

Himmat Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-23-2010

Judge : Govind Mathur and; C.M. Totla, JJ.

Appellant : Himmat Ram

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Govind Mathur, J.

1. By judgment dated 31.10.2003 learned Additional Sessions Judge (Fast Track-I), Dungarpur convicted the appellant for offences punishable under Sections 302 and 450 Indian Penal Code and sentenced him as follows:

Section 302 IPC: life imprisonment with a fine of Rs. 1000/- and in default of payment of fine to further undergo one year's simple imprisonment.

Section 450 IPC: five years' rigorous imprisonment with a fine of Rs. 1000/- and in default of payment of fine to further undergo six months' simple imprisonment.

2. The prosecution case is that on 27.7.2002 one Gomna (PW-10) submitted a written report at Police Station Ganeshpur and as per that in the night of 26.7.2002 Gomna and his son Bhagwan were coming together from Punali turn to Ghatikada

turn wherefrom they both proceeded to their respective houses. In the morning of 27.7.2002 at about 06:00 AM Nathu called Gomna and informed that outer door of Bhagwan's house was lying open with blood stains in compound. Gomna then found dead bodies of Bhagwan and his wife Anita lying inside. Accordingly, a case was registered, investigation was made and a charge sheet was filed against five persons viz. Arjunlal son of Ratna, Himmat Ram son of Arjunlal, Bhanwarlal son of Arjunlal, Manji son of Arjunlal and Jayantilal son of Arjunlal. The case was committed to the court of Sessions, charges for commission of offences punishable under Sections 302, 450 and 109/34 were framed and on denial of same all the accused were tried.

3. The prosecution supported its case with the aid of 17 witnesses and 45 documents (Ex.P/1 to Ex.P/45). The accused persons were examined as per Section 313 Cr.P.C. to explain the circumstances appearing in the prosecution evidence and they also adduced documents Ex.D/1 to Ex.D/7 in defence. The trial court by the judgment impugned acquitted all the accused persons except the present appellant Himmat Ram who suffered conviction for the offences punishable under Sections 302 and 450 IPC.

4. The trial court recorded the conviction while relying upon the statements of PW-2 Harilal, PW-6 Pema, PW-10 Gomna and also upon the recovery of blood stained pant and a sword. The trial court also relied upon the scientific evidence as per which the sword recovered and the clothes of deceased persons were having human blood stains.

5. The challenge to the conviction recorded and the sentence awarded is given on the count that the instant one is a case of circumstantial evidence, thus, the finding could rest upon only definite clear and the convincing evidence to the extent that all the circumstances should indicate towards only one conclusion i.e. the guilty of the accused beyond any shadow of doubt, but in the case in hand a reasonable doubt exists in believing the prosecution story and disbelieving the defence case. As per counsel for the appellant the prosecution utterly failed to establish motive behind the crime, recovery too is not reliable and the scientific report was not worth relying being non-availability of link evidence and possibility of tampering of

evidence whatever available. Learned Counsel also suggested possibility of an alternative story on basis of the statements of PW-1 Dhula, PW-3 Nathu and PW-4 Maya.

6. While opposing the appeal, learned Public Prosecutor in general supported the prosecution case and the conviction recorded.

7. We have considered the arguments advanced and also scrutinised the record available.

8. PW-14 Dr. Kishan Murari Meena was a member of the medical team that conducted autopsy on dead bodies of deceased Bhagwan and deceased Anita on 27.7.2002. This witness approved the postmortem report given, according to that dead bodies of Bhagwan and Anita were having multiple antemortem injuries and, the neuro haemorrhagic shock due to those multiple injuries was the cause of death. Looking to the width of injuries suffered by deceased Anita, PW-14 Dr. Kishan Murari Meena also accepted the use of different weapons in crime. In view of the statements of Dr. Kishan Murari Meena there is no doubt of culpable homicide of Bhagwan and Anita.

9. PW-15 Shantilal Meena was the Station House Officer of police station Ganeshpur on 27.7.2002 and he stated the steps taken during the course of investigation. This witness also verified recovery of pantaloons and a sword at the instance of accused Himmat Ram as per recovery memos Ex.P/12 and Ex.P/11 respectively.

10. It is also relevant to note that P-3 Nathu and PW-4 Maya were produced before the trial court as eye witnesses but they did not support the prosecution case and as such were declared hostile.

11. PW-3 Nathu stated that on the day of incident at about 02:30 AM he heard from the house of Bhagwan calling 'PHUA'. As per this witness the term 'PHUA' means 'Phupha' in relation. On hearing as above, this witness came out from his house and gave a call to Bhagwan but of no consequence, thus, he returned to his house and then at about 06:00 AM Puji wife of Punja came to him and asked to

call Bhagwan and Anita. No response was received on giving call, but looking to the blood stains available in compound, this witness called Gomna, father of deceased Bhagwan. This witness was declared hostile on the count that as per prosecution he was eye witness as he saw accused persons running out from the house of Bhagwan carrying sword.

