

Pushkar Gorrani Vs. the State

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Court : Uttaranchal

Decided On : Feb-22-2010

Judge : Dharam Veer, J.

Appellant : Pushkar Gorrani

Respondent : The State

Advocate for Pet/Ap. : Dr. Udhyog Shukla

Disposition : Appeal dismissed

Judgement :

Dharam Veer, J.

1. This criminal appeal, preferred under Section 374(2) of The Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed against the judgment and order dated 17.10.1997 passed by the Sessions Judge, Almora in Sessions Trial No. 13 of 1996, State v. Pushkar Gurrani, whereby the learned Sessions Judge has convicted the appellant/accused Under Section 307 of The Indian Penal Code, 1860 (hereinafter to be referred as I.P.C.) and sentenced him to seven years' rigorous imprisonment with fine of Rs. 5,000/- and in default of payment of fine, to undergo further R.I. for one year.

2. I have heard learned Counsel for the parties and perused the entire material available on record.
3. In brief, the prosecution case is that complainant Hari Om (P.W.5) lodged an FIR stating therein that on 2.10.1995 at about 9 PM, when he was in his duty at District Hospital, he heard noise that Om Prakash has received injury of knife. On hearing this, he rushed on the spot and saw that injured Om Prakash was lying there and at that time Dr. Dharendra Bankoti (PW4) and duty staff was present over there. Injured Om Prakash informed the complainant that the appellant-accused Pushkar Gurrani tried to enter inside the ward without any reason and when he refused the appellant-accused, then the appellant-accused gave a knife blow in his stomach and thereafter the appellant ran away from there and after that the injured Om Prakash became unconscious. This incident was also seen by the duty staff present over there. With the same averments, the FIR Ex.Ka-3 was lodged by P.W.5 Hari Om on 2.10.1995 at 9:40 PM at P.S. Kotwali Almora. On the basis of the FIR, Head Constable Naresh Pal prepared the Chik FIR of the case, i.e. Ex.Ka-4. The investigation of this case was entrusted to P.W.6 S.I. Ilam Chand Verma. Injured Om Prakash was medically been examined on 2.10.1995 at 9:00 PM by P.W.4 Dr. Dharendra Bankoti who after the medical examination, prepared the medical report Ex.Ka-1. Thereafter, the supplementary report of the injured was also been prepared by the same medical officer, i.e. Ex.Ka-2. During the course of investigation the I.O. inspected the place of occurrence and prepared the site plan, which is on record. Ex.Ka-5 is the extract of statement of Dr. Dharendra Bankoti; Ex.Ka-6 is the extract of statement of Saroj, nurse; Ex.Ka-7 is the extract of statement of Reeta, nurse and Ex.Ka-8 is the extract of statement of Hari Om (complainant), which were recorded by the I.O. The I.O. during the course of investigation recorded the statements of witnesses and after completing the investigation, submitted the charge sheet against the appellant/accused in the court, i.e. Ex.Ka-9.
4. After receiving the charge sheet, learned CJM, Almora committed the case to the court of Sessions on 01.03.1996 after giving necessary copies to the appellant/accused as provided under Section 207 Cr.P.C.

5. On 28.9.1996, the learned Sessions Judge, Almora framed the charge against the appellant/ accused Pushkar Gurrani for the offence punishable Under Section 307 IPC. The charge was read over and explained to appellant/accused, who pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined P.W.1 Om Prakash, injured witness, P.W.2 Reeta, P.W.3 Saroj, P.W.4 Dr. Dharendra Bankoti, who medically examined the injured Om Prakash; P.W.5 Hari Om, complainant and P.W.6 S.I. Ilam Chand Verma, I.O. of the case.

7. After that the statement of the appellant/ accused was recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to him in question form, who denied the allegations made against him and stated that he has been falsely implicated. He has stated that 3-4 days before the occurrence, he had gone to the hospital for obtaining some documents and x-ray report from there and had handed over to the injured an amount of Rs. 400/- for that purpose. On 1.10.1995, when he contacted the injured, he was ill treated by him and the injured also hurled abuses. When he told the injured Om Prakash that he would be reporting the matter to the CMO, he implicated him in this false case.

