

Om Prakash Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-18-2000

Reported in : 2000(2)WLN489

Judge : N.N. Mathur and; D.N Joshi, JJ.

Appeal No. : D.B. Cri. Appeal No. 398 of 1991

Appellant : Om Prakash

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. P.N. Mohnani

Disposition : Appeal allowed

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 24.10.1991 passed by the learned Sessions Judge, Bhilwara in sessions case No. 11/91 convicting the accused appellant of offence under Section 302 I.P.C. and sentenced him to imprisonment for life and to pay a fine of Rs. 500/- and in default of payment to further undergo 2 months' R.I. The appellant has also been convicted of offence under Section 201 I.P.C. and sentenced to 1 year's R.I. and to pay a fine of Rs. 200/- in default of payment to further undergo 1 month's R.I. Both the sentences

have been ordered to run concurrently.

2. The prosecution case in brief is that PW/2 Suryabhan Singh submitted a report written by PW/1 Banshi Lal at Police Station, Raipur stating interalia that his younger brother Badri Lal was living in house outside the village for last more than 20 years. He used to live alone. As Badri Lal was sick for last 7 to 8 days he had gone to enquire about his health. On opening the main gate, he did not find Badri on the cot. He entered in the house thinking that he might have gone to answer call of the nature. After about 1/2 an hour Ram Chandra and Kalu passed through from that side. He called them and entered inside. He found blood on the floor. There were also sign of dragging. On search, he found the dead body of Badri dumped in a pit. He also found a shirt smeared with blood on the spot. On this information. Police registered a case of offence under Section 302 I.P.C., and proceeded with the investigation. The police prepared the inquest and sent the body of Badri Lal for Post-Mortem. The statement of PW/3 Dalpat Singh was recorded on 26.10.1990 wherein he disclosed that the murder was committed by the accused Omprakash. The accused appellant was arrested on 31.10.1990. A 'Kulhari' and Watch were recovered in pursuance of the information given by the accused. After usual investigation, Police laid chargesheet against the accused appellant of offence under Sections 302 and 201 I.P.C.

3. The accused pleaded not guilty to the charges levelled against him and claimed trial. The prosecution in support of the case examined 20 witnesses and produced certain documents. The accused in statement under Section 313 stated that the entire evidence produced by the prosecution against him is false. He also stated that he did not kill Badri and he has been falsely implicated. He also stated that initially PW/3 Dalpat was caught by Police but, subsequently, he was released. After releasing Dalpat, he has been falsely implicated. The trial court discarded the evidence of recovery of Kulhari and Watch. The evidence with respect to the recovery of the blood stained cloth was also discarded on the ground that the prosecution failed to produce report of the Forensic Laboratory. However, the learned Judge relying on the testimony of PW/3 Dalpat held the accused appellant guilty of the charge of the murder of Badri Lal Accordingly, convicted him of offence under Section 302 I.P.C. and sentenced him as stated above.

4. Assailing the conviction, Mr. P.N. Mohnani, learned Counsel for the appellant has severally criticised the testimony of PW/3 Dalpat. It is submitted that PW/3 is a got-up witness. He did not disclose the identity of the accused at the earliest to anybody including his mother and sister. He also submitted that Dalpat was kept in police custody for 15 days. With respect to the injury on his palm, it is submitted that though even according to the police, he was first interrogated on 26.10.1990 but, he was medically examined as late on 3.11.1990. It is submitted that the explanation given by the Investigating Officer in that regard clearly shows that the police was working under the pressure of outside agency. On the other hand Mr. Panny Singh has supported the judgment of the trial court.

5. We have scanned the prosecution evidence carefully, PW/11 Dr. S.N. Mundra stated that on 23.10.1990, he conducted the post-mortem of the deceased Badri and found following injuries on his person:

1. Incised wound with dark clotted blood measuring about 10cm. x 8cm x 4cm. on right side of neck. Margins of wound were sharp. Blood vessels on right side were ruptured.
2. Incised wound with sharp margins 3cm x 1-1/2 cm. on left infra clevicular region of chest wall.
3. Ligature mark on both infra clevicular region of chest wall encircling the lower part of neck and shoulder region.
4. Stab wound 3cm. x 2cm. piercing the whole abdominal wall through which peritoneum visible, clotted blood was present in and around the wound.

He has proved post-mortem report Ex. P/10. In his opinion injury Nos. 1, 2 & 4 were caused by sharp edged weapon whereas injury No. 3 by blunt object. Injuries No. 1, 2 and 4 were antemortem and injury No. 3 Post-mortem in nature. In his opinion injury No. 3 was greivous and injury No. 1, 2 and 4 were sufficient in ordinary course of nature to cause death. Thus, the prosecution has succeeded in establishing that the deceased Badri Lal died of homicidal death.

