Dasu Ram Vs. State

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Court : Rajasthan

Decided On : Sep-07-1950

Reported in : AIR1952Raj20

Judge : Ranawat and; Sharma, JJ.

Acts : Evidence Act, 1872 - Sections 27; Indian Penal Code (IPC), 1860 - Sections 411

Appeal No. : Criminal Appeal No. 79 of 1950

Appellant : Dasu Ram

Respondent : State

Advocate for Def. : Ram Avtar, Govt. Adv.

Advocate for Pet/Ap. : Brij Bushan Lal, Adv.

Disposition : Appeal allowed

Judgement :

Sharma, J.

1. This is an appeal by Dasu accused against his conviction and sentence by the learned Sessions Judge, Alwar. He has been convicted under Section 411, I.P.C., and sentenced to 3 years' rigorous imprisonment.

2. The prosecution case is that one Azmat, a Meo boy about 11 years old, had gone on the 17th November 1949 for grazing his buffaloes in the jungle of village Chaprara in Alwar District. He was wearing a gold ear-top in each of the ears and a pair of silver bangles on the wrists. In the evening the buffaloes came back alone for Azmat did not return. A search was made for Azmat, as a result of which his dead body was found inside a well, called Alamwala well. On the dead body, however, the ornaments, which Azmat was wearing when he started for grazing the buffaloes, were not found, A written report. Ex. P A under the signatures of Ummed and thumb impressions of a Lambardar and Chhotalli Hissedar, was lodged at the Police Station, Sadar, Alwar, the same day. On the 21st November 1949, Dasu accused was arrested and at his instance the ornaments given above were found from a corner of thatched portion inhis Nohara which was used for tethering the cattle of his family. These ornaments were dug out by the accused himself.

3. The body of the deceased was subjected to post-mortem examination, as a result of which it was found that his death was due to asphyxia.

4. The ornaments alleged to have been recovered from the house of the accused at his instance were got identified before Mr. Ramanand, Magistrate III Class, Alwar, on 5th December 1949.

5. The accused was ultimately challaned under Sections 302 & 392 of the Indian Penal Code in the Court of Mr. Prem Nath, Magistrate I Class, Alwar, who committed the accused to take his trial for offences under Sections 302 & 392, I.P.C., or in the alternative under Section 411, I.P.C., before the Court of Session at Alwar.

6. The accused denied the charge and pleadedthat the witnesses, being Meos, had deposed falselyagainst him. The learned Sessions Judge was notsatisfied that the charge of murder and robberyunder Sections 302 and 392, I.P.C., respectively wasbrought home to the accused. He, however, foundhim guilty under Section 411, I.P.C., and sentencedhim to 3 years' rigorous imprisonment, as notedabove.

7. The accused has come in appeal to this Court against his conviction and sentence.

8. It was argued by the learned counsel for the appellant that there was no satisfactory evidence to prove that the ornaments in question were the property of Amzat or were stolen away from him. It was argued that their weight or any particular description was not given in the F.I.R., nor was the weight or other description of the ornaments mixed up with the ornaments in question at the time of identification given. It was also argued that the articles were identified by four witnesses, Ummed, Chhuttan, Kallu and Sumer Singh. Of these Kallu was not produced for reasons best known to the prosecution. Ummed had seen the articles at the time of the recovery and so his identification was useless. Sumer Singh and Chhuttan had an opportunity of being told the description of the ornaments in question by Ummed and so their identification was also not of much use.

9. On a careful consideration of the evidence on record we are satisfied that it is proved that the ornaments in question were the very ornaments which the deceased wore on his person on the day of his death. Ummed's evidence may be ignored as he had seen the ornaments at the time of the recovery, but there is nothing to doubt the evidence of Chhuttan and Sumer Singh. Sumer Singh is the own brother of Azmat deceased and was, therefore, perfectly familiar with them. He identified them before the identifying Magistrate and also deposed on oath before the Court that they were Azmat's ornaments which he was wearing at the time of his disappearance on the 17th November 1949. The fact that their weight or any peculiarity was not given in the report does not matter under the circumstances of the case. The appellant himself did not deny that the ornaments belonged to Azmat. He simply stated that they were not recovered from his house at his instance, as alleged by the prosecution. Under these circumstances, we are not prepared to hold that the learned Sessions Judge was wrong in holding that the ornaments belonged to Azmat.

10. It is also clear that the ornaments in question were stolen by somebody from the body of Azmat and therefore there is no force in the contention of the appellant that they were not the stolen property.

11. The only question is whether the appellant can be held responsible for receiving them, knowing or having reason to believe them to be stolen property. For this the only evidence is that of recovery of the ornaments. The prosecution case is that on the 21st November 1949 the appellant himself showed his readiness to recover the ornaments. For this the evidence is that of Sohanlal Sub-Inspector and of Ummed and Moti. The Sub-Inspector says that the appellant told him, that the ear-tops and the bangres which the deceased was wearing and which had been taken oil' his body, were in the appellant's house and that he would recover them. The portion of the statement regarding the taking of those ornaments is inadmissible in evidence as it amounts to a confession. A confession made to a Ponce Officer or some other person while the accused is in police custody, is not admissible in evidence, 'vide' Sections 25 & 26 of the Evidence Act. It was also held in the case 'Pulukuri Kottayya v. Emperor,' AIR (34) P.C. 67, that where the accused made a statement 'I will produce a knife concealed in the roof of my house, with which I stabbed the deceased', the portion 'with which I stabbed the deceased' was inadmissible, since these words did not relate to the discovery of the knife in the house of the informant. We cannot, therefore, admit into evidence that portion of the statement which relates to the taking of the ornaments from the body of the deceased. It may, however, be said that the portion that he could recover the ornaments from his house is relevant under Section 27 of the Evidence Act.