12. PW-4 Maya is wife of PW-3 Nathu and she also did not support the prosecution story.

13. PW-8 Motilal and PW-12 Kesrimal are the other witnesses who stated that in the night when incident occurred, they were coming from wood and they saw Himmat Ram coming out from the house of deceased Bhagwan. As per these witnesses Himmat was having a sword in his hand. These two witnesses were first time introduced on 16.8.2002 i.e. after a lapse of about 20 days from the date of incident. Be that as it may, the trial court did not rely upon these witnesses being not trustworthy.

14. The trial court considered the statements of PW-2 Harilal, PW-6 Pema and PW-10 Gomna credit worthy to establish the motive behind the crime.

15. PW-2 Harilal stated that in the year 1984 there was some dispute regarding way between Gomna and Arjun and since then they were keeping enmity. As per this witness about four days prior to occurrence of crime in question Himmat Ram came on motorcycle and tried to indulge in hot discussions with Gomna. On the same day in night he abused Gomna and also stated that he will spent even a sum of Rs. 10,000/- to settle Bhagwan who was a witness against him in a case relating to the wife of Dinesh who accompanied Jayanti some time back.

16. PW-6 Pema also stated that Himmat Ram, Jayantilal and Dinesh quarrelled with Bhagwan few days back and Himmat threatened Bhagwan to kill him. He also stated that the quarrel took place because of an affair relating to wife of Dinesh.

17. PW-10 Gomna who is father of Bhagwan and father-in-law of deceased Anita also stated that he was not at good terms with accused persons because of a dispute relating to way. He further stated that the issue relating to the wife of

Dinesh was also a cause for enmity between his family and the accused persons.

18. Learned Counsel for the appellant urged that the minor issues pointed out by the prosecution in no way could have been a motive for a serious crime of murder. As per him, all the persons on statements of whom an inference is drawn regarding motive are interested witnesses and, thus, they are not trustworthy. We do not find any merit in the argument advanced. All the three witnesses referred above in definite terms stated about existence of dispute between the parties and the occurrence of quarrel only few days back to the date of incident. As such, total absence of motive cannot be said in existing set of facts.

19. The other issue is relating to recovery of weapon of offence and blood stained pantaloons of accused Himmat Ram. According to the prosecution as per Ex.P/29 accused Himmat Ram at about 02:15 PM on 2.8.2002 voluntarily disclosed about hiding of the sword by which Bhagwan and his wife were killed and also about his own chappals and pant worn at the time of incident. On basis of disclosure statement aforesaid the investigating agency recovered a blood stained pant from the residential house of Himmat Ram on 3.8.2002 at 11:45 AM. On the same day a blood stained sword was recovered at 10:30 AM from forest. The recovery of aforesaid articles was made in presence of PW-1 Dhula Nanoma and PW-7 Bhogilal.

20. While questioning the recovery made by investigating agency and relied by the trial court, it is contended by counsel for the appellant that the information was given by the accused as per provisions of Section 27 of the Indian Evidence Act on 2.8.2002 at 02:15 PM and the recovery of sword was made at 10:30 AM on 3.8.2002 i.e. about 20 hours later to the information given. It is also urged by counsel for the appellant that the document Ex.P/10, as a matter of fact the time of recovery refers as 11:30 AM but by making an overwriting 11:00 is changed to 10:30 AM. As per counsel for the appellant there was no just and plausible reason for causing delay in effecting recovery. It is also emphasised that the recovery of sword is absolutely false in view of the fact that PW-10 Gomna in quite specific terms stated that the police personnels took sword and the 'myan' from the spot itself.

21. We have considered the argument with the aid of record available. Ex.P/10 is the recovery memo relating to recovery of blood stained sword. The recovery memo though refers the time of recovery as 10:30 AM but an overwriting exists there to get the time 11:30 changed as 10:30 AM. No explanation is available on record for making an overwriting in recovery memo Ex.P/10. Ex.P/17 is the recovery memo wherein the time of recovery is shown as 11:45 AM. As per Ex.P/29 accused Himmat Ram provided information with regard to three articles those are sword, pantaloons and chappal, however, recovery of sword and pantaloons only was made. True it is, the motbirs PW-1 Dhula and PW-7 Bhogilal mentions about recovery of articles in their presence, however, learned Public Prosecutor utterly failed to satisfy the Court as to how and why PW-10 Gomna, who is father of deceased Bhagwan and who was one among the first persons reached at the spot of incident, stated that the sword alongwith its covering ('myan') was taken by the police from the place of occurrence. It is also significant that the accused as per Ex.P/29 made a disclosure statement at 02:15 PM on 2.8.2002 but the investigating agency took at least 20 hours in effecting recovery of articles disclosed under Ex.P/29. The recovery of sword as well as pant both were made from open places and, therefore, the unexplained delay of 20 hours in conjunction with the fact PW-10 Gomna stated that the sword and its covering was recovered from the spot, creates little doubt about genuineness of the recoveries made during investigation.

