

State of Rajasthan Vs. Jora Ram

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Court : Rajasthan

Decided On : Oct-05-2001

Reported in : 2002(2)WLN39

Judge : Sunil Kumar Garg, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154; Indian Penal Code (IPC) - Sections 306

Appeal No. : S.B. Criminal Appeal No. 58 of 1988

Appellant : State of Rajasthan

Respondent : Jora Ram

Advocate for Def. : Mridul Jain, Adv.

Advocate for Pet/Ap. : Chandra Lekha, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Garg, J.

1. This appeal has been filed by the State of Rajasthan against the judgment and order dated 9.9.87 passed by the Learned Additional Sessions Judge, Bikaner in Sessions Case No. 39/85 by which he acquitted the accused respondents for

offence under Section 306 I.P.C.

2. This appeal arises in the following circumstances:

i) On 2.8.83 P.W. 3 Rameshwar lodged a written report Ex.P/5 before DIG, Bikaner stating that her sister Pana wife of accused appellant Jora Ram (hereinafter referred to the deceased) was married with the accused appellant Jora Ram near about 5 to 6 years back and since she did not deliver any child during wedlock of that marriage and she was not beautiful, therefore, the accused respondents used to torture her and beat her. It was further stated that he went to her in-laws place Jadelī where such type of things were told to him by her sister (deceased) and she also told to him that they would kill her. Upon this he made them understand. Thereafter he took the deceased to his village Mundsar and kept there for 5 to 6 months. Thereafter father of the accused Jora Ram and his brother and some other persons came to his village Mundsar and requested that the deceased be sent with them and they would not beat her again. He agreed to send her back to her in-laws house and she was sent back accordingly. After passing of over one week, he was informed that the accused respondents had murdered the deceased by throwing her into a small well and this incident was reported to him within seven days of the happening of incident.

ii) The report Ex.P/5 was sent to the Police Station, Nokha, District Bikaner for registering a case under Section 306 I.P.C. through letter Ex.P/14 and thereafter regular FIR was chalked out on 9.8.83 and same is Ex.P/8 and police started investigation.

3. It may be stated here that before the report Ex.P/5, accused respondent Jora Ram gave information about death of the deceased to the Police Station, Nokha on the same day i.e. on 22.4.82 and the same is Ex.P/10 and upon that information Marg FIR No. 5/82 under Section 174 Cr.P.C. was registered, and investigation was started.

4. During investigation, Panchnama of deadbody of the deceased was got prepared and the same is Ex.P/11 and dead body of the deceased was handed over to the accused appellant through fard Ex.P/13 and the post mortem report of

the deceased was also got conducted on 22.4.82 and the same is Ex.P/6 which shows that the cause of death of the deceased was asphyxia due to drowning.

5. On report Ex.P/5 as stated above, FIR Ex.P/8 was chalked out and thereafter police submitted challan against the accused respondents for offence u/Section 306 I.P.C.

6. On 15.11.85, the trial Judge framed charge for offence under Section 306 I.P.C. against accused respondents who pleaded not guilty and claimed trial.

7. During trial, as many as 8 witnesses have been produced on behalf of the prosecution and statements of accused respondents were recorded under Section 313 Cr.P.C. and no evidence was led in defence.

8. After conclusion of the trial, the learned trial Judge acquitted the accused respondents for offence under Section 306 I.P.C. through his judgment and order dated 9.9.87 inter alia holding that:

i) Since incident took place on 22.4.82 and report was lodged of 2.8.83, therefore, this delay was found fatal to The prosecution case.

NOTE : The learned Additional Sessions Judge treated the delay of 4 months, but looking t the facts of the present case, it appears that the delay was of near about one year and four months as the incident took place on 21.4.82 and the report was lodged on 2.8.83.

ii) P.W. 1 Ladhuram, P.W. 2 Bega Ram and P.W. 5 Kama Ram have been declared hostile and statements of P.W. 3 Rameshwar and P.W. 4 Mala ram who were real brothers of the deceased were not found reliable by the learned Additional Sessions Judge as they were found contradicted to each other and they were not being corroborated by some other evidence.

9. Aggrieved from the said Judgment and order dated 9.9.87, the present state appeal has been filed.

10. In this appeal, it has been argued by the learned Public Prosecutor that the there is sufficient evidence on the record of the case of connect the accused

respondents with the commission of offence and, therefore state appeal should be allowed and accused should be convicted for offence under Section 306 I.P.C. for which they were charged.

11. On the other hand, the learned counsel for the accused respondents submits that the judgment and order of the trial Judge are based on correct appreciation of evidence and thus they do not call any interference by this Court.

12. I have heard both.

13. To prove the charge for offence under Section 306 I.P.C. the prosecution has to prove the following two facts:

i) That commission of suicide by a person and;

ii) accused abated commission thereof.

14. In this case, it is to be seen where both the facts have been proved by the prosecution or not as the learned Additional Sessions Judge has held that the prosecution has failed to prove the case, beyond reasonable doubt for offence under Section 306 I.P.C. against the accused respondents.

