

Gopal Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-28-1987

Reported in : 1987WLN(UC)305

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Appeal No. 3 of 1982

Appellant : Gopal Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Ashok Kumar Mathur, J.

1. This is an appeal of the accused from jail against his conviction under Section 302 IPC and sentencing him to life imprisonment and a fine of Rs. 100/- and in default of payment of fine to further undergo one month's rigorous imprisonment.

2. The facts giving rise to this case are that deceased Damaram was living with Keshuram in 62 R.D. Accused Gopal Singh, deceased Damaram and Keshuram are the employees of the Rajasthan Canal Project, Anoopgarh Branch. On 8-7-1980 in the evening deceased Damaram along with accused Gopalsingh went to 62 RD at the house of Keshuram. There they took their food and afterwards laid

down their cots in front of their hut and slept separately on the three cots. Deceased Damaram while sleeping at the cot was listening the radio. This was objected by Keshuram as he was suffering from fever. But on refusal by Damaram to stop playing with the radio Keshuram took away his cot about 10 to 11 feet away and slept there. The keys of the hut were with Gopalsingh accused. At about 11 p.m. in the night some sound was heard that woke up Keshuram and he saw that accused Gopalsingh was standing near the cot of deceased Damaram and he was armed with Kassi. Keshuram asked the accused Gopalsingh that what he is doing then Gopalsingh shouted that I have already killed one person and if he comes near he will be dealt with as well. Thereafter the accused Gopalsingh went to the hut and Keshuram went near the cot of the deceased Damaram and found that Damaram was lying in a pool of blood and blood was oozing from his neck. Accused Gopalsingh meanwhile came out with his attaches and Kassi and he left that place. Keshuram immediately rushed to one Palluram whose house was about 150 feet away from their hut and he informed Palluram about the whole incident. After that they went to inform other officials. Palluram and Keshuram went to one Nathuram and he was also informed about the incident. Thereafter all the three, namely, Keshuram, Palluram and Nathuram went to Vijay Kumar another employee of the Rajasthan Canal Project and he was also informed about the incident. Vijay Kumar informed the Overseer concerned and thereafter all went to 62 RD. Thereafter, a First Information Report was filed by Vijay Kumar at Police-Station Suratgarh on 9-7-1986 at 5 a.m.

3. The police registered a case under Section 302 IPC and took up the necessary investigation. The police reached the scene of occurrence and inspected the site. The dead body of deceased Damaram was sent for post mortem. Accused Gopalsingh was also arrested during the course of investigation and one Kassi was also recovered at his instance. The blood stained Kassi was sent for chemical examination and it was found to be positive for human blood. After the close of the investigation the police filed a challan against the accused under Section 302 IPC.

4. During the course of trial, the prosecution examined as many as 11 witnesses and the accused in his defence examined two witnesses. The learned Additional Sessions Judge after the close of trial found the accused guilty under Section 302

IPC and sentenced him to life imprisonment and a fine of Rs. 100/- and in default of payment of fine to undergo one month's rigorous imprisonment.

5. Aggrieved against his conviction and sentence the accused preferred this jail appeal before this Court. The accused was previously represented by Mr. O.C. Chatterji, but he expired and thereafter he was not represented by any Advocate as such we appointed Mr. S.K. Mathur as Amicus Curiae to appear on behalf of the accused.

6. The whole case hinges on the testimony of PW 1 Keshuram. PW 1 Keshuram was living at 62 RD He has deposed that all three of them, i.e. he along with deceased Damaram and accused Gopalsingh took their meal and then went to sleep on their cots. In mid night at 11 p.m. when he heard some sound he got up and what he saw was that accused Gopalsingh was standing armed with Kassi in his hand near the cot of deceased Damaram and deceased was lying on the cot in the pool of blood. The accused, did prevent him to come near and threatened him that he has already done away with one person and if he comes near he will also be dealt, with. Thereafter the accused left along with Kassi and attachee from the hut. PW I Keshuram informed this immediately to the next neighbour Palluram PW 9 and then to Nathuram and Vijay Kumar and similarly this incident was also informed to Inderjeet Singh SDO. The version of PW 1 Keshuram stands supported by Vijay Kumar PW 2 and CW 1 Inderjeet Singh. All these witnesses have deposed that this narration was given out by Keshuram to them. Vijay Kumar is a person who has filed the FIR in which he has narrated all the facts which were informed to him by Keshuram. PW 9 Palluram has turned hostile and Nathuram has appeared as DW 1 to support the defence version.

