

Shoki Alias Shoki Ram and Khalid Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-05-1987

Reported in : 1987WLN(UC)537

Judge : Surendra Nath Bhargava and; Gopal Krishna Sharma, JJ.

Appeal No. : D.B. Cr. Appeal No. 135 and 188 of 1987

Appellant : Shoki Alias Shoki Ram and Khalid

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Gopal Krishna Sharma, J.

1. Both these appeals arise out of the judgment passed by the Additional Sessions Judge No. 1, Jaipur City, Jaipur dated 28th Feb., 1987, and hence, they are being disposed of by this common judgment.

2. Both the appellants have been found guilty of offence under Section 302, and each of them has been sentenced to imprisonment for life and a fine of Rs. 100/-, and in default of payment of fine, to further undergo simple imprisonment for one month.

3. Ramswaroop lodged a report at P.S., Ramgunj, on 16th November, 1985, at about 8 p.m., with regard to an incident, which had taken place on that day at about 5.30 p.m. He alleged that one Nauratan had come to him and informed that his (informant's) brother Moti, had been attacked with knife in Mehron-ki-Nadi, where he rushed to the spot, and reaching there, he saw that Shoki and Khalid were inflicting knife-blows to his brother Moti, and that one more person was with them, but he did not know that man but could identify him by his face. Seeing him, all the three persons ran away. There was a biscuit factory near the place of the occurrence, and so, so many persons had collected there, but, out of fear, they did not interfere, nor did any one try to rescue Moti. According the report, Panna had also arrived there. So, he himself and Panna then brought Moti in an auto-rickshaw to hospital. Moti told him that Khalid and Shoki had inflicted knife blows to him. He (Moti) was given medical-treatment by the doctors at the hospital but, after about an hour, he succumbed to his injuries. It was also alleged in the report that Shoki and Khalid used to demand money off and on, from Moti, and in that connection, the latter had been attacked by them.

4. On this report, the police registered a case under Section 302, IPC, against the accused-persons. During investigation, the accused persons were arrested. The police then recovered a knife, at the instance of the accused persons. Post-mortem examination on the dead body was conducted by Dr. B.M. Gupta, and according to him, the death was caused due to shock and haemorrhage as a result of the injury to liver, as mentioned in the postmortem report. After completing usual investigation, the police submitted a challan against both the appellant and one Gopal.

5. The trial court framed charge against Shoki and Khalid under Section 302, IPC and as against Gopal under Section 302/34. All the accused pleaded not guilty and claimed trial.

6. The prosecution examined as many as 17 witnesses in support of its case. The accused persons denied all the allegations made by the prosecution witnesses, and their contention was that they have been falsely implicated in this case. They examined two witnesses in their defence.

7. The learned trial court, after concluding the trial, found that no case was made out as against Gopal accused, and so he was acquitted of the charge. Shoki and Khalid accused, were however, found guilty and sentenced as mentioned above.

8. The learned Counsel for the appellants argued that the prosecution in this case, has failed to prove the motive of attack/beatings. According to him, the alleged motive as mentioned in, the FIR, is different than that which has been stated by the prosecution witnesses in their statements. Thus according to him the entire prosecution case is a false and concocted one. It was also argued by him that prosecution has failed to examine the material witnesses, and that, non-examination of those witnesses, casts doubt in the correctness of the prosecution story. It was also argued that according to the prosecution, Moti was taken in an auto-rickshaw to hospital by Ramswaroop as Moti had been inflicted knife-blows, blood must have been coming out from the wounds, and it must have been fallen on the auto-rickshaw as well. So, according to the learned Counsel, the police should have seized the said auto-rickshaw to prove the said fact. It was then argued that the medical-evidence in this case is not corroborated by the statements of the prosecution witnesses. He went on arguing that the oral dying-declaration given by Moti (deceased) to Ramswaroop and Panna, is also unbelievable.

9. On the other hand, the learned Public Prosecutor has supported the judgment of the trial court and stated that a case is fully established against the accused appellants, and that there is nothing to interfere in the finding recorded by the trial court.

