

State Vs. Rudia and anr.

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Court : Rajasthan

Decided On : Aug-09-1983

Reported in : 1983WLN(UC)162

Judge : M.C. Jain and; S.C. Agarwal, JJ.

Appeal No. : D.B. Criminal Appeal No. 236 of 1974

Appellant : State

Respondent : Rudia and anr.

Advocate for Def. : Shri. K.C. Gaur

Disposition : Appeal dismissed

Judgement :

M.C. Jain, J.

1. The respondents Rudia and his son Mukhtiaria were acquitted by the learned Sessions Judge, Sriganaganagar, of the offences under Sections 302 and 201 of the Indian Penal Code by his judgment dated December 20, 1973.

2. Briefly, the prosecution case is that on i.7.72, PW1 Arjunram resident of 21 PTD lodged a verbal report Ex P8-A at the police station Anupgarh at 4.30 p.m. that when he went to bring Guwar' from his Dhani, he observed animals and birds near

the road in the murabba of his son situated in 23 PTD. He thought that some animal might have died but when he reached near the place, he found that there was a human deadbody. He could not identify the dead body. There was a torn shirt on the deadbody and the rest of the body was naked. The place where the dead body was found was at a distance of about five Panwadas' from the road. On this report, Birbar Dan, A.S.I, conducted the proceedings under Section 174, Cr.P.C. Panchnama of the dead body was prepared and post-mortem examination was also got conducted. As a result of his investigation, he found that the man has been murdered, So he lodged the report Ex P 10 on which, case under Section 302/201, I.P.C. was registered. During the proceedings under Section 174, Cr.P.C. photographs of the dead body Ex.P4 and Ex.P5 were also taken. Shirt Article 5 and Chaddar Article 6 were seized from the dead body and blood-stained earth was also seized vide memo Ex. P12. On the spot investigation, site-plan Ex. P3 and site-notes Ex. P3A were also prepared. On 10-7-72, he handed over the investigation to Shri Kanhaiyalal SHO the dead body was found to be of one Saudagar Sansi. Kanhaiyalal SHO PW 14 seized one Kambal, Chaddar, Kurta and Champal from the possession of one Diwanchand PW 6. The shirit and Chaddar found on the dead body and other articles of the deceased Saudagar were put up for identification which was conducted by Shri Satyanarain Sharma PW 20. Dayawnti, the sister of the deceased, PW 7; and Devidas, the brother of the deceased, PW 13; were put up as identifying witnesses. On 6-9-72, both Rudia and Mukhtiarria accused persons were arrested vide Ex P 15 and Ex P 16 respectively. While in custody, the accused Rudia gave information in respect of Gandasi the memo where of is Ex P 14. The shirt and chaddar of the deceased the Gandasi and the blood stained earth along with sample earth were sent for chemical examination. Human blood was detected on Gandasi. The blood found on the shirt and the Chaddar had disintegrated and so its origin could not be traced. Investigation was conducted from the witnesses and after completion of investigation, challan was put up against both the accused persons 6 they were put up for trial to the court of Sessions by the Munsif and Judicial Magistrate First Class, Raisinghnagar. The accused persons were charged of the offences under Section 302/201 of the Indian Penal Code. They, however, pleaded not guilty to the charges and claimed to be tried. At the trial, the prosecution examined in all 16

witnesses. Asuram PW 5 and Arjun Ram PW 8 were examined as eye witnesses. Besides Asuram PW 5, Mohan Singh PW 9 and Jailal PW 12 were examined as witnesses relating to the alleged extra-judicial confession made by accused Rudia Dayawanti and Devidas, the sister and brother of the deceased were examined as witnesses for identification of the clothes and other belongings of the deceased. Birbardan and Kanhaiyalal are the investigating officers of the case. PW 16 is D. SN Sharma, and PW 10 as already stated, is the Magistrate who conducted the identification proceedings. Sukhram PW 2, Bhagirath PW 3 and Rajendra Kumar PW 4 are the witnesses whose statements were recorded in connection with Section 174, Cr. PC , proceedings. Rajendra Kumar is the photographer. PW 14 Darasingh is the motbir of recovery of Gandasi, After closure of the prosecution evidence, the statements of the accused were recorded in which they qenied the prosecution case and pleaded innocence. No evidence was led in defence.

