

State of Rajasthan Vs. Kania

State of Rajasthan Vs. Kania

SooperKanoon Citation : sooperkanoon.com/767955

Court : Rajasthan

Decided On : Aug-01-1985

Reported in : 1985WLN(UC)138

Judge : S.K. Mal Lodha and; Sobhag Mal Jain, JJ.

Appeal No. : D.B. Criminal Appeal No. 503 of 1984

Appellant : State of Rajasthan

Respondent : Kania

Disposition : Appeal dismissed

Judgement :

Sobhag Mal Jain, J.

1. This appeal on leave granted by this Court Under Section 378(3) of the Code of Criminal Procedure, 1973 is directed against the judgment dated the 23rd February, 1974, of the Sessions Judge, Pali in sessions case No. 2 of 1973 acquitting the accused respondent for the offence Under Section 302 IPC for causing the death of Kistura Harijan of Gundoz.

2. The incident resulting in the death of Kistura took place at about 1.00 P.M. on February 17, 1972 on the Pali-Sumerpur highway six miles from Pali. According to the prosecution Mahboob Ali, PW 2 was coming from Udaipur towards Pali in a

car, when six miles away from Pali he saw the deceased writhing and rolling in pain, Mahboob Ali stopped the car and on his enquiry the deceased told him that Kania Sagara had fixed the gun at him. According to Mahboob Ali a Road-ways bus was already there and 30-40 passengers were standing near the road. Mahboob Ali went to the Police Station, Pali and lodged the first information report the same day, and on this a case Under Section 307 IPC was registered at Police Station Pali. As the case concerned the Police Station Guda-Endla and the deceased also expired, the case was converted into one Under Section 302 IPC and registered at Police Station Guda Endla. During investigation the accused was arrested. A loaded gun was also recovered. After the completion of investigation the police submitted a charge sheet in the court of Munsif Magistrate, Pali who committed the accused-respondent to the court of Sessions to stand trial Under Section 302 IPC.

3. The Sessions Judge, Pali reframed the charge Under Section 302 IPC and recorded the plea of the accused. The accused pleaded not guilty and claimed to be tried. In support of its case the prosecution examined as many as 24 witnesses. Thereafter the statement of the accused was recorded as required by Section 313 Cr. PC. The accused denied the prosecution allegations and stated that at the time when the incident is said to have taken place he was at his own house. He also denied that the gun was recovered from him. There being no eye witness to the occurrence the prosecution based its case on the following circumstances:

(1) that the gun which was used in the incident was recovered from the possession of the accused; and

(2) that the deceased Kistura made an oral dying declaration before Mahboob Ali stating that Kania Sargara of Gundoz had fired the gun shots at him.

The Sessions Judge, Pali by the judgment dated 23rd February, 1974 acquitted the accused, holding, inter-alia, that the allegations that the accused was produced with a gun before the SHO Pali by the constables Chail Singh and Chhatar Singh and that the said gun was loaded at that time are not worth acceptance; that the prosecution has led no evidence to show that this gun belonged to the accused and that the prosecution has also failed to establish that

the metal pieces recovered from the place of occurrence were fired from this gun. Regarding the dying declaration the Sessions Judge held that apart from the fact that the making of the dying declaration itself was doubtful, there was no other material to connect the accused with the crime. No motive against the accused to commit the murder of Kistura was proved. On these conclusions, the learned Sessions Judge acquitted the accused for the offence Under Section 302 IPC. Against this the State has come up in appeal before this Court.

4. We have heard the learned Public Prosecutor for the State and Shri M.C. Bhandari, counsel for the accused. We have closely perused the evidence and have also gone through the reasons recorded by the learned Sessions Judge. The view taken by the learned Sessions Judge cannot be said to be unreasonable. There is no direct evidence and the case against the accused rests on the dying declaration alleged to have been made by the deceased before Mahboob Ali, PW 2. In his statement before the Sessions Judge Mahboob Ali resiled from his statement of the committing court and rather stated that when he was about 6 miles from Pali he saw the deceased rolling in pain. A Roadways bus was already there and the passengers were standing nearby. On enquiry by him the driver of the Roadways bus told him that some one had killed the deceased. The driver had also disclosed that a jeep had already passed that way and had gone to Pali. In this statement Mahboob Ali made no mention about the dying declaration alleged to have been made by the deceased. The witness was declared hostile and his statement recorded in the committing court was tendered in evidence wherein he had stated that on his enquiry the deceased had told him that Kania Sargara had fired the gun at him.

5. The question for consideration before us is, whether the statement of Kania recorded in the committing court is reliable and the conviction of the accused Under Section 302 IPC could be founded on it. We have gone through this statement as also the one recorded during the trial before the Sessions Judge. We concur with the assessment of the learned Sessions Judge that the witness is not reliable and it would be quite unsafe to base the conviction of the accused on his statement recorded in the committing court. It is well settled that unless the view taken by the trial court is shown to be unreasonable and erroneous, the High Court

would not be justified in interfering with his conclusions in an appeal against acquittal. According to the witness when he reached the spot a Roadway bus was already there and 30-40 passengers were standing near the road. None out of the 30-40 passengers, including the driver, support Mahboob Ali that the deceased made a dying declaration implicating the accused. A jeep is also alleged to have been there. Shri O.C. Jigran the occupant of the said jeep was examined but he too was declared hostile. So many people saw the deceased writhing and rolling in pain. A bus and a jeep had been there but none took the deceased to any hospital. Mahboob Ali, who is the author of the first information report chose not to shift the deceased to any nearby dispensary, although the deceased, according to him was then in a helpless condition. Mahboob Ali was in a car. He could have easily taken the deceased to Pali in his vehicle. We do not know what would have happened had early medical aid been provided to the deceased. Looking to all the circumstances we are in agreement with the learned Sessions Judge that the witness is utterly unreliable. We have our own doubts whether the deceased was really alive or in a position to make any intelligible statement regarding his death at a time when the witness reached the spot.

6. The conclusions of the learned Sessions Judge as regards the gun are equally sound and calls for no interference. The learned Public Prosecutor also could not show how the findings of the learned Sessions Judge that the metallic pieces recovered from the spot could not be connected with the gun are erroneous.

7. We see no reason to interfere with the acquittal of the accused respondent passed by the learned Sessions Judge. The result is that the appeal filed by the State stands dismissed.