

Ram Kishan Vs. State

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Court : Delhi

Decided On : Mar-23-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Code Of Criminal Procedure (CPC) - Section 313; Indian Penal Code (IPC)
- Section 302

Appeal No. : CRL.A.93/1999

Appellant : Ram Kishan

Respondent : State

Advocate for Def. : Mr.Pawan Sharma; Mr.Harsh Prabhakar, Adv.

Advocate for Pet/Ap. : Mr.M.S.Yadav, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. Vide impugned judgment and order dated 14.1.1999 the learned Trial Judge has convicted appellant Ram Kishan for the offence of having murdered his brother-in-law Rakesh as also for the offence of having attempted to commit suicide. Vide order on sentence dated 16.1.1999 he has been sentenced to

undergo imprisonment for life for the offence of murder and to undergo RI for 1 month for the offence of attempting to commit suicide.

2. Having heard learned counsel for the parties, let us commence by noting the defence of the appellant which he took when examined under Section 313 Cr.P.C. To the last question whether he had anything to say, appellant replied:- "I am innocent. I had a providential escape despite Rakesh's determined attempt to kill me by inflicting stab injury on my stomach and other parts of my person. I was present in my house and was cutting salad. I was drinking. My father objected and he had an altercation with him. Meanwhile Rakesh came inside my house and pulled me out of my house. He was then armed with knife. All of a sudden he started wielding the knife on my body and I received some injuries on my right hand and forearm in a bid to save my life. I kept asking him as to what he was up to, and tried to save myself from his assault. But he again inflicted stab injuries on my stomach. Again I tried to save my life and in this process Rakesh received some minor injury on his person in my bid. But Rakesh did not stop his assault and threatened me that he would kill me without telling me any reason. He again stabbed me in my stomach second time and I felt that I was going to be killed by him. I again in order to save my life tried to stop him and in the process Rakesh received some injury. But Rakesh again inflicted yet another injury on my stomach. After that I fell down unconscious just outside my house. Smt.Saroj was not present in her house as she was living with some of her relative in Delhi. She was made a false witness. I did not injure myself. Why would I do that?"

3. Suffice would it be to state that the appellant admits his presence with deceased Rakesh and his statement by way of defence inculcates Rakesh as the one who caused the injuries on him, but we highlight the fact that except for stating that when Rakesh assaulted him and he retaliated, and Rakesh received some minor injuries, the appellant has not explained the grievous injuries inflicted upon Rakesh.

4. The process of law commenced when DD No.50, Ex.PW-1/A was recorded at 9:25 PM on 5.9.1986 by HC Jugal Kishore PW-1 on receipt of a report received by him from Ct.Devender Kumar, a fact deposed to by HC Jugal Kishore. As per

Ct.Devender Kumar PW-3, who corroborates HC Jugal Kishore, on 5.9.1986 he was on duty at Hindu Rao Hospital when a gentleman and a woman brought accused Ram Kishan and Rakesh, both in an injured condition, to Hindu Rao Hospital. Rakesh was brought dead. Ram Kishan was admitted at the hospital.

5. As deposed to by HC Jugal Kishore copy of DD No.50 was handed over to SI Shiv Dayal for investigation and as deposed by SI Shiv Dayal PW-21, who had become an Inspector by the time he deposed, when he reached Hindu Rao Hospital he learnt that Rakesh had died and he collected Rakeshs MLC Ex.PW-11/A as also that of Ram Kishan Ex.PW- 19/B. As further deposed to by him, Ram Kishan was in the operation theatre and since no eye-witness met him he reached the place of occurrence where he met Smt.Saroj W/o Rakesh whose statement Ex.PW-12/A was recorded by him. Making the endorsement Ex.PW-2/A beneath Sarojs statement he sent Ct.Chander Bhan for FIR Ex.PW-2/B to be recorded.