3. The learned Sessions Judge dealt with the case dividing the evidence into different categories. With regard to the identification of the dead body, he did not believe the testimony of Dayawanti and Devidas and concluded that the dead body remained unidentified. He found that there was motive with the accused persons inasmuch as there was a dispute with regard to the daughter Mukhtiar Kaur of the accused Rudia who was married to Vidyasagar son of Saudagar, The accused Rudia had brought his daughter Mukhtiar Kaur from the house of Saudagar and despite efforts on the part of Saudagar, Mukhtiar Kaur was not returned to her in-laws. There was some criminal litigation also in connection with the same, at Kathal, launched by the deceased Saudagar. The evidence of eye-witnesses, namely, Asuram PW 5 and Arjunram PW 8 was not believed by the learned Sessions Judge and he branded them as liars. The evidence relating to the extra-judicial confession consisting of Asuram PW 5, Mohansingh PW 9 and Jailal PW 12 was also disbelieved. The circumstantial evidence relating to the recovery of Gandasi was further considered by the learned Sessions Judge and as the Gandasi was recovered from an open place accessible to all and sundry, reliance was not placed on the recovery evidence. In view of the aforesaid state of the evidence, the learned Sessions Judge did not find the accused guilty of any offence. Consequently, he acquitted them of both the offences. Hence this appeal by the State.

4. We have heard Shri Niazuddin, Public Prosecutor for the State and Shri K.C. Gaur, learned counsel for the respondents.
5. The first question that arises for consideration is as to whether the dead body could be identified? The learned Sessions Judge considered the evidence of Mst. Dayawanti and Devidas. He, however, rejected the testimony of both. For the testimony of Dayawanti PW 7, he has recorded some reasons and so far as the evidence of Devidas PW 13 is concerned, except the criticism that the clothes which were mixed with the blood-stained clothes had no stains on them and so the blood-stained clothes could be easily identified, he has not given any other reason and it appears that on the basis of this criticism alone, the testimony of Devidas PW 13 has been discarded. As regards the testimony of Dayawanti PW 7, besides the above ground, her testimony has also been rejected on the ground that the articles were shown to her before test identification. Her evidence has further been considered in detail and inconsistencies were found in her police statement Ex.D 3 with which she was confronted. In her police statement, she did not state that the shirt Article 5 was stitched by her. Stitching of the shirt is the reason given by her for identification but she made no such statement before the police. Besides this, it is also not known whether the shirt was hand-stitched or machine-stitched. It may be stated that even if the testimony of Mst. Dayawanti PW 7 is excluded from consideration, still the testimony of Devidas PW 13, in our opinion, is not open to challenge. Whatever he has deposed in examination-in-chief has gone uncrossed. Devidas has categorically stated that the deceased left wearing the shirt Article 5 and was having Chaddar Article 6. We may mention that even it was not necessary to hold any test identification parade for the identification of the shirt and the Chaddar which were stained with blood. Besides this, even when they had been put up with articles for identification, it was practically impossible to mix such clothes which may also be stained with human blood and that too, of the same dimensions or quantity. When cross-examination has been directed as to how Devidas has been able to identify the two clothes, the uncrossed testimony of Devidas, in our opinion, is rendered acceptable and there can be no reason to reject his testimony with regard to identification of these two clothes. In view of the evidence of Devidas, in our opinion, we cannot agree with the view taken by the learned Sessions Judge that the body remains unidentified. Even when the dead

body was decomposed and was in an advanced stage of putrefaction, still on the basis of the clothes, the dead body could be identified and when the clothes have been identified a conclusion can certainly be reached that the dead body was of Saudagar.

