

Ramlal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-04-2004

Reported in : II(2005)ACC102; 2004(2)MPHT140; 2005(2)MPLJ14

Judge : S.L. Kochar and ;Uma Nath Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302; Evicence Act, 1872
- Sections 25, 27 and 159

Appeal No. : Criminal Appeal No. 724/95

Appellant : Ramlal

Respondent : State of M.P.

Advocate for Def. : G. Desai, Dy. Adv. Gen.

Advocate for Pet/Ap. : V.S. Chouhan, Adv.

Disposition : Appeal allowed

Judgement :

S.L. Kochar, J.

1. Being aggrieved by the judgment and finding dated 26-9-1995 passed by IInd Addl. Sessions Judge, Ujjain in S.T. No. 222/92, whereby convicted the appellant under Sections 302 and 201 of the IPC, sentenced to R.I. for life and two years

with fine of Rs. 500/-; in default of payment of fine further two months additional sentence, the appellant has filed this appeal. The substantive sentences were directed to run concurrently.

2. Briefly stated the prosecution case before? Trial Court was that on 18-1-1991 Satyanarayan (P.W, 13) has lodged a report which was recorded in Rojnamcha Sanha (daily diary) No. 612 at 3.40 P.M. vide Ex. P-24. According to this report, the wife of the appellant had eloped with one Gopichand Koushal on 18-12-1990. Thereafter appellant and witness Satyanarayan brought her back from Dewas after pacifying her. When at 3.00 p.m. Satyanarayan reached at the well of Ramlal to see Kalabai, Kalabai was not present there and Ramlal informed him that she had went day before yesterday to somewhere. He was not knowing where she had gone. According to Satyanarayan, he was having belief that Kalabai did not ran away but appellant might have eloped her or killed her. On the basis of this information, investigation commenced and Sub Inspector Arvind Thambe (P.W. 15) recorded Dehati Nalishi (Ex. P-22) and took the appellant into his custody. The appellant confessed the guilt before the police and made a statement that she was killed by throttling and her dead body was thrown in the well. Thereafter in pursuant to this information dead body was recovered by the police. After recording of memorandum statement of the present appellant (Ex. P-12), police had also recorded the memoranda statement of acquitted accused Anantlal. Thereafter both were taken to the well and both brought out the dead body outside the well. The recovery memo of dead body is Ex. P-13. The dead body was identified as the dead body of Kalabai and the same was sent for post-mortem examination. Dr. S.K. Shrivastava (P.W. 5) performed the post-mortem. His report is Ex. P-8 and according to his evidence, deceased did not die because of drowning but died because of asphyxia due to throttling. Her both the hands were tied by her sari and the same was also surrounded around her neck and on the sari one rope was tied with three knots. Some abrasions were noticed by the doctor at the neck of the deceased. After necessary investigation, charge-sheet was filed. The appellant abjured his guilt and claimed for trial. The learned Trial Court, after examining the prosecution witnesses and hearing both the parties, convicted the appellant as mentioned above. Hence, this appeal.

3. We have heard Shri V.S. Chouhan, learned Counsel for appellant and Shri G. Desai, learned Dy. A.G. for the State.
4. The learned Counsel for appellant has submitted that the recovery of dead body at the instance of the appellant is not proved beyond all reasonable doubt by adducing cogent, legal and reliable evidence by the prosecution. According to him, if recovery of dead body is excluded from the case, there is no other clinching circumstantial evidence available against the appellant for holding him guilty of the murder of his wife.
5. On the other hand, for combating this argument, the learned Dy. A.G. Shri Desai submitted that in view of the statement of Nanuram (P.W. 9) and Satyanarayan (P.W. 13) as well as the statement of Arvind Thambe (P.W. 15), circumstance of discovery of dead body is fully proved and deceased died homicidal death. She was lastly seen in the company of the appellant and appellant has not explained these circumstances in his 313, Cr.PC statement. Therefore, appellant has been rightly convicted.
6. We have perused the entire record. The main evidence relied upon by the learned Trial Court against the appellant is discovery of dead body at his instance. The disclosure statement under Section 27 of the Evidence Act is Ex. P-12. Prosecution has examined both the panch witnesses Nanuram (P.W. 9) and Satyanarayan (P.W. 13).
7. Nanuram (P.W. 9) has deposed that he was not knowing the wife of the appellant. The dead body which was taken out from the well was the body of one woman. He has admitted his signature on Memo (Ex. P-12 and Ex. P-13) and recovery memo (Ex. P-14) vis-a-vis identification memo (Ex. P-15) and inquest (Ex. P-17). He was also the witness of spot map (Ex. P-18). He has also stated that police had recorded his statement and he disclosed before the police that the body of the woman was the body of wife of the appellant. This witness has not been declared hostile. This witness has nowhere stated about disclosure statement made by the appellant Ramlal vide Ex. P-12. He has also not stated that Ramlal pointed out the place where the dead body was found. He has also not stated that dead body was taken out from the well by the appellant. On all these

documents only his signatures were got proved but the contents of the documents were not proved by this witness. Therefore, statement of accused (Ex. P-12) as per provision under Section 27, Evidence Act and seizure memo (Ex. P-14) are of no use.