6. PW/3 Dalpat has stated that in the afternoon of 22.10.1990 he was on the hand-pump fetching water. At that time, the accused Om Prakash asked him to accompany. He returned after putting the bucket of water at his residence. The accused Om Prakash asked him to go to the house of Badri to enquire about his health as he was ill. He went to the house of Badri alongwith Om Prakash, at that time Badri was sleeping on the cot. The accused Om Prakash asked him that he may proceed and we will follow him after visiting the 'Bara'. When he reached near the house of Badri, he found that Shyam Lal was sitting there. He enquired from Badri about his health. He tried to sit on the cot but Badri asked him to sit on the another small cot lying there. Thereafter Shyam Lal left the house. After some time the accused Om Prakash arrived. As soon as he entered in the house, he closed the main gate of the house. Badri enquired as to who he was? The accused Om Prakash replied that it was he. Badri asked Om Prakash as to why he has come to his house inspite of the fact that relation with him is not cordial. The witness stated that even enemy can enquire about the health. Om Prakash sat down on the cot of Badri. Then there was exchange of words between accused Om Prakash and deceased Badri. Accused Om Prakash enquired from Badri as to what allegations he has made against him. Badri retorted and as to what he has said about him, on which, Om Prakash stated that he had spread rumour that a girl of Khatik community was raped by him (Om Prakash) on which, Badri stated that he has made such allegations against him saying that he (Badri) has raped a girl of Brahmin community namely Leela. On this the accused Om Prakash lost his temper and asked Badri as the who he was to say all this. Om Prakash picked up a 'Dantli' and stabbed in the stomach of Badri. Badri immediately got up and enquired as to what harm he has caused to him. The witness also stated that he intervened and caught 'Dantli' on account of which, he sustained certain injuries on his palm. When he tried to took out the 'Dantli', the accused Om Prakash gave a Kulhari blow on the neck of Badri, on account of which, he fell down. On falling of Badri, Om Prakash put a lock on the main gate of the house. Om Prakash pressed the neck of Badri as he was still breathing. Om Prakash brought a rope and made a noose of it and put the same around the neck of Badri. There was bleeding from the neck of Badri. The accused picked up a 'Jabha' lying there and put it around the neck of the deceased Badri and pulled. The tongue of the Badri came out from

his mouth and he died. Om Prakash thereafter put a quilt on the body of Badri. The witness asked Om Prakash that he may be permitted to go out, on which the accused Om Prakash threatened him that if he speaks about the incident, he will be cut into pieces. The accused Om Prakash asked him to sit down, The accused Om Prakash was carrying a 'Kulhari' in his hand. Thereafter, Mehga Bheel arrived there and gave a call to Badri to open the gate. On his asking to open the gate the accused threatened to keep quiet otherwise he will be killed. Meanwhile, Mehga went away. The accused put him in Kotha which is used for storing the grain. Thereafter, the accused dig a pit. After some time he was taken out from the Kotha. He has further stated that after some time Suryabhan also arrived in a tractor. He gave a call to Badri to open the gate, but the accused did not open the gate. Suryabhan also left the place. He was thereafter brought down from the Kotha. He noticed that the dead body of Badri was dumped in the pit. The accused asked him to open the box. He offered to give him money lying in the box, which was declined by him, saying that he does not require money. Thereafter, the accused opened the box and made search of the cloths lying in the box. Some papers were lying in the box. The accused put all these papers on the dead body of the deceased Badri. The accused thereafter took the watch of the deceased Badri and wanted to give him but he declined to accept the same. The accused also asked him to throw soil on the dead body. He declined to do so. The accused thereafter threw him on the ground and set on his chest and started throwing soil on the dead body. Thereafter, he switched off the lamp and radio. He thereafter brought him from inside the house and asked him to sit on the main gate. Thereafter Dalu arrived there. Dalu gave a call to Badri for opening the gate. Thereafter, Sohan arrived there. Dalu told Sohan that Badri was not opening the gate. Sohan also gave a call. He asked accused to open the gate. After some time Dalu and Sohan went away. Thereafter the accused Om Prakash expressed that first he will go out. However, on opening the gate, he (Dalpat) came out. He went to his house, where his mother was sitting. He became unconscious and fell down. Thereafter, he was taken to the place of worship. As the accused Om Prakash threatened him that if he discloses the incident to anybody, he will be killed. Thus, he did not disclose the incident to any body including the family members. After three days police had visited his house. He disclosed the entire incident to them.

In the cross-examination he admitted that at the place of worship there were about 100 to 200 person. At about 12 P.M. he returned to the house and took dinner. He also stated that he was a student of VIIIth and in the morning he had gone out of the house to answer the call of the nature. He also admitted that on 23.10.1990 many people had come to his house to enquire about his health. He also admitted that Police visited the village on 23.10.1990. On 24.10.1990 police had taken him to the police station and gave him slaps. Initially he did not disclose about the incident but, subsequently, he narrated the entire incident. He remained at the police station from 24.10.1990 to 26.10.1990. He also stated that he was released from the police custody only after 15 days. He also admitted that he narrated the entire incident to Sarpanch on 24. 10. 1990 in presence of the S.H.O. He made it clear that he had narrated the entire incident to the Police on 23rd Oct., 1990 itself. He admitted that on 23rd October, 1990 when the police had taken him to the police station, he had shown the injuries on his palm but, police sent him for the medical examination only after 3-4 days. He also admitted that till he narrated the incident to the Police, he did not disclose the incident to anybody.

