

State of Rajasthan Vs. Patiya

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Court : Rajasthan

Decided On : Nov-08-1985

Reported in : 1985WLN(UC)382

Judge : Milap Chand Jain and; Jas Raj Chopra, JJ.

Appeal No. : D.B. Criminal Appeal No. 454 of 1975

Appellant : State of Rajasthan

Respondent : Patiya

Disposition : Appeal dismissed

Judgement :

Milap Chand Jain, J.

1. The respondent Patiya was acquitted of the offence under Section 302 IPC by the Additional Sessions Judge, Sirohi by his judgment dated November 11, 1974.

2. The prosecution case in brief is that Mst. Seeta developed illicit intimacy with her cousin Ajiya (deceased). He was unmarried. The accused-respondent is brother of Mst. Seeta. She even conceived and for the purpose of abortion she was taken to the well of the deceased. The members of the family of Mst. Seeta came to know of it and she was brought back and was hurriedly married to one Teja. It is said that accused Patiya was enraged on account of such illicit relations

having been developed by the deceased with his sister. It is alleged that on May 5, 1974 at about 7.30 P.M. the deceased Ajiya came from the side of Meghwalo-ka-Bas and the accused Patiya came from the opposite direction. The accused gave a knife blow on the chest of Ajiya who tried to run away but the accused followed and struck another blow with knife as a result of which Ajiya fell down and accused Patiya gave some more blows and then ran away. The occurrence was witnessed by Karan Singh P.W. 14, Kheem Singh P.W. 2, Mst. Wadki P.W. 7 and Mst. Modki P.W. 8. Bheek Singh P.W. 1 reached the spot soon after the occurrence and saw the dead body. He found Shankerlal P.W. 11 at the spot who is sister's son of the deceased. On the basis of the information given by Shankerlal, Bheek Singh proceeded to the police Station Barloot on the same day at 8.30 p.m. and lodged the First Information Report Ex. P.1 at the police Station. The station House Officer Jaswantsingh P.W. 13 recorded the First Information Report and registered the case and thereafter proceeded to village Manora and deputed some persons to keep a watch over the dead body and thereafter he returned at the police station. The accused also went to the police station at about mid night with the blood stained knife Ex. 4 and blood stained clothes. His blood stained knife and clothes were seized. On the next day morning the Station House Officer visited the spot and conducted the spot investigation. Investigation was conducted from the witnesses. Autopsy of the dead body was got conducted and the accused was arrested and was got medically examined. After completion of investigation a charge-sheet was presented against the accused and the accused was ultimately sent for trial to the court of Additional Sessions Judge, Sirohi, who charged the accused for the offence under Section 302 IPC to which the accused did not plead guilty and claimed to be tried. The prosecution in all examined 16 witnesses. After hearing arguments the learned Additional Sessions Judge acquitted the accused of the offence Under Section 302 IPC. The four eye witnesses, namely, Kheemsingh PW 2, Karansingh PW 14, Wadki PW 7 and Mst. Modki PW 8 did not support the prosecution and the three witnesses relating to evidence of extra judicial confession, namely, Kapura PW 4, Jodha PW 5 and Otaram PW 6 also did not support the prosecution. Learned Additional Sessions Judge then considered the evidence of Shankerlal PW 11 a boy of 15 years. Learned Sessions Judge observed that he is a chance witness and is also related to the deceased, being

the sister's son of the deceased, and he has contradicted himself in material particulars. His evidence, therefore, cannot be said to be of sterling worth and it will be extremely unsafe to convict the accused for the capital offence on the solitary testimony of this witness. The learned Sessions Judge then considered the case in the light of the statement of the accused, wherein the accused admitted that he inflicted knife blows on Ajiya. He narrated the circumstances in which he had so acted. The version of the accused was then examined by the learned Additional Sessions Judge on the basis of the material on record and he found that the version given by him is worthy of credence. In any case the defence taken by the accused is probablised in the circumstances of the case and he found that it appears that the accused acted in exercise of right of private defence. Consequently, the order of acquittal of the accused was recorded. Hence this appeal by the State.

3. We have heard Shri L.S. Udawat, learned Public Prosecutor for the State and Shri Suresh Kumbhat, learned counsel for the accused-respondent Mr. L.S. Udawat, learned Public Prosecutor for the State submitted that the evidence of Shankerlal PW 11 has been wrongly discredited by the learned Additional Sessions Judge. The presence as this witness is well established from the statement of Bheeksingh. His name finds mention in the first information report. It was Shankerlal who was the source of information to Bheeksingh. The testimony of this witness has not been appreciated by the learned Additional Sessions Judge in its correct perspective. Some inconsistencies have occurred in his testimony but on the basis of the inconsistencies his statement should not have been disbelieved. We have been taken through the statement of Shankerlal PW 11. It may be stated that his statement does not appear to be wholly reliable. Even if it is taken to be true that he was present at the place of occurrence, still it cannot be found that the occurrence took place in the manner as stated by him. The accused had the following injuries on his person as stated by Dr. K.R. Mathur PW 12:

(1) Incised wound 1/-2' x 1/8' superficial on the front of the middle of the distal phalanx of right index finger;

(2) Incised wound 1/-2' x linear x superficial on the front of the distal phalynx of the right middle finger near the interphalyngeal line;

(3) Incised wound 1/-2' x linear x superficial on the front of the middle of the middle phaynx of right ring finger;

(4) Incised wound 1/-4' x linear x superficial on the front of the distal phalynx of the right little finger near the inter phalyngeal line.

and according to him all the injuries of Patia were the result of knife coming into contact once. He has further stated that these injuries may be caused while snatching the knife & these injuries cannot be self inflicted. From the presence of the injuries on the person of the accused it would appear that he was defending himself and in the process of defending he had caught hold of the knife and sustained these injuries. This would show that the occurrence had not taken place in the manner as stated by Shankerlal PW 11. According to Shankerlal, Patia was sitting some where which he did not know but soon after his arrival at the spot the accused inflicted a knife blow on the chest of Ajiya. Thereafter Ajiya took a turn and tried to run away, but he was chased and while he was so chased the accused inflicted one more knife blow and the accused fell down 8-10 steps away. Thereafter further knife blows were given by the deceased on the head and other parts of the body of the deceased. He has no where explained the injuries on the person of the accused. Thus it can be found that the occurrence did not take place in the manner as stated by this witness. If the statement of this witness is viewed is this light, the defence version gets probablised. It may be mentioned that the conduct of the accused appears to be above board. Soon after the occurrence he narrated the occurrence to the other witness PW 4 Kapura and came with a version that he has acted in his defence. The accused even went to the police station at the mid night in the very position in which he was at the time of occurrence. This part of the statement of PW 11 Shankerlal cannot be relied upon that after falling of the deceased, knife blows were continued to be inflicted. So the question of exceeding the right of private defence does not arise. The accused had stated that the deceased tried to strangulate him. When the accused had reasonable apprehension not only of greivous hurt but even of death, the accused

was within his right to open a murderous assault on the deceased. The learned Addl. Sessions Judge was right in observing that it cannot be expected from a person who is apprehending a grave danger to modulate his defence step by step. We, therefore, agree with the learned Additional Sessions Judge and the learned Addl. Sessions Judge was right in entering an order of acquittal of the accused.

4. In the above view of the matter, in our opinion, this appeal has no force, so it is hereby dismissed.

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