8. The another panch witness is Satyanarayan (P.W. 13). He is a witness who has lodged the report first in time vide Ex. P-24 expressing his doubt upon the appellant regarding murder of his wife. This witness has also not stated on oath before the Court that before him the appellant Ramlal made any disclosure statement about the place where the dead body was found. According to him, the appellant Ramlal and he were called in Panchayat Bhawan. Appellant Ramlal and police were inside the room and he was sitting outside. Thereafter police called him and told that Ramlal had confessed the guilt. He himself had not heard what Ramlal had spoken before the police. Again police told him that Ramlal has disclosed the name of co-accused Anantilal. Anantilal was not present there. Thereafter police asked him to accompany them to the place where the dead body was found. Thereafter they reached at Kamanpur Canal. Co-accused Anantilal joined them on the way. The watchman and Anantilal were standing. The police asked them to take out the dead body. Therefore, dead body was taken out. The dead body was taken out by Anantilal and probably by the present appellant. Thereafter panchnama was prepared and appellant and acquitted co-accused Anantilal were arrested. In cross-examination, in Paragraph 10, he has deposed that without thinking and reading normally he was not signing on the papers but on that day on two papers, in a hurry he had signed. Again in cross-examination he has stated that inside the Panchayat Bhawan he did not enter where the police and appellant were sitting. He has denied his statement 'A to A' and 'B to B' portion mentioned in statement recorded under Section 161, Cr.PC vide Ex. P-21. This witness has been declared hostile by the prosecution. But Nanuram (P.W. 9), the another panch witness has not been declared hostile. The statement of both the witnesses are not helpful to the prosecution for disclosure statement made by the appellant as per document (Ex. P-12).

9. The learned Trial Court, in its judgment has relied upon as mentioned in Paragraph 18 of the judgment that:--

^iz- ih- 12 dh tks lwpuk yk'k dks dekuqjk rkyesa Mkydj j[kk gS vkSj cken djuk
crk;k gS vkSj ;g dFku loZizFke mlds }kjk fn;stkus dh otg ls fuf'pr gh Lohdkj fd;s tkus
;ksX; g SA**

The learned Trial Court found the above mentioned statement admissible in evidence under Section 27 of the Evidence Act. It appears that learned Trial Court though quoted a leading judgment of Supreme Court in case of Laxmansingh v. State (AIR 1952 SC167) but failed to understand which part of the disclosure statement is admissible and which is not. The law is now well settled that under Section 27 of the Evidence Act only that portion of the statement of accused is admissible which is leading to the discovery of fact. In the judgment of Laxmansingh v. State (supra), the Supreme Court has also relied upon the same statement reproduced herein that 'the dead bodies could be recovered in the Sakinala'. In the document (Annexure P42) only portion admissible is :--

^eSa yk'k dks ml rky ij py dj cken dj nsrkgwaA**

Rest of the portion about commission of murder and throwing of the dead body is the confessional statement before the police which is not admissible as per provision under Section 25 of the Evidence Act. Even Section 25 is restricting the proof of confession made by the accused to the police officer. Recently again Supreme Court has elaborately considered which part of the statement of accused recorded under Section 27 of the Evidence Act is admissible in the judgment of SalimAkhtar alias Moosa v. State of U.P.,(2003) 5 SCC 499, in which it is held that :--

'So far as the disclosure statement of the appellant is concerned, the same was admittedly made to police personnel and only that part of the statement would be admissible which is permissible under Section 27 of the Evidence Act. The scope of this provision was explained by the Privy Council in the well known case of Pulukuri Kottaya v. Emperor, wherein it was held that it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given, must relate distinctly to this fact. Information as to the past user, or the past history, of the

object produced is not related to its discovery in the setting in which it is discovered. Therefore, what is admissible is the place from where the polythene bag containing pistol and other articles was allegedly recovered. The fact that some terrorist organisation had given the pistol and other articles to the appellant or its use would not be admissible.'

10. In the light of above mentioned legal position, in the present case both the independent panch witnesses have nowhere stated that appellant made a disclosure statement about the place from where the dead body was recovered.

11. Now we are left with the only statement of Investigating Officer Arvind Thambe (P.W. 15). In paragraph two, this witness has deposed that on 19-1-1991 the appellant Ramlal was interrogated and he admitted his guilt about killing of his wife and throwing her in the Kamanpura Canal with the help of his brother Anantilal. On this information, he had recorded the Dehati Nalishi (Ex. P-22). The disclosure statement of the appellant is Ex. P-12. In paragraph three, this witness has proved the disclosure statement of appellant Ramlal vide Ex. P-12 and stated that Ramlal disclosed about killing his wife by throttling and thereafter throwing her dead body into the Kamanpura Canal after tying her with stones with the help of Anantilal. Nowhere this witness has stated on oath before the Court that appellant expressed his desire to get the body discovered from Kamanpura Canal. So the statement as mentioned in Ex. P-12 :--

^eSa yk'k dks ml rky ij py dj cjken djn nsrkgwaA**

has not been proved by this witness also.

12. This Court long back in the case of Bhagirath and Ors. v. State of M.P. (1958 MPLJ 745) has held that the memoranda of discovery are not themselves evidence. Any statement attributed to the accused as leading to discovery must be proved by witnesses like any other fact. Such memoranda can be used by that witness as per provision under Section 159, Evidence Act to refresh his memory.

13. In the light of this factual and legal position, we are unable to rely on the solitary testimony of Investigating Officer Arvind Thambe (P.W. 15) regarding

disclosure statement about dead body made by the appellant. The learned Trial Court has also committed error on relying the confessional part of the statement. If the evidence of discovery of dead body at the instance of the appellant goes away, thereafter nothing substantial remains against the appellant to uphold his conviction.

14. As discussed above, the evidence of discovery of dead body at the instance of appellant Ramlal is not proved beyond reasonable doubt by the prosecution. Therefore, we are inclined to give benefit of doubt to the appellant.

15. The appeal thus allowed and the conviction and sentence passed against the appellant is set aside. He is on bail. His bail bond and surety bond are discharged.

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