

ANIL PRAKASH SHUKLA AND ORS.

v

ARVIND SHUKLA AND ANR.

MAY 1, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860:

s. 302—Murder—Prosecution case based on alleged dying declaration and testimony of sole eye-witness—Enmity between complainant and accused—Victim died several days after incident—Contradictions in testimony of sole eye-witness—Dying declaration before Magistrate recorded after victim was alleged to have been tutored—Magistrate not examined—Held: High Court rightly acquitted the accused.

Evidence:

Dying declaration—Veracity of—Victim who died after several days of incident, told the I.O. that prior to this statement being recorded before the Magistrate, he was tutored by his brother and father—Magistrate not examined—Held, High Court rightly disbelieved the dying declaration.

Eye-witness—Contradictions in statements of the sole eye-witness—Held, High Court rightly held that after coming to know of medical report, witness before trial courts improved his version given in FIR.

Respondent-accused in both the appeals was on inimical terms with PW-1, the complainant, and his brother, the deceased. On the day of incident when PW-1, and his brother, after taking a round in the market, were returning to their house, the accused along with two other persons, appeared there and gave one knife blow on the brother of PW-1. Initially, a case under section 307 IPC was registered against the accused and when the victim died, after several days of the incident, the case was converted into one under s. 302 IPC. The prosecution mainly relied on the evidence of PW-1, the sole eye-witness, and the alleged dying declaration of the deceased. The trial court convicted the accused of the offence charged. On appeal, the High Court acquitted him. Aggrieved, the complainant filed CrI. Appeal No. 830 of 2002

A and the State filed CrI. Appeal No. 932/2002.

Dismissing the appeals, the Court

B HELD: 1. As regards the alleged dying declaration, it has been pointed out by the High Court that the Magistrate before whom the said dying declaration was said to have been recorded, was not produced as a witness before the trial court and hence the accused did not have an opportunity to cross-examine the Magistrate. Moreover, the deceased died several days after the incident. Deceased stated before the Investigating Officer 20 days after the incident that he had been tutored to give an incorrect statement before the Magistrate. In the circumstances, the High Court rightly disbelieved the dying declaration. [Para 7] [1066-F-G]

C 2. With regard to the evidence of PW-1, the sole eye-witness, the High Court has pointed out that he was not a natural witness as per his own showing and he had animosity against the accused. His presence at the scene of occurrence was by a sheer chance. Apart from that, there is inconsistency between his version given in the FIR and his statement as PW1 before the trial court. In the FIR it is only stated that the accused inflicted a knife blow on the deceased, but his deposition before the trial court, PW-1 stated that the accused inflicted knife blows on the deceased while the other person also inflicted knife blow on him. As rightly held by the High Court, the statement of PW-1 in the court is an improvement on the version given in the FIR.

[Para 9, 10 and 11] [1057-B-F]

The High Court has rightly given the benefit of doubt to the accused.

[Para 12]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 830 of 2002.

From the Final Judgment and Order dated 01.03.2002 of the High Court of Allahabad in Criminal Appeal No. 482 of 1981.

G WITH

CrI. A. No. 932 of 2002.

H P.N. Mishra, Syed Ali Ahmad, Syed Tanweer Ahmad, Girdhar G. Upadhyay, Vinita G. Upadhyay, Asha Upadhyay, Sahdev Singh, Fuzail Khan, Javed M. Rao and Musharraf Chawdhry for the Appellant.

V.K. Shukla, Anil Pandey and K.K. Mohan for the Respondent. A

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. These two appeals have been filed against the impugned judgment dated 1.3.2002 of the Allahabad High Court in Criminal Appeal No. 482 of 1981. B