6. Let us note the relationship of the persons whose names would hereinafter emerge as the principal players. Of course, we already have the names of Ram Kishan i.e. the accused as also Rakesh i.e. the deceased as also that of Saroj, wife of Rakesh. Another person whose name would emerge is Veena Rani, the sister of Rakesh and the wife of Ram Kishan. Bhagwan Das, father of Ram Kishan and Parveen, a neighbour are the further players.

7. Eschewing reference to what Saroj stated in her statement Ex.PW-12/A on the basis whereof FIR was registered, for the reason we find that Saroj who appeared as PW-12 has deposed in sync with the said statement and indeed learned counsel for the appellant, after a feeble attempt, to point out minor discrepancies here and there, concedes that notwithstanding appellant stating in his defence statement that Saroj was not present, there is nothing to discredit Saroj insofar she speaks of her presence. Appearing as PW-12 Saroj deposed that the accused was the husband of Veena Rani the sister of her husband i.e. deceased Rakesh. Veena Rani has borrowed a book from her about a month before 5.9.1986 and did not return the book as she gave the book to someone else without her permission and on said issue she and Veena had quarreled. She had told her husband Rakesh about and he slapped Veena who did not like her brother slapping her. On

5.9.1986 at about 7:15 PM, Ram Kishan was quarreling with his father. After some time he ran towards their house with a knife in his hand and abuses on his lips. Out of fear she bolted the door from inside and after some time heard the voice of her husband at about 7:30 PM. Her husband was heard by her telling the accused tu usko kyon gaali de raha hai. Mere se baat kar. Upon this she opened the door and saw her husband fall in front of House No.B-1810 with the accused stabbing him. After inflicting 2 3 blows on her husband, the accused inflicted 2 3 knife blows upon his person. Bhagwan Das, father of the accused and she took her husband to Hindu Rao Hospital where he died. She returned home where police recorded her statement Ex.PW- 12/A.

8. Eschewing reference to what she deposed pertaining to the exhibits lifted from the scene of the crime, relevant would it be to note that Saroj gave her address as B- 1827 Jahangirpuri and we note that appellant resides in House No.B-1830 Jahangirpuri i.e. the two are virtual neighbours.

9. We may also highlight that no suggestion was given to Saroj as regards the incident as claimed by the appellant when he was examined under Section 313 Cr.P.C.

10. Praveen PW-14 a neighbour, a witness who was declared hostile, deposed that he resided at B-1752 Jahangirpuri and that on 5.9.1986 he saw the accused and the deceased with knives in their hands and both were bleeding. He did not see the two stab each other. Being declared hostile he denied having told the police that the accused had stabbed the deceased followed by stabbing himself.

11. Bhagwan Das PW-16, the father of the accused, as would be expected, sided with his son. But relevant would it be to note he corroborated Saroj to a limited extent inasmuch as he stated that on the day of the incident, under influence of liquor, his son picked up a quarrel with him at about 7:30 PM and when Rakesh told his son not to quarrel with him, he told Rakesh to go away as it was a matter between a son and a father. This is substantially what Saroj has also deposed. But while deposing further facts, he shifted the blame on Rakesh by stating that Rakesh hurled abuses and assaulted his son.

12. Now, let us have a look to the MLC of the appellant, for the reason, as noted by us, SI Shiv Dayal PW-21 stated that when he reached the hospital, appellant was in the operation theatre and thus it is apparent that the appellant was also seriously injured, requiring surgical intervention.

13. The MLC Ex.PW-19/A of the appellant is in the handwriting of Dr.Sachdeva, who had examined him at Hindu Rao Hospital, but unfortunately expired and could not depose and hence Devender Kumar PW-19, the record clerk of Hindu Rao Hospital proved the MLC by stating that he was familiar with the handwriting of Dr.Sachdeva.

14. At the forefront it may be noted that in the MLC Ex.PW-19/A it stands recorded that Ram Kishan was brought to the hospital by one Krishna at 8:25 PM with the history of a fight. It is recorded that the patient was irritable and smell of alcohol was detected in the breath. On local examination a clear incised wound in the epigastric region about 1 inch below to the left with active bleeding; a clear incised wound in the abdomen about 4 inch above and towards the right side of midline and 3 inch above and to the right of umbicus with active bleeding and a clear incised wound in the lower part of the thoracic cage on the right side and three abrasions on the right hand and forearm were detected. The patient was referred for surgery. The appellant had received 3 stab wounds.

