

Maniya Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-19-1983

Reported in : 1983WLN(UC)179

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

Appeal No. : D.B. Criminal Jail Appeal No. 197/1977

Appellant : Maniya

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

By The Court

1. The appellant Maniya was convicted of the offence Under Section 302 IPC and was sentenced to imprisonment for life by the learned Sessions Judge by his judgment dated April 13, 1977.

2. The charge against the appellant was that on 3.2.1976 at about, noon, he entered into the house of Honiya and fired a shot with a gun at Mst. Mugali wife of Rai Chanda on her face as a result thereof she died The appellant was also charged for the offence Under Section 25 of the Arms Act.

3. In nut shell, the prosecution case is that on 3.2.1976 at about moon, the accused entered into house of Honiya, Mugali was alone in the dhalisa' outside the 'kotha'. Dwarkadas (PW.2 and Babu (PW3) were present, Dwarka Das Singhi is a contractor residing at Udaipur and Babu was his servant. In connection with the cutting of the trees from the forest Dwarkadas had come to the house of Honiya and was staying there in the'dhaliya'. Dwarkadas was preparing his meals at the time when the accused entered into the 'kotha'. Both these witnesses heard the gun shot report and saw the accused coming out of the 'kotha' and the accused was crying. According to Dwarkadas he saw from a distance that Mst. Mugali was lying dead near the oven having an injury on her face right side which was bleeding. Both of them went to inform Soma, the uncle-in-law of the deceased, is the father-in-law of the deceased was away from the village and her husband was also away in the jungle, the father-in-law of the deceased Honiya had gone to village Sandmariya. Soma on being informed visited the house of Honiya and found Mugali dead having a gun shot wound on her face. Mst. Sedna (PW7) had also come to the home of Honiya who informed Soma that she had seen accused Maniya and that he confessed that he had fired a shot at Mugali. Soma waited for his brother, who came in the night and on the next morning Soma went to police station Kotara which is at a distance of ten miles from the place of occurrence. Soma lodged a report on 4.2.76 at about 8.30 a.m. on which a case under Section 302 IPC was registered by Himmat Singh, SHO (PW 16). After registering the case, the S.H.O. visited the spot and prepared the site plan and site memos (Ex P 9 and P.10) and panchanama (Ex.P1) and conducted the other spot investigation. He arrested accused Maniya on 9.2.1976 vide memo (Ex P.3). Autopsy of the dead body was conducted and thereafter the dead body was handed over to Raichanda. Investigation was conducted in the matter and after completion of the investigation a charge sheet was presented to the count of Judicial Magistrate, Udaipur, who committed the accused for trial to the court of Sessions.

4. The accused was charged of the offence Under Section 302 IPC and 25 of the Arms Act to which he pleaded not guilty and claimed trial. At the trial the prosecution in all examined sixteen witnesses. The statement of the accused was recorded in which he denied the prosecution case and he stated that he has been

falsely implicated in this case. No evidence was led in defence. The learned Sessions Judge after hearing the arguments convicted the appellant to the offence Under Section 302 IPC and sentenced him as aforesaid. He was however acquitted of the offence Under Section 25 Arms Act, The learned Sessions Judge recorded the finding of guilt on the basis of the evidence of Dwarkadas and Babu whose statements further get corroboration from the statements of Soma (PW4) and Kesha (PW14), the evidence relating to extra judicial confession consisting of Sedna (PW 7), Jeeva (PW6), Kalia (PW 9) and Mangla (PW 13). Dissatisfied with the conviction and sentence, the accused has preferred this appeal.

5. We have heard Shri S.R.Bhandari, Amicus Curiae for the appellant and Shri Niyajuddin Khan, learned Public Prosecutor for the State,

6. The prosecution case hinges on the evidence of Dwarkadas (PW2) and Babu (PW3), whose testimony is said to be corroborated by the testimony of Soma (PW4) and Kesha (PW 14) and on the evidence relating to the extra judicial confession consisting of Jeeva (PW 6), Sedna (PW,7) Kalia (PW9) and Mangla (PW 13). It is to be seen as to whether the evidence led by the prosecution is worthy of credence and connects the accused with the commission of the offence. As stated above, prosecution evidence can be divided into two categories. In the first category falls the circumstantial evidence regarding observance of the accused entering into the 'kotha' of the deceased and coming out of the 'kotha,' soon after the gun shot report crying the words 'ej kbZ ej kbZ' and the deceased was seen having a gun shot wound on the right side of her face. In the second category falls the evidence relating to the extra judicial confession told by the above four witnesses.

