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Makka Ram Vs. State

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Court : Rajasthan Jodhpur

Decided On : May-22-2014

Appellant : Makka Ram

Respondent : State

Judgement :

D.B.Cr. Appeal No.1123/2004 1/8 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT
Makka Ram vs. The State of Rajasthan D.B. Criminal Appeal No.1123/2004 under Section 374, Criminal Procedure Code against the judgment dated 19.10.2004 passed by Addl Sessions Judge (Fast Track) Jalore in Sessions Case No.67/2004(old No.32/04). Date of Judgment :

22. 5.2014 PRESENT HON'BLE MR. GOPAL KRISHAN VYAS,J.

HON'BLE MR. ATUL KUMAR JAIN, J.

Mr. Vijay Purohit , for the appellant. Mr. J.P.S. Chaudhary, Public Prosecutor for the State. BY THE COURT(Per Hon'ble Mr. Jain,J.): Accused-appellant Makka Ram Meghwal filed this criminal appeal against the judgment dated 19.10.2004 passed by Additional Sessions Judge(Fast Track), Jalore in Sessions Case No.67/2004(old No.32/2004) pertaining to FIR No.93/2004 registered at Police

Station, Nosara, District Jalore, whereby he was convicted and sentenced under Section 302 of Indian Penal Code by life imprisonment and a fine of rupees one thousand and he was further ordered to suffer one year's simple imprisonment in default of payment of fine.

2. Accused Makka Ram was charged with an offence of murder of his real brother and the conviction in the trial court has been based solely on the basis of extra-judicial confession alleged to have been D.B.Cr. Appeal No.1123/2004 2/8 made to PW-1 Masra Meghwal who is cousin brother of accused- appellant and the deceased Bhaga Ram.

3. We have heard the arguments of both sides and we have gone through the record of the case. It has been argued on behalf of the accused-appellant that the judgment of the trial court is wrong, illegal, unjust and perverse to the material on record. It has further been argued that the trial court has convicted the accused-appellant on the basis of surmises and conjectures and the so called extra- judicial confession made to PW-2 Masra was not at all reliable. It has also been argued that extra-judicial confession even if proved, is a very weak type of evidence and when there were three eye-witnesses, namely, (1) Bhura Ram(PW-2), Ms. Sukhi (PW-4) and Bheema Ram(PW-

6) and all the three of them have been declared hostile, then the conviction should not have been made relying upon extra-judicial confession only. It has also been argued that alleged recovery of blood stained 'lathi' from the accused-appellant has also not been duly proved and in the circumstances,it has been prayed that the accused- appellant Makka Ram should be acquitted from the charge of Section 302 of Indian PenalCode.

4. It has been argued on behalf of the prosecution that the law does not require that the evidence of an extra-judicial confession should in all cases be corroborated (Piara Singh & ors. vs. State of Punjab, AIR 1977 SC2274. The extra-judicial confession, if voluntary, can be relied upon by the court along with other evidence to convict D.B.Cr. Appeal No.1123/2004 3/8 the accused(Mulk Raj v. State of U.P., AIR 1959 SC902. The extra- judicial confession is undoubtedly a week type of evidence but if corroborated by surrounding circumstances then it

must be taken into consideration (In re Mansingh Parma Teli,1959 MP267. The prosecution has also placed reliance on Kusha Laxman Waghmare v. The State of Maharashtra, 2004 Cri.L. J.

2251, in which it was held that if extra-judicial confession is made by the accused before an independent witness that he had assaulted his wife, as a result of which she died, then if the evidence of the witness is reliable and corroborated in every material particular by other witness and medical expert, then conviction on the basis of said extra-judicial confession is not erroneous.

5. On the other hand, reliance may be placed on Salig Ram v. State of Haryana, (1988) 3 Crimes 766(Raj.), wherein it was held that extra-judicial confession to a person in whom he has no occasion to repose confidence is highly unnatural especially for a heinous crime like murder. Reliance has also been placed on Hiteshwar Chetia v. State, 2007 Cr.L.J.

4570(Gauhati) wherein it was held that if the alleged extra-judicial confession about killing of the deceased made by the accused was not inspiring confidence then the accused should not be convicted on the sole basis of such type of extra-judicial confession.

6. In the light of the principle propounded by Hon'ble the Apex Court and other High Courts as mentioned above, if we go through the D.B.Cr. Appeal No.1123/2004 4/8 facts of the case, then we find that Ms. Sukhi(PW-4) is mother of accused as well as of the deceased, as accused and deceased were real brothers, but she has herself been declared hostile. In her police statement (Ex.P.7) under Section 161 of Code of Criminal Procedure, she had stated that she had seen accused Makka Ram killing her son Bhaga Ram by beating him with the help of a 'lathi'. In her court statement, she states that she does not know who has killed her son Bhagga Ram.

7. Similarly, Bheema Ram(PW-6) was said to be an eye-witness from the side of the prosecution and in his statement (Ex.P.8) recorded under Section 161 of Code of Criminal Procedure, he had stated that in his presence, accused Makka Ram was killing his own brother Bhaga Ram. He had further stated there that Ms. Sukhi

Devi and Bhura Ram had also reached the spot when Makka Ram was beating his brother Bhaga Ram. This witness Bheema Ram(PW-6) was also declared hostile during the court statement and in his court statement, he has stated that he had never seen Makka Ram killing his brother Bhaga Ram.

