

Gopal Vs. State

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Court : Allahabad

Decided On : Oct-08-1976

Reported in : 1977CriLJ358

Judge : G.D. Srivastava and; V.N. Verma, JJ.

Appellant : Gopal

Respondent : State

Judgement :

V.N. Varma, J.

1. This is an appeal from the judgment and order of Sri I.N. Misra, Sessions Judge, Mainpuri by which he convicted the appellant under Section 302, I.P.C. and sentenced him to imprisonment for life.

2. The person who lost her life in this case was one Smt. Rewati. She was the wife of the appellant. It is said that the appellant suspected the fidelity of his wife and, he, therefore, on 4-10-70 at about 10 A.M. took her to his field on the pretext of scraping grass and there inflicted Khurpi blows on her as a result of which she, died. This incident was said to have been witnessed by Saifulli and Sannu. After killing his wife the appellant was alleged to have made an extra-judicial confession in regard to his guilt before Hemendra Singh and Sukhram. It is further alleged that after making that confession he went to P.S. Kuraoli and lodged a report (Ex. Ka-

5) there at 11-30 A.M. In that report he admitted to have killed his wife with a Khurpi. He was arrested and put up in the thana lock-up. As no Sub-Inspector was present at the police station, Head Constable Zor Singh (P.W. 4) himself went to the place of occurrence reaching there at about noontime. Subsequently, the investigation of the case was entrusted to S.I. B.S. Sirohi (P.W. 7). He reached the spot at about 2-30 P.M. There he first held an inquest on the dead body of Smt. Rewati and prepared the inquest report Ex. Ka-2. He then despatched the dead body duly sealed to Mainpuri for post-mortem. Later on, he inspected the locality, drew the site plan Ex. Ka-11, recorded the statements of the material witnesses and collected blood from the spot.

3. The post-mortem examination on the dead body of Smt. Rewati was conducted by Dr. O.P. Batra on 5-10-71 at 11 A.M. He found four incised wounds, two contusions and three linear abrasions on different parts of the dead 'body.

4. The internal examination revealed fracture of ribs Nos. XI and XII.

5. According to Dr. Batra, death was due to shock and haemorrhage as a result of the injuries received.

6 : The appellant pleaded not guilty and denied the allegations made against him. He stated that he had gone to lodge a report at the thana about the murder of his wife, but the police arrested him and trumped up this false case against him due to village Partibandi. He denied that he ever suspected the fidelity of his wife.

7. The learned Sessions Judge found the prosecution case fully proved and he, therefore, convicted and sentenced the appellant as indicated above. Aggrieved, he has come up in appeal to this Court.

8. Two witnesses were examined in this case to show that it was the appellant who had hacked his wife to death. They are Saifulli (P.W. 1) and Sannu (P.W. 2), The learned Sessions Judge, however, did not place reliance on their evidence as he felt that they were in some way or the other connected with the police We think the learned Sessions Judge was absolutely correct in this regard and he rightly ignored their evidence. After ignoring their evidence, the learned Sessions Judge

proceeded to scrutinize the circumstances of the case and recorded a conviction against the appellant on the ground (1) that he had a motive to kill his wife because she was a woman of loose character (2) that the report made by him led to the discovery of the dead body of the deceased and the blood-stained Khurpi that was used in the commission of the crime and (3) that he made an extra-judicial confession admitting his guilt. Now so far as the first ground is concerned, there is no evidence worth the name to show that the deceased was >a woman of loose character and that the appellant ever suspected her fidelity. None of the witnesses examined in this case has said a word about the deceased being a woman of bad character. On the other hand, we find that Panni (P.W. 1) has clearly mentioned in his statement that the deceased Smt. Rewati was a woman of good character. The learned Sessions Judge refused to place reliance on his evidence on the ground that he is the own brother of the appellant and he can, therefore, say anything with a view to help htm in this case. Instead he relied upon the F.I.R. to hold that the deceased was a bad charactered woman and the appellant suspected her fidelity. We do not think that it was open to the learned Sessions Judge to rely upon the F.I.R. for holding that the deceased was a bad charactered woman. The F.I.R. in this case, as stated above, was made by the appellant himself. It was, therefore, in the nature of a confession made before a police officer. A confession made before a police officer is not admissible in law. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent it is permissible by Section 27 of the Indian Evidence Act. That being so, that part of the F.I.R. which deals with the motive for the commission of the crime cannot be legally looked into. The learned Sessions Judge, therefore, fell in error when on the toasis of the F.I.R. he held that the appellant had a motive to commit the murder of his wife.

