

Thandi Ram and ors. Vs. State of Raj. and ors.

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Court : Rajasthan

Decided On : Jun-03-2005

Reported in : RLW2006(4)Raj2843

Judge : Shiv Kumar Sharma and; Jitendra Ray Goyal, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 147, 148, 149, 302, 323 and 447;
[Arms Act, 1959](#) - Sections 3 and 25; Code of Criminal Procedure (CrPC) -
Sections 313

Appeal No. : D.B. Criminal Appeal No. 442 of 2001

Appellant : Thandi Ram and ors.

Respondent : State of Raj. and ors.

Advocate for Def. : Arun Sharma, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta,; Alka Bhatnagar and; S.K. Jain, Advs.

Judgement :

Shiv Kumar Sharma, J.

1. The appellants, three in number, along with Mukesh, (herein after to be referred as 'accused') have impugned the judgment dated July 18, 2001 of learned Additional Sessions Judge (Fast Track) Hindaun in Sessions Case No. 123/2001

(44/97), whereby the accused have been convicted and sentenced as under:

(1) Thandi Ram and (2) Ghamandi:

Under Section 302/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 10000/-, in default to further suffer six months simple imprisonment. Under Section 323 IPC:

Each to suffer simple imprisonment for one month and fine of Rs. 200/-, in default to further suffer fifteen days simple imprisonment. (3) Madan:

Under Section 302 IPC:

To suffer imprisonment for life and fine of Rs. 10000/-, in default to further suffer six months simple imprisonment. Under Section 3/25 Arms Act:

To suffer simple imprisonment for one year and fine of Rs. 300/-, in default to further suffer one month simple imprisonment. Sentences were directed to run concurrently.

2. The prosecution story is woven like this on March 4, 1997 a written report was submitted by Girdhari (PW. 14) at the police station Todabhim to the effect that Thandi Ram and Madan, who were armed with guns, opened fire at Vishram. Ghamandi then said that Vishram was still alive but he deserved death, therefore Ghamandi also opened fire at Vishram. All these persons killed Vishram with lathis, Pharsi and stones. Police Station Todabhim while incorporating the report in the FIR register noted the oral information of Girdhari that is wife Prem and daughter Guddi also sustained injuries and they were lying near the dead body of Vishram. A case under Sections 147, 148, 149, 323, 447 and 302 IPC was registered and investigation commenced. Statements of witnesses were recorded. Dead body was subjected to post mortem. Necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the Learned Additional Sessions Judge (Fast Track) Hindaun. Charges under Section 302 and 323 IPC were framed against the accused, additional charge under Section 3/25 Arms Act was framed against Madan. The

accused denied the charge and claimed trial. The prosecution in support of its case examined as many as 17 witnesses. In the explanation under Section 313 Cr.P.C., the accused claimed innocence. Accused Thandi Ram stated that Prem and Guddi came to his house and hurled abuses at them. He came to know that members of Motor-cycle gang killed Vishram. Two witnesses were examined in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Having closely examined the material on record we notice that the prosecution case is founded mainly on the testimony of Prem (PW. 4), Guddi (PW. 11), Indraj (PW. 13) and Girdhari (PW. 14). Dr. K. Asnani (PW. 16) performed autopsy on the dead body of Vishram, who as per postmortem report (Ex. P. 26) found following ante mortem injuries:

1. Incised wound on medial aspect of Rt. foot on middle aspect 4 cm x 1/2 cm x 1cm clotted blood present.
2. Incised wound on Rt. ankle joint on medial aspect 3 cm x 1/2 cm x 1/2 cm
3. Incised wound on post aspect of Lt. ankle joint 2.5 cm x 1/2 x 1/2 cm
4. Incised wound present over small intestine gun shot on Lt. side below Lt. lower rib over illiac area. There are carbon particles present blow.
7. Pellets severed from wound perforation (torn) small intestine. Small intestine coming from wound (torn) spleen ruptured 3 cm x 2 cm x 1/2 cm.

The cause of death was rupture of vital organs (small intestine and spleen) leading to shock due to gun shot injury.

4. As per injury report (Ex. P. 14) Prem (PW. 4) made complaint of pain on Rt. side of back and Guddi (PW. 11) vide injury report (Ex. P. 15) received one abrasion measuring 3 cm x length above Lt. knee joint.

5. Learned Counsel for the accused Mr. A.K. Gupta pointed out shortcomings in the statement of Prem (PW. 4) as under:

1. She was not named in the FIR and her name appears only in police proceeding endorsed on the written report.
2. It has not been mentioned in the FIR that Prem received any injury.
3. She introduced a new story regarding Maruti Car.
4. Her conduct was unnatural.
5. She neither saw the injuries of deceased nor stayed near him.
6. She did not call villagers and had no knowledge that Vishram died.
7. She is interested witness being near relative of deceased.
8. Although she was available on March 4, 1997 itself, but her statement was recorded on March 16, 1997 i.e. after 12 days of the incident.

