

Ramjas and ors. Vs. State

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Court : Rajasthan

Decided On : Mar-10-2010

Judge : A.M. Kapadia and; Gopal Krishan Vyas, JJ.

Appellant : Ramjas and ors.

Respondent : State

Judgement :

Gopal Krishan Vyas, J.

1. In this appeal, appellants Ramjas, Mange Ram and Amar Singh are challenging the judgment dated 31.10.1985 passed by Additional Sessions Judge, Nohar in Sessions Case No. 16/84, by which the appellants were convicted for committing offence under Section 302/34 IPC and were sentenced for life imprisonment with fine of Rs. 200, in default of payment of fine to further rigorous imprisonment of two months.

2. Brief facts of the case are that on 21st April, 1984 FIR Ex.P/1 was registered at Police Station Bhadra, District Sri Ganganagar against six persons out of which four were named and two not named. The said FIR was lodged by PW1 Het Ram S/o Bhoma Ram, in which it is stated that before 15 years from the date of occurrence accused appellant Ramjas entered in the house of Jeevan Ram with some evil intention and Gharsi Ram deceased gave beatings to Ramjas in those days due to that incident accused Ramjas used to keep enmity with Gharsi Ram.

On the day of incident, the author of FIR Het Ram alongwith Gharsi Ram and Duli Chand went to the house of Hanuman Singh to attend some marriage party and after giving 'Ban' when they were returning to their village at about 9 PM and going to their house, the complainant Het Ram and Duli Chand stopped at the Water Works Office to inquire about the supply of water and deceased Gharsi Ram kept on moving towards the village and for this reason he was ahead of them about 40-50 Pawandas. When deceased Gharsi Ram was ahead of the complainant and Duli Chand, they heard voice of Ghasri Ram saying 'Mare Re, Mare Re' and thereupon they rushed to the place of occurrence where they saw that accused appellants Ramjas, Nathu Ram, Mange Ram, Amar Singh and two other persons were beating Gharsi Ram by lathies, when they tried to go near deceased Gharsi Ram for rescue, they were threatened by the accused party that if they would come near them, they would also be beaten. It is further stated by the complainant Het Ram that they rushed towards village and informed the father of deceased Bhoma Ram and Hardayal, Moola Ram, Ramkishan, Ramkumar and thereafter returned back to the place of occurrence along with those persons. After reaching at the place of occurrence, water was poured on the mouth of deceased. At that time, Bhoma Ram asked Gharsi Ram as to what had happened with him and on that deceased told Bhoma Ram that he was beaten by Ramjas and his sons and two other persons. Upon aforesaid allegations made in the FIR, the Police Station Bhadra registered FIR at about 11 PM on 21.04. 1984 and thereafter regular investigation was conducted and accused appellants were arrested on 25th April, 1984. In the investigation, it was found that Nathu Ram was falsely implicated so also two other unknown persons were not found to be indulged in the incident, therefore, challan was filed only against the present three appellants.

3. After filing challan by the police under Section 302 before the Munsif & Judicial Magistrate, 1st Class, Bhadra the matter was committed to the Court of Addl. Sessions Judge, Bhadra where trial took place. The trial Judge, after framing charge under Section 302 and in alternate under Section 302/34 IPC granted opportunity to the prosecution to lead evidence. The prosecution led evidence to prove the prosecution case, statements of following eight prosecution witnesses were recorded;

- (1) PW1 Het Ram - Author of FIR and brother of deceased Gharsi Ram
- (2) PW2 Bhoma Ram - father of deceased who came on spot after the incident took place.
- (3) PW3 Dr. Brij Mohan - Conducted postmortem and submitted report Ex.P/6
- (4) PW4 Dulichand -eye witness and close relative of deceased
- (5) PW5 Bhanwarlal - photographer who snapped the photos of deceased Gharsi Ram
- (6) PW6 Richpal - SHO, who investigated the case
- (7) PW7 Lal Singh - Constable (carrier)
- (8) PW8 Suraj Bhan, ASI

(No other witness produced before Court to prove recovery of lathies and arrest memo of all the accused and other documents of investigation)

4. Thereafter, statements of accused appellants under Section 313 Cr.P.C. were recorded and opportunity to produce evidence was granted to the appellants. In defence, statement of Sultan Singh DW1 was recorded and after that the case was finally heard and decided by the trial Court vide impugned judgment dated 31.10.1985.

