

Mohammad Raffique Vs. the State

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Court : Madhya Pradesh

Decided On : Apr-18-1950

Reported in : 1952CriLJ1631

Judge : Kaul, C.J. and ;Mehta, J.

Appellant : Mohammad Raffique

Respondent : The State

Judgement :

Mehta, J.

1. The accused appellant Mohammad Raffique, son of Ghaseet Khan of Jaora was convicted under Section 302, I.P.C., and sentenced to transportation for life by the Sessions Judge Ratlam on 13.12.1949. The prosecution case is that accused Mohammad Raffique murdered a girl Memmona, aged 3 years on the 26th April 1949. The occurrence took place at Jaora. The first information report was lodged by Noor-mohammad, father of Memmona on 26th April, 1949 at about 9 P.M. Noor Mohammad went to-the Police Station and reported that his daughter aged about 3 years who was wearing silver Kadas on feet and hands is missing and the Police should make efforts to find her out.

Later on, Noor Mohammad at about 10, P.M., produced Naharkhan before the police and Naharkhan informed the police that he had seen Memmonna, the

missing girl, in the company of the accused at about 6-30 P.M. on 26th April 1949. Acting on the basis of this information, the police apprehended the accused and the house of the accused was searched on 26th April at about 10 or 10-30 P.M. The girl was not found in the house of the accused. At about 11 or 12 midnight the accused disclosed to the police that he knew the place where the body of Memmona was lying. It was lying in a well and he would point it out. The accused took the Panehas and the police along with him and he took them to a well which is near Kalali. As it was dark, with the help of kerosene light they found dead body floating on the water. The body was lifted out of the well and it was identified to be the body of Memmona, daughter of Noormohammad.

2. At about 1-30 A.M., the accused told the police that the silver kadas of Memmona were kept in his house and that he would point them out and produce them. The accused took the police and Panehas to his house and produced pairs of silver kadas. The kadas were tied in the handkerchief belonging to the accused and they were kept concealed behind a photo frame hanging on the wall. Articles P/2 & P/3 are the two silver kadas and Article P/4 is the handkerchief in which they were tied. On these facts, the accused was challaned and was committed to the Session. He was convicted and sentenced as noted above by the Sessions Judge, Ratlam.

3. In this case there is no direct evidence of eye witnesses and the entire prosecution case hinges on the circumstantial evidence. There are three prominent incriminating circumstances:

(1) The accused was last seen in the company of the deceased Memmona at about 6 or 6-30 P.M. by Naharkhan & others on 26th April 1949.

(2) The dead body of Memmona was shown by the accused.

(3) The pair of silver kadas, Articles P/2 & P/3 were recovered at the instance of the accused and from his house; and

(4) The point No. 4 taken up by Mr. Samvatsar, counsel for the accused at a later stage relates to contravention of Section 285, Criminal P.C.

4. I will dispose of point No. 4 first. The trial commenced on 11.11.1949 with four assessors to start with. On 14.11.1949 one Sultan Hamid, one of the assessors, sent a telegram stating 'Detained by the Doctor. Regret unable to attend court'. The Sessions Judge passed order on the 15th November, 1949, dispensing the presence of Sultan Hamid on sufficient ground and hence the trial proceeded with the help of assessors. From 15.11.1949 it was adjourned to 12th December, 1949. On 12.12.1949, one Mulla Haiderali was not present. From the proceedings of the 12th December, it appears 'that Mulla Haiderali was ill and he remained absent. On 12th & 13th December, there were two assessors and the trial proceeded with the help of two assessors only. The two assessors gave their opinion that the accused is not guilty. Mr. Samvatsar contended that if during the course of trial with the aid of assessors, any assessor for sufficient cause is prevented from attending throughout the trial and absents himself and it is not practicable to enforce his attendance, the trial shall proceed with the aid of other assessors but before proceeding with the trial with the remaining assessors, the court should ascertain whether the absence of assessors was due to sufficient cause. If the Sessions Judge proceeds with the trial without ascertaining whether his absence was due to sufficient cause and without taking steps practicable to enforce his attendance, the trial is vitiated. In this connection I may state that the Sessions Judge was satisfied that there was sufficient reason for the assessors to remain absent. Both Sultan Hamid and Haiderali were prevented from attending the court and therefore, the Sessions Judge dispensed with their presence and proceeded with the aid of remaining assessors. If the Sessions Judge did not take any practicable steps to enforce the attendance of the assessors and proceeded with the trial with the aid of remaining assessors, it has not prejudiced the accused and the defect in a trial did not affect its validity and the irregularity was curable under Section 537, Criminal P.C. because the irregularity had not in fact occasioned the failure of justice and that no such failure of justice has been shown.

5-8. His Lordship then took up points 1 to 3 and after discussing the evidence, continued as follows:) From the circumstantial evidence discussed by me above, there appears to be no doubt in my mind that the accused murdered the unfortunate girl in order to rob her of the pair of silver kadas and I hold the accused guilty under Section 302, I.P.C.

9. It is a case of brutal murder of an innocent girl, aged 3 years and the crime was actuated by greed. It is a sordid brutal murder and the learned Sessions Judge should have imposed, in the circumstances of the case, death penalty. 'However, I would confirm the order of conviction and sentence, and dismiss the appeal.

Kaul, C.J.

10. I agree with the conclusion arrived at by Mehta, J, and with the order proposed to be passed by him. The only reason why we refrain from issuing notice to the accused for enhancement of sentence is that the matter is already one year old.

11. 'By The Court' : The appeal is dismissed.

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