

Karna Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-14-2001

Reported in : 2002(1)WLC93; 2002(1)WLN417

Judge : N.N. Mathur and; Prakash Tatia, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 299; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 247 of 1997

Appellant : Karna Ram

Respondent : State of Rajasthan

Advocate for Def. : J.S. Choudhary, Adv.

Advocate for Pet/Ap. : Doongar Singh, Adv.; Panney Singh, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Mathur, J.

1. These two appeals arise from the common judgment dated 28th March, 1997 passed by the Special Judge for SC/ST (Prevention of Atrocities) Act Court, Jodhpur in Sessions Cases No. 98/1996 and 100/1996 convicting the appellants

Kama Ram and Dhanna Ram for offence under Section 302 IPC and sentenced each of them to undergo imprisonment for life and to pay a fine of Rs. 100/-; in default of payment to further undergo simple imprisonment of one month.

2. Briefly stated the prosecution case is that on 7th July, 1994 at about 7:00 A.M. deceased Ladu Ram, Head Master, Government Upper Primary School, Raneri left his house for attending the School and while he was passing through the filed of Birbal Ram, appellants Kama Ram from the western side and Dhanna Ram from the southern side armed with Dharia', knife respectively arrived and attacked on him, on account of which, he succumbed to the injuries on the spot. The incident was witnessed by PW-9 Heera Ram- brother and PW-16 Shanker Lal the son of the deceased. PW-9 Heera Ram stayed back at the place of the incident and PW-16 Shanker Lal went to the village Dedasari at a distance of 3 Kms, to telephone the police. He asked PW-12 Noordin to inform the police. Police received the telephonic message at 8:30 A.M. An entry of the said information was made in the Rojnamacha at the Police Station, Baap vide Ex.D4. PW-19 Rajendra Singh the Investigating Officer reached on the spot at about 9:30 A.M. PW-16 Shanker Lal submitted a written report Ex.PIS before the S.H.O., Police Station, Baap. Police proceeded with investigation and a regular F.I.R. Ex.P 16 was registered at 10:30 A.M. by P.W. 17 Madan Singh. During investigation, it revealed that there was enmity between the family of appellants' father Pabu Ram and deceased Ladu Ram. Deceased Ladu Ram and his associates were tried on the charge of murder of Pabu Ram. A panchayati was also convened to settle the dispute between the parties. However, the appellants sons of Pabu Ram expressed their clear intention to kill Ladu Ram. It also revealed that on 6th July, 1994 a conspiracy was hatched to commit murder of Ladu Ram. After usual investigation, police laid charge-sheet against appellants Kama Ram and Dhanna Ram for offence under Section 302, 302/34 & 120-B 1PC and against Ram Kishan and Shanker Lal for offence under Section 302, 120-B IPC. As appellant Dhanna Ram was absconding, the charge-sheet was filed against him under Section 299 Cr.P.C. On being committed appellant Kama Ram along with Shanker Lal and Ram Kishan were tried (Sessions Case No. 98/96). Appellant Dhanna Ram was arrested on 28.2.1996 and as such he was separately tried (Sessions Case No. 100/96). The trial court instead of dealing the case of Kama Ram and Dhanna

Ram separately while delivering the judgment has referred the prosecution witnesses at one place as evidence is almost the same. Similarly the documents have also been referred. We shall also be referring the witnesses and documents in same manner. In Sessions Case No. 98/96 PW-16 Shanker Lal has been examined as PW-5 in Sessions Case No. 100/96 and as such he has been referred as PW-16/PW-5. Similarly the FIR has been marked as Ex.PIS in Sessions Case No. 98/96 and in Sessions Case No. 100/96 as it is referred as Ex.P15/Ex.P2. All the witnesses and documents are referred in the same way.

3. The appellants and other acquitted accused persons denied the charges levelled against them claimed trial. The prosecution in support of the case examined 22 witnesses. The appellants in their statement under Section 313 of the Code of Criminal Procedure denied the correctness of prosecution evidence appearing against them. The accused persons stated that they have been falsely implicated on suspicion because of the enmity. In Sessions Case No. 98/96 the defence examined DW-1 Satya Narayan Joshi. The trial court disbelieved the version of the prosecution so far as the conspiracy part is concerned and accordingly acquitted the accused Shanker Lal and Ram Kishan. However, relying on the testimony of the eye witnesses Heera Ram, Shanker Lal corroborated by the medical evidence and the evidence of recovery convicted both the appellants and sentenced as noticed above.