10. We have considered the arguments advanced by both the learned Counsel and also have minutely gone through the statements of the prosecution witnesses. According to the report (Ex. P 1), Ramswaroop who is brother of the deceased, is an eye-witness in this case. He has mentioned in the report that when Nauratan informed him that Moti had been attacked with knives by Khalid and Shoki, he came to spot and saw that both the appellants were inflicting knife-blows to Moti. In his court-statement, he has stated that when he reached the spot, he saw his brother Moti first running and then falling on the ground. He had seen three

persons running away, from the spot. Moti, according to this witness, had fallen into a gutter. According to the prosecution case, the incident had taken place at place 'A' shown in the site-plan (Ex. P2). From place 'A', Moti had run towards place 'B' which was a 'Thari' of Tulsiram, wherefrom, he had further run towards the place marked 'D'. The place 'D' was about 225 feet away from place 'A'. Thus, the place 'D' was not visible from place 'A'. Ramswaroop had come to spot and found that his brother Moti was lying on the ground at place 'D'. It shows that Ramswaroop had arrived at the spot, after the attack/beating to Moti was over. So, it is clear that Ramswaroop is not an eye-witness to the alleged incident. In his cross-examination, this witness has admitted that first of all, he had reached near the 'Thari' of Tulsiram, and from there he had gone to Hazri-Gaha which was the place marked in the site-plan as 'D', where Moti was lying on the ground. So, Ramswaroop PW 1 is of no help to the prosecution. He has tried to pose himself as an eye-witness, but, his statement reveals that he was not an eye-witness to the alleged incident, but has tried to give a false statement.

11. Nauratan PW 2 has stated that at the 'Choraba' (junction) of Mehran-ki-Nadi, Khalid, Shoki and one more person were attacking Moti with knife, and that, Babulal was also witness to the said incident. Babulal had told him to inform the brother of Moti. He had gone to Ramswaroop and then come to spot while the fighting was going on. Seeing them, all the three accused persons ran away towards the temple of Mehron This statement is a false one. When he (Nauratan) and Ramswaroop had come to spot, Moti was lying at the place marked 'D' in the site-plan, which was Hazri-Gaha. He has stated that he cannot say as to on which part of the body of Moti, Khalid had inflicted knife-blow and on which part, Shoki had inflicted that. In his cross-examination, this witness has said that he had seen a collection of children towards the Municipality, where, he himself and Ramswaroop had gone and found Moti lying on the ground. This shows that when this witness had arrived at the spot, the fighting was over. So, he was also not an eye-witness to the incident, and cannot be relied as such, at all.

12. Pannalal PW 4, who is also real brother of Moti deceased, has stated that he and Ramswaroop were at the house, and that, when Trilok came to them and informed that Moti had been inflicted knife-blows, he and Ramswaroop came to

spot, and at Hazri-Gaha they found Moti lying on the ground having injuries on his abdomen and hands. The statement of this witness further is that on inquiry, Moti had told them that Shoki and Khalid had inflicted knife-blows to him. From the cross-examination of this witness, it is found that this witness Pannalal is also a made out witness. According to him, Trilok had informed him and Ramswaroop, while according to Ram Swaroop PW 1, Nauratan had informed him of the incident. Moreover, Ramswaroop PW 1 has not stated that Pannalal PW 4 also had come with him to spot. Thus, it is clear that Pannalal PW 4 is also not an eye-witness, and no reliance can be placed on his testimony.

13. Babulal PW 5 has stated that he was going towards his hotel. At that time, he saw one person running towards the road of Pannigaro. He saw from a distance of 15-20 yards from his hotel that Shoki and Khalid were beating Gopal, who were inflicting knife-blows to him, and that Moti was running being chased by those persons who were inflicting knife-blows while chasing Moti. Thus, this witness has given a different story, which is neither in the FIR, nor in the statements of the witnesses. From the cross-examination of this witness, it is clear that Moti had been inflicted knife-blows at the place marked 'A' in the site-plan (Ex. P 2), which is the case of the prosecution. As stated by this witness, the attack/beating had started from a distance of about 20 yards from his hotel, and Moti had run towards Hazri-Gaha, which was at place marked 'D' in the site-plan (Ex. P 2), and was chased by the accused persons. This all shows that this witness, Babulal is also a false witness.

