

Mangal Ram Vs. State

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Court : Delhi

Decided On : May-10-2011

Judge : S. Ravindra Bhat; G.P.Mittal, Jj.

Acts : Indian Penal Code (IPC) - Section 302

Appeal No. : CRL.A. 117/1998

Appellant : Mangal Ram

Respondent : State

Advocate for Def. : Mr. Lovkesh Sawhney, Adv.

Advocate for Pet/Ap. : Mr. O.P. Malviya, Adv.

Judgement :

1. The present appeal impugns a judgment and order of the learned Additional Sessions Judge (hereafter called "the impugned judgment" and the "Trial Court" respectively), dated 20.02.1998, in the

CASE ARISING FROM

FIR 454/98, P.S. Dabri. By the impugned judgment, the Appellant was convicted for the offence under Section 302, IPC, and sentenced to undergo life imprisonment.

2. The prosecution alleged that on 29.11.1992, at about 09:00 PM, one Niranjan ("the deceased"), living in the house of PW-4 and his wife (PW-2 Roopmati) was attacked with a knife. The knife blow, was given by Mangal, the Appellant. The deceased had asked the Appellant not to sit near the chabutra of the shop owned by PW-4, which was managed by PW-1 and PW-2, as it was causing inconvenience to the ladies who used to frequent it. The deceased, who was treated by PW-2 as her son, had asked the Appellant to go away, which angered him; he therefore attacked the deceased, which resulted in his death. PW-1 Shrimati, PW-2's daughter, informed the police picket, which in turn passed on the information; later, the injured Niranjan was taken to the Deen Dayal hospital. In the meanwhile, the police, on being informed, reached the scene of crime, and later, on coming to know that the injured had been taken to the hospital, they went there. The injured, on being taken to the hospital, was declared dead, as per the MLC Ex. PW-6/A. The prosecution recorded the statements of PW- 1 and PW-2. Since both the witnesses (PW-1 and PW-2) implicated the Appellant, their statements were recorded. The FIR was registered at 09:00 PM. The Appellant was arrested in the early hours of the morning. After investigations were conducted, the police filed a final report, arraigning him as accused for committing the offence; he was charged by the court for commission of the crime. The Appellant pleaded not guilty, and stood trial. The impugned judgment convicted him and imposed a sentence of life imprisonment.

3. The Appellant's counsel, Mr. Malviya, argues that there are fatal inconsistencies in the prosecution version which escaped the attention of the Trial Court which wrongly found him guilty. It was alleged that the version of the two alleged eyewitnesses, PW-1 and PW-2, was so improbable and at variance with the prosecution story that their presence at the scene of occurrence was highly doubtful. Learned counsel urged that both these witnesses were interested parties, being related to the deceased, and therefore had a stake in the decision in the case. The prosecution version was that the crime was committed when people were moving around, and the scene was a small shop. If such were the case, the prosecution was under a duty to secure uninterested and independent witnesses, instead of family members of the deceased, who were not even injured. Their credibility was suspect, and the Trial Court ought not to have accepted their

version without deliberate and careful consideration.

4. It was submitted that the medical and documentary evidence was at complete variance with the ocular testimonies of both PW-1 and PW-2 in the present case. Elaborating on this, it was submitted by the Appellant's counsel that both the eye witnesses deposed unambiguously that the deceased had been give one knife blow, to which he succumbed on the way to the hospital. This version was corroborated by the MLC, Ex. PW-6/A, which was prepared at 10:00 PM; it mentioned only one injury on the deceased's body (since he was declared dead upon being taken to the hospital). Yet, the testimony of PW-5 Dr. L.T. Rahmani showed that there were no less than three incised wounds and three abrasions. This was corroborated by the post mortem report, Ex. PW-5/A. In contrast, the MLC PW-6/A, prepared by PW-6 revealed that only one injury was seen when Niranjana was taken to the hospital, and declared dead. This serious contradiction between the ocular and medical testimony casts grave doubts about the prosecution story, which the court ought to have considered, and held that both the alleged eyewitnesses were untrustworthy, and were not present at the time of occurrence of the crime.

