

Mohanlal Vs. State

Mohanlal Vs. State

SooperKanoon Citation : sooperkanoon.com/767342

Court : Rajasthan

Decided On : Dec-03-1998

Reported in : 1999(2)WLC269; 1999(1)WLN42

Judge : Arun Madan and; M.A.A. Khan, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 21 of 1996

Appellant : Mohanlal

Respondent : State

Advocate for Pet/Ap. : Mr. Ghanshyam Brijwasi, Mr. Brijwasi

Disposition : Appeal dismissed

Judgement :

Arun Madan, J.

1. On August 26, 1993 at about 6.00 a.m. PW-3 Shankarlal along with PW-4 Heeralal, resident of village Saiawad reached Police Station Bakani in the District of Alwar and informed PW-22 Khemraj, the Station House Officer, that the present appellant had caused death of Ratiram-deceased. On the basis of such report the SHO registered Crime No. 119/93 under Section 302 IPC and commenced investigation.

2. In the course of investigation of the case PW-22 Khemraj, SHO collected the evidence to the effect that PW-1 Smt. Puri Bai, daughter of PW-2 Cheetarlal and PW-11 Smt. Kesar Bai had illicit relations with the appellant-Ratiram, that Smt. Puri Bai had been married with one Prabhulal resident of Surajpura but she left the company of her husband and returned to the house of her parents, that she was then married with one Kanhaiyalal resident of Mahuda (Nayagaon) but she did not stay there also, In her statement Smt. Puri Bai has stated that she has already married for the third time.

3. With regard to the occurrence in the present case the evidence collected was to the effect that on a day prior to the incident, which took place on 26.8.1993 at 6.00 a.m. at village Salawad, PW-1 Smt. Puri Bai and her mother PW-11 Smt. Kesar Bai were returning after responding to calls of nature and when they reached near the Bada of PW-3 Shankarlal, where at the appellant also had his Bada, the appellant appeared on their way all of a sudden and opened an attack with a knife upon Smt. Puri Bai causing injury on her left breast below the nipple and an injury on the shoulder of Ratiram-deceased and then ran away. Smt. Puri Bai and her mother raised on alarm which attracted PW-2 Cheetarlal father of Smt. Puri Bai, PW-3 Shankarlal and PW-4 Heeralal to the place of occurrence. They found Smt. Puri Bai and Ratiram having bleeding injury on their respective persons and they moved them to hospital at Bakani where Ratiram was declared dead.

4. At the hospital PW-7 Dr. Gopal Lal Nagar, examined Smt. Puri Bai, and found an incised wound 1/2' x 1/4' x 1/10' below her left Breast. On Examining the dead body of Ratiram-deceased Dr. Nagar noticed a stab wound 1 1/2' x 1/2' deep upto Lung parenchyma. On opening the body of deceased Dr. Nagar noticed that the wound had punctured the walls, ribs and cartilages of the right side and that right Lung was also punctured. Dr. Nagar opined that the deceased had died of Haemorrhage and Shock due to injury caused to his right Lung.

5. The prosecution case further is that at about 6.00 a.m. on 26.8.1993 the appellant reached police outpost at Richwa under Police Station Bakani and there he stated to PW-10 Gokul Prasad that he had caused death of a person and that he himself had consumed Cellphos Tablets whereupon PW-10 Gokul Prasad,

Constable took the appellant to Police Station Bakani. At the police station PW-22, Khemraj, SHO forwarded the appellant to the hospital at Bakani for his examination. At the hospital at Bakani PW-19 Dr. Pradeep Salodia examined the appellant at 11.30 a.m. but the appellant was not cooperative in his examination and, therefore, Dr. Salodia referred him to the hospital at Jhalawar. At the Govt. Hospital Jhalawar PW-20, Dr. Mohanlal Gupta Obtained Visras from the person of the accused-appellant.

6. It is further alleged that PW-22 Khemraj, SHO arrested the appellant on 27.8.1993 vide Ex. P-15. On the following day the appellant is alleged to have made a disclosure Statement under Section 27 of the Indian Evidence Act to the effect that he would lead to the place whereat the weapon had been kept hidden by him. It is further alleged that in pursuance to such information a knife, alleged to be the weapon of offence in the present case, was discovered from the fields outside the village and seized vide Ex. P-13 on 29.8.1993. However, the recovery of knife has been rendered quite irrelevant and immaterial for the obvious reason that no report from Medical Examiner or the Serologist has been produced at the trial. The alleged weapon has also not been identified by any of the witnesses as being the weapon of offence in the present case.

