

Vishnu Vs. State

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Court : Rajasthan

Decided On : Oct-12-2001

Reported in : RLW2003(1)Raj446; 2002(2)WLC146

Judge : Shiv Kumar Sharma and; A.C. Goyal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 450

Appeal No. : D.B. Criminal Jail Appeal No. 264 of 1995

Appellant : Vishnu

Respondent : State

Advocate for Def. : Rajendra Yadav, Public Prosecutor

Advocate for Pet/Ap. : N.K. Joshi, Adv.

Disposition : Appeal allowed

Judgement :

Sharma, J.

1. The appellant was indicted before the learned Special Judge, Dacoity Affected Area, Bharatpur, for having committed murder of Mool Chand in Sessions Case No. 48/1994, vide judgment dated 18th May 1995. He was found guilty, convicted and sentenced under Section 302 IPC to undergo imprisonment for life and a fine

of Rs. 1,000/-. In default to further suffer three months rigorous imprisonment and under Section 450 IPC to undergo three years rigorous imprisonment and a fine of rupees 500/-. In default to further undergo one month's rigorous imprisonment. Both the sentences were directed to run concurrently.

2. The prosecution case is woven like this. Radha Raman PW-3, on April 8, 1994, lodged F.I.R. Ex.P. 2, with the Police Station Kotwali Bharatpur, in connection of murder of his father Mool Chand aged 78 years who was sleeping in the room down stairs alongwith his grand daughter and wife. It was slated in the report that on hearing the sound of firearm when he awoke, he saw appellant running alongwith one unknown person. Although he made attempt to chase the appellant yet he could not get hold of him. The Police Station, Kotwali, Bharatpur, registered F.I.R. No. 106/94 under Section 302 IPC and investigation commenced. Site- Plan was drawn vide Ex.P. 1. Pillow-cover and one bed-sheet was recovered vide Ex.P. 3. Inquest report was drawn vide Ex.P.7. Autopsy on the dead body of Mool Chand was conducted on April 8, 1994, vide Ex.P.10. Appellant was arrested on April 8, 1994 at 4 p.m. vide Ex.P.9. Statements of witnesses under Section 161 Cr.P.C. were recorded. On conclusion of investigation, charges- sheet was filed. In due-course the case came up for trial before the learned Special Judge, Dacoity Affected Area, Bharatpur. Charge under Sections 302 and 450 IPC were framed. Appellant denied the charges and claimed trial. The prosecution examined as many as 12 witnesses in support of its case. Thereafter the statement of the appellant under Section 313 Cr.P.C. was recorded. The appellant pleaded innocence and contended that through-out the alleged night, he was at hotel and did not go anywhere. Two witnesses Chandra Bhan (DW-1) and Ramesh Kumar (DW- 2) were examined in defence. On hearing the final submissions, learned trial Court convicted and sentenced the accused appellant as here-in-above.

3. The prosecution case rests mainly on the testimony of Parul, PW 2 and Radha Raman P.W. 3, who are the star witnesses of the instant case. The evidence is sought to be corroborated by medical opinion of Dr. B.L. Meena P.W.11 and statement of Surendra Singh, I.O. P.W.10. Let us proceed to scan the credibility of the prosecution witnesses. Parul, PW.2 in her deposition stated that while she was sleeping in the room of her grand-father Mool Chand alongwith her grand-mother

Bhagwandai PW-9. Around 3-4 in the night, she suddenly awoke after hearing the voice of her grandmother, who was saying 'Vishnu what are you doing.' Thereafter she had been Vishu, standing by the side of the cot of his grand father. Suddenly Vishnu opened fire and injured her grand-father. When she made hue and cry, Vishnu went out of the room, and he again opened fire. He then scaled the staircase, and jumped out alongwith one unknown person. In her cross-examination, she however admitted that there was no light in the room and faces of Vishnu and other unknown person were covered with cloth.