22. The third argument in defence advanced by counsel for the appellant is that the trial court erred while relying upon the Forensic Science Laboratory report as there was possibility of tampering with the evidence. It is pointed out by learned Counsel that under document Ex.P/23 i.e. copy of malkhana register, there is no entry of remitting sword and pant for their examination. He has also pointed out from the statements of PW-13 Parmanand, malkhana in charge at police station Ganeshpur that on 27.7.2002 six articles relating to case in question were available in malkhana. Two articles further were added on 23.8.2002 and on 27.7.2002 two packets of blood stained soil, covering of sword and blood stained clothes of both the deceased were made available. He further stated that on 3.8.2002 a sword and a blood stained pant were also deposited with malkhana. As per this witness the sealed articles were given to constable Himmat Singh on

26.8.2002 to carry the same to S.P. Office to get those articles scientifically examined from Forensic Science Laboratory, Udaipur.

23. PW-17 Himmat Singh is the person who as per prosecution carried articles from malkhana to S.P. Office and then to Forensic Science Laboratory. This witness stated that he received some articles on 20.8.2002 and some other articles on 26.8.2002 to carry to the office of the Superintendent of Police, Dungarpur. He also stated that he brought the articles taken from malkhana to the S.P. Office, Dungarpur on 20.8.2002 itself. Relevant to note here that PW-13 Parmanand in quite specific terms stated that no article was issued on 20.8.2002 to Himmat Singh. Ex.P/23, the malkhana register, also not refers release of any material on 20.8.2002. Learned Public Prosecutor failed to satisfy the discrepancy aforesaid existing in malkhana register and the contradiction existing in the statements of PW-13 Parmanand and PW-17 Himmat Singh. In such circumstances, we are of the view that a possibility of tampering with the evidence cannot be absolutely ruled out. We would also like to mention here that while examining the accused no specific question regarding findings of Forensic Science Laboratory was asked. The incriminating material relating to findings of Forensic Science Laboratory too was not put forth to the accused. The cumulative effect of whatever said above, puts the scientific evidence also under clouds.

24. An another aspect of the matter is that PW-3 Nathu though was declared hostile, stated that in the night of occurrence he heard someone calling 'PHUA' and Gomna told him that in the night concerned Jeeva son of Dhula was at the resident of Bhagwan. PW-4 Maya wife of PW-3 Nathu also stated in cross examination that the son-in-law of Shankar is known to her but she do not know his name. On the date of incident he was at the residence of Bhagwan and he happen to be 'Phupha' of Bhagwan. One interesting thing, may that be not of much relevance but requires mentioning is that PW-3 Nathu himself was in the zone of suspicion for committing the crime under consideration and he was interrogated by the police by keeping him at police station for a term of 15 days. He stated in his statements that he was released from the police station by making a payment of a sum of Rs. 6000/-. This fact is corroborated by his wife PW-4 Smt. Maya. It is also important to note that the document Ex.P/1 i.e. 'naksha mauka and naksha najri'

for remembrance, mentions that the position of the site shows that some known person came and at his instance house was opened. This inference appears to be drawn in the document aforesaid on the count that the dead body of deceased Anita was found just close to entering door of the house. In these circumstances the alternative story as sought to be propounded by the defence that someone other was present at the house of Bhagwan in the night of occurrence, cannot be said to be absolutely unbelievable. It is well settled that whenever and wherever a little doubt exists then benefit is required to be extended in favour of the accused. In the present case the entire evidence is based on circumstances and as such that should be of such a cogent nature that no other inference could have been drawn except the guilty of accused persons. In the case in hand such is not the position.

25. On minute examination of the evidence, we are of the view that in the instant case reasonable doubt exists in believing the prosecution story and disbelieving the defence case. The chain of circumstances meted by the prosecution is also not so clear, convincing and definite to infer only one conclusion i.e. guilty of accused.

26. For the reasons mentioned above, this appeal deserves acceptance and, therefore, the same is allowed. The judgment dated 31.10.2003 passed by Additional Sessions Judge (Fast Track-I), Dungarpur in Sessions Case No. 43/2003 is quashed. The conviction of the accused recorded for the offences punishable under Sections 302 and 450 IPC is set aside. The sentence awarded under the judgment impugned too is quashed. The accused be released from judicial custody forthwith, if not required in any other case.