5. Learned trial Judge convicted all the three accused appellants for committing offence under Section 302 read with Section 34 of the IPC and all the appellants were sentenced with life imprisonment alongwith fine of Rs. 200 and in default to further undergo imprisonment for two months.

6. We have heard counsel for appellants and Public Prosecutor and perused the entire record of the case.

7. The learned Counsel for the appellants argued that prosecution has not proved its case beyond reasonable doubt. The occurrence took place on the public way near Water Works Office of village but no independent witness has been produced

to prove the occurrence. Only two witnesses were produced as eye witnesses; one is Het Ram PW1, author of the FIR and another is PW4 Dulichand, brothers of the deceased. Upon perusal of the statements of these two witnesses, it emerges that the Investigating Officer himself has not accepted the testimony of these two witnesses with regard to involvement of six persons because in FIR Ex.P/1 so also in their statements recorded under Section 161 Cr.P.C. they have alleged that there were six persons who were inflicting injuries upon deceased Gharsi Ram but in the investigation, PW6 Richpal SHO found that Nathu Ram whose name was specifically mentioned in the FIR has falsely been implicated so also other two persons were also falsely implicated in the case by the eye witnesses, therefore, credibility of the statements of these witnesses cannot be accepted because both these witnesses PW1 Het Ram and PW4 Dulichand are brothers of the deceased and they falsely implicated the accused appellants in this case. It is further argued that upon perusal of statements of PW1 Het Ram, PW2 Bhoma Ram, father of deceased, and PW4 Dulichand, it will reveal that they are not alleging any trustworthy motive or intention against the appellants why they assaulted the deceased which resulted into his death, therefore, in absence of any motive or intention the finding of the learned trial Court with regard to committing offence under Section 302 read with Section 34 of the IPC is baseless and has no foundation to stand before eye of law. The learned Counsel for the appellants vehemently argued that main ingredient of murder which is intention or motive is absent in this case, therefore, even if it is presumed that incident took place then also offence under Section 302 read with Section 34 of the IPC is not made out. In this view of the matter, it is submitted that the prosecution has failed to prove its case for committing offence under Section 302 read with Section 34 of the IPC by the accused persons but the learned trial Court while giving erroneous finding held the accused appellants guilty for committing offence under Section 302 read with Section 34 of the IPC.

8. Learned Counsel for the appellants invited our attention towards the fact that as per Postmortem Report Ex.P/6 there is no serious injury upon vital part of the body of deceased. The Injury No. 9 which is said to be inflicted upon leg of the deceased was found to be grievous. While inviting attention towards the statement of PW3 Dr. Brij Mohan, it is submitted that the said witness has

deposed in his statement that except Injury No. 9 which was on the leg of the deceased, all other injuries (bruises) were simple in nature, meaning thereby, there was no grievous injury upon any vital part of the body of the deceased and this fact itself is sufficient to show that there was no intention on the part of the appellants to kill the deceased. Further, it is submitted that out of 17 injuries mentioned in the Postmortem Report, 15 are bruises and none of them were on vital part of the body, Injury No. 1 which is a lacerated wound that too is simple in nature and injury No. 9 is also a lacerated wound upon tibia and fibula of the deceased, therefore, even if it is presumed that occurrence took place then also on the basis of the nature of injuries found on the body of deceased, it can be gathered that there was no intention to kill the deceased and there was no intention behind the incident. In that view of the matter, it is submitted that accused appellants have been convicted while giving erroneous finding by the trial Court.

