

Durga Lal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-17-1987

Reported in : 1987WLN(UC)609

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

Appeal No. : D.B. Cr. Appeal No. 534 of 1985

Appellant : Durga Lal

Respondent : State of Rajasthan

Judgement :

Gopal Krishna Sharma, J.

1. This is a criminal appeal against the judgment passed by learned Sessions Judge, Jhalawar, convicting the accused appellant under Section 302 IPC and sentencing him to imprisonment for life and a fine of Rs. 1,000/-, in default of payment of fine, one year RI and also under Section 323 IPC for six months RI.

2. A report lodged at the Police Station Aklera, District Jhalawar on 27-11-1983 at 1 p.m. regarding an incident which is alleged to have taken place on 27th November, 1983 between 8 and 8.15 a.m., by Smt Kanti Bai (PW-13), wife of deceased Ram Narain. In the report, it has been mentioned that in the morning at about between 8 to 8.15 a.m., she and her husband were doing repair works of the

house ('GARA POT RAHE THE') and her Dewar Durga Lal (accused) came there with a 'Lohadi' (a stick with rings) and started abusing her husband and asked him to get out of the house, and that he will not allow to do 'Gara' (repair of house). Her husband replied that this portion of the house had come in his share and he should not object but Durgalal replied that he will take this house and Ramnarain, husband of Smt. Kantibai will not give the same, the accused will finish him to avoid any future dispute. Thereafter, the accused inflicted a blow from Lohadi on the head of her husband, as a result there of, her husband Ram Narain fell down and he gave some more beating to him while lying and when Mst. Kantibai went to his rescue, she was also given beating by the accused. Ultimately, Rammnarain died and she made the report. The police registered a case under Section 302 and 307, IPC. After usual investigation, the challan was filed in the court of learned Magistrate who committed the case to the court of Sessions and the learned Sessions Judge, Jhalawar convicted the accused appellant as aforesaid. Hence this appeal.

3. We have heard Shri A.K. Gupta, learned counsel for the accused and Shri O. P. Sharma learned Public Prosecutor, on behalf of the State. We have also gone through the judgment of the trial court as also the evidence and record of the case.

4 Learned trial court has placed reliance on the evidence of PW-13 Kanti Bai and PW-16 Jagdish who happened to be the eye witnesses and has found the accused guilty of offence. We have also examined the evidence of PW-13 Kantibai and PW-16 Jagdish very, closely. PW-13 Kanti Bai is wife of the deceased who lodged the First Information Report and is admittedly an interested witness. In her statement, she has very categorically stated that on account of the injuries received by her, she had fallen on the ground and had become unconscious, and that she re-gained consciousness on the next day at 5 p.m. She has further stated that on the date of incident, she was unconscious for the whole day and night and regained consciousness on the next day, and what happened during that period, was not known to her as she was unconscious. FIR (Ex. P. 14) is alleged to have been lodged at 1 p.m. on the date of incident and bears thumb mark of Mst. Kanti Bai. On further cross-examination, she was unconscious when she was taken in the cart. She was not in a position to speak and she regained consciousness only

at 5 p.m. on the next day and therefore, she filed the report in the police on the next day after she regained consciousness. She has further stated that shi did not lodge any report on the day of incident but only on next day. We are not able to reconcile this contradiction.

5. Similarly, PW-16 Jagdish is also an interested witness. In his examination in chief, he has stated that he heard some noise while he was passing in front of the house of the deceased and when he entered the house, he saw Ramnarain was lying on the ground and blood was oozing from his head and Kanti Bai was also lying injured on the ground. He has of course stated that accused Durga gave some blows in his presence also but this is in contradiction to what Smt. Kanti Bai has stated. Prosecution has examined Jagdish under Section 164 Cr. PC. It appears that the prosecution was not sure that he will support their case at the stage of trial. In this connection, learned counsel for the appellant has placed reliance on 1983 RLR 883.

6. Prosecution has also examined PW 5 Kanchan Bai and PW-14 Shakuntala as eye witness mentioned in the FIR by Smt. Kantibai. Smt. Shakuntala has been declared hostile and has not supported the prosecution case. Kanchan Bai also, though not declared hostile, does not support the prosecution. The prosecution has failed to examine Prabhulal who is an eye witness according to Smt. Kantibai as mentioned in FIR Ex. P. 14 Learned counsel for the appellant has placed reliance on Beer Singh v. State UP : 1978 CriLJ177a for the proposition that it is the duty of the prosecution to examine independent eye witnesses and if they fail to do so, adverse inference should be drawn.

7. Moreover, in this case, prosecution has failed to produce the weapon of offence (Lohadi) in the court not it was shown to the doctor for given his opinion as to whether the injuries received by the deceased could be caused by that weapon. In this connection, learned counsel for the appellant has placed reliance on Ishwar Singh v. State of UP : 1976 CriLJ1883 where in the Supreme Court has observed that it is the duty of the prosecution that the alleged weapon of the offence should be shown to the medical witness and his opinion invited as to whether any of the injuries on the victim could be caused with that weapon, following an earlier

decision in *Kartrey v. State of U.P.*, : 1976 CriLJ13 .

8. Dr. Arvind Kumar Bohra (PW 2) was examined on 16th May, 1984 and he has given the injuries received by the deceased Ramnarain wherein injury No. 2 and 5 are clear cut incised wounds which could be caused only by a sharp edged weapon. In cross-examination, he has also asserted that clear cut incident would be caused only by sharp edged weapon and that he has not seen the weapon like Lohadi and the counsel for the accused wanted to show the weapon to the doctor and therefore his evidence was not complete and it was adjourned. His evidence was again recorded on 11 9-1984 and at that time also, the weapon of the offence Lohadi was not available to be shown to him. In further cross examination, he has stated that the incised wound could be caused by the Lohadi only if the rings have a sharp edge. Learned counsel for the appellant has placed reliance on *Milkayat Singh v. State of Raj.* : 1981 CriLJ998 and *Sondreponde v. State* (1983 Cr. LJ 1199) wherein the Supreme Court has observed that if there is inconsistency between ocular and medical evidence, conviction cannot be sustained and the accused is entitled to the benefit of doubt.

9. In view of our discussion above we are of the opinion that this appeal deserves to be accepted, conviction and sentences under Section 302 IPC are reversed and the accused is acquitted of the charge under Section 302 IPC. As regards his conviction under Section 323 IPC, learned counsel for the appellant has not pressed this appeal as the appellant has already served out that sentence and has remained in custody for more that six months.

10. In this view of the matter, this appeal is partly allowed, the judgment of the learned Sessions Judge is set aside and conviction of the accused appellant under Section 302 IPC is set aside. The accused is in jail. He should be released forthwith if not required in any other case.