

Rajesh Vs. State

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Court : Rajasthan Jodhpur

Decided On : Jan-23-2014

Appellant : Rajesh

Respondent : State

Judgement :

D.B.Cr.Appeal No.586/2013 1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Rajesh Suthar versus The State of Rajasthan D.B.Criminal Appeal No.586/2013 under Section 374, Criminal Procedure Code against the judgment dated 7.6.2013 passed by Additional Sessions Judge No.4, Jodhpur Metropolitan in Sessions Case No.38/2012.

Date of Judgment : 23rd January, 2014 PRESENT HON'BLE Mr.GOVIND MATHUR,J.

HON'BLE Mr.ATUL KUMAR JAIN, J.

Mr.N.K.Bohra and Mr.Gokulesh Bohra for the appellant.

Mr.A.R.Nikub, Public Prosecutor for the State.

BY THE COURT(Per Hon'ble Mr.Jain,J.).Murder is a serious offence in which compromise is not permissible but because of the poverty of the relatives of the deceased lady, almost all the witnesses have turned hostile in this case and the prosecution story hinges upon the statement of the Investigating Officer only.

Relying upon the statement of Investigating Officer only, the learned Additional Sessions Judge D.B.Cr.Appeal No.586/2013 2 No.4, Jodhpur Metropolitan, in Sessions Case No.38/2012 titled as State v.

Rajesh Suthar, has convicted accused Rajesh on 7.6.2013 for the offence under Section 302 of Indian Penal Code and he has been sentenced to life imprisonment with a fine of Rs.1000/-.

In default of payment of fine, it has been ordered that the accused will have to suffer six months' additional simple imprisonment.

This appeal has been filed by accused Rajesh against the aforesaid judgment.

We have heard both the parties and we have also perused the record of the case.

If we go through the statements of the hostile witnesses, then we come to know that PW-1 Baldev has been found hostile.

He is a cousin brother of deceased Mst.

Santosh.

He says that Panchnama of dead-body (Ex.P.1) was not prepared in his presence but he signed it on the request of police.

PW-2 Nemi Chand is also a hostile witness.

He is real brother of deceased Mst.

Santosh.

He says that his sister Mst.

Santosh had never complained to him against misbehaviour of her husband and so he states that he does not remember that FIR Ex.P.2 was true or not true.

He says that his brother-in-law accused Rajesh has not D.B.Cr.Appeal No.586/2013 3 committed murder of his sister Mst.

Santosh.

Thus, he has also been found totally a hostile witness.

He admits that both the parties have come to a compromise in this case of death of his sister.

PW-3 Champa Lal is husband of elder sister of Mst.

Santosh.

This witness has also been declared hostile and he says that piece of wood used in committing the offence of murder was not recovered from accused Rajesh in his presence.

He also admits the signature on Ex.P.9 but he denies the contents of Ex.P.9.

He says that he had signed only on blank paper on the request of the police.

PW-4 Shyam Lal s/o Bhanwar Lal has also been declared hostile.

He denies the contents of police statement Ex.P.13.

He says that both the parties have compromised the matter.

He also states that Panchnama of dead-body was not prepared in his presence and he does not know if accused Rajesh had any doubts on the character of his wife Mst.

Santosh.

He denies the fact of beating of Mst.

Santosh by her husband in his presence.

PW-5 Radhey Shyam has also been declared hostile.

He D.B.Cr.Appeal No.586/2013 4 admits that both the parties have compromised the matter.

He states that blood stained pent of accused Rajesh was not seized in his presence.

He also denies the recovery of blood stained piece of wood used in committing offence of murder by accused.

He only admits the signature on Ex.P.9, Ex.P.10 and Ex.P.11, but he denies the contents of these documents.

PW-6 Arjun is also a hostile witness.

He admits his signature of Panchyama of dead-body(Ex.P.1) but he states that he does not know anything about the death of Mst.

Santosh.

He also states that both the parties have compromised the matter.

PW-7 Mst.

Gomati is mother of deceased Mst.

Santosh.

She has also been declared hostile by the prosecution in this case.

She states that it is wrong fact that her son-in-law Rajesh has committed murder of her daughter.

She denies the contents of her police statement Ex.P.14 also.

She states that on the day of death of her daughter, her son-in-law Rajesh was not on the spot.

She states that because of allegation of theft against Sita Ram by her daughter, she might have been murdered by any person like Sita Ram.

D.B.Cr.Appeal No.586/2013 5 PW-8 Mst.

Munni Devi has also been declared hostile.

She denies the contents of her police statement Ex.P.15.