2. One of the appeals has been filed by the complainant and the other by the State Government.

3. Heard learned counsel for the parties and perused the record. C

4. The prosecution case as disclosed in the FIR lodged by Anil Prakash Shukla (PW1) was that about 1-1/2 years prior to the occurrence in question Atul Prakash Shukla, brother of the first informant was beaten by accused Arvind Shukla and despite having assaulted him, accused Arvind tried to implicate Atul Prakash in a false case but could not succeed. Since then Atul Prakash Shukla and Arvind were on inimical terms. It was further alleged that on 21.10.1979 first informant Anil Prakash Shukla and his brother Atul Prakash Shukla, deceased in this case, were going to their residential house after taking a round in the market and when they were in front of the house of Shyam Babu Sharma in Mohalla Gumti Qasba Auriya accused Arvind @ Pappu and Virendra Dubey suddenly appeared there. They cried that Atul be killed whereupon accused Arvind gave one knife blow on Atul. He ran crying and fell down on the Chabutra of Shyam Babu Sharma. Besides the first information, the incident was witnessed by Dinesh Shukla, Ramesh Kumar Tripathi and Laljee Chaurasiya and the accused persons were identified by electric light. The accused persons ran away when challenged. Anil Prakash along with the witnesses came on the Chabutra where Atul was lying injured. He sent Laljee Chaurasiya to call his father who immediately arrived there and asked Anil Prakash Shukla to lodge the report. He also carried Atul to the police station in a rickshaw leaving Anil Prakash (PW1) on the spot. Anil Prakash Shukla scribed the report Ext. Ka 1 and lodged the same at police station Auraiya at 8.10 P.M. The police Station was situated only at a distance of about 3 furlongs from the place of occurrence. On the written report of Anil Prakash Shukla, a case under Section 307 IPC was registered against Arvind Shukla, Virendra Dubey and Anil @ Pappu in the General Diary at Sl. No. 36, which also indicates that injured Atul had reached the police station along with the first informant Anil Prakash Shukla. Injured Atul was sent to Hallet Hospital, Kanpur with Constable 536 Ram Prakash who also carried with him D
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A the Chithi Majroomi. On account of a strike, Atul could not be admitted in Hallet Hospital, therefore, he was taken to Ursula Hospital, Kanpur. Atul's father (PW2) Ram Sewak Shukla accompanied Atul when he was taken to Kanpur in a bus.

B 5. Dr. S.N. Sharma (PW6) of Ursula Hospital examined the injuries of Atul at 11 P.M. on 21.10.1979 and found the following injuries:-

- i) Incised wound 3.00 cm x 1/2 cm x bone deep on left side of scalp 7.0 cm above left ear.
- ii) Incised wound 2 1/2 cm x 2.00 cm x 1 1/2 cm on front of left shoulder joint
- C iii) Incised wound 3.00 cm x 1 1/2 cm x cavity of abdomen deep on right side of abdomen about 7.00 cm above umbilicus. X-ray advised.
- D iv) Incised wound 4.00 cm x 2 1/2 cm x 2.00 cm on middle aspect of front of left forearm about 5.00 cm below left elbow.
- v) Incised wound 4 1/2 cm x 2 1/2 cm x 2.00 cm about 1 cm below the medial of injury No. 4.

E 6. The prosecution mainly relied on the evidence of the sole eyewitness Anil Prakash Shukla (PW1) as well as the alleged dying declaration of the deceased Atul. The question is whether these should be believed or not.

F 7. As regards the alleged dying declaration before the Magistrate (Ex. Kha 1), it has been pointed out by the High Court that the Magistrate before whom the said dying declaration was said to have been recorded, was not produced as a witness before the learned Sessions Judge and hence the accused did not have an opportunity to cross examine the Magistrate. Moreover, it may be mentioned that the deceased died several days after the incident. Deceased Atul Prakash stated before the Investigating Officer on 9.11.1979 i.e. 20 days after the incident that he had been tutored to give an incorrect statement before the Magistrate. The Magistrate was neither cited G as a witness in the charge-sheet nor produced at the trial. Hence, the High Court disbelieved the dying declaration.

H 8. We fully agree with the view taken by the High Court that under the circumstances the alleged dying declaration made before the Magistrate is unreliable. Atul Prakash stated before the Investigating Officer on 9.11.1979

that while he was brought in a bus to Kanpur he was tutored by his father, brother and other accompanying persons to give a distorted and incorrect version about the incident. A

9. As regards the evidence of the sole eyewitness, that too, has been disbelieved by the High Court. As pointed out by the High Court, Anil Prakash (PW1), was not a natural witness as per his own showing and he had animosity against Arvind Shukla. His presence at the scene of occurrence was by a sheer chance. Anil (PW1) and Atul (deceased) left their homes separately. Anil had not accompanied the deceased nor any programme was prefixed regarding the time of his coming back. He admitted in his deposition before the Court that it was by a sheer co-incidence that the deceased met him in front of the shop of doctor Ram Babu Bajpai. His house was undoubtedly situated at a far distance from the place of occurrence and hence his presence at the scene of occurrence was by a sheer chance. B C

10. Apart from that, there is inconsistency between the version given in the FIR and the statement of Anil Prakash (PW1) before the trial court. In the FIR it is only stated that accused Arvind inflicted a knife blow on Atul, but in his deposition before the trial court, PW1 stated that accused Arvind inflicted knife blows on Atul while Anil @ Pappu also inflicted knife blow on Atul. Thus the statement in court is an improvement on the version given in the FIR in which it was only stated that Arvind above inflicted a knife blow on Atul, but there was no mention in the FIR that Anil @ Pappu also inflicted knife blows on Atul. D E

11. As rightly held by the High Court, it seems that after coming to know of the medical report for the first time at the trial court, the witnesses improved their version given in the FIR. F

12. The High Court has given the benefit of doubt to accused Arvind Shukla and we see no reason to take a different view. The appeals are accordingly dismissed.

R.P.

Appeals dismissed. G