SUPREME COURT OF INDIA

State of Rajasthan

Vs

Om Prakash

(Arijit Pasayat and B. P. Singh, JJ)

13.06.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. State of Rajasthan is in appeal against the judgment of Rajasthan High Court at Jodhpur. Respondent faced trial for alleged commission of offence punishable under Section under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for life by learned Additional Sessions Judge Nagaur. Accused filed an appeal questioning his conviction and sentence imposed. The High Court by the impugned judgment allowed the appeal.

2. Background facts in a nutshell are as follows:

First Information Report was lodged in the Police Station, Khinvsar on 14.5.1992 by one Nenuram, stating that at about 11.00 a.m., on that day, he heard that accused Om Prakash has killed Shivpyari, his wife (hereinafter referred to as the 'deceased'), due to old quarrel. The investigation was conducted. The accused was arrested and the prosecution commenced. The prosecution examined 22 witnesses during the trial to prove its case alongwith certain documents which were duly proved. On appreciation of the oral and documentary evidence, the learned Additional Sessions Judge came to the conclusion that the accused had committed murder punishable under Section 302 IPC and, therefore, proceeded to punish him to suffer imprisonment for life as aforesaid.

3. Trial Court placed reliance on the evidence of Om Prakash-PW-1 and found his evidence to be

cogent and clear and recorded conviction and sentence as indicated above.

4. An appeal was filed before the High Court. Stand of the appellant was that the order of conviction is unsustainable in law as conclusion of guilt is not supported by the evidence on record. The entire conviction is rested upon the sole testimony of an interested witness, who is younger brother of the deceased Shivpyari and the corroboration which is sought to be used for supporting the testimony of PW 1 Om Prakash is the recovery of blood stained knife and clothes at the instance of the accused.

The delay caused in lodging the First Information Report was not satisfactorily explained. The explanation for the so-called delay does not over rule out the possibility of concoction of the entire case against the accused, the investigation is very faulty and the evidence, as is accepted by the learned trial Judge, is not sufficient to safely convict the accused of murder. The evidence admits of reasonable explanation which can exclude the participation of the accused and in such circumstances, conviction on such evidence is not legal and proper. Police visited the scene of occurrence immediately on the receipt of the First Information Report and had seen the premises. The accused was arrested thereafter and then, it is alleged that at his instance, the blood stained knife and clothes were recovered. Possibility of planation of these articles cannot be over ruled. The Investigating Officer has committed a blunder in not connecting the knife to the accused. Assuming that the knife and clothes were discovered at the instance of the accused, mere discovery is not enough, unless the knife, connected to the accused, is shown to have been used by him. The police could have ascertained the finger prints from the knife and could have either proved or excluded use of the knife by the accused. Failure on the part of the prosecution is a serious lacuna, which raises a reasonable doubt regarding involvement of the accused and, therefore, the evidence, as is accepted, is grossly in-sufficient for sustaining the order of conviction.

5. However, the primary stand was that on the basis of a solitary witnesses' evidence, conviction cannot be recorded; more particularly, when he is related to the deceased. The High Court accepted the plea and held that in case of solitary witness, and when he is related to the deceased, corroboration is a must.

6. In support of the appeal, learned counsel for the State submitted that the evidence of PW-1 clearly established the commission of offence by the respondent. There is no reason why he would depose falsely against his brother in law after his sister has lost her life. The decisions referred to by the High Court do not lay down any proposition of law to the effect that on the basis of solitary witnesses' evidence conviction cannot be recorded and also that relatives' evidence needs corroboration. Accused has not explained as to what he was doing if he was present in the house after the occurrence. He did not prefer to file any report with the police. His conduct is also relevant.

7. Learned counsel for the respondent on the other hand submitted that though the reasoning of the High Court is not elaborate, but the conclusion is correct. According to him, the corroboration was necessary because of contradictions in the version of PW 10, his conduct in not lodging the FIR, improvements made during the evidence and his presence having not been established by any

acceptable evidence. Finally it is submitted that motive was not established. The High Court relied on the decision in Anil Phukan v. State of Assam Â to hold that corroboration was necessary because it was a case of single witness supporting the prosecution version and the witnesses' relationship.

8. The High Court seems to have misread this Court's observation. The relevant observations read as follows:

"Conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the scene that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."

9. Again in the same decision it was noted as follows:

"Mere relationship of the witness with deceased is no ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant and implicate a false person. However, the possibility that he may also implicate some innocent person along with the real assailant cannot be ruled out and, therefore, as a matter of prudence, court should look for some independent corroboration of his testimony to decide about the involvement of the other accused in the crime."

10. In the instant case the evidence of PW-1 was not shaken in spite of incisive cross examination. The High Court seems to have taken exception to the credibility of his evidence on the ground that he had graphically described his movements with the accused and deceased. It is not clear as to how that can be the ground to discard his evidence. He has only described the movements during the relevant period of time from one place to another. For that it was not necessary to have photogenic memory as the High Court seems to have inferred. On the contrary these were mere description of the places which at the relevant time the PW-1 visited in the company of the accused and the deceased.

11. At this juncture it is to be noted that though learned counsel for the respondent tried to highlight certain improvements in the version of the witness it is not of consequence. Irrelevant details which do in any way corrode the credibility of a witness cannot be levelled as omissions or contradictions. Interestingly in the cross examination of PW-1 the following suggestions was given to the witnesses:

"Today I do not remember whether the accused had inflicted the said katari obliquely or straight."

12. The essence of the question appears to be that though the accused had given the katari blow, the witness did not remember whether it was inflicted obliquely or straight. This by itself may not be sufficient to fasten the guilt on the accused, but this is certainly a relevant factor. Additionally the conduct of the accused was highly suspicious. If he subsequently came to the house after the incident, he has not explained as to why he did not lodge any report with the police. That would have been his normal conduct, considering the fact that undisputedly the deceased breathed her last in the house itself. The effect of the unnatural conduct of the accused in strengthening the prosecution version has been highlighted by this Court in State of Karnataka v. K. Gopalakrishna Â

13. Looked at from any angle the High Court's order is indefensible and is set aside. Acquittal as recorded by the High Court is set aside and conviction and sentence as recorded by the trial court stand restored.

14. The appeal is allowed.