6. The statement of Guddi (PW. 11) has been criticised thus:

1. She was not named in the FIR.
2. She changed the manner of occurrence.
3. She is interested witness being near relative of deceased.
4. Her conduct was unnatural.
5. She introduced a new story regarding Maruti Car.
6. Although she was available on March 4, 1997 itself, but her statement was recorded after 12 days of the incident.

7. Testimony of Indraj (PW. 13) has been assailed by learned Counsel on the following grounds:

1. He is near relative of deceased.
2. He changed the manner and place of the occurrence.

3. He did not come to lodge the report with Girdhari (PW. 14) and went to meet his father.

4. He had no knowledge that Vishram had died.

5. Although he was available on the day of incident and put his signatures on site plan, but his statement was recorded after 3 days of the incident.

6. Although on the Inquest report (Ex. P. 15) put his signatures at 2.45 PM, but he stated at the trial that he had gone to meet his father at Todabhim.

8. Statement of Girdhari (PW. 14) has been criticised by learned Counsel on the following grounds:

1. He is very near relative of deceased.

2. He changed the manner of occurrence. He took U turn and changed the story at the trial.

3. His conduct was unnatural.

4. Although he was available on the day of incident, but his statement was recorded on March 5, 1997.

9. Per contra, Mr. Arun Sharma, learned Public Prosecutor and Mr. S.K. Jain learned Advocate for the complainant supported the impugned judgment and urged that the contentions raised by learned Counsel for the accused are not material in nature. The statements of witnesses from the point of view of trustworthiness are reliable and the learned trial judge has rightly relied upon their testimony.

10. Having carefully examined the material on record we notice the factual situation of the case thus:

(i) The prosecution case as per the FIR was that all the three accused had gun and they opened fire at Vishram, as a result of which Vishram died.

(ii) As per postmortem report (Ex. P. 26) the deceased sustained four incised wounds. Dr. K. Asnani (PW. 16), who performed autopsy on the dead body, deposed that injuries No. 1, 2 and 3 were caused by sharp edged weapon and they did not cause death.

(iii) Death of deceased was homicidal and cause of death was rupture of vital organs (small intestine and spleen) leading to shock due to gun shot injury.

(iv) No injury on the head of Vishram was found.

(v) Shiv Charan (DW. 1) and Suresh (DW. 2) were examined by the accused in support of their defence that five persons came in a Maruti Car, and one of them killed Vishram with the gun.

(vi) Prem (PW. 4), Guddi (PW. 11), Indraj (PW. 13) and Girdhari (PW. 14) deposed that Ghamandi and Thandi Ram had caused injuries on the person of Vishram with lathi and axe.

11. Having analysed the evidence on record with broad reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny we are of the opinion that the possibility of over implication of accused Thandi Ram and Ghamandi cannot be ruled out. The prosecution came with a definite case that all the three accused namely Thandi Ram, Ghamandi and Madan opened fire at Vishram, but at the trial the whole story was changed and Thandi Ram and Ghamandi were shown to have lathi and axe in their hands. The witnesses deposed at the trial that Thandi Ram inflicted lathi blow on the head of Vishram, but in the postmortem report no injury was found on the head of Vishram Co-accused Mukesh and accused Girdhari had allegedly caused injuries with axe on the hands and legs of Vishram but Mukesh was acquitted by the learned trial judge. Case of Thandi Ram and Ghamandi is not distinguishable with that of the case of co-accused Mukesh. Having separated grain from the chaff we find that evidence of Prem (PW. 4), Guddi (PW. 11), Indraj (PW. 13) and Girdhari (PW. 14) is full of material contradictions qua accused Thandi Ram and Girdhari and they are entitled to benefit of doubt. In our considered opinion the prosecution has failed to establish the charges against Thandi Ram and Girdhari under Sections

302/34 and 323 IPC beyond reasonable doubt. In so far as the case of accused Madan is concerned, we find no error in the judgment of learned trial judge.

12. Having heard rival submissions we are of the view that the evidence of Prem (PW. 4), Guddi (PW. 11), Indraj (PW. 13) and Girdhari (PW. 14) is contrary to medical evidence as no injury was found on hands of Vishram attributed to Mukesh as stated by these witnesses. In our opinion charges under Sections 302/34 and 323 IPC are not established beyond reasonable doubt against Mukesh. Learned trial Judge did not commit any error acquitting him.

13. For these reasons we dispose of the appeal and the revision petition in following terms:

(i) Appeal of accused Thandi Ram and Ghamandi is allowed and they stand acquitted of the charges under Sections 302/34 and 323 IPC. They are on bail, they need not surrender and their bail bonds stand discharged.

(ii) Appeal of accused Madan stands dismissed.

(iii) Revision petition has no merit and it stands dismissed.

(iv) Impugned judgment of learned trial Court stands modified as indicated above.

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