14. Trilok Chand PW 6 was also examined by the prosecution, who has stated that he was sitting at his cycle-shop, from where he had seen that the accused persons were beating Moti, and that, Gopal was holding Moti while Khalid and Shoki were inflicting knife-blows to him. According to him, Moti then ran towards his shop first and then towards Hazri-Gaha, and after that, he fell down into the Gutter. Then, according to this witness, the accused persons ran away. In the site-plan (Ex. P 2), the place of incident has been shown as at place 'A', and the shop of this witness was at No. 22 which was just in front of the lane where the spot marked 'D' has been mentioned. From shop No. 22 of Trilok Chand, the place marked 'A' in the site-plan was not visible. From place 'A' one has to come to Choraha, take a turn

towards the north, and after 5-6 shops, comes the shop of Trilok Chand. So, the statement of this witness that he had seen the accused persons inflicting knife-blows to Moti, is a false statement. In this cross-examination, this witness has tried to pose himself as a truthful witness and has said that he had seen the incident of attack/beating going on at place 'B' in the site-plan (Ex. P 2). This is also a false statement, because, no other witness has stated that Moti had been, inflicted knife-blows at place 'B' marked in the site-plan (Ex. P 2). This all proves that this witness too is an unreliable witness.

15. Now remains the witness, Tulsiram PW 3, on whose testimony, much reliance has been placed by the learned Public Prosecutor. Tulsiram was having his betel-shop near the spot marked 'B' in the site-plan (Ex. P 2). He has stated that Moti was driving an auto-rickshaw, in which, two passengers were sitting. When Moti came to spot, the accused persons started beating those passengers. Moti then intervened and tried to rescue the passengers. Then, the accused persons started inflicting knife-blows to Moti. According to this witness, Khalid and Shoki both had inflicted knife-blows in the abdomen of Moti. Moti then tried to run away, but Shoki inflicted another knife-blow on his leg. This witness has stated that the accused had run away before Ramswaroop arrived there. Thus, Tulsiram has given a new story. It is neither in the FIR, nor in the statements of the prosecution witnesses that the accused first had given beating to the two passengers who were in the auto-rickshaw and that when Moti tried to intervene to save them, both the appellants inflicted knife-blows to him. Then, this witness in his court statement, has specifically stated that Shoki and Khalid had inflicted knife-blows in the abdomen of Moti. This witness was also examined by the police during investigation, and his police statement is Ex. D 3. In that statement (Ex. D 3), this witness did not specifically state that Khalid and Shoki had inflicted knife-blows in the abdomen of Moti, but, in his court statement he has said so. This shows that Tulsiram has improved his statement in court. Apart from this, the new story set out by this witness, as observed above, also gives inference that he is also an unreliable person. It is correct that this witness had his betel-shop just near the place of occurrence, but, what ever he has stated is not a correct deposition, Looking to the statement of this witness given in court as well as his police statement (Ex. D 3) and the statements of the other prosecution witnesses, we are

of the opinion that this witness Tulsiram is not of sterling worth, at all. And, it would not be safe to place reliance on his testimony.

16. As discussed above, we find that all other prosecution witnesses are made out ones. Tulsiram PW 3 was the only probable witness who could have said that he had witnessed the incident, but, his statement is of no value, and conviction cannot be based on his testimony.

17. While considering the arguments, we find that the prosecution has failed to prove the motive behind the incident. According to FIR (Ex. P 1), the accused persons used to demand money from Moti, who also used to use force for the purpose so, this was the cause of attack/beating. PW 3 Tulsiram has stated that the accused persons first gave beating to the passengers sitting in the auto-rickshaw, and when Moti tried to save them, he was also inflicted knife-blows by them. So, Tulsiram has given another motive behind the attack-beating. Thus, doubt is created in the genuineness of the prosecution story. We have perused the statements regarding the oral dying-declaration given by Moti. 18. Ramswaroop PW 1 has stated that when he reached near Moti where he was lying, he told that Khalid and Shoki had inflicted injuries to him. It means that Moti had given this information at the spot, which is marked 'D' in the site-plan (Ex. P 2). No other witness has stated like this. Then, in the FIR (Ex. P 1), this witness mentioned that he himself and Pannalal were taking an auto-rickshaw, and there, Moti told them that Khalid and Shoki had inflicted knife-blows to him. Thus, there is contradiction in the statement of Ramswaroop and the report (Ex. P 1) lodged by him.