12. The only portion of the statement, which can be read in evidence, is that the appellant stated that the ornaments were in his house and that he would recover them. This statement has been attempted to be proved by the evidence of the Sub-Inspector Sohanlal and two witnesses Ummed and Moti. The evidence of the Sub-Inspector, however, is that the accused had already told, him that he would recover the ornaments from his house and that he told so in the presence of Ummed and Moti for a second time who were not present when this disclosure for the first time was made to the Sub-Inspector. Under these circumstances, the evidence of Ummed and Moti about the accused having shown his readiness to recover the property is not admissible. It was held in 'Public Prosecutor v. Subbareddi', AIR (26) 1939 Mad 15, that where a Circle Inspector knew beforehand what the accused was going to say, but finding it necessary to have

more trustworthy persons present as witnesses, when the information should be disclosed, he sent for two witnesses to go to the Police Station where the accused was kept in custody and on the arrival of those witnesses, the accused was brought out of the lock-up and examined by the Circle Inspector and the statement of the accused was embodied in a Panchayatnama and signed by the witnesses and the information said to have been then given by the accused led to the discovery of certain instruments, by which the accused was alleged to have committed the murder, it was impossible to say that anything was discovered in consequence of the statement made by the accused to the Inspector in the presence of the witnesses. Hence the evidence regarding the statement of the accused embodied in the Panchayatnama and spoken to the witnesses was wholly inadmissible. It was again held in 'In re Kottameedi Chennareddi' AIR 1940 Mad 710, that it is the first statement of the accused to whomsoever made that leads to the discovery of the fact, after a fact is discovered. Thus it cannot be said that the ornaments in question were discovered on the information given to the Sub Inspector in the presence of Ummed and Moti. The only information that can be said to have led to the discovery was the information said to have been given to the Sub-Inspector when he was alone.

13. Coming to the question of recovery, it was argued by the learned counsel for the appellant that the recovery was not made in the presence of two or more respectable inhabitants of the locality, as required by Section 103, of the Code of Criminal Procedure. The only witnesses, who are said to have been present at the time of the alleged recovery, are Kishanlal Tongawala who did not belong to the village, and Motiram who was more or less a permanent witness for the police and the Sub-Inspector himself. The recovery was, therefore, not in accordance with law. It was further argued that the recovery was made from a place which was not in the exclusive possession of the accused, but was possessed by the whole family of the accused consisting of his parents, his brothers and sisters. Even if it be held that the recovery was made, as alleged, it at the most shows that the accused Knew where the property was hidden. This alone would not be sufficient for his conviction under Section 411 of the Indian Penal Code.

14. We are certainly not satisfied with the manner in which the recovery was made. A lot of persons are living in village Chaprara and it was not difficult for the Sub-Inspector to call 2 or more independent witnesses of the locality at the time of the recovery. No such witnesses were called. It was considered sufficient that the recovery be witnessed by Kisnanlal Tongawala who had been engaged by the Sub-Inspector from Alwar, and Moti Ram who had admittedly been utilized by the police on several similar occasions previous to the recovery in question. It cannot, therefore, be said without doubt that the recovery was made in the manner alleged by the prosecution. Moreover, even if the prosecution evidence is believed the only thing which is proved is that the appellant recovered the ornaments in question from a thatch meant for tethering cattle of the family of the accused which consisted of several members including his parents. It cannot, therefore, be said that the said thatch was in the exclusive possession of the accused. It was held in 'Sohansingh v. Emperor', A I R (17) 1930 Lah 91, that where an accused pointed out certain places, from which portions of stolen property were recovered and those places belonged to the family of the accused consisting of his father and other members, it was possible for the accused to have knowledge of the places, without himself being guilty for any offence and so the recoveries alone were not sufficient to justify the conviction under Section 411, I.P.C. The fact of the recovery alone, therefore, cannot be sufficient for the conviction of the appellant in the present case.

15. The learned Government Advocate, however, argued that there was some other evidence besides the recovery of the ornaments in question and this evidence was that of Ummed and Chhuttan who had deposed that the deceased was seen in the company of the accused at about 1 in the afternoon on the day of occurrence. This evidence is, however, quite insufficient to connect the appellant with the crime. It has not been proved that the deceased did not fall into the company of any other person after 1 o'clock in the afternoon, and that the accused kept company with him right up to his disappearance. Moreover, the learned Sessions Judge himself has not relied on this evidence and has based his conviction only on the evidence about the recovery. We are, therefore, not satisfied that guilt has been brought home to the appellant without a reasonable shadow of doubt. His conviction under Section 411, I.P.C., cannot, therefore, be

sustained.

16. The appeal is allowed. The conviction and sentence are set aside, and the accused is acquitted. He shall be set at liberty forthwith unless required in connection with some other case. The twoMurkis and the bangles recovered during the investigation shall be returned to the family of the' deceased.

Ranawat, J.

17. I agree.