpur did not believe prosecution witnesses with regard to live accused persons who have been acquitted by him and, therefore, is no guarantee that the prosecution witnesses are speaking truthfully while implicating the present accused appellant. He has further submitted that the learned trial court has itself rejected the story of dragging of deceased Satish by the accused persons. He has very vehemently argued that in this case, investigation has been very unfair and the prosecution had been jealous to seek conviction of the accused appellant some how or the other and in this connection, he drew our attention to the fact that the Investigation Officer has manipulated and interpolated the record of investigation. He has drawn our attention to Ex. D 2 which is the statement of Ram Prasad recorded under Section 61 Cr. P.C. wherein the last line marked A to B runs as under: 'MAINE SARA HAAL BIJLI KI ROSHNI ME DEKHA HAI'

4. These words have been added lateron and are with different ink and pen because the carbon copy of the same which is available on the record at page B 9/6 does not contain these words. Similarly these, words have been added in Ex D 3, statement of Roshan Lal, recorded under Section 161 Cr. PC which are not available on the carbon copy Ex. D 4. Similarly, these words have also been added in the statement recorded under Section 161 Cr. P.C. of Bhuri Singh (Ex. D 5) and which are not available in the carbon copy (Ex. D 6). He has further drawn our attention to Ex. P 8, the statement under Section 161 Cr. P.C. of Ramnarain wherein these words have been added but they do not occur in the carbon copy which is available at page B 9/5.

5. He has also drawn our attention to Ex. P 3, statement of Bashira recorded under Section 161 Cr. P.C. The same words have been added though they are not present in the carbon copy available on record at page B 9/7. Similarly, these words have been added in the statement of Rameshwar, carbon copy whereof is available at page B 9/8.

6. Similarly, in the site plan (Ex. P 6) following words marked 'X' to 'Y' have been added, though they are not present in the carbon copy Ex. P 6/A: 'KHOON KE CHHEETE HUAE HAI TATHA GHASITAN BANI HAI'

7. In this connection, learned Counsel for the appellant has placed reliance on Subhash v. State of U.P. AIR 1975 SC 1924 and 1985 Cr. LR (Raj.) 18.

8. The carbon copies marked Ex. D 4, Ex D. 6, etc. were obtained from the record of the SP's office where a copy of the statements recorded under Section 161 Cr. PC is sent under the Cr. P.C. Learned Counsel for the appellant has also drawn our attention to the findings of the trial court where in the trial court has held that the theory of dragging the deceased from the place of incident, by the accused to their house, does not seem to be correct. Similarly, the trial court has also held that the prosecution has failed to prove any motive for the commission of the crime, and has disbelieved the evidence of the prosecution witnesses in that regard. Learned Trial Court has also not believed the recovery of Basula and Hathoda Articles 1 and 2, from the accused Ramesh and Ravindra respectively.

9. Learned Counsel for the appellant has further submitted that the evidence of the eye witnesses does not tally with the evidence of doctor. Dr. Mohan Lal Maru (PW 3) has proved the injuries on the person of the deceased. There are five cut wounds and three bruises. Learned Sessions Judge while acquitting the other co-accused persons has himself observed that the evidence of the prosecution witnesses where in they have stated that other accused persons who have been acquitted also gave blows by Lathi and other weapons, is contradictory and inconsistent with the medical evidence, therefore, evidence of the eye witnesses was disbelieved vis-a-vis those accused persons who have been acquitted. As regards accused appellant Ramesh, learned trial court has found that he inflicted blows by Basula to the deceased Satish which have been corroborated by the

medical evidence and have been found sufficient to cause death. His argument is that since the trial court has disbelieved the evidence of eye witnesses PW 7 Rameshwar, PW 8 Nawal Singh, PW 11 Ram Prasad, PW 12 Roshan and PW 13 Bhuri Singh with regard to those accused persons who have been acquitted, there is no guarantee that these witnesses are speaking truth with regard to present appellant Ramesh. The other two eye witnesses produced by the prosecution, i.e., PW 4 Bashira and PW 7 Ram Narain have been declared hostile.