15. The one of the striking features of this case though it has not been touched by the learned Additional Sessions Judge in his judgment dated 9.9.87 is that after the alleged incident, which took place on 21.4.82, a report of said incident was lodged by the accused respondent Joraram being husband of the deceased with the police Station Nokha where Marg FIR No. 5/82 was registered and investigation was commenced. The post mortem of the deceased was got conducted and the post mortem report is Ex.P/6. Therefore, it cannot be said that the accused respondent Jora Ram remained silent over the alleged incident and he reported the matter just after the occurrence to the Police.

16. There is no dispute on the point that P.W.1, Ladhu Ram, P.W. 2 Bega Ram, and P.W.5 Kama Ram have been declared hostile and now there remains statements of P.W. 3 Rameshwar and P.W. 4 Mala Ram who were real brother of the deceased and the report Ex.P/5 was lodged by P.W. 3 Rameshwar on 2.8.83

though the incident took place on 21.4.82.

17. In his examination in chief, P.W. 3 Rameshwar has clearly admitted that after passing of 7 days of the death of the deceased, he went to her in-laws' house, meaning thereby that he came to know that death of deceased has taken place after 7 days of death of the deceased. He has further admitted in examination-in-chief that he went to the police station, Nokha, but no body heard him. In cross-examination he has admitted following facts:

i) He has read upto 7-8th standard.

ii) In report Ex.P/5 it is not mentioned that he went to the Police Station first.

iii) He went so many times in the police Station and made oral request, but no report was lodged by him in the police station.

iv) When report Ex.P/5 was lodged by him before DIG on the very day, S.P. informed him that the deceased died of natural death.

v) He did not enquire from the neighbours as to how the deceased died.

18. P.W. 4 Mala Ram was also real brother of the deceased. He has admitted following facts In cross-examination:

Just after one or two days of the death of the deceased he had come to know that deceased had died, but he never went to the Police Station.

19. Thus from the statements of P.W. 3 Rameshwar and P.W.4 Mala Ram who were real brothers of the deceased, the fact that they had come to know about death of the deceased just after the occurrence is well established. P.W. 4 Mala Ram in his statement has clearly stated that he did not go to the Police Station. The statement of P.W. 3 Rameshwar that he went to the police station many times and made oral requests for lodging the report, but police did not take down his report, cannot be accepted in view of the fact that earlier to report Ex.P/5 dated 2.8.83, there is no report on the file nor such report is found in the police record, meaning thereby it should be held to be concluded that before lodging the report Ex.P/5 dated 2.8.83, P.W. 3 Rameshwar did not lodge any report in any police

station or before higher authority though he was informed about the death of the deceased within very short span of time. Thus he remained mum from 21.4.82 to 2.8.83.

20. P.W. 6 Khushhal Chand is one of the persons who conducted investigation of the present case and he has stated that he did not find any incriminating circumstance from the site where the death took place. Similarly P.W. 7 Jogendra Singh who investigated the case of Marg FIR, had also come to the conclusion that he did not find any incriminating circumstances in the present case. He has further stated that after him, the case was investigated by P.W. 6 Khushhal Chand.

21. P.W. 8 Ganpat Singh is another witness produced by the prosecution and he had frankly admitted that he did not make any investigation in the case.

22. Thus from the above, following facts are revealed:

i) That the death of the deceased took place on 21.4.82.

ii) on 22.4.82, the report was lodged by accused respondent Jora Ram being husband of the deceased with the Police Station, Nokha where Marg FIR Ex.P/10 was registered and investigation was started and post mortem of the body of the deceased was got conducted.

iii) From the statements of some police officials, it appears that they did not find any incriminating circumstance during investigation.

iv) P.W. 3 Rameshwar lodged the report for the first time on 2.8.83 and the same is Ex.P/5 and same was lodged before DIG, Bikaner. Thus there is delay of near about 16 months.

23. In my considered opinion, the delay in this case is certainly fatal to the prosecution case and the prosecution case can be thrown out merely on this ground and the findings of learned Additional Sessions Judge on this point are liable to be confirmed one.

24. It is well settled that the delay in giving FIR by itself cannot be a ground to doubt the prosecution case, but where delay is of such nature which shelters the

basis of the prosecution case, such type of delay can be treated as fatal to the prosecutions case. The present case is one of them. The incident in the present case took place on 21.4.82 and brothers of the deceased, P.W. 3 Rameshwar and PW.4 Mala Ram were informed within a week and they remained silent for a period of 16 months and thereafter report was lodged by P.W. 3 Rameshwar on 22.8.83. This delay is fatal and destroys the basis structure of the prosecution case specially when Marg FIR was lodged on the same day on the report of accused respondent Jora Ram. In these circumstances, it cannot be said that the accused respondents were at fault in not giving information of the police.

25. For the aforesaid reasons, the findings of learned additional Sessions Judge by which he acquitted the accused respondents for offence under Section 306 I.P.C. are liable to be confirmed one as they are based on correct appreciation of evidence and the learned Additional Sessions Judge has given cogent reasons for not holding the accused respondents guilty and this court does not want to take a different view of the matter and thus the findings of acquittal recorded by the learned Additional Sessions judge do not require interference of this Court and acquittal of respondents is to be upheld and the state appeal is liable to be dismissed.

For the reasons mentioned above the present state appeal is dismissed after confirming the judgment and order of acquittal dated 9.9.87 passed by the learned Additional Sessions Judge, Bikaner.