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Court : Rajasthan

Decided On : Mar-21-1990

Reported in : 1990(2)WLN22

Judge : Kanta Bhatnagar and; R.S. Verma, JJ.

Appeal No. : D.B. Cr. Appeal No. 59 of 1990

Appellant : Bhola Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. H.B. Kharlia

Disposition : Appeal allowed

Judgement :

Kanta Bhatnagar, J.

1. This appeal directed against the judgment dated 16-1-1990 by the learned Sessions Judge, Hanumangarh on which appellant Bhola Singh was held responsible for the murder of Mandar Singh alias Sukhmendra Singh and was convicted Under Section 302, IPC. He was sentenced to imprisonment for life and a fine of Rs. 100/-, in default to under-go one month's simple imprisonment.

2. The prosecution case is that on 11-6-1988 at about 5.15 a.m. the father of the appellant and deceased Sukhmendra Singh lodged a report at Police Station, Hanumangarh that on the previous day Sukhmendra Singh and Bhola Singh had gone to the field with tractor to irrigate the field. In the evening Bhola Singh came to the house and took food for himself and his brother. That, at 12 or 12.15 in the night, the neighbourer of the field, Darshan Singh, went to Hameer Singh and informed him that Sukhmendra Singh had gone to his field and informed that at his tubewell four unknown persons had given a beating to him and Sukhmendra Singh and caused injuries. Hameer Singh along with some persons went to the field and found his son Sukhmendra Singh lying dead on a cot near the tubewell having a number of injuries on his person. Bhola Singh informed him about four unknown persons giving a beating to him and his brother Sukhmendra Singh and matching his watch and taking away the tractor. That, he got admitted Bhola Singh, injured in the town hospital. SHO, Mohan Singh (PW 10) went to the site and made necessary investigation. On 15-6-1988, the SHO arrested Bhola Singh, appellant on the ground that during the course of investigation it had come to his notice that Bhola Singh has committed the murder of his brother Mander Singh alias Sukhmendra Singh because he was suspecting illicit relations between his wife and the deceased. In pursuance of the information furnished by the appellant SHO recovered the sword and watch from the field on 20th of June, 1988. The blood stained clothes of the deceased and the appellant, the blood soaked soil and the sword were sent for chemical examination and human blood was detected on them Charge-sheet against the appellant Under Section 302, IPC was filed in the court of Additional Chief Judicial Magistrate, Hanumangarh. The learned Magistrate charge-sheeted the appellant and on his denying the charge, proceeded with the trial. Ten witnesses were examined by the prosecution. Appellant in his statement Under Section 313, Cr.PC totally denied the allegations levelled against him and stated that his relations with Shri Ram (PW 1) were inimical on account of party politics and, therefore, he might have stated against him The learned Judge placed reliance on the statement of Sahi Ram regarding the extra-judicial confession of the appellant and passed the judgment under appeal.

3. We heard Mr. H.B. Kharlia, learned Counsel for the appellant and Mr. N.D. Khan, learned Public Prosecutor assisted by Mr. M.C. Bhandari, learned Counsel for the complainant and perused the record of the case.

4. At the very outset it may be observed that the learned trial Judge has passed the judgment of conviction on the sole testimony regarding the extra-judicial confession said to have been made by the appellant in the presence of Sahi Ram (PW 1), Rulendra Singh (PW 3), Makhan Singh (PW 4), Darshan Singh (PW 5) and Amarjeet Singh (PW 6). All of them have been declared hostile by the prosecution. The recovery of the sword and watch has not been supported by any independent witness and the learned trial Judge has not attached any importance to the recovery.

5. The pertinent question is whether the statement of a witness i.e. the statement of Sahi Ram, who in his examination in chief has denied the fact of any extra-judicial confession being made by the accused in his presence, should be taken to be a witness of sterling worth then in cross examination by the Public Prosecutor he has admitted to have heard the accused giving extra judicial confession. The statement of a witness is to be read as & whole. If a witness states one thing in the examination in chief and an altogether different thing in the cross-examination he cannot be said to be a witness of credence. We do not find any justification in the conviction of the appellant on the solitary evidence of such a witness to whom the prosecution has not found reliable and has disowned.

6. Under such circumstances, there is no ground to uphold the conviction and sentence of the appellant.

7. Consequently, the appeal is allowed. The conviction and sentence of appellant Bhola Singh are set aside and he is acquitted of the charge. He is in jail. He shall be set at liberty forthwith if not required in any other case.