4. Assailing the conviction, it is contended by Mr. Doongar Singh that it is a case of blind murder and the eye witnesses PW- 9/PW-I. Heera Ram and PW-16/PW-5 Shanker Lal have been planted to secure the conviction of the appellants. He has read to us, in extenso, the evidence of all the material witnesses. It is submitted that while as per the version of PW-16/PW-5 Shanker Lal, he informed the police on phone but PW-19/PW-11 Rajendra Singh has stated that he had received the telephonic call from PW-I2/PW-7 Noordin. It is also submitted that the name of the assailants has not been given to the police In the telephonic message. He did not narrate the incident to any of the persons, who came in his contact. It is further submitted that when the police reached at the place of incident at about 9:30 A.M. Shanker Lal submitted a written report at 9:45 A.M. falsely introducing the names of the accused persons. It is also submitted that statement of PW-9/PW-1 Heera

Ram has been recorded as late as on 11.7.94 inspite of the fact that he was available throughout. It is also submitted that if the FIR was submitted at 9:45 A.M., there was no reason as to why the names of the accused persons did not find place in the inquest report. It clearly shows that FIR was prepared after inquest report and Fard Surat Hal was prepared. The learned counsel has also pointed out certain contradictions in the statements of the material witnesses. It is also submitted that PW-16/PW-5 Shanker Lal stated that his father left the house after taking food but PW- 18/PW-12 Dr. Mukesh Gupta has stated that no food contents were found in the stomach at the time of performing the post-mortem. On the other hand learned Public Prosecutor has supported the judgment of the trial court. Before we deal with the contentions it would be appropriate to indicate the evidence produced by the prosecution.

5. PW-8 Dr. Mukesh Gupta has stated that on 7.7.94 he was Medical Officer posted at Primary Health Centre, Baap. He conducted the post-mortem of the dead body of Ladu Ram. He noticed the following injuries and proved the post mortem report Ex.P.14.

- (1) Incised wound 4' x 2' x 2' Lt. side of forehead.
- (2) Penetrated wound 1/2' x 1/2' x 1/2' Rt. side of neck.
- (3) Penetrated wound 1/2' x 1/2' x 1/2' Rt. side of neck 2' below Rt. ear.
- (4) Penetrated wound 1/2' x 1/2' x 1' just above Lt. clavicle.
- (5) 1/2' x 1/2' x 1', 3' above mid point of clavicle.
- (6) Incised wound 1/2' x 1/2' x 1' lateral side of elbow joint.
- (7) Incised wound 1/2' x 1/2' x 1' postero lateral side of elbow joint.
- (8) Long horizontal incised wound 5' x 1/2' x 1/2' bases of all Lt. fingers.
- (9) Incised wound 1' x 1/2' x 1/2' Dorsum of Rt. Wrist joint.
- (10) Incised wound 1' x 1/2' x 1/2' back of Rt. shoulder joint.

(11) Incised wound 3' x 1/2' x 1' Lt. upperpart of scapula.

(12) Incised wound 2' x 1/2' x 1' Rt. upper part of abdomen at the level of 12th rib.

(13) Incised wound 3' x 1/2' x 1' vertebral coloum of 12th rib.

(14) Incised wound 1/2' x 1/2' x 1' Lt. scapula.

(15) Incised wound 1/2' x 1/2' x 1/2', 4' below Lt. Nipple.

In his opinion the deceased died due to external haemorrhage by wound all over body as described in the post-mortem report and internal haemorrhage of brain due to fracture of frontal bone i.e. mainly inlera cerebral haemorrhage.

6. PW-9/PW-1 Heera Ram, who is the brother of the deceased has stated that on the date of incident at 7:00 A.M., while he has getting ready for going is the field, he heard distress call from the field of Birbal. He rushed to the field and found that Dhanna Ram and Kama Ram were assaulting his brother Master Ladu Ram. Kama Ram was armed with a knife and Dhanna Ram with a 'Dharia'. Ladu Ram died on the spot. He also slated that Shanker Lal also reached on the spot along with him. They unsuccessfully tried to chase Dhanna Ram and Kama Ram. He asked Shanker to go to village Dedasari and inform the police on telephone. He also asked to inform the relatives. There is a lengthy cross-examination, but nothing has been elicited to discredit the testimony of this witness. With respect to the delay in recording his statement by the police, he has stated that on the next day of the incident, he left for the field known as 'Sihada Wala' field. On his return, police recorded his statement.

7. PW-16/PW-5 Shanker Lal is the son of the deceased. He has stated that his father deceased Ladu Ram was the Head Master in the Government Upper PrimarySchool, Raneri. On the date of incident at 7:00 A.M. he left the house for attending the school. He proceeded on the foot track passing through the field of Birbal Ram, at that time he was standing out side the house. He witnessed that as soon as his father entered in the field of Birbal Ram, accused Kama Ram from the western side and accused Dhanna Ram from the southern eastern side came running armed with knife and 'Dharia' in the hand and attacked on his father.

