Pati Ram

Vs

State of U. P.

Criminal Appeal No. 24 of 1969

(V. Bhargava, K.S. Hegde JJ)

24.09.1969

JUDGMENT

HEGDE, J. -

1. After carefully going through the evidence on record with the assistance of the learned Counsel appearing for the appellant, we have come to the conclusion that this appeal has no merit. We shall now proceed to state our reasons in support of our conclusion.

2. The prosecution case is that the appellant hit deceased Mulia and killed her on the morning of August 7, 1967, in the courtyard of their house. The appellant and the deceased were first cousins. The deceased was a childless widow. She owned some properties. These are all admitted facts. It is also admitted that the deceased died as a result of the injuries sustained by her on the morning of August 7, 1967. The place where she sustained injuries is also not in dispute though there is some dispute as regards the time of the occurrence. According to the prosecution, she sustained the injuries in question at about 10 a.m. on the date mentioned earlier. But the defence suggestion was that she is likely to have sustained those injuries in the early hours of the morning when it was dark. But this is a mere suggestion. No evidence has been adduced to show that she sustained those injuries during the early hours of morning on that day.

3. It is said that the deceased and the appellant were not on good terms. There was a partition suit pending between them. That suit had been filed some time before this occurrence took place and that it had been posted for appearance of the appellant on August 8, 1967, i.e. the day following the say of the occurrence. Some days prior to the occurrence, the deceased had sold her residential house to P.W. 1 who is her second cousin. The evidence as regards the motive was furnished by P.W. 1. His evidence receives corroboration from Exh. K-15. The appellant is the nearest heir to the deceased. If the deceased had died intestate, he would have succeeded to her estate. The suggestion made on behalf of the prosecution is that because of the litigation between him and the deceased the appellant feared that the deceased would convey her properties to P.W. 1. There is evidence to show that the deceased and the appellant were constantly quarreling. It is said that the sale of her residential house by the deceased to P.W. 1 greatly infuriated the appellant. The motive proved is not a strong one but the adequacy of a motive largely depends on the reaction of the concerned individual. Different people react differently in different circumstances.

4. The most important question in this case is whether the prosecution has satisfactorily proved that it was the appellant who had caused the injuries sustained by the deceased which resulted in her death. There is no dispute that the injuries sustained by the deceased were sufficient in the ordinary curse of nature to cause death. Medical evidence supports that conclusion and the same was not

challenged before us.

5. P.Ws. 1, 3 and 4 speak to the occurrence. P.Ws. 1 and 4 claim to by eye-witnesses to the occurrences. Both of them reside in the same Kothi in which the deceased and the appellant were living. They are the most natural witnesses. Both the Trial Court as well as the High Court accepted their evidence. We have been taken through their evidence and we agree with the High Court that their evidence is acceptable. The only comment made against their evidence is that according to these witnesses, P W. 3 deposed that she had not seen the actual occurrence, but on hearing cries of the deceased she came out of the house and saw the deceased fallen down with the injuries. At that time P.Ws. 1 and 4 told her that the appellant had hit the deceased and run away. Her evidence is extremely important. Must argument was advanced regarding the contradiction referred to earlier. We attach no importance to the same. Evidently P.Ws. 1 and 4 had formed a wrong impression as to the time when P.W. 3 came to the scene. There is nothing strange about it, if we bear in mind the fact that the incident took place within a few seconds.

6. We are asked to reject the testimony of P.Ws. 1, 3 and 4 on the ground that they were all inimically disposed towards the appellant. There is no basis for this contention. The fact that the deceased lived with P.W. 1. does not prove that he was an enemy of the appellant. Nor is it shown that P.Ws. 3 and 4 had any enmity with the appellant. As mentioned earlier, their evidence has been accepted both by the Trial Court as well as by the Appellate Court. Ordinarily this Court does not reappreciate the evidence on record. We see no special reason to depart from the normal rule.

7. We are asked to reject the testimony of the occurrence witnesses on the basis of the medical evidence in the case. According to the accurrence witnesses, the deceased was assaulted with a Goolidar Lathi. From that it was urged that there could not have been any stab injuries on the person of the deceased if their evidence is true, but the post-mortem report shows that she sustained one stab injury and, therefore, their evidence should be rejected. It is true that the post-mortem report describes one of the injuries found on the deceased as a stab injury. The description of that injury as given in the post-mortem certificate reads thus :

"Stab wound 1/2" x 1/4" X bone deep outer end of left eye brow."