7. The question arises for the consideration is, as to whether the conviction of the appellant can sustain on the sole testimony of PW/3 Dalpath. On careful scrutiny of statement of PW/3 Dalpath, we are of the view that it is not safe to accept his statement implicating the accused appellant for the murder of the deceased Badri for the following reasons:

(1) PW/3 Dalpath Singh in the examination in chief stated that the police approached him three days after the date of incident, but in the cross-examination he had stated that the police had taken him to the police station on 24.10.1990. Thereafter he stated that he narrated the entire incident to the police on 23.10.1990 itself. In another breath, he stated that he narrated the entire incident to the Sarpanch on 24.10.1990 in the presence of the S.H.O. On the other hand PW/18 Ganesh Dan, the Investigation Officer has stated that the first time he had called PW/3 at the police station on 26.10.1990. Thus, prosecution evidence is not consistent on the most material fact as to at what point of time Dalpat Singh was first interrogated and he disclosed the incident.

(2) PW/3 Dalpat Singh stated that on 23.10.1990 when he was taken to the police Station, he showed injuries on his palm which was sustained by him during the incident. He also stated that he was medically examined after 3 or 4 days. According to this statement, he must have been examined on 26.10.1990 or 27.10.1990. The Investigating Officer categorically stated that PW/3 Dalpat was called at the police station on 24.10.1990 and 25.10.1990. but he was medically examined for the injuries only on 26.10.1990. It is significant to notice that the injury report is of 3.11.1990. The question is if PW/3 Dalpat had shown injuries on the palm on 26.10.1990 as per the saying of PW/18 Ganesh Dan as to why he was not immediately medically examined? PW/18 Ganesh Dan, Investigating Officer has given an explanation by saying that he had not received any instructions from the higher police authorities in that regard. He also stated that he did not consider appropriate to get PW/3 medically examined till then. We failed to understand as to what for Investigating Officer was awaiting for the instructions of the higher police authorities forgetting PW/3 Dalpat Singh medically examined. He was the incharge of the case and he was competent to investigate the matter in an appropriate manner. This suggest that investigation officer was not investigating the case independently.

(3) PW/3 Dalpat has stated that the accused first stabbed by 'Dantli' and thereafter gave a 'Kulhari' blow on the neck, still when he did not breath last the accused took a rope and made a noose of that and threw it around the neck of the deceased Badri and killed him by strangulation. The post-mortem report Ex. P/10 shows ligature mark on both infra clevicular region of chest wall encircling the lower part of the neck and shoulder region as injury No. 3 but PW/11 Dr. S.N. Mundra had described it as post-mortem injury. It shows that the said injury has been caused after the death of Badri. Thus the statement of PW/3 is contradicted by the medical evidence.

4. PW/3 3.Dalpat himself has stated that he was kept at the police station for about 15 days. There is no explanation as to why the PW/3 Dalpat was kept in police custody for 15 days. The accused appellant in statement under Section 313 Cr. P.C. has stated that initially Dalpat was made accused in the case but, subsequently, he was substituted in his place. PW/18 Ganesh Dan as stated that

PW/3 Dalpat' was send to the court for recording the statement under Section 164 of Cr. P.C. but the statement was not recorded as the learned Magistrate stated that it is not necessary to record his statement. This statement of PW/18 is contrary to the record. The record shows that the S.H.O. submitted the application for recording the statement of PW/3 Dalpat on 15.11.1990 but his statement could not be recorded on the said date, because the learned Magistrate was on leave. However, summons were issued to Dalpat Singh for his appearance on 20.11.1990 PW/3 Dalpat was present on 20.11.1990 but, his statement could not be recorded because of shortage of time with the court. The court directed that he may be produced on 13.12.1990 for recording the statement. On 13.12.1990 the presiding officer was on leave and direction was given to keep Dalpat present on 4.1.1991. On the said date, Dalpat did not present himself for recording the statement Under Section 164 Cr. P.C. and, therefore, the application filed by Investigating Officer dated 15.11.1990 was rejected. We fail to understand as to why initially Investigating Officer was interested in getting the statement of PW/3 Dalpat Singh recorded under Section 164 Cr. P.C. and thereafter he did not take interest and allowed the application for recording statement under Section 164 Cr. P.C. rejected.

5. A reading of the statement of PW/3 Dalpat does not appear to be natural. He has even gone to the extent of saying that the accused set on his chest and then threw noose around the neck of the deceased and killed him by strangulation. It is not only un-natural, but contrary to medical evidence.

Thus, we are of the view that PW/3 Dalpat Singh is not a creditworthy witness. It is not safe to upheld the conviction of the appellant on the sole testimony of PW/3 Dalpat.

8. Consequently, this appeal is allowed. The judgment passed by the learned Sessions Judge, Bhilwara dated 24.10.1991 is quashed and set aside. The accused appellant is acquitted of offence under Sections 302 & 201 I.P.C. The accused appellant Om Prakash shall be released forthwith, if not required in any other case.

