

Salil K. Sarkar Vs. State

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Court : Delhi

Decided On : May-07-1986

Reported in : 1986RLR429

Judge : R.N. Aggarwal and; J.D. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 47 of 1984

Appellant : Salil K. Sarkar

Respondent : State

Advocate for Pet/Ap. : R.M. Tufail and; B.T. Singh, Advs

Judgement :

R.N. Aggarwal, J.

(1) [THE deceased residing in Delhi was sister of one Narain Das in Bengal. He learning that she was not keeping good health sent his wife and niece to enquire her welfare and bring her to Bengal, if she agreed. Accused who was a private tutor, teaching children of Narain Das expressed desire to accompany them and did so. A daughter of deceased was living at Faridabad. The 3 came to Delhi in early Nov. 80, visited the deceased and resided with her daughter at Faridabad. On 21.11.80, accused came alone to Delhi and was seen taking lunch at the place

of deceased. In the evening he returned to Faridabad telling the people there that he was short of funds and had pawned his watch at Delhi. Next day deceased was found to have been murdered. Suspicion fell on the accused and at his instance ornaments belonging to the deceased were recovered in Bengal. These included one earring while other piece of this pair remained with the body of deceased. On Scientific exam. the 2 were found to be alike. Accused was charged for murder of deceased. He was found guilty and convicted. He appealed to High Court]. After detailing above facts. Judgment proceeds :

(2) The aforesaid evidence, in our view, proves beyond any doubt the recovery of the ornaments, that is, the gold necklace, the gold chain, the earring and silver key ring, etc. at the instance of the accused.

(3) The learned counsel for the accused contended that the pair of earring was not put for identification to Public Witness s25 and 29. In our view, the reason for not doing so is obvious. One piece of earring was recovered from the person -of Sondhya on 22nd Nov after she was admitted in the hospital. The second piece of earring was recovered at the instance of the accused on 3.12.1980. The two pieces were sent to the Central Forensic Science Laboratory for a report whether they resemble in their shape, design and other physical characteristics. The report is that the two pieces of ear-ring resemble in their shape, size, design and other physical Characteristics. One piece of ear-ring having been recovered from the person of the deceased the question of its identification by the witnesses does not arise. The gold chain, the gold necklace and the key ring were put up for the identification of Public Witness ..25 and Public Witness . 29. They identified them as belonging to the deceased. We have carefully examined the entire evidence regarding the recovery of the ornaments from the possession of the accused and their identification by the witnesses and we find no sufficient reason to disbelieve the prosecution evidence regarding the recoveries and their identification by the witnesses.

(4) The accused in his statement at the trial has stated that the Jewellery has been planted on him in order to connect him with the offence. We find nothing on the record to support the above plea of the accused. The accused in his statement

has denied the prosecution case in toto. We have earlier while discussing the prosecution case found that the accused had stayed at Delhi and Faridabad between the period 3-4th Nov. 1980 and 22.11.1980. The denial by the accused of this circumstance also goes against him.

(5) There are other small circumstances appearing in the evidence against the accused. They are recovery of a pant, sandals and an underwear from the person of the accused at the time of his arrest. Another small circumstance is the recovery of the money said to have been given by the accused to some of the subscribers to the scheme. We are not attaching much significance to these recoveries. The crucial recovery is the recovery of the ornaments belonging to the deceased from the possession of the accused. We have believed the evidence regarding the recovery of the ornaments. The accused has not explained as to how he came to possess these ornaments including the ear-ring. The recovery of these ornaments belonging to the deceased within a few days of the occurrence lead to only one conclusion and that is that it was the accused who after committing the crime had deprived the deceased of her ornaments. This circumstance completely connects the accused with the crime.

(6) For the reasons stated we affirm the conviction and sentence of the appellant and dismiss the appeal.

(7) Before we part with this case we wish to say a few words on the disposal of the case property during the pendency of the appeal. During the course of arguments, we wanted to see the ornaments. We were told that in 1983 on an application made by Babu Lal an order was made by Shri Mahesh Chandra, Additional S.J. for the return of the ornaments and the cash on superdari to Babu Lal. We want to say for the future guidance of the subordinate courts that the case property should be kept intact till the appeal is pending. During the last few months we have come across some cases where the case property has been destroyed or disposed of. This practice has to be stopped. Sometimes the case property has very important bearing on the appreciation of the evidence. The matter may be different in the case of heavy amounts lying in cash but even in those cases wh Judges. Sessions Additional the all of notice to bought be ours order this that direct We court.

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