9. The learned Counsel for the appellants further argued that no specific injury has been attributed to any of the accused. More so, PW1 Het Ram and PW4 Dulichand, who are close relatives of the deceased, have stated in their statements that there were six persons but during investigation the investigating officer found that only three accused appellants were involved in the offence, meaning thereby, a concocted and fabricated story was put forth by the prosecution witnesses to indulge the whole of the family of the accused appellants which creates volumes of doubt with regard to the incident, therefore, accused appellants cannot be held guilty for committing offence under Section 302 read with Section 34 of the IPC. Learned Counsel submitted that testimony of these witnesses is to be assessed on the basis of the facts narrated by them in their statements before the Court and upon perusal of the statements of eye witnesses it emerges that there is no whisper with regard to intention except one fact that before 15 years of incident appellant Ramjas was beaten by the deceased when he was entering in his house, therefore he was keeping enmity with deceased but upon assessment of the evidence on record, it clearly reveals that prosecution has not proved its case beyond doubt for committing offence by the accused appellants under Section 302 read with Section 34 of the IPC and finding of learned trial Court is totally wrong and perverse because there is no trustworthy evidence on record to show that there was any intention behind so called crime

which is alleged to have been committed by the appellants.

10. The learned Counsel for the appellants without prejudice to above arguments submitted that even if it is presumed that occurrence took place then also the case does not travel beyond Section 325 read with Section 34 of IPC and from any angle no offence under Section 302 read with Section 34 of the IPC is made out, therefore, even if this Court comes to the conclusion that incident took place then also appellants cannot be convicted for offence under Section 302 read with Section 34 of the IPC. Learned Counsel for the appellants further invited attention of this Court toward a very important fact that only eight witnesses were examined from the prosecution side but no evidence has been produced on record to prove the recovery of lathies which is said to be used in the commission of the offence and submitted that when recovery of lathies is not proved then accused appellants cannot be convicted for the alleged offence.

11. Lastly, the learned Counsel for the appellants submitted that the prosecution has failed to prove its case beyond doubt but the learned trial Court has wrongly relied upon the testimony of eye witnesses knowingly well that important witnesses of recovery of lathies and other documents have not been produced by the prosecution, therefore, the judgment deserves to be set aside and the accused appellants are entitled to be acquitted of the charges leveled against them.

12. Per contra, learned Public Prosecutor vehemently argued that the judgment rendered by the trial Court, which is impugned in this appeal, does not require any interference and submitted that the learned Addl. Sessions Judge, Nohar has rightly relied upon the testimony of eye witnesses PW1 Heat Ram and PW4 Dulichand and their presence at the place of occurrence is also proved because soon after the occurrence FIR was lodged by PW1 Hetram and on his information case was registered at Police Station, Bhadra. The learned Public Prosecutor further argued that though involvement of six persons was alleged in the FIR but police during investigation found that only three accused appellants were involved in the commission of offence, therefore, on the basis of fair investigation challan was filed and thereafter trial took place in the Court of Addl. Sessions Judge, Nohar where prosecution led valuable evidence including of eye witnesses and the

investigating officer so also the doctor who performed postmortem and gave report and while accepting the testimony of these witnesses the learned trial Court has rightly arrived at the finding that offence under Section 302 read with Section 34 of the IPC is made out against the accused appellants.

13. The learned Public Prosecutor while opposing the arguments of learned Counsel for the appellants submitted that the arguments advanced by learned Counsel for the appellants are required to be ignored on the ground that prosecution has proved its case beyond reasonable doubt and number of injuries were found on the body of the deceased and soon after the occurrence FIR was registered upon information given by PW1 Het Ram and after investigation challan was filed.

14. In the trial, two eye witnesses PW1 Het Ram and PW4 Dulichand gave their statement that incident took place in front of them, therefore, their presence and testimony before the trial Court is trustworthy, hence this appeal deserves to be dismissed.

15. After hearing both the parties, we have scanned the entire evidence which is on record. Admittedly, upon perusal of FIR Ex.P/1 it emerges that FIR was filed against six persons, out of which four were named and two were unnamed and in the investigation it is found that only three accused appellants were involved in the incident. Further, in the entire evidence on record, there is no evidence to prove intention or motive of accused appellants to commit murder of deceased except one averment in the FIR that 15 years back from the incident deceased Gharsi Ram gave beating to Ramjas and therefore he used to keep enmity which resulted in the occurrence. In our opinion, the said fact cannot be treated as an intention for committing murder of the deceased by the accused appellants and convicting them for offence under Section 302 read with Section 34 of the IPC.