She states that both the parties have compromised the matter.

She denies the fact that accused Rajesh was having any doubt on the character of his wife Mst.

Santosh and for this reason, often he used to beat his wife Mst.

Santosh.

In her cross-examination she supports the plea of alibi raised by accused Rajesh and she states that accused Rajesh was at the residence of Shyam Lal as has been told to her by Shyam Lal as well as Rahul, who is son of Mst.

Santosh.

PW-9 Mst.

Rameshwari Devi has also been declared hostile by the prosecution.

She also denies the contents of her police statement Ex.P.16.

She states that both the parties have fully compromised the matter.

She is real elder sister of Mst.

Santosh, but still she says that accused Rajesh is totally innocent and she also states that she is not in knowledge of the fact that how her sister Mst.

Santosh met with her death.

PW-10 Mahendra Singh exhibits photos Ex.P.17 to Ex.P.27 along with a letter Ex.P.28.

This witness does not help the prosecution story to bring home the guilt of accused Rajesh.

He D.B.Cr.Appeal No.586/2013 6 may be called a formal witness only.

PW-11 Mst.

Sohani Devi is also elder sister of Mst.

Santosh.

She has also been declared hostile by the prosecution.

She also denies the contents of police statement Ex.P.28.

She also admits that both the parties have compromised the matter.

In her cross- examination, she states that in the night of the death of Mst.

Santosh, her husband accused Rajesh was not at his own residence but he had gone to the residence of Shyam Lal s/o Lumba Ram.

Shyam Lal s/o Lumba Ram has been examined as DW-2 and he also states that on 15.9.2011 in the night, Rajesh had stayed at his house and he left his house on 16.9.2011 only.

The statement of Shyam Lal s/o Lumba Ram has been supported by Rahul(DW-1).He is a boy of thirteen years and he is son of accused Rajesh.

He also states that in the night when his mother expired, his father was not at his own residence but he had gone to the house of Shyam Lal s/o Lumba Ram situated in Vidhya Nagar.

He states that his father had returned from the house of Shyam Lal on 16.9.2011 at 5.30 a.m. and at that time he found that his wife Mst.

Santosh was murdered and her dead-body was lying in the chowk(open yard).He states that his mother was murdered by some unknown person and his father has been D.B.Cr.Appeal No.586/2013 7 falsely implicated in the matter.

PW-12 Mangi Lal is said to be uncle of deceased Mst.

Santosh.

He has also been declared hostile.

He states that he had signed the site-plan(Ex.P.3).Description memo of dead-body (Ex.P.4).Memo of supurdgi of dead body(Ex.P.5) and memo of blood-stained cloths of deceased Mst.

Santosh, but he states that without knowing the contents of the documents, he had signed those documents in the hospital.

PW-14 Dr.

D.K.Sharma states that Medical Board of Dr.Shailendra Sharan with him was formed to examine the injuries of deceased Mst.

Santosh w/o Rajesh aged 30 yeaRs.caste Suthar, resident of Shikshak Nagar, Mata-ka-than, Police Station Mandore.

Following injuries were found on her body:- 1. x 1 . .

2. 2 . .

3. 3 . .

, 4. # \$ 1/2 x 1/2 . .

1/4 x 1/4 . .

(# 5.# # \$ 1/2 x 1/2 1/2 x 1/4 . .

,) 6.

* # \$ 7 . .

x 3 . .

x 1/2 x 1/2 . .

(, # D.B.Cr.Appeal No.586/2013 8 7. * # 6 x 3 . ., 8. * # \$ 3 x 2 . .

1/2 x 1/2 . .

(, 9. # # * # \$, # 3 # 6 10. # \$ 7 x 3 . .

1/4 x 1/4 ((6 11. * # 22 x 15 . .

(, 12. * # 19 x 15 . ., 13. 29 . .

(3/4 . .

7 (, # 14.9* (# # , 15. * # 6 x 3 . .

(, 16. * # \$ 6 x 1 . .

1/2 x 1/2 . .

(, 17. * # 12 x 9 . .

18. # \$ 3 . .

x 1/2 . ., 1/2 x 1/2 . ., 19. * # \$ 1 . .

x 1/2 . .

(, # , * " D.B.Cr.Appeal No.586/2013 9 In his cross-examination, Dr.

D.K.Sharma states that post- mortem Report is Ex.P.32 which has been signed by both the doct ORS.FSL report is Ex.P.43.

He states that Mst.

Santosh had died because of shock caused by ante-mortem injuries mentioned in Ex.P.32 and those injuries were sufficient in the ordinary course of nature to cause death of Mst.

