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Court : Rajasthan

Decided On : May-01-1953

Reported in : 1955CriLJ835

Judge : Wanchoo, C.J. and; Bapna, J.

Appellant : The State

Respondent : Motia and ors.

Judgement :

ORDER

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of Motia, Gepla and Achalia of offences Under Sections 302 and 318, IPC Motia and Gepla have been served, and the appeal is, therefore, being heard against them. Achalia has not been found yet, and the appeal against him will remain pending.

2. The prosecution story was briefly this : Harka deceased, his wife Mst. Chakhu also deceased, and his daughter Jammu also deceased used to live in village Bakra. Siremal P.W. 8 is a neighbour of Harka, his house being 40 paces away. He heard the cries of Mst. Rambha, mother of Harka deceased, on the morning of 8-12-1948. Mst. Rambha is blind, and was told by a child in the morning that HarTia, was lying dead, and therefore raised an alarm. Siremal ,t went to Harka's house accompanied l5y Kistoorchand, and saw the dead bodies of .Harkha, his

wife Chakhu and his daughter Jammu lying there in the Pol. They, therefore, sent information to the police at Jalore. Sub-Inspector Hukamsingh immediately left for Bakra, and started investigation there. He found the cash box open and empty, and the 'ora' broken into, and it also seemed that ornaments were taken away from Kothalias. No clue, however, seems to have been found ti-11 15-12-1948, when Motia accused was arrested at Jaswantpura at the hotel of one Sama. Motia accused had gone to this hotel on 15-12-1948, and took his meals there. Thereafter, he asked Sama to keep his small box in safe custody. Sama found that the box was very heavy for its size and became suspicious, and asked Motia what the box contained. Motia told him that it contained money as he was going to Nimaj to buy a mare. One Jail Hawaldar and two constables were at the hotel at the time, and Sama related the incident to them and placed the box before them. Thereupon, the Jail Hawaldar brought Head Constable Ghafoor Khan, and these persons took Motia to the police station at Jaswantpura along with the box. The box was then opened by Sub-Inspector Umar Khan in the presence of two Motbirs, and was found to contain cash and ornaments of gold and silver. Motia accused was then taken in custody on suspicion, and later enquiries showed that the ornaments belonged to Harka of Bakra. Consequently, they were forwarded to the Superintendent of Police at Jalore. Further, investigation then proceeded and Gepla and Achalia were also arrested as being connected in the crime that had taken place at the house of Harka in Bakra. All three of them were prosecuted Under Sections 302 and 380, IPC

3. The Sessions Judge, after a consideration of the evidence, came to the conclusion that no case Under Section 302, IPC had been proved against any of the accused, and acquitted them under that section. He also held that no case Under Section 380, IPC had been proved against Achalia and Gepla, and they were acquitted under that section also. As for Motia, he came to the conclusion that he was guilty Under Section 411, IPC and convicted him under that section and sentenced him to two years' rigorous imprisonment. This appeal is against the acquittals Under Sections 302 and 380, IPC

4. Motia's case was that lie was not even at Eakra on the night of the incident, and that he had been implicated on account of enmity by Hema P.W. He admitted that

he had gone to the hotel of Sama, but said that he was drunk and did not know what happened there. As to the ornaments and other things recovered from his possession at Jasvantpura, he said that he had found these things along with the box in the jungle at Bakra. The box was buried underground and he dug it out because he noticed some fresh sand there. He denied the recovery of other things by the police at his instance. Gepla denied his guilt and said that he had been implicated on account of enmity, and that he was not at Bakra on that date. He also denied the recovery of the axe at his instance. Achalia also denied his guilt. It may be added that nothing¹ was recovered from his possession or at his instance.. As he is not before us we shall not consider his case further.

5. The evidence in this case is all circumstantial. It will, therefore, be necessary to consider the statements of all the witnesses connecting the accused with the crime one by one, and see whether the prosecution has proved its case beyond all reasonable doubt.

6. (The judgment then discussed the evidence of the witnesses and proceeded as under :) A consideration of the entire evidence shows that so far as Gepla is concerned, there is hardly any evidence worth the name against him connecting him with this crime once the statement of Hema is ruled out of consideration. All that remains is the recovery of a 'safa' and a 'ganji' from his possession, which are said to be blood stained, and the recovery of an axe from his house, which is also said to be blood stained. These recoveries took place 11 days after the murder. We agree with the Sessions Judge that it is impossible to connect these recoveries with the murder of Harka, even if some human blood has been found on these articles by the Chemical Examiner, Bombay. So far therefore as Gepla is concerned, we are of opinion that there is no case against him, and he is entitled to an acquittal. We may point out that the case of Achalia is no better than the case of Gepla, as this may help the State in withdrawing the appeal against Achalia.

