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Court : Rajasthan

Decided On : Nov-03-2011

Judge : Govind Mathur & Narendra Kumar Jain

Appeal No. : D.B.Criminal Appeal No.638 of 2004

Appellant : Mohanlal

Respondent : State of Rajasthan

Judgement :

MATHUR, J.

By the judgment impugned dated 19.5.2004 learned Additional Sessions Judge (Fast Track) No.1, Banswara convicted and sentenced the accused appellant as under:-

u/S.450 IPC : Ten years rigorous imprisonment with a fine of Rs.1000/- and in default of payment of fine further to undergo rigorous imprisonment for one month.

u/S.302 IPC : Life imprisonment with a fine of Rs.5000/- and in default of payment of fine further to undergo rigorous imprisonment for two months.

The facts necessary to be noticed are that Smt. Sasula (PW-1) reported in writing at police station Sadar, Banswara on 13.6.2003 at 04:00 AM that in the night of 12.6.2003 after having dinner, she was sleeping at her house with her kids and

husband. The house being under construction was not having doors as such was open. At about 01:00 AM she awoke on hearing scream of her husband and found Mohanlal (accused appellant) passing through the bed of her husband with open sword. On making alarm accused fled from the spot throwing the sword there. Hearing the alarm Kanti (PW- 15), Sohanlal (PW-5) and Harteng (PW-10) also arrived at the place of occurrence. Her husband was having serious sword injury across the naval and the back.

On basis of the information aforesaid a case was registered, investigation was made and a police report as per the provisions of Section 173 Cr.P.C. was filed before the competent court. The case then was committed to the court of Sessions and charges were framed against the accused appellant for commission of the offences punishable under Sections 450 and 302 Indian Penal Code. On denial of the same, regular trial was conducted. The prosecution supported its case by producing 20 persons in witness box and several documents. PW-1 Sasula was cited as an eye witness and the witnesses PW-10 Harteng, PW-15 Kanti and PW-5 Sohanlal were produced to corroborate the statements given by the eye witness.

PW-17 Dr. Ravi Upadhyay conducted autopsy upon the person of deceased and submitted postmortem report Ex.P/14, thus, he satisfied the medical evidence.

PW-18 Sawai Singh, being investigating officer, narrated all the steps taken during the course of investigation.

An opportunity was given to the accused appellant to explain the adverse circumstances existing in the prosecution evidence tendered before the court. The accused pleaded is innocence and termed all the adverse evidence as false.

Learned trial court while relying upon the statements of PW-1 Sasula with its corroboration by PW-15 Kanti and PW-5 Sohanlal held the accused appellant guilty, accordingly recorded the conviction and awarded sentence.

In appeal, the submission of learned counsel for the appellant is that the testimony of PW-1 Sasula is highly unreliable and, therefore, the conviction based on basis of the evidence adduced by her is erroneous. According to learned counsel PW-1

Sasula while submitting first information report and also while getting her statement recorded as per provisions of Section 161 Cr.P.C. nowhere disclosed that she saw the incident, however, she made an improvement in her statements while deposing before the court. It is further stated that the body of deceased was found at least 40 feet away from the place pointed out by PW-1 Sasula in her statements. It is also asserted that PW- 10 Harteng has not supported the prosecution case and similarly PW-5 Sohanlal and PW-15 Kanti too have stated that they have not seen commission of the crime and they came at the spot only after hearing an alarm made by PW-1 Sasula.

While opposing the appeal it is submitted by learned Public Prosecutor that there is no reason to disbelieve the eye witness, who in quite specific terms has narrated the entire incident. It is also pointed out that in the first information report itself it was mentioned that Mohan has killed husband of complainant Shri Shanti. As per learned Public Prosecutor a definite motive was available to the accused appellant for commission of the offence. Necessary foundation in this regard is available in the first information report itself with assertion that accused Mohan was having apprehension of illicit relations of deceased with his wife Smt. Kirpa.

Heard learned counsel for the parties.

The factum of homicidal death of Shri Shanti, husband of complainant PW-1 Smt. Sasula, is not at all in dispute in view of the medical evidence available on record. As per the medical evidence the body of deceased was having two antemortem injuries and those were as under:-

(1) Incised wound with blood 5 x 3 cm x 7 cm across the abdomen to back through left ribs; and

(2) Incised wound with blood 3 x 2 cm into entire abdominal deep crossing the ribs from outside.

The liver and other tissues too were found highly injured. The cause of death given was haemorrhaging and neurogenic shock due to incised wounds sufficient to cause death.

PW-1 Sasula stated that in the fateful night she, her husband and her kids were sleeping at their house. At about 01:00 AM she awoke on hearing scream of her husband. She then found Mohan, having an open sword in his hand and giving a blow of that on the chest of Shanti. The sword blow resulted into an injury across the naval to back. On making alarm, Kanti, Sohanlal and Harteng also came at the spot. This witness also stated that Mohan was having an apprehension about illicit relations of his wife Kirpa with deceased and he was always making complaint in this regard.

PW-5 Sohanlal and PW-15 Kanti have stated that on hearing alarm raised by Sasula, they reached at the place of occurrence where Sasula told them about the act of Mohanlal. These witnesses also stated about the doubt existing in the mind of Mohan about illicit relationship of deceased Shanti with Kirpa. The factum of apprehension of illicit relations of deceased with Smt. Kirpa is also stated by other witnesses including PW-5 Sohanlal, PW-8 Ratanlal and PW-9 Jamna.

We do not find any just reason to disbelieve eye witness PW-1 Smt. Sasula who just within the period of three hours lodged a first information report with definite allegations against the accused appellant. Her statements as per Section 161 Cr.P.C. too were recorded on the same day of the incident i.e. 13.6.2003. In the first information report as well as in the statements drawn under Section 161 Cr.P.C., she disclosed that her husband was killed by Mohanlal. It is well settled that in the first information report a complainant is not supposed to give minute details of each and every step of the incident taken place. It is an information of the incident taken. However, in the present case the information provided is quite definite and is sufficient to initiate investigation.

Similarly, the improvement made while narration of facts is immaterial if i.e. not in contradiction with earlier version or if, i.e. not highly improbable. In the case in hand PW-1 Sasula stated before the court that accused Mohan was having an open sword in his hand and he gave a blow on the chest of her husband. While drawing her statements under Section 161 Cr.P.C. she stated that Mohanlal was having a sword in his hand and after seeing her he fled from the spot. It was also drawn that she stated killing of her husband by Mohanlal with sword. The factum

of killing by sword undisputedly exists in both the versions. As such, there is no improvement in the version stated. Learned trial court, thus, in our opinion, rightly held the accused appellant guilty for the offences punishable under Sections 450 and 302 Indian Penal Code.

For the reasons given above, the appeal is having no merit, therefore, the same is dismissed.

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