9. Now so far as the second ground of conviction is concerned, it is to the effect that the report made by the appellant led to the discovery of the dead body of the deceased as also to the discovery of the blood-stained Khurpi that was used in making the assault on the deceased. We think that part of the report which led to the above discoveries is admissible in evidence, and can be looked into for finding

out whether or not the appellant is guilty of the offence with which he stands charged. This is clear from what the Supreme court has said in *A. Nagesia v. State of Bihar* : 1966 CriLJ100 . Now what we have to see is whether the report made by the appellant had led to the two discoveries referred to above, in this regard it would be useful to look to the evidence of S.I. B.S. Sirohi (P.W. 7). He was the person who had done the investigation of this case. He had gone to the spot carrying the papers of the case with him. One of those papers was the report that had been made in this case. In pursuance of the information given in that report S.I. B.S. Sirohi found the dead body of Smt. Rewati as also a blood-stained Khurpi in the field of the appellant in village Gangapur. We find that not a word was put to S.I.B.S. Sirohi with a view to assail his evidence on this point. We, therefore, believe him when he says that on the information given by the appellant in his report he had recovered the dead body of his wife as also a blood-stained Khurpi from his field in village Gangapur. The question that now arises is whether on the basis of these two discoveries alone, a conviction can be recorded against the appellant in this case. We do not think that it would be prudent to do so as this circumstance by itself is not clinching enough to prove the case against the appellant.

10. The learned Counsel for the State contended that apart from the evidence of recoveries referred to above, there is also the extra judicial confession of the appellant and the two taken together went a long way to connect the appellant with the murder of his wife. This, therefore, raises the question whether the appellant had really made an extra-judicial confession or not. The appellant denied to have ever made any such confession, The prosecution, however, examined two persons- Hemendra Singh (P.W. 5) and Sukhram (P.W. 6)- to show that the appellant had made a confession before them. So far as Hemendra Singh is concerned, the learned Sessions Judge did not think him to be a good and dependable witness and, therefore, did not rely upon his evidence. He, however, placed reliance on the testimony of Sukhram. He has stated that on the morning of the day of the incident, he had come to Kuraoli to purchase manure from the Seed Godown and was to take that manure to his village Kuberpur on the bus of Hemendra Singh (P.W. 5). His bus had, however, gone out of order and had been sent to Etah for repairs. The bus was expected any time and therefore he and

Hemendra Singh sat on a cot near the Hotel of one Ram Sanehi waiting for the 'bus to come from Etah. At about 11 A.M. according to him, the appellant came running and panting to wash his hands and feet at a water-tap near the place where they had been sitting. As his face wore a weird look, the witness inquired from him as to what the matter was and then he blurted out that he had hacked his wife to death with a Khurpi and was on his way to the thana to make a report. We have gone through the evidence of this witness very carefully and we may say here at once that he has not at all impressed us to be a truthful witness. Even if we took it for a moment that he had been sitting near the Hotel of Ram Sanehi waiting for Hemendra Singh's bus to come from Etah, we have not been able to understand as to why he should have questioned the appellant when he came near the water tap to wash his hands and feet and why the appellant should have told him in a detached manner that he had killed his wife. One could have understood Ms questioning the appellant had the hands of the appellant or his clothes been soiled with blood. Admittedly, that was not the case. To say that he was constrained to question the appellant on seeing his weird look is something which no reasonable man can believe. and then it sounds so odd that the appellant should have confessed his guilt to him on his mere questioning. Neither of the two knew each other well from before. The only acquaintance that Sukhram had with him was that once or twice he had purchased vegetables from him. At such a low level of acquaintance it is too much to expect that the appellant could ever be willing to repose his confidence in Sukhram and admit his guilt to him. Further, it is again too much to expect that soon after the incident the appellant would become garrulous and acquire a sudden proneness to blurt out that he had killed his wife. Keeping all these things in view we do not think that Sukhram is telling the truth when he says that the appellant had confessed his guilt before him. The story about the appellant having made an extra-judicial confession is, therefore, all false and has been cooked up just with a view to give strength to the prosecution case. We are really amazed how the learned Sessions Judge found it possible to accept this part of the prosecution case as true.

11. Thus, from the above it is clear that but for the fact that the dead body of the deceased and a blood-stained Khurpi had been recovered from the field of the appellant at the information furnished by him, there is no other evidence in this

case which goes to show that the appellant had a hand in the commission of this crime. At best, all that one can say is that the conduct of the appellant had been rather suspicious, but suspicion, howsoever strong cannot take the place of legal proof. It was, therefore, not a case in which the appellant should have been convicted.

12. In the result, therefore, we allow the appeal and set aside the conviction and sentence passed against the appellant. He is on bail, his bail-bonds are discharged and he need not surrender to them.

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