8. After hearing learned Counsel for the parties and appreciating the entire material available on record, the learned Sessions Judge, Almora vide judgment and order dated 17.10.1997 convicted and sentenced the appellant/accused as discussed above. Feeling aggrieved by the aforesaid judgment and order, the accused/appellant has preferred the present appeal.

9. Before any further discussion, it is pertinent to mention the injuries recorded on the person of injured Om Prakash in the injury report Ex.Ka-1, who was examined on 2.10.1995 at 9 PM by P.W.4 Dr. Dharendra Bankoti, which are as under:

Incised stab wound over left side of stomach, 14 cm below left nipple measuring 4 cm x 1.5 cm, spindle shaped direction below upward, margin sharp cut, fresh bleeding present. Nature of the wound under observation kept.

Opinion-caused by sharp object, duration fresh, nature under observation. Patient admitted and referred to surgeon, police informed, CMO informed.

10. After that the supplementary report of the injured was also prepared by the same medical officer (Ex.Ka-2), which is as under:

The injury No. 1, which was kept under observation on that day, was grievous in nature as per hospital records.

11. To prove the above-said injury reports, the prosecution has examined P.W.4 Dr. Dharendra Bankoti who has proved the injury report Ex.Ka-1 and supplementary report Ex.Ka-2 prepared by him. He further stated that at the same time, he conducted the operation of the injured and stopped the flowing of blood oozing out from the blood vessel near the intestine by way of operation. He further stated that if the bleeding would not have been stopped, then it could have resulted in the death of injured and the injury, being dangerous to life, was grievous in nature. It is pertinent to mention here that this witness was declared hostile only for the reason that he has stated that he had not seen the incident.

12. To further prove its case the prosecution has examined P.W.1 Om Prakash, injured witness, who has stated that on 2.10.1995 at 9 PM, he was standing in front of Surgical Ward of the hospital and at that time, the appellant-accused Pushka Gurrani came there and started insisting upon sleeping at that place. When he refused, thereupon the appellant-accused hurled abuses to him. Dr. Dharendra Bankoti (PW4) was going to examine the patients at that time and Hari Om (PW5), sweeper was also present there. Staff nurses Reeta and Saroj Rani were also present in their duty at that time. On his refusal to the appellant-accused to sleep into the hospital, the appellant-accused brought out a knife from his pocket and stabbed in his (Om Prakash) abdomen. Then some noise was raised and he fell down and after that the appellant-accused ran away. The appellant-accused was known to him previously. A bulb was lightning in front of duty room and the appellant-accused was identified in the light thereof. An electric rod was also lightning there. The other persons went to lodge the report and he was also medically been examined at that time. For about 10 days, he remained admitted in the hospital. He further stated that the appellant-accused stabbed knife with the

intention to kill him. This witness was cross-examined at length by the defence counsel but nothing has come out in his statement which may create any doubt in his statement. The statement of this witness is reliable and believable and inspires confidence.

13. P.W.2 Reeta and P.W.3 Saroj have not supported the prosecution case and they were declared hostile.

14. P.W.5 Hari Om has stated that on 2.10.1995 at 9 PM he was in his duty at District Hospital and on hearing the noise, he came out and found Om Prakash fallen down, who informed him that the appellant-accused had stabbed knife to him. However, he did not see the appellant-accused outside in the crowd. He got the report of the incident scribed by Shyam Lal and he also proved the same i.e. Ex.Ka-3. After that this witness was also been declared hostile.

15. P.W.6 S.I. Ilam Chand Verma has stated that investigation of this case was entrusted to him. During investigation, he inspected the place of occurrence and prepared the site plan, which is on record. Chik FIR of this case was prepared by H.C. Naresh Pal Singh, i.e. Ex.Ka-4. He also recorded the statements of Dr. Dharendra Bankoti, nurses Saroj, Reeta and complainant Hari Om in the case diary, i.e. Ex.Ka-5 to Ex.Ka-8 respectively. During investigation he recorded the statements of witnesses and on completing the investigation, he filed the charge sheet i.e. Ex.Ka-9.

