

Prakash Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-20-2007

Reported in : RLW2008(1)Raj918

Judge : Shiv Kumar Sharma and; Guman Singh, JJ.

Appellant : Prakash

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Guman Singh, J.

1. Prakash, the appellant herein was put to trial before the Court of Special Judge, Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Cases and District and Sessions Judge, Dholpura, in Sessions Case No. 59/2002. The learned trial Judge vide his Judgment dated 11.8.2005, convicted the appellant Under Section 302 IPC and sentenced him to undergo imprisonment for life and also imposed a fine of Rs. 5000/- and in default of payment of fine to further undergo six month's imprisonment. For the offence Under Section 341 IPC, a Fine of Rs. 500/- was imposed and in default of payment of fine to undergo six days imprisonment. While the appellant was acquitted for the offence Under Section 3(2)(v) of the Scheduled castes and the Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989').

2. The brief facts of the case are that the informant Meer Singh lodged a written report (Ex.P.10) at Police Station Kanchanpura, on 31.3.2002, at 10 a.m. stating that on 30.3.2002 at about 7-8 p.m. the accused appellant Prakash s/o Sanja, by caste Gusai, resident of Math Hansai inflicted lathi blows on the head and temporal region of his uncle Pooran as a result of which he died and this incident was witnessed by Pooran S/o Shiv Narain Meena and Rakesh S/o Ram Khiladi Meena, residents of village Hansai. The dead body of his uncle Pooran was brought to the village and was placed at his residence. It was further stated that after the incident, the accused Prakash fled away from the scene of occurrence and the whole incident was brought to the knowledge of the informant by his aunt Charandei w/o deceased Pooran and his son Munni Chand, who went to inform at village Surethi in the night.

3. On the basis of this report, a case Under Section 341/302 of the Indian Penal Code and Under Section 3(2)(v) of the Act of 1989, was registered and the investigation commenced. After investigation, challan was filed against the accused Under Section 341/302 of the Indian Penal Code and Section 3(2)(v) of the Act of 1989. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 21 witnesses namely Dharmendra, (P.W. 1) Badri Prasad, (P.W. 2) Rambharosi, (P.W. 3) Ram Prakash, (P.W. 4) Ramvakeel, (P.W. 5) Peetam, (P.W. 6) Jagdish, (P.W. 7) Kanhaiya, (P.W. 8) Charandei, (P.W. 9) Lakhan, (P.W. 10) Munni Chand, (P.W. 11) Meer Singh, (P.W. 12) Rakesh, (P.W. 13) Pooran Singh, (P.W. 14) Shriniwas, (P.W. 15) Dr. Gopal Goyal, (P.W. 16) Sukhveer Singh, (P.W. 17) Shri Ganga Ram, (P.W. 18) Banwari Lal, (P.W. 19) Satveer Singh (P.W. 20) and Ravi Kant Mittal (P.W. 21). Thereafter the statement of the accused Prakash was recorded Under Section 313 Cr.P.C. No evidence was led in defence. Learned trial Judge on hearing final submissions, convicted and sentenced the accused appellant as indicated here in above.

5. Having scanned the material on record, we find that the death of Pooran was homicidal in nature. As per post-mortem report (Ex.P.13) the following ante-

mortem injuries were found on the dead body:

(1) Incised wound 3 cm x 1.5 cm x bone deep with fracture of the frontal bone at the mid. Part of forehead.

(2) Bruises 7 x 4 cm with swelling over left parietal region of scalp.

(3) Lacerated wound 2 cm x 1 cm x muscle deep on right pinna of ear.

(4) Abrasion 3 cm x 2 cm on Rt. Mastoid region.

All injuries were anti mortem in nature and there was fracture of frontal bone of skull and left parietal bone fracture at skull.

6. Dr. Gopal Goyal, (P.W. 16) who conducted autopsy on the dead body deposed that the cause of death was head injury leading to shock.

7. In assailing the impugned Judgment, learned Counsel for the appellant urged following points:

(i) Testimony of eye-witness Rakesh (P.W. 13), Pooran Singh (P.W. 14) and Dharmendra (P.W. I) lacked in inherent consistency and probability and thereby the same was devoid of intrinsic truth;

(ii) The eye-witnesses Rakesh (P.W. 13) and Pooran Singh (P.W. 14) were in fact the person who were responsible for the death of deceased Pooran while the appellant had no motive to assault and to cause death;

(iii) The prosecution has failed to prove the genesis of the prosecution story;

(iv) The testimony of the eye-witnesses is afflicted by contradictions, improvements and embellishments making them unworthy of credit; and

(v) The investigation is unfair and the prosecution has failed to prove the case beyond doubt.