7. Anyway, after having completed the investigation PW-22 Khemraj, SHO submitted a report under Section 173(2), Cr.P.C. against the present appellant in the concerned court of Magistrate. After the committal of the case to him the learned Sessions Judge Jhalawar tried the appellant for offences under Section 302, 324 and 309 IPC. After trial, the learned Sessions judge, vide his judgment & order dated 28.8.1995 held the appellant guilty of offence under Section 302 & 324 IPC, convicted him as such and sentenced him to imprisonment for life and fine of Rs. 100/- for the offence under Section 302 and one year Rigorous Imprisonment for the offence under Section 324 IPC. The appellant was, however acquitted of the offence under Section 309 IPC. Hence, this appeal.

8. Mr. Ghanshyam Brijwasi, learned Counsel for the appellant, vehemently urged that there was no iota of satisfactory and reliable evidence on the record of the trial Court to connect the present appellant with the commission of offence in the

present case. It was submitted that PW-1 Smt. Puri Bai was a young lady of loose character and her statement cannot be believed. Similarly, PW-2 Cheetarlal and PW-11 Smt. Kesar Bai were the father and mother, respectively of Smt. Puri Bai and were therefore, highly interested witnesses. It was urged that they were also not eye-witnesses inasmuch as, they had reached the place of occurrence after Smt. Puri Bai and the deceased had already been assaulted by their assailants. Mr. Brijwasi further submitted that in fact, PW-2 Cheetarlal and his men had caused the death of Ratiram-deceased and in this respect our attention was invited to statement of PW-5 Bhagchand, the father of Ratiram- deceased who has stated that PW-2 Cheetarlal had taken his son Ratiram-deceased from village Nayagaon to his own village and on the next day he had come to know that Ratiram had been murdered. It was further submitted that the appellant might be having an affair with Smt. Puri Bai he had no grudge or ill will against Ratiram and, therefore, had no motive to open an assault upon him.

9. On the contrary, Mr. G.D. Parwal, learned Public Prosecutor, submitted that PW-1 Smt. Puri Bai was herself an injured witness and since she had very frankly admitted her illicit relations with the appellant, her testimony cannot be rejected. The learned Public Prosecutor further submitted that the occurrence had taken place at about day break when the villagers are normally in their Nohras and that since PW-2 Cheetarlal and PW-4 Heeralal were very much in their respective Nohras, they could have reached the place of occurrence and witnessed the appellant causing hurt to Smt. Puri Bai and Ratiram- deceased. The learned Public prosecutor particularly pointed out to the fact that the report of the incident was lodged within one hour of the occurrence and that soon thereafter Smt. Puri Bai and Ratiram-deceased were examined by the Doctor for their injuries and that injuries caused with sharp edged weapon, as had been stated by Smt. Puri Bai and others witnesses, were found present on their respective bodies. It was further submitted that the learned trial judge has committed no error in relying upon the testimonies of PW-1 Smt. Puri Bai, PW-2 Cheetarlal and PW-11 Kesri Bai.

10. On query from the Bench, Mr. Brijwasi, learned Counsel for the appellant was fair enough to state that in the present case it is not disputed that the deceased had died a homicidal death and that Smt. Puri Bai had also been found having one

injury caused to her with a sharp edged weapon. But what disputed before us was that the present appellant was the author of the injuries either to Smt. Puri Bai or to Ratiram-deceased. On an examination of the testimony of Dr. Nagar, we are satisfied that Rati Ram was caused an injury with a sharp edged weapon on the vital part of his body and that such injury had pierced into his lung causing his death. We are satisfied on discussion to follow that the said bodily injury had been caused to the deceased intentionally and that it was sufficient to cause death in ordinary course of nature. Clause 3rdly of Section 300 IPC is therefore clearly attracted.

11. In the instant case although as many as 23 witnesses were examined by the prosecution but the present case centres around the testimonies of PW-1 Smt. Puri Bai, PW-2 Cheetarlal, PW-3 Shankarlal, PW-4 Heeralal and PW-11 Smt. Kesar Bai besides the medical evidence led by PW-7 Dr. Gopal Lai Nagar, PW-19 Dr. Pradeep Salodia and PW-20 Dr. Mohanlal Gupta. Let us examine if the testimonies of these witnesses may be relied upon against the present appellant.