19. Pannalal PW 4 has stated that Moti was taken in an auto-rickshaw, and that, when in the way, they had asked Moti, he narrated the entire story. It means that according to Pannalal, Moti himself had informed him and Ramswaroop about the incident, in the market. So, this contradiction in the statements of both the witnesses, proves that it is a false version that Moti had informed Ramswaroop and Pannalal, of the incident, i.e. of inflicting knife-blows by the accused persons to him. So, the oral dying-declaration is of no value, and cannot be believed.

20. As stated by Tulsiram PW 3, the accused persons first started beating the two passengers who were sitting in the auto-rickshaw -- who were those two

passengers, has not come on record they were very material witnesses. So, the Investigating Officer should have found out those two witnesses and examined them, who could have been the best witnesses to the alleged incident. But, they have not been examined. So, this lacuna also creates suspicion in the story of the prosecution.

21. Apart from this, the incident had taken place in front of a biscuit-factory. The time was 5-5.30 p.m. So, there must have been workers near the said factory. The place of the incident was not an isolated one, and there must have been so many independent witnesses also who would have witnessed the incident. But, the prosecution has not examined any person from the biscuit-factory or any other independent witness. The police in this case, has recovered four knives. We have gone through the memo of information given by the accused persons as well as the recovery-memo of the knives. The knives had been sent to the Forensic Science Laboratory, for examination, but the report of the Laboratory has not been produced. It was the duty of the prosecution to have proved the report of the Forensic Science Laboratory, and it should have connected the knives with the crime. So, this lacuna also casts doubt in the recovery of the knives.

22. Another argument was that the knives which were recovered by the police, were not shown to the doctor, during his statement. It was the duty of the prosecution to have shown the knives recovered, to the doctor, and thus it was for them to have proved that the injuries to Moti (deceased) could have been caused by those knives recovered at the instance of the accused persons.

23. We have also gone through the statement of Dr. B. M. Gupta PW 10, and from his statement, it is clear that the doctor was not shown the weapon by which the injuries were caused to Moti (deceased). Thus, the knives which were recovered, have not been connected with the crime. The doctor has stated that after receiving the injuries Moti could not have run more than 10-20 paces. But, the other prosecution witnesses have stated that Moti having been inflicted the blows, had run towards the Hazri-Gaha, which was about 220 yards from the place where he was inflicted the injuries.

24. Thus, the medical evidence is not in corroboration to the statements of the eye-witnesses.

25. The next argument of the learned Counsel for the appellants was that the investigation in the case, was unfair and the genesis of the incident has not been established. We find that this argument has substance. In this regard, the learned Counsel has placed reliance on the case of Babu Mauhna v. The State of Rajasthan (1986 RLR 573), where in it was observed by this Court that in their statements, the witnesses of the prosecution had changed the genesis, and they were found to be false ones.

26. In *Sarwansingh Rattansingh v. State of Punjab* : 1957 CriLJ1014 , their Lordships of the Supreme Court, have observed as under:

It is no doubt a matter of regret that a foul cold-blooded and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.

27. In view of our above discussion, we are of the opinion that the solitary witness in this case, namely, Tulsiram PW 3 is not of sterling worth. There are so many infirmities in the statements of the witnesses. It would not be safe to convict the accused persons on the basis of such statements.

28. In view of the numerous discrepancies and contradictions in the statements of the prosecution witnesses, as discussed above, serious doubt is created in the truthfulness of their testimony. The evidence of the prosecution witnesses, does not inspire confidence. On our own re-appraisal of the evidence of the alleged eye-witnesses, we find that they are not reliable witnesses, and there is no corroboration in their statements on material aspects. So, all these create serious doubt in the correctness of the prosecution story. In such circumstances, the benefit of doubt should go to the accused persons. The prosecution, in our considered view, has failed to establish its case beyond reasonable doubt, and the

trial court has also committed error in finding the accused-appellants guilty of the offence.

29. In the result, both the appeals are hereby allowed. None of the accused-appellants is found guilty of offence under Section 302, IPC, and they both are acquitted of the said charge. Both the accused-appellants are in jail. They be released forthwith, if not required in any other case. The judgment of the trial court, is accordingly, set aside.

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