6. Still the main question remains as to whether there is creditable evidence on record on the basis of which the accused persons can be connected with the commission of the offence? We may first consider the evidence of eyewitnesses Asuram PW 5 and Arjunram PW 8. We have been taken through the statements of these two witnesses and we have also perused the relevant part of the judgment of the learned Sessions Judge where he has considered their evidence. The conduct of both these witnesses does not at all inspire confidence. The dead body was found on 5.7.72. Had these witnesses witnessed the occurrence, it was expected of them to have revealed the occurrence but admittedly, as stated by both these witnesses, they did not narrate the occurrence at all to any one. They remained silent, one for more than 3 1/2 months and the other for more than two months. The statement of Asuram PW5 came to be recorded on 24.10.72 whereas the statement of Arjunram PW8 was recorded on 13.9.72 by the police. The learned Sessions Judge has further considered the material contradictions in the testimony of both these witnesses with regard to the weapon of offence with which the accused persons are said to have been armed. Arjunram PW8 has stated that Mukhtiar was having an axe whereas Asuram PWS has stated that he was bare handed. Arjunram PW8 states that he did not see the accused persons giving any beating to Saudagar. As regards Asuram PWS, it may further be stated that he remained in the custody of the police for about 1 1/2 month and according to him, the police thrashed him and beat him with shoes. In his police statement Ex.D1, he did not state that the accused persons and the deceased got down from a sand-dune and thereafter the accused Rudia inflicted a Gandasi blow on the deceased. On being confronted, he stated that he did state it to the police and the police might not have written it. On the light of his police statement, he ceases to be an eye-witness of the occurrence and apart from that, his conduct as well is such that no credence can be attached to his testimony. As regards Arjunram PW 8, as already stated, he did not see any beating having been given to the deceased. He was confronted with his police statement with regard to the arms which the

accused were having. The witness denied to have given any police statement. In his police statement, there was no mention of any arms with the accused persons. There was similar omission in his statement Ex D5 recorded by the Magistrate for which he stated that the Magistrate might not have written although he did mention it in his deposition. Arjunram PW8 did not even identify the dead body, either before the police or before the doctor and his explanation is that out of fear he did not identify the dead body. According to him, the deceased had come to his 'Jhuggi' and he had taken meals at his 'Jhuggi'. When the deceased was known to the witness and had seen the deceased in the company of the accused persons, and when he had seen the dead body as well, then the witness ought to have identified the dead body. His statement does not appear to be truthful when he states that out of fear he did not identify the dead body. Non-identification of the dead body rather casts a doubt in the version given by him that he saw the deceased in the company of the accused persons. Thus, to our mind the learned Sessions Judge was right in rejecting the testimony of both these witnesses.

7. We now come to the evidence relating to extra-judicial confession consisting of the three witnesses. We have already considered the conduct of the witness Asuram PW5. His evidence relating to extra-judicial confession also is unworthy of credence and is unacceptable on the same ground on which his testimony has been rejected by us while dealing with him as an eye-witness to the occurrence. If any confession was made by the accused Rudia before him, he should have revealed it to others and should have reiterated the matter to the police, but his statement was recorded after 3.1/2 months. In his examination-in-chief, he has stated that the accused Rudia met him after five-seven days of inflicting of the Gandasi blows on the deceased. He asked the accused Rudia at that time as to whether the latter will come on work. Asuram PW5 is said to be a contractor of digging 'Diggies' and Rudia and Mukhtiar are said to be working as labourers with him and in this connection, the witness asked him as to whether he will come for work. The witness said that the accused Rudia told him that by his hand his 'Saga' that is, Saudagar, has been killed and, therefore, he will not come for work, as he is afraid of the police. In his police statement Ex.Dr., Asuram PW5 stated that accused Rudia met him after 13-14 days. This contradiction in time could have been ignored but as the testimony of this witness does not at all inspire

confidence, so his statement relating to extra-judicial confession, in our opinion, is not believable. As regards the testimony of Mohansingh PW9 and Jailal PW 12, it may be stated that there is discrepancy in the versions given by them with regard to the act of confession said to have been made by the accused Rudia. Mohansingh PW 9 has stated that Rudia told that Saudagar was a big scoundrel, he has launched litigation and has harassed him considerably. Therefore, they have killed Saudagar. Jailal PW 12 has not come out with that version. He has deposed that when both of them had visited the house of Rudia on 37 P.S. and when they took meals, then both of them (Mohansingh and Jailal) expressed that there should be compromise between him (Rudia) and Saudagar. It is at this stage, according to the witness, that Rudia came out with a version that he has killed Saudagar as he used to give them trouble. It would appear that according to the confession made before Mohansingh PW9 both Rudia and Mukhtiar were the assailants of Saudagar whereas, as per the statement of Jailal it was Rudia alone who killed Saudagar. Both these witnesses have stated that from 37 P.S , they went to the sister (Dayawanti PW7) of the deceased at 41 P.S. to whom, according to the witnesses, the extra-judicial confession made by Rudia was disclosed, but Dayawanti PW7 does not corroborate the statements of Mohansingh PW8 and Jailal PW 12. No mention has been made by Dayawanti PW 7 in her statement that Mohansingh and Jailal came to her and disclosed to her the alleged confession by the accused Rudia. The learned Sessions Judge has also considered that discrepancies and infirmities in the statements of these two witnesses and a perusal of their statements would rather show that it is doubtful that they at all visited the house of the accused Rudia. According to Mohansingh PW 9, there was no 'Kotha', it was all an open space surrounded by boundaries. Jailal PW 12 on the other hand stated that he had seen one 'Kotha' in the house of Rudia and whether there were other 'Kothas' or not he cannot say. Further contradictions have appeared in the testimony of Mohansingh PW9 and he has been confronted with his earlier statement. At the trial, he stated that he did not visit the court on 7.8.72. According to the witness, 7.8.72 was the date fixed in the case of Saudagar which he had instituted against Rudia and in connection with service of warrant on Rudia and his daughter, Saudagar had come to Rudia's place. In this police-statement Ex D6, portion A to B, this witness stated that on