12. PW-1 Smt. Puri Bai is the lady who appears to be the main cause of the loss of one precious human life. In this case she is a married lady aged about 22 years and has very frankly admitted that she had been married twice but she had left the houses of her husbands. Regarding the incident, she has stated that on the fateful morning she, Smt. Kesar Bai and Ratiram-deceased were returning after having eased themselves and when they were on their way to their house the appellant came out of his Bada and assaulted her on her Breast with a knife. She further stated that the appellant then assaulted Ratiram-deceased with some weapon causing injury to him on the shoulder. The witness further stated that her father PW-2 Cheetarlal and her mother PW-11 Smt. Kesar Bai rushed to her rescue but the appellant ran away. Ratiram took some steps and fell down on the ground and died. Soon after Shankarlal, Heeralal and Gopal PW-12 reached there.

13. PW-2 Cheetarlal and PW-11 Smt. Kesar Bai have also spoken almost in the same language. They have stated that when Smt. Puri Bai, Smt. Kesar Bai and Ratiram-deceased were returning after having eased themselves the appellant had appeared on their way and assaulted Smt. Puri Bai and Ratiram-deceased

with a knife.

14. It is no doubt true that all the above three witnesses are inter related but that itself is no ground to disbelieve them. Other incriminating circumstances of the case, apart from the medical evidence on record, fully corroborate their testimony. As stated earlier, the FIR of the incident was lodged within one hour of the occurrence and therein it had been reported that the present appellant had caused death of the son-in-law of Jagannath. It may be mentioned here that the deceased was also married in village Salawad, as is stated by his father PW-5 Bhagchand. Since all the three witnesses have admitted this fact that Smt. Puri Bai was a young girl of loose character and was having illicit relations with the appellant which, she continued despite protest from them and the village panchayat had also levied a fine upon the parents of the lady, the testimony of all the three witnesses inspire confidence. A witness who admits a fact which adversely affects his own reputation can hardly tell a lie upon such a material fact. All the three witnesses are quite natural witnesses and their testimony is consistent on all relevant and material points. They are quite truthful and reliable witness and their testimony suffers from no infirmity or improbability. The learned trial Judge has rightly believed them and accepted their testimony.

15. PW-3 Shankarlal has stated that he was returning after having eased himself outside the village and on hearing an alarm being raised from the place of occurrence he had reached there. The witness further stated that on reaching there he noticed that some villagers had gathered there and Ratiram was lying on the ground with injuries on his person. The persons gathered at the place of occurrence were saying that Ratiram had been caused injury by the present appellant.

16. PW-4 Heeralal has also spoken almost in the same language. He stated that he was taking his Cattle to the Bada and near the primary school he had met with Ratiram-deceased, that, soon after he heard a noise coming from the place of occurrence whereupon, he reached there and saw Smt. Puri Bai and Ratiram-deceased with injuries on their respective persons. The witness further stated that Smt. Puri Bai had told him that the present appellant had caused injuries to her as

well as to Ratiram-deceased with a knife.

17. Both Shankarlal and Heeralal are not found to be having any enmity against the present appellant. Nothing to that effect has been suggested to them even in cross examination. Both are the residents of that village. That they might be busy with the work, as stated by them, can hardly be disputed, in view of the time and place of the occurrence. It may be appreciated that both have stated that the witnesses present on the place of occurrence had named the present appellant as assailant of Smt. Puri Bai and Ratiram-deceased. Their testimony is clearly relevant and admissible under Section 6 of the Evidence Act and we see no reasons to disbelieve them and reject their testimony.

18. The medical evidence on record, as stated above, fully supports the ocular evidence in the case. The deceased had been found sustaining one stab wound on his shoulder joint and such wound had punctured his right lung. Smt. Puri Bai was also found having an injury below her left nipple. Such injuries could have been and were caused to them with knife blows as stated by the witnesses. Medical evidence on record thus fully corroborates the direct evidence of the witnesses in the present case.

