

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CRML LEAVE TO APPEAL No. 15 of 2008

STATE
V/S
HET RAM & ORS.

Mr. JPS CHOUDHARY, PP

Date of Order : 30.4.2008

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI KISHAN SWAROOP CHAUDHARI, J.

ORDER

Heard learned Public Prosecutor and perused the record.

It is unfortunate that in a case of accused of murder, all the four accused persons have been acquitted, but then that cannot be the sole consideration for us to grant the leave to appeal, for the simple reason, that the case suffers from glaring infirmities, material contradictions, and the totality of circumstances do give a glaring impression, that the things have been manipulated by the investigating agency at every stage.

The combined reading of the so called Parcha Bayan of the deceased, Ex.P13, in conjunction with the statement of P.W.8 and P.W.7, does clearly give an impression that it appears that the deceased was severely beaten, and ought we

know, he might have been lying dead on the road, but then the story is propounded that he was taken to Lunkaransar hospital, there drip was administered, and his Parcha Bayan was recorded by P.W.8, being Ex.P13, and regarding the condition of the deponent to be fit to give statement, reliance is placed on Ex.P14, the endorsement made by the doctor. It is significant to note that a naked eye view of the Ex.P14 does show that the endorsement of the doctor about referring the victim to PBM Hospital, Bikaner is over with making reference, and the last line appears to be a post script addition. That apart, a look at Ex.P13 shows that, that doesn't bear any signatures of the doctor, or any other person, or officer, as required by Section 6.44 of the Police Act. Then a look at the statement of P.W.8, who has proved Ex.P13, shows that according to him, the deceased was speaking, which was being heard by Ast Ali, and it is Ast Ali, who scribed Ex.P13. However, Ast Ali has been produced by the prosecution as P.W.7, and a look at his statement shows that in the entire statement, he has not deposed a word about his having scribed Ex.P13. Then a look at Ex.P13 also shows that according to him on his being beaten, he raised a hue and cry, which attracted his brother Khema Ram, and other persons, who came to intervene, but the accused persons threatened them, and therefore, they could not intervene. As against which according to P.W.7, at the place, where victim was found, no family member of Rekha Ram victim was available,

thereupon, the investigating agency people met the family members, SHO also made inquires from his family members, and then they went to the house of Khema Ram, as the two brothers live separately, they met Khema Ram, they requested Khema Ram that Rekha Ram is lying near temple, and he should accompany, but then Khema Ram declined. This on the other hand does clearly show that the recitals in Ex.P13 are dead against the prosecution version, as appearing in the statement P.W.7. With this, it is also significant to note that in Ex.P13, the victim is alleged to have named as many as 7 accused persons, and has deposed that some 4-5 more persons were there, which has not been found by the investigating agency, and the challan has been filed only against 4 persons. Over and above all this, it is also significant to note that since the statement was desired to be recorded as dying declaration, according to the established legal principles, it was required to be recorded in the own words of the deponent, while according to P.W.8, the deponent was deposing in Marwari, and it was translated into Hindi, and was written as Ex.P13. Thus, the story propounded right from inception appears to be a suspicious. This is one aspect of the matter. True it is that mere wrong recital in FIR etc. would not vitiate the prosecution case altogether. All this we have observed here is to show that right from inception itself, the things were proceeding in a manipulated manner.

Then coming to the oral evidence produced before the lower Court also, Khema Ram has appeared as P.W.3, and has deposed to have gone on the spot on hearing hue and cry, and found the brother victim lying, and has deposed that accused persons, 6 in number, were beating him, and has given description that Het Ram was having Kulhari, Bhikha Ram and Shanker Lal were having Lathis, Sheopatram and Rupa Ram were giving kick blows. Then Chandu Ram son of Rawat Ram was having light weapons. Then he raised hue and cry, which attracted other persons, including Om Prakash. Then he has deposed about motive. Then he has deposed that in the morning police people prepared papers at Bikaner, from Lunkaransar, they brought to Bikaner and the Police went back to his village at about 7-7.30 AM. Then post mortem was conducted at Bikaner. Significantly, Ex.P13 purports to have been recorded at Lunkaransar, which is belied by the statement of Khema Ram. Then the conduct of this Khema Ram is also significant when he deposed that when the accused persons wanted to chase him, he went away to his house. This is contrary to the normal human conduct, inasmuch as, the victim was none-else his real brother, and instead of going away to him, he would have taken some steps, may be like intimating Police to extend protection etc. Then it is significant to note that though according to prosecution, the victim was injured when he was taken to Lunkaransar, and drip was administered to him, obviously the doctor was available as appears from Ex.P14 also, but

then no injury report of the alive person was prepared. Then coming to the post mortem report, Ex.P3, the nature, location and dimensions of the injuries are clearly contrary to what has been deposed by the witness Khema Ram, so also is a total variance with what has been deposed in Ex.P13. Likewise, is the condition about the other witnesses, who have been produced by the prosecution purportedly to be eye-witnesses, or the witnesses of resgestae.

We have then gone through the findings recorded by the learned trial Court, who has discussed the entire material in detail, and after going into the entire record, we are at one with the findings arrived at by the learned trial Court. Thus, we do not find any ground to interfere with the impugned order.

The petition for leave to appeal is, therefore, dismissed.

(KISHAN SWAROOP CHAUDHARI),J.

(N P GUPTA),J.

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