7. We now turn to the case of Motia against whom there is evidence, and we have to see whether that evidence is sufficient to prove that he committed the murder of Harka and his wife and daughter and robbed them of the ornaments. It is

undoubted that ornaments belonging to Harka's wife and daughter were recovered from the possession of Motia at Jaswantpura on 15-12-1948. The box also contained pieces of turban of Motia and a knife. Further a coat belonging to Motia was also recovered from his house, and an axe was also recovered. But as no human blood was found on it we need not attach any further importance to it. A knife was also recovered from the possession of Anaria. But as we have not relied on Anaria's statement, we need not say anything further about this knife. The case for the prosecution against Motia is that he was in possession of these ornaments belonging to Harka's wife and daughter within a few days of the murder, and that these ornaments were found stained with human blood. So was the sheath and dagger found in the box containing the ornaments and Motia's coat which was recovered from his house. From these circumstances the prosecution wants us to draw the inference that Motia must have murdered Harka and others, and robbed them of the ornaments on the night between 7 and 8-12-1948.

8. learned Counsel for Motia accused has raised a number of objections about this evidence against Motia. In the first place,, he points out that there is no evidence to show that after the various articles had been recovered from the possession of Motia, they were kept sealed so that it was not possible for any one to sprinkle blood stains on them while they were in the custody of the police and before they were sent for examination by the Chemical Examiner. We must point out that this lacuna in the prosecution evidence is there. Whenever it is desired by the prosecution that certain articles, which have been recovered from accused persons are to be identified, or are to be sent to the Chemical Examiner for analysis, it is necessary that the officer recovering the articles should immediately take steps to seal them and evidence should be produced that the seals were not tampered with till the identification is over, or till the articles are sent to the Chemical Examiner for analysis. In the absence of such precautions it would always be open to the accused to say that the police later put human blood on the articles in order to implicate the accused. It is, therefore, necessary for the prosecution to produce evidence that steps were taken at once to seal the articles, and that from the time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the Chemical Examiner the seals remained intact. This evidence is missing in this

case. It is, of course, not difficult to sprinkle a few human blood stains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken, the argument raised on behalf of the accused that this might have been done remains unrefuted. Under these circumstances, we find that we cannot place the same reliance on the discovery of blood stains on these various articles as we would have done if necessary precautions had been taken.

9. Another point that has been urged is that though it is proved that these articles were recovered from the possession of the accused, and that they are the articles which are before the court, there is no proof that these were the particular articles which were sent to the Chemical Examiner for examination. We must say against that this lacuna also remains. Evidence should have been produced that the articles recovered from Motia accused were sent to the Chemical Examiner. All that the letter of the Chemical Examiner, Ex. M 33 shows that a parcel containing certain things was received by him; but there is nothing to show that these are the very things which were recovered from Motia's possession. Here again we do not say that the things sent to the Chemical Examiner were not those which had been recovered from Motia. In all probability they were. But there is nothing on the record to meet the argument on behalf of Motia that the articles sent to the Chemical Examiner were not the same which were recovered from his possession,

10. Besides these two formal defects, we have still to see whether the evidence that remains against Motia is sufficient for his conviction. We have already said that Hema's statement is unreliable, and we rule it out of consideration. All that remains is that certain articles belonging to Harka and his wife were recovered from the possession of Motia seven days after the murder. The question is whether this is sufficient evidence to prove that Motia must have committed the murder. It may be remarked that Motia lives in the same village and his presence in the village on that night is not of particular significance. The matter would have been different if he had belonged to some other village. The mere possession of articles belonging to the murdered person, even supposing that they were blood stained, would not, in our opinion, be sufficient to prove a case of murder against Motia accused beyond all reasonable doubt. The prosecution has even failed to

show in this case that these particular ornaments, which were recovered from the possession of Motia, were with Harka and his wife up to the 7th of December, and were stolen only that night. There is no evidence to show that, Harka's wife was wearing even one of these ornaments on the 7th of December. It may be that the probability is that the ornaments were stolen at the same time as the murder was committed. But in a case depending upon circumstantial evidence, all possibility of the innocence of the accused should be excluded, and in the case before us it has not been shown that these ornaments could not have been missing from the house of Earka before the 7th December. In the absence of proof of this fact, it cannot be said for certainty that the person in possession of these) ornaments must be the murderer.