Hearing the out cry of his father, he along with his uncle Heera Ram reached on the spot. Seeing them, the accused persons ran away. They reached near the body of his father and found that he was dead. He has also stated that his father was killed on account of enmity. His uncle pacified him and asked him to proceed to village Dedasari and inform the police on telephone. He went to Dedasari and informed the police on the telephone. The police thereafter reached on the spot at 9:30 A.M. He submitted a F.I.R. before the police. In the cross-examination, he admitted that deceased Ladu Ram left the house after taking break-fast. He also stated that he could not give the names of the accused persons on telephone to the police as he was terribly and mentally disturbed on account of death of his father. He also stated that he himself did not telephoned to the police, but asked the Poonam Chand and others on the Telephone Booth to convey the message. He did not disclose the names of the assailants as the Poonam Chand and other persons did not inquire from him. Nothing substantial has been elicited in the cross- examination from this witness to discredit his testimony.

8. PW-12/PW7 Noordin is essentially a witness of the preparation of necessary papers by the police on the spot. However, in the cross-examination, he has admitted that as per the instructions given by Shanker Lal, he telephoned to the police at Baap. He also admitted that he did not inquire the names of the assailants from him.

9. PW-5 Sahi Ram has stated that on the date of incident while he was on way to his 'Molikiya Wala' field from the Dhani, Heera Ram met him and disclosed that Ladu Ram has been murdered by Dhanna Ram, Kama Ram, Shanker Lal and Ram Kishan. PW-13 Birbal Ram has stated that he was told by Sahi Ram that Master Ladu Ram has been killed, His son also disclosed that he had seen Dhanna Ram, Kishan, Kama Ram running from the side of the place of incident. The evidence of PW-13 Birbal - Ram is a hear-say and, therefore, is not of any use.

10. On careful scrutiny of the testimony of PW-9/PW-1 Heera Ram, we do not find any infirmity in his statement. The only criticism levelled against this witness is that his statement has been recorded after four days of the incident. He has stated in

the cross-examination that on the next date of the incident, he left for the field known as 'Sihada Wala' field and on return, the police recorded his statement. Thus, there is an explanation of delay in recording the statement. The presence of this witness is quite natural as his house is Very close to the place of incident. Similarly, we do not find any infirmity in the statement of PW-16/PW-5 Shanker Lal. He has stated that he was standing out side his house. His deceased father Ladu Ram left for the school. The field of Birbal Ram, which the place of incident is at a visible distance from his house. . The only criticism levelled against this witness is that he did not disclose the names of the assailants while informing the police on telephone. The learned counsel has tried to capitalised on the point of contradictions that while he has stated that he informed the police on telephone PW-19/PW-11 Rajendra Singh has stated that information was received from Noordin. His slated by PW- 12/PW-7 Noordin that on asking by Shanker Lal, he telephoned to the police. The witness must be disturbed, having seen the murder of his father and as such, it is just possible that he might not have disclosed the names of the assailants to Noordin. This contradiction is not of such a dimension that on account of which the testimony of this witness may be discarded totally. There is no reason for this witness to falsely implicate the appellant. The statement of this witness is natural and trustworthy.

11. PW-19/PW-11 Rajendra Singh, the Investigating Officer has staled that a blood-stained knife was recovered from the possession of appellant Kama Ram vide Ex.PS in pursuance of the information Ex.P.18. The recovery been made in presence of PW-2 Jeevan Ram and PW-8 Multan Ram. Both witnesses have supported the recovery. Similarly a blood-stained shirt has been recovered vide Ex.P9 in pursuance of the information vide Ex.P19 in presence of the motbirs PW-11 Gokala Ram and PW-21 Virendra Singh. It is stated by PW-I9/PW-11 Rajendra Singh that both the articles were packed and sealed on the spot. The articles were deposited in the Malkhana. There is an evidence of PW-11 Gokal Ram that on 7.7.94 he was Head Constable at Police Station, Baap. Three articles were deposited in the Malkhana. He has also proved the entries Ex.PIO, Ex.P11, and Ex.P12 in the Malkhana Register. PW-22 Sahi Ram has stated that he has taken the said articles for delivery to the Forensic Science Laboratory. PW-22 Sahi Ram has also stated that he has delivered the articles in the office of the

Superintendent of Police in sealed and intact condition. The FSL report Ex.P24 shows that both the articles i.e. the knife and the shirt were stained with human blood. The appellant has not given any explanation as to presence of blood spots on the knife as well as the shirt. It is an important incriminating circumstances against the appellant Kana Ram Similarly the circumstance of absconding is an important circumstance against appellant Dhanna Ram.

12. Thus, the statement of the eye witnesses PW-9/PW-1 Heera Ram and PW-16/PW-5 Shanker Lal corroborated by the medical evidence, prompt FIR and the incriminating circumstance of recovery of knife and shirt from the possession of Kana Ram and the evidence of absconding against Dhanna Ram conclusively establishes the guilt against the appellants. The trial court has rightly convicted the appellants for offence under Section 302 1PC.

13. Consequently, we find no merit in both the appeals being D.B. Criminal Appeal No. 247/97 and D.B. Criminal Appeal No. 246/97 and the same are dismissed. The appellants are in jail. They will serve out the remaining part of the sentence.