10. Learned Counsel for the appellant has relied on *Shyam Swaroop and Anr. v. State of Rajasthan* 1985 RCC 273 wherein a division bench of this court has held that when the prosecution case that all the accused gave beating to deceased and it was not specified as to which injury was caused by which accused person, the statement of witness could not be believed,

11. Reliance was further placed on *Laxmi Singh v. State of Bihar* : 1976 CriLJ1736 , where in their Lordships of the Supreme Court have held that if the ocular evidence is totally inconsistent to the medical evidence, the evidence of eye witnesses cannot be believed. He has also placed reliance on *Mohar Singh v. State of Punjab* : 1981 CriLJ998 , *Radhey Shyam v. State of Rajasthan* 1985 Cr. LR (Raj.) 685 and *State of Rajasthan v. Prem Singh* 1986 Raj Cr. Cases 271. Reliance was also placed on a recent decision of the Supreme Court in *Cr. Appeal No. 161/78 Amar Singh and Anr. v. State of Punjab*, decided on 17-2-1987=1987(1) SVLR (Criminal) 117).

12. He has also placed reliance on *Balaka Singh v. State of Punjab* AIR 1975 SC 1962 where in their Lordships of the Supreme Court have observed that where the grain cannot be separated from the chaff because the grain and chaff are so inextricably mixed up that in the process of separation the court will have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution, completely, from the context and the background against which they were made, then, the prosecution case must fail.

13. On the other hand, learned Public Prosecutor has very vehemently supported the judgment of the trial court and has submitted that the maxim *falsus in UNO, falsus in omnibus* is neither a sound rule of law nor a rule of practice, and that it is

the duty of the court to separate grain from the chaff and rely on the prosecution witnesses on the portion which is corroborated by the medical evidence or other evidence. In this connection, he placed reliance on Ugar Ahir v. State of Bihar : AIR 1965 SC277 , Bhagwan Tara Patil v. State of Maharashtra : 1974 CriLJ145 and State of U.P. v. M.K. Antony : 1985 CriLJ493 .

14. He has further submitted that simply because the other accused persons have been acquitted, it does not necessarily mean that the present accused appellant has also been falsely implicated. As far as the present appellant is concerned, he is alleged to have inflicted a blow by a Basula which has been found to be sufficient to cause death and this part of the statement of the eye-witness is fully corroborated by the medical evidence. He has further submitted that the Investigating Officer has given sufficient explanation as to why the words find place in (he statement recorded by him under Section 161 Cr. P.C. to the effect that he had to change the ball pen and therefore, there is a different ink and since the carbon was not available, it could not be recorded in the carbon copy and the witness did state but he forgot to mention in their statements. In this connection, he has placed reliance on Bala Din v. State of U.P. : 1956 CriLJ345 and Chandrakant Laxman v. State of Maharashtra : 1974 CriLJ309 .

15. We have given our thoughtful consideration to the whole matter and have also perused the judgment of the trial court as also the record of the case and various authorities cited at the bar.

16. In our opinion, in the present case, investigation has not been very fair to the accused appellant. The addition of words 'MAINE SARA HAAL BIJLI KI ROSHN ME DEKHA HAI in the statement of eye witness, recorded under Section 161 Cr. PC is very significant. It is not that while recording the statement of one witness these words have been added but in the statements of all the eye witnesses these words have been added, though they do not find place in the carbon copy which was sent to the Supdt. of Police Office. Therefore, it appears that they might have been added only for the purpose of trial and after the carbon copy having been sent to the office of the Supdt. of Police. as required under the Cr. PC Statements of some of the witnesses were recorded on 29th February. 1984 whereas that of

Ramnarain and Bashira were recorded on 1st March, 1984 i.e, the next day and even in their original statements also, these words are missing.