7. Before dealing with the above evidence we would like to consider the first contention of Shri Bhandari that the first information report lodged in this case is a delayed one, So the FIR cannot be pressed into service by the prosecution for any purpose rather the delayed information would show that there might be an attempt on the part of the prosecution to concoct a particular version. It is true that the occurrence took place at about 12 noon on 3.2.1976 and the FIR (Ex.P,6) was lodged by 8 a.m. on 4.2.1976 and 8.30 a.m. It was urged by Mr. Bhandari that when information was conveyed by Dwarkadas and Babu to Soma soon after the

occurrence, Soma could have proceeded to the police station and should have immediately lodged the report, There was no need for Soma to have waited for his brother. It was also urged by Mr. Bhandari that if Dwarkadas and Babu had seen the accused soon after the offence coming out of the 'kotha' of the deceased they could have lodged the FIR Neither they lodged the report nor Soma, the uncle-in-law of the deceased lodged the report and so this possibility cannot be ruled out that they were making the time in order to cook up a particular story against the accused. We have given our careful consideration to the above contention but we are unable to agree with Shri Bhandari. In the circumstances of the case it cannot be said that the report was deliberately delayed by Soma. Honiya was the head of the family. It is stated in the FIR that Honiya, the brother of Soma came late in the night from Sandmariya. Jeeva (PW 6) gives out to us that when the accused visited him and confessed the guilt before him he proceeded to inform Honiya at Sandmariya. Honiya (PW 5) has stated that Jeeva came to him at Sandmariya and informed about the occurrence. Kaliya (PW 8) who was with Honiya at Sandmariya has stated that he along with Jeeva and Honiya started from Sandmariya at about sunset and it takes about 4-5 hours to reach village Phooldariya from Sandmariya Thus it appears that Honiya came to house much late in the night and Soma, after arrival of Honiya left for the police station early in the morning on the next day. Thus the alleged delay stands explained and it cannot be said that whatever delay has taken place on account of time being taken in concoction of any story. Whatever version has come in the FIR that version finds support from the prosecution evidence. Had an attempt been made to concoct the story the witnesses would not have supported the FIR version at the trial. There may be little variation or omissions in the prosecution evidence viewed in the light of the FIR but the same were not of much significance.

8. Now we proceed to consider the first category of evidence. Both Dwarkadas and Babu are outsiders. Dwarkadas is a resident of Udaipur and Babu is a resident of Pindwara. Dwarkadas is a contractor aged about 62 years and Babu is his servant. Both of them as per the prosecution evidence were staying at the house of Honiya in village Phooldariya. They had put their luggage and belongings in the 'dhaliya' of the house of Honiya shown by point 7 in the site plan (Ex.P. 10). According to the statement of Dwarkadas he was preparing meals. He saw the

accused entering into the 'kotba' marked No. 5. After about 20 minutes he heard a gun shot report and immediately thereafter he saw the accused coming out of the 'kotha' and running from the place. He also heard the accused crying ej xbZ ej xbZ Dwarkadas further states that he saw from some distance that Mugali was lying near the oven having a wound on her face on the right side which was bleeding He stated that neither he nor Babu went inside the 'kotha'. Both of them then went to inform Soma. Babu also corroborates the statement of Dwarkadas. He has not stated that he saw the accused entering into the 'kotha' but he clearly mentioned that he saw the accused coming out of the 'kotha' after the gun shot report and he also heard the accused crying ej xbZ ej xbZ He further stated that he did not see the deceased. Mr. Bhandari urged that on the question of seeing the accused entering the 'kotha' the two witnesses have given two different versions, one sees the accused and the other does not see him. So far as this criticism is concerned, it may be stated that it may be that at time when the accused entered into the 'kotha' witness Babu may not be facing that side and Dwarkadas might be facing the side of entrance of the 'kotha' while preparing the meals having his face in that direction. It is significant to note that inside the 'khota' there was none else except the deceased and it was the accused alone who was seen coming out of the 'kotba' immediately after the gun shot report. So non-observance of the accused while entering into the 'kotha' by Babu is not of much significance. The accused who was seen coming out of the 'kotha' by both the witnesses soon after the gun shot report. From the testimony of these two witnesses it is established beyond doubt that both of them saw the accused coming out of the 'kotha' soon after the gun shot report and both of them also heard the accused crying ej xbZ ej xbZ Besides from the statement of Dwarkadas it is proved that he also saw the accused entering into the 'kotha' sometime before the gun shot. As regards the expression ej xbZ ej xbZ Mr. Bhandari submitted that had the accused killed the deceased he would have uttered the words 'Mar diya'. It may be stated that such an expression could have been an expression on the part of the victim and not on the part of the assailant. The words ekj fn;k could have been uttered by the accused and by uttering these words he might have meant that from his shot the deceased has expired. In connection with the expression of words ej xbZ ej xbZ reference was made to the statement of Soma (PW 4). In his cross examination