4. Bhagwan Dai, PW. 9, the wife of the deceased did not support the prosecution case and was declared hostile. She did not identify the appellant. Radharaman P.W. 3 who is the adopted son of the deceased Mool Chand, in his deposition, stated that he had seen Vishnu running out of his house. Although he chased him yet could not get hold of him. In his earlier version he stated that he had seen Vishnu all alone in his house but in the next breath, he deposed that one another unknown person was also there with him. He also stated that though his father did not utter a single word but his mother and daughter were naming Vishnu. In his cross-examination, he stated that he was adopted son of Mool and since his early childhood he was residing with his father. Virendra Kumar alias Sita Ram, P.W. 5, is also the adopted son of deceased Mool Chand. He stated that on hearing the sound of fire he awoke and made attempt to chase the culprit but could not recognize him. Investigating Officer Surendra Singh P.W. 10 in his cross-examination stated that he arrested the appellant at 4 p.m. on April 8, 1994, and no firearm was recovered at his instance. Empties and Pallets were not found at the place of occurrence. We have closely scrutinised the site plan Ex.P.1. A look at which demonstrates that deceased Mool Chand was sleeping all alone in his room whereas Bhagwan Dai and Parul were sleeping in the other rooms that were not adjoined to each other.

5. The salient features of the prosecution evidence may be deduced thus :-

(i) As per site-plan Ex.P. 1, deceased was sleeping all along in a room, whereas Parul and Bhagwan Dai were sleeping in two different rooms;

(ii) Although appellant was arrested on the date of the incident, yet no fire arm was recovered from his possession;

(iii) No blood stained clothes of the deceased were recovered. Even the clothes of the accused appellant allegedly wearing by him at the time of incident were not seized.

(iv) Parul in her deposition stated that at the time of incident, there was no light in the room and she had seen the accused in covered faces.

(v) Bhagwan Dai did not support the prosecution case and Virendra Kumar alias Sita Ram P.W. 5 neither recognized the appellant before the Police nor before the trial Judge.

6. In his statement under Section 313 Cr.P.C. the appellant stated that throughout the night, he was at the hotel and defence witnesses Chandra Bhan D.W. 1 and Ramesh Kumar D.W. 2 supporting his version deposed that on April 7, 1994, from 11 p.m. till 5 a.m. of next morning appellant through out remained at the hotel and did not go anywhere.

7. The learned trial court in convicting the appellant, placed reliance on the testimony of Parul and Radha Raman. Parul PW-2 stated that the murderers had covered faces but when they went out of the room, she could somewhat recognized that it was from the site plan Ex.P.1 it is established that Parul and the deceased were not sleeping in the same room. Thus no reliance can be placed on her statement. It is borne out from the record that the whole house of the deceased was wrapped in the sheet of darkness at the time of the incident and it was not possible to identify the assailant. His also the prosecution case that firstly somebody took off the quilt from the face of Mool Chand and then he cried Vishnu what are you doing.' This fact can not be believed as it has not been corroborated even by Bhagwan DaL Non-recovery of quilt also creates doubt about this version.

8. There is yet another infirmity in the prosecution case. As per the testimony of Radha Raman (PW. 10) the appellant after scaling the staircases, jumped down from the second floor of the house. A person who jumps down from the second

floor, is excepted to sustain at least some injuries on his person. The appellant who was arrested on April 8, 1994 did not sustain any injury. In view of this his participation in the occurrence becomes doubtful. On examining the statement of Radha Raman and Parul from the angle of trustworthiness we find them most unreliable witnesses. The prosecution has also failed to adduce any evidence as to what could have been the motive of the appellant in killing Mool Chand. How could he enter into the house and identify Mool Chand in the darkness. Whether there was enmity between the appellant and Mool Chand? If the appellant was involved with the crime then where was the gun? As the direct evidence in the instant case is not acceptable, non-recovery of gun or spent cartridge is fatal and does detract from the case of the prosecution.

9. After careful consideration of the facts and circumstances of the case we find it difficult to agree with the reasonings of the learned trial Judge. We are of the view that the prosecution has failed to connect the appellant with the crime and no offence under Section 302 and 450 IPC is established against the appellant beyond reasonable doubt.

10. In the result the appeal is allowed. The impugned judgment of the learned trial Judge stands set aside and the appellant stands acquitted of the charges under Section 302 and 450 IPC. He is in jail. He shall be set at liberty forthwith if not required in any other case.