17. Thus, we are not impressed by the explanation given by the Investigating Officer with regard to these additions.

18. Similarly, in the site plan (Ex. P 6) material words 'KHOON KE CHEETE PADE HUAE HAI TATHA GHASITAN BANI HAI' have been added, though these words are not there in the carbon copy Ex. P 6 A, Presumably, these words were added to support the prosecution case that the deceased was dragged by the accused persons from the place of incident to their house which theory has been disbelieved even by the learned trial court and it has given sufficient reasons for discarding this theory which we need not repeat here to burden this judgment. We have also examined the case of present appellant Ramesh very carefully particularly when the learned trial court has disbelieved all the five eye witnesses with regard to other co-accused persons. In the FIR Ex. P 5 which was a written report by Rameshwar who has been examined as an eye witness by the prosecution, it has not been mentioned that the accused appellant Ramesh had a Basula in his hand and that Ramesh inflicted the blow to the deceased by Basula. Dr. Maru, PW 3 who conducted the post mortem has stated that in his opinion, the cause of death is fracture of skull bone, laceration of brain, haemorrhage, whereas according to the prosecution witnesses, it was Ramesh who had inflicted the blow by Basula and Ravindra by Hathoda and the injuries which have been responsible for the death, could be caused by both Basula and Hathoda. Ravindra has been acquitted by the learned trial court no appeal against him has been filed by the prosecution. The prosecution has utterly failed in proving that the injuries sustained by the deceased were caused by Ramesh alone, which are responsible for the death of Satish. It is true that the court must make an attempt to separate grain from the chaff, truth from the falsehood, yet this can only be possible when the truth is separable from the falsehood. In the present case, we find that the grain cannot be separated from the chaff because the grain and chaff are so inextricably mixed up that process of separation will have to ignore the evidence of the eye witnesses with regard to the accused persons who have been acquitted by the trial court and against whom no appeal has been filed. If the evidence of these

eye witnesses has been disbelieved by the trial court in regard to the participation of the accused persons who have been acquitted, it is difficult to say how it can be accepted so far as the role assigned to the present appellant is concerned. Evidence of the eye witnesses does not inspire confidence and it is really unsafe to rely on evidence of such eye witnesses & convict the accused appellant on their evidence, as has been held in Prem Singh v. State of Punjab : 1977 CriLJ261 , Ram Saran v. Rex AIR 1949 All 594, Even in the case of Ugar Ahir (supra) relied by learned Public Prosecutor, the Supreme Court has observed that the court cannot disbelieve the substratum of the prosecution case or the material particulars of the evidence and reconstruct a story of its own. In the words of the Supreme Court in the present case also, the learned Sessions Judge has reserved the metaphor in removing grain and accepting the chaff and convicted the appellant.

19. Before, parting with the case we would like to mention that the learned trial court has sent a copy of the order to the Inspector General of Police for necessary action with regard to the conduct of Investigating Officer, Dharam Singh PW 14 where in he has been careless in investigation and has added some words in the statements recorded by him under Section 161 Cr. PC and also in the site plan Ex. P. 6 prepared by him The prosecution is expected to be fair in all respects and it is immaterial whether the person is found guilty or not. Courts generally place great reliance on the Investigating Agency and therefore, it is all the more expected that they should not commit such act so as to throw suspicion on the impartiality and fairness of the investigation We hope that the Inspector General of Police must have taken necessary steps in this connection, and issued instructions to all Investigating agencies to be more careful in future and remain always fair while doing investigation.

20. In the result, this appeal is allowed, the judgment of the learned Sessions Judge, Bharatpur, dated 12-6 1986 convicting and sentencing the appellant Ramesh son of Ganga Prasad Jain, under Sections 302 & 448, IPC is set aside, the accused appellant is acquitted of all the charges levelled against him. The appellant may be released forthwith, if not required in any other case.