5. It was also submitted that the doctor who conducted the post mortem deposed that cut marks were found on the deceased's thigh, and there were cut marks on the deceased's pants. However, the forensic report in this case did not reveal any such cut marks on the deceased's clothes or trouser. It was urged that similarly, the prosecution had alleged that PW-2's petticoat was blood stained; however, she deposed having worn a "dhoti" at the material time. The prosecution did not establish how her petticoat could be blood stained, even when another layer of clothing, i.e. dhoti, was worn over it. Learned counsel also points to a similar discrepancy about whether PW-2's statement was recorded in the hospital, or at the alleged scene of the crime.

6. The learned counsel for the Appellant further argued that the arrest in this case is alleged to have taken place in the presence of PW-4 Choke Lal; however, PW-17 and PW-18 do not mention his role. Moreover, submitted the counsel, for the recovery (of the knife pursuant to the alleged disclosure statement of the appellant),

PW-4 was not made a witness. This falsifies the said alleged recovery.

7. Having regard to the material discrepancies between the medical evidence and eyewitness testimony, argued Mr. Malviya, the court should accept the medical evidence of an expert; if such is the position, PW-1 and PW-2 were in fact not eyewitnesses. Reliance was placed on *Maniram v. State of U.P.* (1994 (Suppl) 2 SCC 289) and *State of U.P. v. Ram Bahadur and Ors* (2004 (9) SCC 310). It was urged that for these reasons, the court should interfere and set aside the findings of the Trial Court, and acquit the Appellant of the charges.

8. The learned APP argued that there is no infirmity in the findings and sentence recorded by the Trial Court. It was submitted that the discrepancies alleged by the Appellant in this case are minor in nature. Both the eyewitnesses were natural and each corroborated the other in all material particulars. PW-1 had no reason to falsely implicate the Appellant, if he was not involved in the case or the commission of the crime. It was urged that her version was supported by her mother PW-2. The deceased was treated by PW-2 and her husband PW-4 as their son. On the day of the incident, the deceased objected to the Appellant's presence, near their house, where PW-1 was tending the shop, which used to sell small grocery and items of household utility. This angered the Appellant, who went home (he was living in the vicinity), returned with a knife and stabbed the deceased.

9. It was argued that there was in fact no discrepancy between the version of the two witnesses and the medical evidence. This aspect, submitted the APP, was clarified by PW-6, the doctor who had observed the deceased first and prepared the MLC Ex. PW-6/A. She deposed that the main injury (No. 1) was 9cm in depth; the second was superficial and was possibly caused by the removal (taking out) of the knife, while inflicting the first injury. It was also submitted that the other three injuries were abrasions, and not much could be made out about the presence of cuts on the trouser. Once the prosecution established who inflicted the fatal injury, and explained the other injury, over which the Appellant's counsel sought to urge about a contradiction with the ocular evidence, the presence of some other minor injuries did not constitute such a variance (with the medical evidence) as to lead

the court to discard the ocular evidence.

10. It was submitted that the recovery of the murder weapon could not be doubted or wished away merely because PW-4 omitted to say something, or PW-17 or PW-18 did not notice the presence of PW-18. The weapon was recovered upon the disclosure by the Appellant from a place about which he alone had particular knowledge. The weapon, a 30 cm dagger or knife, was not an ordinary one. Having regard to all these facts, the Appellant was under a duty to explain - by virtue of Section 106 of the Evidence Act, why these circumstances existed. He had no explanation. The Trial Court therefore, correctly convicted him.

11. In the present case, both the eyewitnesses (PW-1 and PW-2) are cogent and consistent about the nature of the attack, the identity of the assailant, and the surrounding circumstances. The Appellant had urged that their testimonies ought to have been discarded since they were partisan (meaning relatives of the deceased) witnesses. On this it would be appropriate to notice a recent decision of the Supreme Court, i.e Ram Bharosey v State of U.P 2010 (116) Cr. LJ. 871, where the court observed as follows:

"..Even if it is assumed for the sake of argument that the witness examined in this case are close relatives of the deceased and, therefore, should be regarded as interested witnesses, the law relating to appreciation of evidence of an interested witness is well settled, according to which the version of an interested witness cannot be thrown overboard but has to be scrutinized carefully and critically before accepting the same. This Court finds that the Trial Court and the High Court had subjected the evidence of witness Bhure Lal and witness Pooran Singh to careful scrutiny before accepting the same. Therefore, on the facts and in the circumstances of the case this Court is of the opinion that neither the Trial Court nor the High Court committed error in placing reliance on the testimony of first informant who is father of the deceased and P.W. 4.."