15. Let us also note post-mortem report Ex.PW-17/A of Rakesh. It records 7 incised wounds on the person of Rakesh as under:-

"(1) Incised wound 2 cm x 1 cm x placed obliquely on the medial and of left clavicle, both ends are equal, outer and trailing into a near abrasion 0.5 cm long.

(2) Incised wound obliquely present on the left fra clavicular area 3 cm below the left clavicle and 7 cm above the left nipple size 2.5 cm x 1.5 cm x wound is spindle shaped, flood blood was oozing from wound.

(3) Incised wound 1 cm x 0.5 cm x muscle deep on the left hypochondriun just below the costal margin in the line of nipple. Injury was vertical, both ends are actual.

(4) Incised wound 2 cm x 1 cm x muscle deep transversely present on the natural aspect of the left forearm, upper third, injury was 0.5 cm deep.

(5) Incised wound 2.4 cm x 1 cm x transversely placed on the left scapular area. On exploring injury was found to be only skin deep.

(6) Incised wound 1.5 cm x 1 cm x muscle deep on the posterior medial part of left arm lower third. Injury was spindle shaped, obliquely placed.

(7) Incised wound 3 cm x 1.5 cm x vertical on the upper third of left thigh, on the lateral aspect, both ends are actually neat and margin were regular."

16. Relevant would it be to note that when the MLC of the appellant was put to Dr.L.T.Ramani to seek his opinion, he stated: I have seen MLC of Ram Kishan mark DA and injuries mentioned therein and I am of the opinion that these injuries are unlikely to be suicidal only.

17. It needs to be highlighted that Ram Kishan was declared fit for statement only on 12.9.1986 and as per his MLC the injuries were described to be dangerous i.e. much above simple and grievous.

18. Fortunately, the medical papers of the appellant were seized by the Medical Officer and have been proved as Ex.PW-21/DA which show that Ram Kishan was admitted on 5.9.1986 was discharged on 20.9.1986. Laparotomy was performed. The injury on the abdomen had cut through the muscle and the posterior wall of the stomach was cut; requiring to be stitched. Cuts on peritoneum were noted and were stitched.

19. It is apparent that the appellant was also fairly seriously injured and we have noted herein above the opinion of an expert, Dr.L.T.Ramani who categorically opined that the injuries are unlikely to be suicidal only. It is apparent that he was referring to the injury on the abdomen.

20. The learned Trial Judge has held that since the version in the defence statement was not put to Saroj, the appellant could take no benefit of his unilateral version that it was Rakesh who inflicted the injuries on him. He believed Saroj

when she said that the appellant suffered self inflicted injuries. We find that the learned Trial Judge has not discussed the opinion of Dr.L.T.Ramani on the issue; we note that as per Dr.L.T.Ramani, his opinion was that injuries on the person of the appellant could not be suicidal only.

21. Being the wife of the deceased, it would be but natural for Saroj to hide that part of the truth which would be favourable to the accused. Likewise, being the father of the accused it would be natural for Bhagwan Das to hide that part of the truth which would be inculpatory of the accused.

22. It is true that while cross-examining Saroj, the appellant did not put his version, but in the decision reported as AIR 2001 SC 2902 Kashi Ram & Ors. v. State of M.P., where neither private defence was put up while cross-examining the witnesses, nor when the accused were examined under Section 313 Cr.P.C., nor by leading any defence evidence, the Supreme Court allowed an argument to be advanced on the plea of self defence holding as under:-

"24 A plea of self defence can be taken by introducing such plea in the cross-examination of prosecution witnesses or in the statement of the accused persons recorded under Section 313 Cr.P.C. or by adducing defence evidence. And, even if the plea is not introduced in any one of these three modes still it can be raised during the course of submissions by relying on the probabilities and the circumstances obtaining in the case as held by this Court in Vijayee Singhs case (supra). It is basic criminal jurisprudence that an accused cannot be compelled to be cross-examined as a witness and no adverse inference can be drawn against the defence merely because an accused person has chosen to abstain from the witness box."