8. Then comes the statement of PW-2 Bhura Ram. He has also been declared hostile and he has refused to have given statement (Ex.P.2) under Section 161 of Code of Criminal Procedure to the police. In his police statement (Ex.P.2) he had supported the prosecution story and in those statements he has stated that he was the eye-witness of the incident and in his presence, Makka Ram had D.B.Cr. Appeal No.1123/2004 5/8 killed Bhaga Ram by beating him with the help of a 'lathi'. In his court statement, he states that he had never seen Makka Ram killing his brother Bhaga Ram.

9. Thus, it can be said that all the three eye-witnesses, who were said to be present on the spot, when allegedly Makka Ram had killed his brother Bhaga Ram with the help pf a 'lathi', have been declared hostile and they have totally denied their police statements in this regard. Thus, the only evidence which remains against accused- appellant is the statement of PW-1 Masra and recovery of 'lathi' from the accused-appellant. Seizure memo of 'lathi' is Ex.P.15 in which it has been mentioned that a blood stained 'lathi' was recovered at the instance of accused-appellant Makka Ram in presence of witnesses Beenj Ram and Mangu Singh. Beenj Ram has not been produced for his examination before the court. Mangu Singh has been examined as PW- 8 by the prosecution in the trial court and Mangu Singh also does not support the story of the prosecution in this regard and he states that in his presence, no 'lathi' was recovered from accused-appellant Makka Ram.

10. Then if we go through the statement of PW-1 Masra, then we come to know that he states that he had not seen the incident. He claims to be the cousin brother of the deceased. He states that his house is half kilometer away from the house of accused-appellant Makka Ram. He says that in presence of three persons, accused- appellant Makka Ram had killed his brother Bhaga Ram and then he D.B.Cr. Appeal No.1123/2004 6/8 had come with the blood stained 'lathi' to tell him

that he had killed Bhaga Ram with that 'lathi'. Her further states that in the said mid- night, he was sleeping at his own house and at twelve in the mid- night, Makka Ram had come to his house to tell him the said story. The prosecution has not been able to explain that how it was possible that accused-appellant Makka Ram, who had no confidence in PW-1 Masra and with whom he used to quarrel while being drunk, would have gone to him in the mid-night to tell him that he has killed his brother. It has also not been explained that when PW-6 Bheema Ram, PW-2 Bhura Ram and PW-5 Ms. Sukhi had reached the spot when accused was killing his brother, then why he was not caught red- handed by the three of them and why the report was not lodged by any one of three and why the report was lodged by Masra Meghwal only. In the circumstances of the case, alleged extra-judicial confession made by accused-appellant Makka Ram to Masra Meghwal does not inspire confidence at all and further more, since all the eye- witnesses have denied to have seen the incident and recovery of blood stained 'lathi' from the accused-appellant has also not been proved, much reliance cannot be placed on so called extra-judicial confession alleged to have been made to Masra Meghwal.

11. In this case, PW-3 Anna Ram, PW-5 Hadmat Singh,PW-7 Mehara Ram, PW-11 Dilip Singh, HC and PW-13 Mohan Lal, HC are un- important witnesses and they have said nothing on the basis of which accused-appellant can be convicted of the charge levelled against D.B.Cr. Appeal No.1123/2004 7/8 him.

12. PW-10 M.R. Parmar has been examined in this case and he had proved the post-mortem report (Ex.P.18) in which he states that injuries no.3,4,5 and 6 mentioned in Ex.P.18 were the head injuries of the deceased and because of those injuries, Bhaga Ram had expired. It has been argued on behalf of the accused-appellant that Dr. Parmar has nowhere stated in his statement that the aforesaid injuries were sufficient to cause death of Bhaga Ram in the ordinary course of nature.

13. PW-12 Purushotam Rajput was the Investigating Officer in this case. He states that the blood stained 'lathi' was recovered by him at the instance of accused-appellant in furtherance of information (Ex.P.21) given by the accused-appellant in

this regard but as we have discussed earlier, recovery of blood stained 'lathi' has not been duly proved and in the circumstances of the case, only on the basis of FSL report (Ex.P.27), it cannot be said that the said blood stained 'lathi' was recovered from the accused-appellant.

14. In the circumstances of the case, this Court has no hesitation to say that the alleged extra-judicial confession of accused-appellant Makka Ram has not been proved and also it does not inspire confidence and further more, it has not been corroborated by other evidence in the case. There is no other evidence against the accused- appellant Makka Ram to prove his guilt and hence, the prosecution story is fully doubtful and benefit of reasonable doubt needs to be D.B.Cr. Appeal No.1123/2004 8/8 given to accused-appellant Makka Ram, who is in jail since the date of his arrest in this case.

15. Hence, this appeal of appellant Makka Ram deserves to be accepted, which is hereby accepted and he is hereby acquitted from the charge of Section 302 of Indian Penal Code. The conviction and sentence passed against him by the trial court is hereby set aside. He be released forthwith, if not wanted in any other case. A copy of this judgment should immediately be sent to the District Jail, Jalore. Record of the lower court be sent back with one copy of this judgment immediately. (ATUL KUMAR JAIN),J.

(GOPAL KRISHAN VYAS),J.

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