A criminal court is tasked to scrutinize the materials before it, carefully and objectively, and keeping in mind the standard of proof beyond reasonable doubt, which the prosecution has to satisfy to convict an accused, weigh every deposition and material placed before it. Therefore, dogmas about relatives who witness an incident invariably not being truthful, have no place in a criminal trial. The court has to maintain and apply the standard of critical scrutiny having regard to the rule of proof beyond reasonable doubt. Viewed so, the depositions of PW-1 and PW-2 cannot be discarded or wished away as is urged on behalf of the Appellant.

12. A joint reading of the testimonies of PW-1 and 2 would show that the deceased was known to them, and was treated by them as a family member. When the altercation took place between the Appellant and the deceased, they rushed out of the house and tried to separate the two. The origin of the quarrel is also spoken - it is deposed that the deceased asked the Appellant to leave the place since PW-1 had come of age. Both the witnesses corroborate each other about the manner by which the deceased was attacked and given a knife blow. Their clothes were smeared with blood. PW-2 as well as PW-1 accompanied the deceased to the hospital. Their presence at the scene of occurrence is natural and expected. Nothing worthwhile was elicited in the cross-examination. The Appellant has not been able to establish any motive on the part of these two witnesses, to implicate him. In these circumstances, the Court cannot discard their testimony merely because they knew or were connected or related to the deceased.

13. As to the main submission of the Appellant with regard to the alleged discrepancies between the ocular evidence (both the eye witnesses mentioned only one knife blow) and the medical evidence (i.e. the post mortem report Ex. PW-5/A and the testimony of the doctor, Ex. PW-5), which mentioned six injuries, it would be useful to extract the following discussion from the impugned judgment:

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.....The report of Dr. L.T. Ramani is to be considered on this aspect. The injuries No.1, 2 and 6 as already noted as follows:

(i) An incised wound 2.5 cm x 1 cm into obliquely placed on the left side of chest, 3 cms below the nipple, the lower middle end of the wound was curved and acutely cut.

(ii) Incised wound triangular looking 0.5 cms x 0.5 cms on the epigastriac region of the abdomen with the linear abrasion 6 cms long trailing at its lower end.

(iii) An incised wound 2.5 cms x 1 cms vertically placed on the front of left thigh middle part. Lower end of the injury was acutely cut.

The other injuries No. 3, 4 and 5 are the abrasions and bruises on the body of the deceased which according to the doctor have been caused by blunt force/object.

The injury on the person of deceased was also recorded by the Dr. Sangita in MLC Ex. PW6/A. She had found only one stab mark approximately 3 inches below left nipple, approximately of the size of 2.5 cm in length. The injury which has been recorded in the MLC report, relates to injury No.1 as has been recorded by Dr. L.T. Ramani in his report Ex. PW5/A.

Dr. Sangita when she appeared in the witness box was questioned on this aspect of the matter as follows by the court.

C.Q. Please see the post mortem report and enlighten the court about the injuries mentioned in the post mortem report. If you can, alongwith the injuries mentioned by you in the MLC?

Ans. The injury No.1 which was on the left side of the chest on post mortem examination was found to be of the length of 9 cm and going through and through at the tip of the left vertical. Since the patient was wearing pant and there was no blood or any cut mark visible, therefore, I might have missed the injuries

noted in the post mortem report.