11. In - 'Emperor v. Chintamoni Shahu' AIR 1930 Cal 379 (2) (A), while dealing with the matter of presumption, it was held that the possession of stolen goods recently after the loss of them may be indicative not merely of the offence of larceny or of receiving with guilty knowledge but of any other more aggravated crime which has been connected with the theft. The presumption is particularly applicable where there is satisfactory proof in case of a murder of a woman that the stolen articles were habitually worn by the deceased and that she was actually seen wearing it on the evening 'before the murder. But the prosecution in this case has produced no evidence to show that any of these ornaments were in the house of Harka, or that his wife and daughter were wearing any of them on the 7th of December. In the absence of such evidence, the possibility that the ornaments must have been stolen earlier cannot be ruled out.

12. The recovery in this case took place a week after, and there was, in our opinion, ample time for the stolen articles to have passed from the thief or murderer to a receiver. We, of course, do not believe the statement of the accused that he found these articles lying buried in the sand. But, the recovery of these articles from the possession of Motia would not, in our opinion, necessarily lead to the inference that he must be the person who committed the theft and murder. The presence of blood stains, even if we were to accept their presence in spite of the formal defects pointed out above, also does not necessarily connect Motia with the murder, for the things might have been passed on to him blood stained as they

were, and he might not have washed them. As to the blood stains on the coat and turban of the accused, it is enough to say that the presence of these blood stains after a period of seven days does not necessarily indicate that they must have been received in this murder. In this connection, we may refer to - 'Nand Singh v. Emperor' AIR 1943 Lali 101 (B), where it was held that the presence of a few blood stains on the shirt of the accused 11 days after the occurrence is not a strong piece of evidence.

13. In - 'Bhikha Gober v. Emperor' AIR 1943 Bom 45i (C), it was held that the mere fact that the accused produced, shortly after the murder, ornaments which were on the murdered woman is not enough to justify an inference that the accused must have committed the murder. Evidence to connect the accused with the murder is necessary. In the present case, it has not been proved with certainty that these articles were at the house of Harka on the 7th of December, and therefore the presumption is even weaker.

14. In - 'Ramprashad Makundram v. The Crown' AIR 1949 Nag 277 (D), it was held that the court was entitled to draw an inference that an accused person committed a murder or took part in its commission, from the facts that he is found in possession of property proved to have been in the possession of the murdered person at the time of the murder or is able to point out the place where such property is concealed and admits having concealed it there and that he fails to give any explanation of his possession of the property which can reasonably be accepted. In the present case, however, it has not been proved that these ornaments were in the house of Harka on the 7th of December, or his wife was wearing any of them at the time of the murder.

15. In - 'Narayana; v. Emperor' AIR 1933 Mad 233 (E), it was held that where an accused admitted that certain ornaments, which were missing from the person of the murdered girl, were in his possession, and produced them from a place very near where the girl was murdered, and did not give any explanation as to how he was connected with those ornaments, an inference can be drawn that he had taken part in the murder. In that case, however, it was proved that the girl was wearing the ornaments at the time of the murder, an element which is missing in

the case before us.

16. Taking, therefore, the entire evidence against Motia into account and remembering that it is circumstantial, and ruling out the statement of Hema, we find it impossible to come to the unhesitating conclusion that Motia must have taken part in the murder, and that this is the only way in which he could come into possession of the ornaments which were recovered from him. It has not been proved in this case that the ornaments were in the possession of Harka or on the person of his Wife or daughter up to 7-12-1952. More than a week had elapsed between the murder and the recovery, and during this interval it was not impossible that the ornaments might have changed hands. The proof of presence of blood on the ornaments suffers from formal defects which we have pointed out. Under these circumstances, it cannot be said that the Sessions Judge was wrong in acquitting even Motia of the offences Under Sections 302 and 380, I. P. O. Motia has already been convicted Under Section 411 by the Sessions Judge, and that was all that could be done under the circumstances of this case. There may be a suspicion that Motia took part in this murder; but suspicion cannot take the place of proof, particularly when the entire case depends upon circumstantial evidence.

17. On a careful consideration of the entire evidence and the circumstances, we see no reason to interfere with the order of acquittal passed by the Sessions Judge even in the case of Motia. The appeal is hereby dismissed.