23. The decision in Vijayee Singhs case referred to in the aforementioned passage is reported as AIR 1990 SC 1459 Vijayee Singh v. State of U.P.

24. Let us now turn to the broad probabilities of the case. Saroj and Bhagwan Das have deposed in harmony to the extent both of them have stated that the accused quarreled with his father. Thereafter their versions differ. As per Bhagwan Das the deceased who was the brother-in-law of his son intervened in their quarrel and

when his son persisted to fight with him i.e. Bhagwan Das, Rakesh hurled abuses at his son and assaulted him i.e. his son. As per Saroj after fighting with his father accused ran towards their house with a knife in his hand and abuses on his lips. In fear she bolted the door from inside and after sometime heard the voice of her husband who was saying Tu usko kyon gaali de raha hai. Mere se baat kar and upon that she opened the door and saw her husband being stabbed. She claims that thereafter the accused stabbed himself.

25. Bhagwan Das being the father of the accused has obviously twisted the truth for the reason we find it most unnatural for Rakesh to stab the accused if the accused did not pay heed to Rakesh's counsel not to fight with his i.e. the father of the accused. Similarly, even Saroj would be expected to give a version exculpatory of her husband. Her testimony that after quarreling with his father the accused ran towards her house with a knife in his hand is an indication of an exaggerated version for the obvious reason, why would the accused who was fighting with his father run with a knife in his hand to the house of his brother-in-law? She claims that she locked herself in her house when she saw the knife and that she opened the door when she heard the voice of her husband and at that point of time saw the accused stab her husband is again a version which is most unnatural for the reason if she had seen the accused with a knife in his hand and heard him abusing somebody and the accused ran towards her house, her natural conduct would be to shriek and yell i.e. issue summons to rescue. The place of incident is a crowded locality and Saroj would obviously summon people in the neighbourhood if she saw the accused in an aggressive mood. If, as claimed by her she heard the voice of her husband, her natural conduct would have been to immediately yell and warn her husband of the impending danger. She did nothing of that kind.

26. The circumstances probablize that when the accused was having a verbal duel with his father Bhagwan Das, the deceased who was the brother-in-law of the accused intervened and this was not liked either by the accused and Bhagwan Das. Something happened. What was that is not known to us. It triggered of a mutual fight between the accused and his brother-in-law the deceased. Who stabbed whom first is difficult to say. We keep in mind the fact that the injury

inflicted in the stomach of the accused prima facie cannot be a self-inflicted injury to create defence evidence. The injury is dangerous and has been so opined to be. The charge of the prosecution that the accused attempted to commit suicide is also indicative of the fact that the prosecution admits that the injury was life threatening. There is no reason for the accused to try and commit suicide. Thus, giving a 360 degrees look to the evidence inescapable conclusion would be that the evidence probablizes a mutual fight between the accused and the deceased. The accused was drunk. Whether the deceased was drunk or not is not known. Under the circumstances the conviction of the appellant for the offence punishable under Section 302 IPC cannot be sustained and it has to be held that the offence committed by the appellant is that of culpable homicide not amounting to murder and for which we direct that the sentence to be imposed upon the appellant would be to undergo imprisonment for the period already undergone which we note is 5 years and 7 months. While imposing the sentence we take into account that the offence took place on 5.9.1996 i.e. 15 1/2 years ago. Appellant was admitted to bail on 4.5.1999. He has no previous criminal antecedents and during bail has not come into brush with law. We acquit the appellant of the charge of having attempted to commit suicide.

27. The appeal stands disposed of in terms of para 26 above.

28. In view of the sentence imposed upon the appellant we discharge the bail bond and surety bond furnished by the appellant.

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