Santosh.

Now remains the last witness Bhupendra Rajpoot, S.H.O. of Police Station Mandore, who has been examined as PW-13.

He is the Investigating Officer of the case.

He states that on telephonic information from an unknown person, he reached to the spot along with his staff.

He states that Nemi Chand (PW-2), who was brother of deceased, had submitted a written statement to him at the spot and so FIR No.206/2011 under Section 302 of Indian Penal Code was registered against accused Rajesh which is Ex.P.2 and then Panchnama of dead-body was prepared which is Ex.P.1 and which has been signed by all the witnesses who were present at that time.

He states that apparently, Mst.

Santosh had died because of injuries caused to her.

He states that from the spot of crime, he collected the sample of blood stained pieces of floor and sealed them.

He also D.B.Cr.Appeal No.586/2013 10 states that he had seized the clothes of deceased Mst.

Santosh by making Ex.P.7 in presence of the witnesses.

He further states that he had arrested accused Rajesh by memo of arrest(Ex.P.8).He states that accused Rajesh had given voluntary information about recovery of weapon of the offence and the weapon of offence was recovered by him as Ex.P.31 and then he states that a piece of wood was recovered as per the information given by accused Rajesh from the house of

accused Rajesh, which was seized by him as per procedure and memo of seizure of piece of wood has been prepared as Ex.P.9.

Similarly, after making memo of seizure of blood stained pent(Ex.P.11).he had seized the blood stained pent of accused.

The Investigating Officer further states that post-mortem of the dead-body was conducted by the Medical Board and report Ex.P.32 was prepared by the Medical Board.

FSL reports Ex.P.42 and Ex.P.43 have also been exhibited by this witness.

He states that Article-4 pent of the accused, Article-5 Lahanga of deceased, Article-6 blouse of deceased, Article-7 Odhana of deceased and Article-8 bra of deceased were also seized by him and a lathi which has been allegedly been used as a weapon of offence by the accused, has also been recovered through Ex.P.9.

D.B.Cr.Appeal No.586/2013 11 In his cross-examination, the Investigating Officer states that he did not try to locate the person who had made the telephonic call to the police station regarding the offence of murder.

He states that Rahul, who was son of deceased was so young that he did not think to examine him as a witness.

He states that it is wrong that accused Rajesh was not at his own residence and he had passed his night at the residence of his brother Shyam Lal.

He admits that he did not examine Shyam Lal s/o Lumba Ram regarding the plea of alibi raised by the accused.

The Investigating Officer further states that it is a wrong suggestion that Mst.

Santosh was murdered at some other place and her dead-body had been thrown in the house of the accused by the unknown offender after committing her murder.

He admits that there were no symptoms of occurrence of murder in the room of the accused Rajesh.

He admits that there was no witness who could have said that soon before the death of Mst.

Santosh, she was in the company of her husband Rajesh at her residence.

Thus, it can be said that the Investigating Officer Bhupendra Singh Rajpoot has also not been able to make out a D.B.Cr.Appeal No.586/2013 12 clear cut case of murder against accused Rajesh.

He has tried to collect evidence against accused Rajesh but in the opinion of this Court, the evidence collected by the Investigating Officer against accused Rajesh is not sufficient to bring home the guilt against him.

Only on the basis of suspicion, the accused-Rajesh cannot be convicted for a serious charge of murder.

No doubt the trial court has put total reliance upon the Investigating Officer only and the trial court has convicted the accused Rajesh only on the basis of the statement of the Investigating Officer but it is unsafe to put blind reliance on the statement of a Investigating Officer.

His statement has not been corroborated, in any respect, by any of the witnesses of the prosecution.

On the other hand, accused Rajesh has raised a plea of alibi and he has been able to substantiate his defence and the plea of alibi has been well probabalized by the statements of DW-1 Rahul and DW-2 Shyam Lal.

Hence, this appeal is allowed and the conviction and sentence of accused Rajesh Suthar under Section 302 of Indian Penal Code, which were passed by the Additional Sessions Judge No.4, Jodhpur Metropolitan on 7.6.2013 in Sessions Case No.38/2012 deserve to be quashed and the same are hereby quashed D.B.Cr.Appeal No.586/2013 13 and set aside.

The accused-appellant Rajesh is in Jail.

He be released forthwith, if not required in any other case.

A copy of this judgment be sent to the trial court immediately.

Two copies of this judgment be also sent to the concerned Jail Superintendent, who will supply one copy to the accused- appellant.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

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