7.8.72, he along with Jailal and Devidas went to the court and found that the accused Rudia was present but Saudagar did not attend the court. The witness denied to have stated so and again changed his version and deposed that he had gone to the court in connection with his own case. Thus, the version given at the trial was given a go by by this witness that he and Jailal did not visit the Kaithal court on 7.8.72. If witness had gone, as admitted by him, to Kaithal courts on 7.8.72, it would have been natural for him to have asked accused Rudia as to why Saudagar, who had gone for service of warrant on him, had not come. But according to the witness, he did not make any enquiry from Rudia. Thus, the version given by Mohan Singh PW 9 and Jailal PW 12 does not appear to be natural. At the proper opportunity, no query was made and it was only at the house of Rudia that the alleged extra-judicial confession is said to have been made. There is also no clear evidence as to when both these witnesses visited the house of Rudia. Jailal PW 12 has stated that neither he can give the date, not month, of their visit to the house of accused Rudia. He has simply stated that his statement was recorded after 5-10 days by the police after the alleged extra-judicial confession. According to Jailal PW12, after 2-4 days of 7.8.72. both of them first visited 41 PS, then 37 P.S. and thereafter again they returned to 41 P.S., whereas Mohansingh PW9 has stated that they directly went to 37 P.S. and from there, they went to 41 P.S. and informed Dayawanti (PW 7) of the confession. It may be mentioned that both these witnesses are residents of Birthebari in Haryana. There was no reason for the accused Rudia to have made any confession to them. For all these reasons, looking to the nature of their testimony, in our opinion, it would be unsafe to place any reliance on their testimony. Thus, the evidence relating to extra-judicial confession, to our mind, is also not creditable.

8. Now there remains the evidence relating to the recovery of the weapon of offence, namely, the Gandasi. As regards this circumstantial evidence, a factor which has got to our mind, an important bearing is the nature of the information given by the accused. The information Ex.P17 is to the effect that the Gandasi with which Saudagar has been killed, the accused Rudia stated, that he can get the same recovered. As a matter of fact, this is no information. The simple information is that he can get that Gandasi recovered. The information does not reveal that

Gandasi is any where concealed or is in exclusive possession and exclusive knowledge of the accused. From the persual of the information, it can also be found that he is simply in know as to where the Gandasi is, that is he might have seen others placing the Gandasi at a particular place and on that basis, he showed his willingness to get it recovered. Recovery on the basis of such an information is meaningless. The information is dated 17.9.72. after a lapse of sufficient time. The recovery memo of the Gandasi Ex.P14 undoubt shows that the Gandasi was recoverd from a place in the pit near 'Kareel' bush in the East of Johad Salempur, burried in the sand. It is an open place accessible to all and sundry and as exclusive knowledge cannot be attributed to the accused, the circumstance of recovery cannot be read against him. Thus, there is no creditable connecting evidence on record.

9. No doubt, motive is proved against the accused Rudia by the evidence of Dayawanti PW7 and Devidas PW 13 and also by the statement of Diwanchand PW 6. Mohansingh PW9 and Jailal PW 12 have also stated with regard to the litigation between the accused Rudia and the deceased but when there is no connecting evidence, simply on the basis of the motive, the accused persons cannot be held guilty of any ofience. In our opinion, both the accused persons have been rightly acquitted by the learned Sessions Judge of the offence with which they have been charged.

10. In the result,(sic) find no force in this appeal and it is hereby dismissed.