19. After having considered rival submissions and having examined the evidence on record, we are satisfied that the learned trial Judge has rightly appreciated the evidence of PW-1 Smt. Puri Bai, PW-2 Cheetarlal, PW-3 Shankarlal, PW-4 Heeralal and PW-11 Smt. Kesar Bai. Their testimony was fully reliable and convincing and did positively connect the present appellant with the commission of the offence in the present case. The charge brought against the appellant thus stood proved by their testimony beyond reasonable doubt.

20. It was urged by Mr. Brijwasi that the investigation was not fair in as much as that whereas the facts brought on record suggest that the appellant had himself reached police outpost at Richwa on that very day at about 7.00 or 8.00 a.m. and surrendered himself to the custody of the police after having informed the officials there that he committed a cognizable offence and a report in the daily diary, kept at the police outpost had also been recorded vide Ex. P-19 and PW-22 Khemraj, SHO himself had also corroborated PW-10 Gokul that the present appellant had

been produced before him by the police constable from Police Outpost Richwa, yet the SHO could not explain as to how was it that the appellant was arrested on the following day i.e. 27.8.1993 when a case for cognizable offence had already been lodged against him at that very police station on 26.8.1993. The learned Counsel further added that PW-19 Dr. Pradeep 'Salodia has categorically stated on oath that he had examined the appellant on 26.8.1993 at about 11.30 a.m. on the request of SHO Police Station Bakani and then had referred him to the Govt. Hospital at Jhalawar where PW-20 Dr. Mohanlal Nagar examined him. But in the presence of these broad and very well established facts the arrest of the appellant was shown to have been made on 27.8.1993 and a disclosure statement from him was also shown to have been recorded on 28.8.1993 in consequence of which a knife was stated to have been discovered on 29.8.1993 vide Ex. P-13. All these facts, urged Mr. Brijwasi, reflect upon the effort of Khemraj SHO to twist the correct facts of the case and, therefore, the prosecution case be rejected on the ground of unfair investigation.

21. We have given serious thoughts to the arguments advanced by Mr. Brijwasi but fail to agree with him.

22. On our appreciation of the ocular as well as medical evidence in this case we have felt satisfied of the truthful character of the prosecution case. The facts pointed out by Mr. Brijwasi themselves speak that the appellant had himself reached the police out-post at Richwa and made a confessional statement to Gokul Constable there and the police/official had recorded such statement of the appellant in the Daily Diary vide Ex. P-19. Instead of diverting his attention to the collection and proof of such relevant and material evidence against the appellant PW-22 Khemraj SHO appears to have adopted another course of showing his worth as an able Investigating Officer and in his enthusiasm prepared an incorrect arrest memo on 27.8.1993. When the commission of a cognizable offence had been reported to him on 26.8.1993 and a case registered by him on that day in that respect and the person alleged to have committed such cognizable offence had also been produced at the police station by non-else but a subordinate official of the SHO himself, Khemraj SHO could hardly have any cogent reasons for not arresting the appellant on 26.8.1993 and to postpone the same for 27.8.1993.

Such facts reflect adversely on the fairness of the investigation conducted by Khemraj SHO and therefore, his testimony on the point of the disclosure statement, allegedly made by the appellant to him on 28.8.1993 and the recovery of a blood stained knife on 29.8.1993 in consequence of such disclosure statement, cannot be believed. In view of the conduct of the appellant himself of going to the police out-post at Richwa and surrounding to the custody of Gokul Constable there, the theory of arrest of the appellant on 27.8.1993 and subsequent recovery of the knife on 29.8.1993 in consequence of the disclosure statement alleged to have been made on 28.8.1993 does not fit in the facts and circumstances of the case. If the appellant could have thought of hiding the knife at the place wherefrom the same is stated to have been recovered on 29.8.1993, the appellant would not have, in all probability, reached the police out-post Richwa. Little did not Khemraj SHO realise that his endeavour to earn unmerited and undeserved laurels may adversely affect the worth and value of the other natural, convincing and reliable evidence in a case involving the commission of a grave offence. But in our considered view the infirmity in the investigation does not at all adversely affect the value of the ocular and medical evidence in this case.

23. To sum up we hold that since the prosecution had proved the charges under Sections 302 & 324 IPC against the appellant by cogent and reliable evidence beyond reasonable doubt, the learned trial Judge rightly convicted and sentenced the appellant for those offences.

24. In the result, this appeal is dismissed.