Thus even according to Dr. Sangita it was injury noted by her which is described as two of length of 9 cms. injury in the post mortem report such injury as noted by Dr. L.T. Ramani in the post mortem is the same which could be as a result of blow of knife given by the accused as noted by the witnesses. The injury No.2 could be as a result of taking out knife from body as it is superficial injury and has not effected inner parts of body. I find no variance with the medical evidence and testimony of witnesses as far as injury on chest and abdomen No.1 and 2 noted by Dr. L.T. Ramani are concerned. In any case, the injury No.3 has been reported to be triangular looking .5 cms x .5 cms on the eipigestris region of the abdomen with the liner abrasion of 6 cms long trailing at its lower end. This injury is to be compared with injury No.3 which is too has been recorded by Dr. L.T. Ramani as "one triangular abrasion 0.7 cms x 0.5 cms on the left lumber area of abdomen". As per deposition of the witnesses as soon as the accused gave the dagger blow on the person of the deceased, the accused ran away and the deceased fell down. This has been stated by PW-1 Ms. Shrimati as well as PW-2 Smt. Roopwati when she deposed that accused gave a knife blow on the chest of deceased Niranjan and ran away. The deceased took the name of mother and fell down. They took the deceased in the scooter to the hospital. If injury No.3 which was on the abdomen could be due to blunt object then the same is possible for injury No.2 which is superficial in nature. This aspect also leads me to find that there is no variance between medical and ocular evidence.

Similarly, injury No.6 is super ficial in nature. Had there been cut by knife as is submitted by Sh. Solanki, the injury No.6 could have been visible to Dr. Sangita as well who deposed that she

did not note any injury on thigh. Dr. L.T. Ramani has not described the size of cut mark. The size of the cut mark is on the front part of the pant. No cut mark has been noted by the laboratory when they prepared the report Ex. P-X, P-Y and P-Z of the pant of the deceased. The cut mark on the pant. Such a cut mark as has been noted by Dr. L.T. Ramani could be due to fall. Injury No.6 which have been noted by the Dr. L.T. Ramani cannot be said that to be injury which was actually caused by the knife.....

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14. This Court is of the opinion that the Appellant's contention regarding inconsistency between the eyewitnesses' testimonies and medical evidence is unfeasible. There might be cases where such inconsistency can decisively outweigh the prosecution allegations. However, there cannot be any invariable rule that in every case highlighting such discrepancies, the benefit has to be given to the accused. In the present case, the Trial Court had the benefit of examining two medical experts. The post mortem report mentioned about six injuries - two of them clearly being the result of stabbing. The Medico-legal Certificate (MLC), however, mentioned about stabbing generally. If one notices the post mortem report, it would be apparent that the injuries were spread all over the body - mostly abrasions. However, the explanation given by PW-6, Sangeeta, who had occasion to observe the deceased when she prepared the MLC (Ex. PW-6/A), is cogent. Injury No.2, i.e. a superficial one, appears to be the result of and connected with Injury No.1, a 9 cm deep-cut wound. The medical evidence also is to the effect that death occurred as a consequence of the more serious knife injury. Having regard to these facts, it is held that there is no inconsistency between the medical and eyewitness testimony so as to falsify the prosecution case.

15. As far as the recovery of the knife is concerned, PW-4 stated - upon cross-examination by the Public Prosecutor, on leave being granted in that regard, that his deposition that he had not gone along with the police, was made due to confusion. He denied the suggestion that the Appellant did not tell about his hiding

the knife under the pulia near the railway lines, as disclosed in Ex. PW-4/A. He testified about having gone with the police to the place where the knife was recovered, and where the writing work was done. He corroborated preparation of sketch plan, Ex. PW-4/B. This is also supported by the depositions of PW-17 and 18. The only variation between the testimony of witnesses here appears to be that PW-4 states that the sketch was prepared in his house after the recovery of the knife whereas PW-17 and 18 stated that it was prepared at the place where the recovery was made. The Trial Court concluded that as PW-4 had admitted to being confused, the totality of his statement had to be seen, which could lead one to deduce that he was confused on that day. It was, therefore, held that there was no contradiction or inconsistency in his evidence about the recovery of the knife. This Court is also of the opinion that the arguments on behalf of the Appellant have not shown any substantial reason, such as mis-appreciation of evidence by the Trial Court, which can persuade this Court to take a different view of this aspect.

16. In view of the foregoing, this Court is satisfied that the findings of the Trial Court do not call for any interference. The appeal has to fail. The appellant, who has been on bail all this while, is directed to be present before the Trial Court on 23.05.2011, to surrender, and serve the remainder of the sentence. The Registry is directed to transmit the records of the Trial Court along with the judgment in the present appeal, to ensure due compliance.

17. The appeal is accordingly dismissed in the above terms.

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