16. To gather 'intention' and 'motive', we have perused and assessed the injuries mentioned in the postmortem report and statements of doctor Brij Mohan PW3. Upon perusal of statement of PW3 Dr. Brij Mohan, it is revealed that Injury No. 9 found upon leg was grievous in nature and all other injuries were simple in nature. Further, he has made following statement before the Court:

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17. Upon assessing the credibility and reliability of the statement of the doctor, we find that as per the statement of doctor only one injury which is Injury No. 9 on the leg of deceased was grievous in nature. Further. in the statement of PW1 Het Ram and PW4 Duli Chand no specific allegation for inflicting Injury No. 9 by any particular accused has been made. This fact itself speaks that there was no intention of the accused appellants to kill the deceased. Therefore, in our opinion, there is strength in the argument of the learned Counsel for the appellants that the prosecution has not led sufficient evidence to prove the case for commission of offence under Section 302 read with Section 34 IPC. As per details of injuries mentioned in the Postmortem Report, out of 17 injuries, Injury No. 9 was found to be grievous that too upon the leg of the deceased and remaining injuries were simple bruises, therefore, upon assessment of above facts, we are of the opinion that there was no intention to kill the deceased and we are in full agreement with the counsel for the accused appellants that as per evidence on record, even if it is presumed that occurrence took place then also no offence under Section 302 read with Section 34 of the IPC is made out. The finding of the learned trial Court with regard to commission of offence under Section 302 read with Section 34 IPC is erroneous and contrary to the evidence on record. The basic ingredient of murder which is intention is absent in this case, therefore, in our opinion, learned trial

Judge has committed an error while convicting the accused appellants for committing offence under Section 302 read with Section 34 of the IPC so also case does not travel beyond Section 323 and 325 read with Section 34 IPC.

18. In this case, to prove the prosecution case, a list of 21 witnesses was annexed with the challan but only eight witnesses were produced before the Court. None of the witnesses of recovery of lathies from accused appellants and none of the independent witnesses (Motbir) of preparation of site plan and other memos were produced before the trial Court except the Investigating Officer. This fact is also very important to assess the credibility of the evidence as to why the prosecution has not produced independent witnesses before the trial Court to prove the fact of arrest of accused appellants and recovery of lathies from them. The learned trial Court has relied upon the testimony of Investigating Officer PW6 Richpal only and found that prosecution has proved its case for offence under Section 302 read with Section 34 of the IPC. In our opinion, it is an important lacuna of the prosecution case that to prove the offence under Section 302 read with Section 34 of the IPC. Prosecution has not produced sufficient evidence though prosecution has mentioned names of as many as 21 persons in the list of witnesses but has produced only 8 witnesses out of which 3 close relatives of deceased; PW1 Het Ram (real brother), PW2 Bhoma Ram (father) and PW4 Duli Chand (cousin brother), were produced and no other independent witness has been produced before the Court to prove the prosecution case despite the fact that as per prosecution case incident took place in an open place.

19. In this view of the matter, it is obvious that the accused appellants for the offence under Section 302 read with Section 34 of the IPC. In our opinion, on the basis of assessment of entire evidence, we find that there is no evidence on record to prove that there was any intention or motive behind the occurrence so also no grievous injury was found upon vital part of the body of the body of deceased except one grievous injury which was found on the leg of deceased and as per the opinion of the doctor deceased died due to shock and none of the injuries suffered by him was sufficient to cause death. Therefore, the finding of learned trial Court with regard to committing offence under Section 302 read with Section 34 of the IPC is perverse and contrary to the evidence on record and their

conviction for offence under Section 302 read with Section 34 of the IPC does not sustain. This appeal is pending since 1985 and accused appellant Ramjas is more than 80 years of age and there is no specific allegation against any of the accused appellants for inflicting grievous injury upon the leg of the deceased, therefore, this appeal is partly allowed, the conviction of the accused appellants under Section 302 read with Section 34 IPC is hereby altered from Section 302 read with Section 34 IPC to conviction under Section 325 read with Section 34 IPC. The accused appellants are hereby sentenced to the period of imprisonment already undergone by them but the amount of fine imposed by the trial Court Rs. 200 is enhanced to Rs. 2000 which should be deposited by each of the accused appellants in trial Court within two months from today.

20. Accused appellants are on bail. Their bail bonds are hereby discharged.

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