16. After that the statement of the appellant/accused was recorded Under Section 313 Cr.P.C. The oral and documentary evidence was put to him in question form, who denied the allegations made against him and stated that he has been falsely implicated. He has stated that 3-4 days before the occurrence, he had gone to the hospital for obtaining some documents and x-ray report from there and had handed over to the injured an amount of Rs. 400/- for that purpose. On 1.10.1995, when he contacted the injured, he was ill-treated by him and the injured also hurled abuses. When he told him that he would be reporting the matter to the CMO, he implicated him in this false case.

17. Dr. Udhyog Shukla, learned Counsel for the appellant-accused argued that the prosecution has not proved its case beyond reasonable doubt against him. I do not find any force in this argument for the reason that P.W.1 Om Prakash, who is the injured witness of the case, has stated that on 2.10.1995 at 9 PM, he was standing in front of Surgical Ward of the hospital and at that time, the appellant-accused Pushka Gurrani came there and started insisting upon sleeping at that place. When he refused, thereupon the appellant-accused hurled abuses to him. Dr. Dharendra Bankoti (PW4) was going to examine the patients at that time and Hari Om, sweeper was also present there. On his refusal to the appellant-accused to sleep into the hospital, the appellant-accused brought out a knife from his pocket and stabbed him in his (Om Prakash) abdomen. Then some noise was raised and he fell down and the appellant-accused ran away. The appellant-accused was known to him previously. A bulb was lightning in front of duty room and the appellant-accused was identified in the light thereof. An electric rod was also lightning there. The other persons went to lodge the report and he was also medically been examined at that time. For about 10 days, he remained admitted in the hospital. He further stated that the appellant-accused stabbed knife to him with the intention to kill him. The evidence of this witness is reliable, believable and inspires implicit confidence. The evidence of this witness also gets full corroboration from the medical evidence. P.W.4 Dr. Dharendra Bankoti has clearly stated that he conducted the operation of the injured and stopped the flowing of blood oozing out from the blood vessel near the intestine by conducting the operation. He further stated that if the bleeding would not have been stopped, then it could have resulted in the death of injured and the injury, being dangerous to life, was grievous in nature. In the supplementary report Ex.Ka-2 also, the injury has been opined as grievous in nature. Therefore, the medical evidence of P.W.4 Dr. Dharendra Bankoti as well as medical report Ex.Ka-1 and supplementary report Ex.Ka-2 also fully support the case of the prosecution. 18. It was next argued by the counsel for the appellant-accused that the trial court has convicted and sentenced the appellant-accused on the basis of the sole testimony of P.W.1 Om Prakash and it is not safe to convict the appellant-accused on the basis of sole testimony. This argument advanced by learned Counsel for the appellant has also got no force. It is well settled principle of law that the conviction can be based on

the sole testimony provided it must inspire implicit confidence. I am fortified in my view with the verdict of Hon'ble Supreme Court in the case of Chittar Lal v. State of Rajasthan reported in : (2003) 6 SCC 397 in which it has been held that conviction can be based on sole evidence of a witness if it inspires confidence. Para 7 of the judgment is essential to mention here which is quoted as below:

Evidence of the person whose name did not figure in the FIR as witness does not perforce become suspect. There can be no hard-and-fast rule that the names of all witnesses, more particularly eyewitnesses should be indicated in the FIR. As was observed by this Court in Shri Bhagwan v. State of Rajasthan mere non-mention of the name of an eyewitness does not render the prosecution version fragile. The information was not lodged by an eyewitness. Mental condition of a person whose father has lost his life inevitably gets disturbed. Explanation offered by witnesses for non-mention of PW 3's name is plausible. Additionally, it is to be noted that in the present case the statement of PW 3 was recorded on the same day of incident, immediately after the investigation process was set into motion. Therefore, the plea that PW 3's testimony is doubtful lacks substance. The other plea was that conviction should not have been made on the basis of a single witness, PW 3's testimony. This plea is equally without essence. The legislative recognition of the fact that no particular number of witnesses can be insisted upon is amply reflected in Section 134 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'). Administration of justice can be affected and hampered if number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of one witness, leaving aside those cases which are not of unknown occurrence where determination of guilt depends entirely on circumstantial evidence. If plurality of witnesses would have been the legislative intent, cases where the testimony of a single witness only could be available, in number of crimes the offender would have gone unpunished. It is the quality of evidence of the single witness whose testimony has to be tested on the touchstone of credibility and reliability. If the testimony is found to be reliable, there is no legal impediment to convict the accused on such proof. It is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. This position has been settled by a series of decisions. The first decision which has become locus classicus is Mohd. Sugul Esa Mamasan Rer Alalah. R. The

Privy Council focused on the difference between English law where a number of statutes make conviction impermissible for certain categories of offences on the testimony of a single witness and Section 134 of the Evidence Act. The view has been echoed in *Vadivelu Thevar v. State of Madras*, *Guli Chand v. State of Rajasthan*, *Vahula Bhushan v. State of T.N.*, *Jagdish Prasad v. State of M.P.* and *Kartik Malhar v. State of Bihar*.

19. My view further stands fortified with another judgment of Hon'ble Apex Court in the case of *Mahendra Singh v. State of M.P.* reported in (2007) 3 SCC (Cri.) 583 in which in para 11, it has been held as under:

11. It is now a well-settled principle of law that conviction can be based on the basis of the testimony of a sole eyewitness.

20. After considering the aforesaid judgments rendered by Hon'ble Apex Court and in view of the evidence discussed above, the argument advanced by learned Counsel for the appellant is not sustainable in the eye of law and as per the foregoing discussion, it has been proved beyond any reasonable doubt that the evidence of P.W.1 Om Prakash is reliable, believable and inspires implicit confidence and thus the trial court has rightly convicted and sentenced the appellant-accused on the basis of sole testimony of P.W.1 Om Prakash.

21. Learned Counsel for the appellant-accused next argued that the offence Under Section 307 IPC is not made out against the appellant-accused and at the most, offence punishable Under Section 324 IPC is made out. I am not at all convinced with this argument for the reason that P.W.1 Om Prakash has specifically stated that the injury of knife stabbing was caused by the appellant-accused to him with the intention to kill him. The injury is on the vital part i.e. on the abdomen and the injury was grievous and dangerous to life and for that the injured was also been operated. The medical officer has clearly stated that if the blood would not have been stopped by operation, it could have resulted in the death of injured Om Prakash. Therefore, it is proved that the appellant-accused caused injury by stabbing the knife on the stomach of the injured Om Prakash, with such intention and knowledge, and under such circumstances that, if he by that caused death, he would be guilty of murder and as such the offence punishable Under Section 307

IPC is clearly made out against the appellant-accused by the prosecution beyond reasonable doubt.

22. No other ground was argued.

23. Thus, as per the above-said discussion, the prosecution has been completely successful in order to prove its case to the hilt against the appellant-accused for the offence punishable Under Section 307 IPC and the trial court was correct in convicting and sentencing the appellant-accused as discussed above.

24. In view of the above said discussion, the appeal lacks merit and is accordingly dismissed. The conviction as well as sentence awarded by the learned Sessions Judge, Almora vide judgment and order dated 17.10.1997 to the appellant-accused, under Section 307 IPC for seven year's R.I. with fine of Rs. 5,000/- and in default, one year's further R.I., is hereby affirmed. The appellant-accused is on bail. Let him be taken into custody forthwith to serve out the sentence. However, the period already been served out by the appellant-accused during the period of investigation, trial or appeal shall be set off after verifying the record.

25. The record of the case let be sent back to the trial court concerned for compliance.

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