8. Per contra, learned Public Prosecutor has supported the conviction of the appellant and it has been canvassed that the eye-witnesses (P.W. I) Dharmendra,

(P.W. 14) Rakesh and (P.W. 15) Dharam Singh, were rightly relied upon by the learned trial Judge. It is further contended that the infirmities pointed out by the learned Counsel for the appellant do not affect the substratum of the case. Learned Counsel took us to the statements of the witnesses and other material on record.

9. On reappraisal of the evidence led by the prosecution it is revealed that the deceased Pooran, aged 45 years, was Sweeper by caste and resided with his family in village Hasai. The village was predominantly inhabited by the persons of 'Meena' Community. It has also come on record that the land on which the deceased resided was also given by the father of Puran Singh (P.W. 14). As per the statement of Charandei (P.W. 9) wife of Puran deceased, on the day of incident at about 4 p.m. Rakesh (P.W. 13) and Puran Singh (P.W. 14) came to her house and called her husband and took him along with them. At about 6-7 p.m. she was informed about the altercation between her husband and accused Prakash taking place on the way from village Hasai to Jahanpur, at a distance of one and half k.m. from Hasai, near the wheat field of Narain Singh. Charandei (P.W. 9) went to the place of occurrence with her son Munichand (P.W. 11) but the dead body was not found on account of dark and there being standing wheat crop in the field of Narain Singh. So Charandei (P.W. 9) and Munichand (P.W. 11) went to inform Peetam, elder brother of the deceased, who resided in village Sarothi and when they all came back to the place of occurrence, the body of the deceased was found lying in the wheat crop of Narain Singh. The body was then taken on cycle to the residence of the deceased and a written report of the incident was lodged on the following day at 10 a.m. by Meer Singh (P.W. 12).

10. The prosecution case was based on the testimony of three eye-witnesses of the occurrence namely dharmendra (P.W. I), Rakesh (P.W. 13) and Puran Singh (P.W. 14). On conjoing reading of their testimony, it is revealed that in the F.I.R. (Ex.P. 1) there is no mention of the name of (P.W. I) Dharmendra. (P.W. I) Dharmendra has surfaced on the scene as an eye-witness, when he was examined after almost three months of the incident as his statement Under Section 161 Cr.P.C. (Ex.D.I) was recorded on 26.6.2002. From his statement it is revealed that at the time of incident, he had gone for defecation and he saw the

altercation going on between the accused and the deceased Puran and he also saw the accused inflicting lathi blow on the head of the deceased. This witness also speaks of the presence of the other two eye-witnesses (P.W. 13) Rakesh and (P.W. 14) Puran Singh. According to him when he asked not to beat the deceased, he was threatened and was asked to run away by the accused and then he went to the house of the deceased and informed his wife Charan Dei (P.W. 9). But this testimony is not supported by the other two eye-witnesses as they do not speak even of his presence. In the cross-examination he admits that when he heard the voice of altercation he was defecting in the field and he could not see the occurrence as there was dark and could see the dead body when he approached the place after attending the natural call. The witness has not been able to withstand the test of cross-examination and extensive improvement and contradictions have occurred rendering his testimony incoherent, inconsistent and improbable.

11. Though the prosecution has examined (P.W. 13) Rakesh and (P.W. 14) Puran Singh as star eye-witnesses, whose names were mentioned in the F.I.R. (Ex.P.10), but the other witnesses examined by the prosecution including the wife of the deceased Charandei (P.W. 9) have discredited their veracity and have been alleged that in fact these two witnesses were responsible for the murder of the deceased. According to Charan Dei (P.W. 9), these two witnesses had come to the residence, called the deceased and took him with them almost two hours before the incident. In the cross-examination, she stated that her husband was liquidated because the land given for residence by the father of Puran Singh (P.W. 14) was the cause of grudge behind the incident. She further alleged that in fact the Police had hauled them up but they were released on ulterior considerations. She has also stated that the village being predominately inhabited by the persons belonging to 'Meena' Community, the witnesses being 'Meena', their release from the Police was managed. In view of the above background, on reappraisal of the testimony of these two eye-witnesses, it is noticed that they have given a sketchy version of the incident by merely saying that they saw the incident while coming from the village Jahanpur and the deceased Puran was beaten with Lathi by the accused Prakash. These two witnesses simply say that they asked the accused not to beat the deceased and on being threatened by the accused they left the