Soma has stated that Dwarkadas did not tell him that the accused Maniya was uttering the words ej xbZ ej xbZ when he was running away from the spot. It may be that Dwarkadas has not so mentioned to Soma but on that account the statement of Dwarkadas and Babu would not stand discredited when they said that the accused was uttering these words. As already stated, both these witnesses informed about the occurrence to Soma, so their testimony gets corroboration from the testimony of Soma. In the FIR Soma has stated that Dwarkadas informed that Maniya had left the gun at the spot. It has not been so stated by Dwarkadas although Soma has stated that Dwarkadas told him that the accused left the gun at the spot. This divergence with regard to leaving of the gun by the accused is not at all very material. What is material is as to whether the occurrence was narrated by Dwarkadas to Soma and with what weapon was caused the death of the deceased. This version has categorically been stated by Dwarkadas to Soma and Soma has corroborated it by stating that Dwarkadas informed him that the accused fired a shot at the deceased as a result whereof she died and she was seen lying dead inside the house of Honiya. Dwarkadas was not an eye witness but on account of the fact that there was none else inside the 'kotha' except the accused, so this version has come in his evidence that the accused fired a shot at the victim. On account of the aforesaid circumstances a similar version appeared in the FIR. In fact Dwarkadas did not witness that actual act of firing so the version which has been given in the FIR to that extent may not be a version based on actual seeing the accused firing the deceased. But this version in the circumstance is of no consequence. The statements of Dwarkadas and Babu in our opinion get sufficient corroboration from the statement of Soma which further stands corroborated by the FIR. Besides Soma there is another witness Kesha (PW 14). He also corroborates the version given by Dwarkadas and Babu. When both these witnesses were proceeding to Kotara leaving the house of Honiya, Dwarkadas informed Kesha that the accused Maniya had fired a shot and killed the wife of Raichanda. It is on this information that Kesha visited the house of Honiya. Thus it is amply proved that the accused was seen entering into the house of the deceased and further seen coming out of the house after the gun shot report and there was none else in the 'kotha' except the accused and the deceased. The deceased was seen by Dwarkadas inside the

'kotha' lying in a pool of blood near the oven having injury on the right side of her face. The above evidence further has to be read alongwith the evidence relating to the extra judicial confession. Sedna (PW7) was at her house which is at a distance of about one field from the house of the deceased, after hearing the gun shot she came out of the house and at some distance of the house she met the accused and the accused then told her that he had shot Mugali dead and thereafter she visited the house of the deceased. After seeing Sedna it appeared that the accused met Jeeva (PW6) in the same field when Jeeva was engaged in picking up 'tour'. Jeeva has stated that at about noon the accused came to him and told him that he has killed the deceased. On examination by the accused he took a categorical stand that whatever he stated to the police was a correct version. It appears that at one stage the witness tried to help the accused. This may be so on account of the accused being a near relation but thereafter he had been consistent in his statement that the accused did make confession before him that he has killed Smt. Mugali by a gun shot. On the evidence of Kalia it can be said that the subsequent consistent version given by the witness appears to be true and can be relied upon. Mangla (PW 13) is a resident of Kotara. He is also a relative of the accused as well as of the in-laws of the deceased. He has also stated that the accused came to him and confessed before him that he has killed the wife of Raichanda by a gun shot. Nothing has come out in his cross examination on the basis of which the testimony of this witness may be rendered untrust worthy. It was not necessary that the version of extra judicial confession as has been given by Jeeva, Kalia and Mangla should have appeared in the FIR. By that time it appears that only Sedna had met the informant so Sedna's version finds mentioned in the FIR. As already stated Kalia and Mangla are the relatives of the accused himself so their testimony is rather inspiring and the confessional statement made by the accused to the witness can be acted upon. If both the categories of evidence in real together, in our opinion it is established beyond all reasonable doubt that it was the accused and accused alone who fired the shot at Mst. Mugali and killed her. It is true that he went unarmed but he found a loaded gun inside the room which belonged to one Bheem (PW 12) who had pledged it for a sum of Rs. 60/- to Honiya (PW 6). Something must have been transpired inside the 'kotha' as a result of which the accused lifted the gun and fired the shot.

9. It is also contended by Shri Bhandari that there is no evidence of Dwarkadas and Babu that there was any altercation in between the accused and victim or there was an exchange of words. What led to the firing is not known. In these circumstances the firing could be even accident or even suicidal. In our opinion the suggestion is simply preposterous. It is true that there is no such evidence both of Dwarkadas and Babu as to what took place inside the 'kotha' or what led to the firing. However, in our opinion the conduct of the accused in running away from the place of occurrence coupled with his utterance and further coupled with the credible evidence relating to the extra judicial confession leaves no room for doubt that it was the accused who opened the fire on the victim and lay her dead. Thus an offence Under Section 302 IPC has been amply proved against the accused and in our opinion the learned Sessions Judge was right in convicting the appellant of the said offence.

10. In the result we find no force in this appeal and so it is hereby dismissed.

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