7. Learned Amicus Curiae has sternuously urged that Keshuram is not a reliable witness. He argued that Keshuram is not the witness of the actual incident. What he saw that the accused at late night was standing near the cot of the deceased armed with a Kassi and the deceased washing in the pool of blood. Learned Amicus Curiae submits that who has actually struck the blow to the deceased has not been witnessed by any person. It is only after the death of deceased the accused Gopalsingh was found standing near the cot along with Kassi. Thus,

learned Counsel submits that this itself is not enough to connect the accused with the commission of the crime. Learned Counsel further submits that this version which has been given out by PW 1 (Keshuram has not been supported by Palluram as PW 9 Palluram has turned hostile and DW 1 Nathuram has supported defence. Therefore, the sole testimony of Keshuram is not of sterling worth so as to rely upon for conviction. In this connection, learned Counsel has relied upon *Sharad Birdhkhand Sarda v. State of Maharashtra (1) : 1984 CriLJ1738*

8. We have considered the arguments of the learned Counsel and we are of the view that the testimony of PW 1 Keshuram is wholly reliable and dependable. It is true that Keshuram only saw the accused standing armed with Kassi near the cot of the deceased and the deceased was lying in the pool of blood. Thereafter, the accused left the scene of occurrence along with attachee and Kassi and he was arrested on the next day i.e. 9-7-1980 when he was trying to escape. Though the defence has examined DW 1 Nathuram and DW 2 Magharam to support that the accused was going to his village after receiving the salary. But the testimony of both these witnesses appears to be wholly unreliable and they are got up witnesses. Nathuram who was informed about the incident instead of supporting the prosecution case has supported the defence version. In fact the testimony of PW 1 Keshuram has a ring of truth as the testimony of this witness appears to be corroborated by the testimony of Vijay Kumar and CW 1 Inderjeet Singh, SDO. The same finds mention in the First Information Report which was filed on 9-7-80 in the early morning at 5 a.m. by Vijay Kumar. Though Palluram PW 9 has turned hostile but when he was cross-examined and confronted with his police statement where he has stated that while the accused and deceased were playing the cards they fought with each other and deceased Damaram gave beating to Gopalsingh. This statement was completely disowned. But from the narration of the events it does transpire that there was some immediate cause for the accused to do away with deceased Damaram. However the clinching circumstance which stands out is that Keshuram saw the accused standing armed with Kassi near the cot of the deceased and the deceased was lying in the pool of blood and thereafter the accused ran away from the place of occurrence is itself a clinching circumstance which establishes the guilt of the accused and excludes every other hypothesis.

9. In Sharad's case (1), their Lordships of the Supreme Court has enumerated that in order to convict the accused on the basis of circumstantial evidence, it should be such that they are only consistent with the guilt of the accused and they exclude every hypothesis except the one which proves the guilt of the accused. In the present case the testimony of Keshuram appears to us to be reliable and squarely proves the guilt of the accused.

10. Learned Counsel has also laid much stress on the question of blood stained Kassi which has been recovered at the instance of the accused and the same was sent for chemical examination of the blood. Learned Counsel submits that it has not been established that how the blood stained Kassi was sealed and sent for chemical examination. It has further been argued that whether those sealed container of the blood stained Kassi reached the Chemical Examiner intact condition or not. Learned Counsel argues that there is no evidence to prove this. It is true that no evidence has been led by the prosecution that as to who took the sealed blood stained Kassi to the Chemical Examiner and the seal was intact or not. But we have found that the testimony of Keshuram is clinching one and it leaves no doubt, therefore, nothing turns on this question.

11. Thus, in the result, we do not find any merit in this appeal, the conviction and sentence of the accused under Section 302 IPC is confirmed and the appeal of the accused appellant is dismissed.