In our opinion this injury had been wrongly described by the doctor who conduced the autopsy. It would have been more appropriate to call that injury as an incised injury. It is more or less a scratch. Even that injury as an injury as an incised injury, It is more or less a scratch. Even according to P.W. 2, who conducted the autopsy, the injury in question could have been caused by a nail. It is probable that this injury was caused by the iron tip of the Goolidar Lathi. We were informed that a Goolidar Lathi has a iron tip.

8. In the course of his arguments the learned Council for the appellant advanced various other contentions. He urged that the requirements of Section 174, Cr. P.C. were not complied with in this case inasmuch as no Panchayatdar present at the inquest was examined as a witness in the case. The inquest report had been signed by the Head Constable who conducted the inquest and the five Panchayatdars who were present. Section 174, Cr. P.C. does not prescribe that any of the Panchayatdars should be examined as witnesses in the case. The inquest report was proved by the Head Constable who conducted the inquest. In this case there was no special reason for examining any of the Panchayatdar. The head Constable was not even cross-examined as regards the inquest.

9. It was next said that Section 156, Cr. P.C. has not been complied with as the investigation was

conducted by a Head Constable. This contention has also no merit in it. It is seen from the evidence of the Head Constable that when the first information was received in this case, no sub-inspector was present in the police station. He was the officer-incharge of the station at that time. Hence the law permitted him to investigate the case.

10. It was next urged that Section 289, Cr. P.C. had been contravened and, therefore, the conviction of the appellant cannot be sustained. This contention is based on the assumption that only after coming to the conclusion that an accused is guilty, the trial judge can call upon him to enter into his defence. This is clearly a misreading of the section. What that section requires is that if the trial judge comes to the conclusion that there is evidence to show that the accused had committed the offence, then the accused should be called upon to enter upon his defence. The value to be attached to that evidence is not to be considered at that stage. In this connection it was also urged that the question whether the accused had defence evidence or not should not have been put to him in his examination under Section 342, Cr. P.C. but it should have been put to him separately. What has been done is, as is usually done in all such cases. After putting the questions that are required to be put under Section 342, Cr. P.C., the accused was asked whether he had any defence evidence. We do not think that that procedure in any way conflicts with Section 289, Cr. P.C. At the first instance, the appellant had stated that he had defence evidence to adduce, but when he was called upon to adduce that evidence, his counsel stated that he had no defence witness to be examined but put in an application requesting the Court to summon a document to show that in the consolidation proceedings between him and the deceased he had filed a Razinama. The learned Trial Judge thought that the document in question was unnecessary as he was accepting the plea of the appellant that in the consolidation proceedings, the parties had entered into a compromise. Under that circumstance it was not necessary for the Court to summon the document in question.

11. A grievance was made of the fact that though a large number of witnesses had been cited in the charge-sheet, several of them were not examined in court. They were all witnesses to speak to the motive. Their evidence was considered unnecessary by the prosecution. The facts accepted by the Court as proving the motive are - (1) that there was a partition suit between the appellant and the deceased and that suit had been posted for hearing on August 8, 1967 and (2) that the deceased had sold her residential house to P.W. 1, a few days before the occurrence. So far as the latter is concerned, it was not disputed. In face according to the suggestions made on behalf of the defence P.W. 1 might have murdered the deceased as he had not paid fill consideration for the sale. So far as the partition suit is concerned, we have the evidence of P.W. 1. The same was not challenged in cross-examination. When that evidence was put to the appellant during his examination under Section 342, Cr. P.C. he pleaded that he was not aware of the same. But that fact is conclusively proved by Exh. K-15. Therefore there was no purpose in examining the witnesses cited in the charge-sheet to prove those facts.

12. A point was made of the fact that some of the persons who had come to the scene immediately after the occurrence had not been examined. We see no substance in this contention. It is no body's case that those parsons had witnessed the occurrence. Nor can it be said that they were reresgesta witnesses. That being so, their evidence was unnecessary for unfolding the prosecution case. As the Trial Court as well as the High Court believed the witnesses examined in the case, the non-examination of the other witnesses has no significance.

13. Lastly it was urged that sentence of death should not have been imposed on the appellant as he was a young man. The question of sentence is within the discretion of the Trial Court. The appellate court or this Court does not interfere with that discretion unless there are adequate grounds for

doing so. The appellant was thirty years when he was tried in the case. He was not a teenger. The ground urged for the mitigation of the sentence is wholly irrelevant.

14. In the result this appeal fails and the same is dismissed.

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