place and then they went to the house of Charandei (P.W. 9) and informed that the accused Prakash was beating Puran, the d. This conduct of the witnesses is abnormal as they did not stop and left the place while the altercation was going on though they had brought the deceased along with them from his house about two hours before as deposed by (P.W. 9) Charandei. They appeared to be simply in hurry to inform Charandei about the incident. These two witnesses, being the residents of the same village, it would have also been natural for them to go to the place of occurrence with Charandei (P.W. 9) but they seem to have left the place of incident as if they were not concerned. It appears from the evidence of the prosecution witnesses that accused Prakash belonged to the different village and there was no cause of any grudge with the deceased. P.W. 9 Charandei has even stated in her crossexamination that when she went to the place of occurrence for second time in search of the dead body along with Peetam (P.W. 6) and others, her husband was still alive and breathing and they asked the accused Prakash for cycle for carrying him, then the accused told them to take the cycle from his house and in fact the dead body was taken on cycle. This shows that the conduct of the accused Prakash was not that of an accused after the incident while the manner in which the two eye witnesses vanished from the scene of occurrence is indicative of their abnormal conduct. In view of this aspect of the matter, the argument of the learned Counsel for the appellant becomes significant that these two witnesses have twisted the whole incident by posing themselves to be the only eye-witnesses which could otherwise indicate at their own culpability.

12. On advertng to the investigation part of the case, it is revealed that initially the investigation was conducted by Satvir Singh (P.W. 20), who reached at the place of occurrence but later on the investigation was handed over to Ravi Kant Mittal (P.W. 21) who recorded the additional statement of the witnesses Under Section 161 Cr.P.C. and also recorded the statement of eye witness P.W. I Dharmendra Under Section 161 Cr.P.C. and also recorded the statement of eye-witness P.W. I Dharmendra Under Section 161 Cr.P.C. for the first time almost after three months of the occurrence. There is also no explanation as to why the accused was not arrested for about ten days after the incident while the investigation of the spot was completed on the following day of the incident on receipt of the report and the Post-Mortem of the dead body was also conducted on that day. The Investigation

Officer (P.W. 20) has been asked to a specific question whether the family members of the deceased had complained the complicity of Rakesh (P.W. 13) and Puran Singh (P.W. 14) in the crime, but this witness has given an evasive reply by stating that he did not remember. This witness has also denied to the suggestion that the aforesaid two witnesses were present in the Police Station on the. Day the report was lodged but has admitted that these two eye-witnesses were not available in the village on that day when h went to the spot after the report was lodged. Thus, the manner in which the investigation was done left ample room for apprehension that existed in the mind of Charandei (P.W. 9) indicating at the complicity of the aforesaid two eye-witnesses and innocence of the accused.

13. In State of U.P. v. Anil Singh : 1989 CriLJ88 the Hon'ble Supreme Court has held that it is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies of falsehood are so glaring as utterly to destroy confidence in the witnesses.

13.1. In State of Haryana v. Tek Singh and Ors. : 1999 CriLJ2577 , the Hon'ble Apex Court held that while appreciating the evidence of a witness, the approach must be whether evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

14. On testing the prosecution case on the touchstone of above legal principles, we find that genesis of the prosecution story is shrouded in mystery. The presence of the eye-witnesses is not established at the time of occurrence and their testimony is afflicted by inherent inconsistency and improbability and on reading their evidence as a whole there does not appear to be a ring of truth. The credit of Rakesh (P.W. 13) and Puran Sing (P.W. 14) has been impeached even by the testimony of prosecution witnesses including (P.W. 9) Charandei, the wife of the deceased and according to her the needle of culpability pointed at them instead of

the accused Prakash. Therefore, the finding of guilt arrived at by the learned trial Court is not based on cogent, legal and reliable evidence and the same is not sustainable. Thus, the prosecution has failed to prove the guilt of the accused appellant beyond reasonable doubt.

15. For these reasons, we allow the appeal and set aside and impugned Judgment dated August 11, 2005, of the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Cases and Sessions Judge, Dhaulpur. We acquit the appellant of the charges Under Sections 302 and 341 of the Indian Penal Code. Appellant Prakash who is in jail shall be set at liberty forthwith if he is not required to be detained in any other case.

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