

Bhanwar Singh Vs. the State

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Court : Rajasthan

Decided On : Jul-29-1987

Reported in : 1988CriLJ1054; 1987WLN(UC)713

Judge : S.N. Bhargava and; Mohini Kapur, JJ.

Appellant : Bhanwar Singh

Respondent : The State

Advocate for Pet/Ap. : Shri. Tibrewal

Judgement :

S.N. Bhargava, J.

1. This is an appeal against the judgment of the learned Sessions Judge, Jhunjhunu, convicting the accused-appellant under Section 302, I.P.C. and sentencing him to life imprisonment and a fine of Rs. 100/-, and in default of payment of fine to further undergo three months' R.I., and further convicting the appellant under Section 301, I.P.C. and sentencing him to two years' R.I. and a fine of Rs. 100/-, in default of payment whereof to further undergo one month's R.I.

2. Gangu Singh (PW 9), uncle of the deceased Smt. Vimla lodged a report (Ex.P. 13) at P.S. Sujangarh on 22-5-84 stating that Smt. Vimla, daughter of his elder brother Jagmal Singh, was married to Bhanwar Singh accused some 8-9 years

before and she used to stay with him. She had given birth to a child but the same had also expired. On 26-3-84 Keshat Singh had come to him and informed him that Vimla had gone somewhere being annoyed from her husband on 23-3-84 and a search was being made but so far she has not been traced out. On that day, he and Meghsingh went to the accused-appellant, and after giving him full assurance made inquiries. Thereupon the accused started weeping and while touching his feet told that he had committed a mistake and he had killed Mst. Vimla in anger, and because he and Megh Singh both believed his statement, he was making the report in the police.

3. The police registered a case against the accused-appellant and after usual investigation submitted a challan before the magistrate, who committed the case to Sessions, and the learned Sessions Judge after trial convicted and sentenced the accused as stated above. However, the learned Sessions Judge acquitted the accused Laxman Singh. Hence this appeal by Bhanwar Singh accused-appellant.

4. We have heard Shri Tibrewal learned Counsel for the appellant and Mr. R. Alvi R. P. for the State. We have also gone through the judgment of the learned Sessions Judge as also the record of the case.

5. There are no eye-witnesses and the case is based entirely on circumstantial evidence. The learned Sessions Judge has mainly placed reliance on the following circumstances:

1. Recovery of dead body and clothes at the instance of the accused-appellant on 23-5-84.

2. Recovery of Kasia on the information of the accused-appellant.

3. Extra-judicial confession before Gangu Singh (PW 9) and Megh Singh.

6. As regards the first circumstance, we shall like to refer to the evidence of Dr. Mahavir Singh (PW 8), who has stated that he had inspected the dead body on 23-5-84, and for that the police had informed him that one dead body was lying burried for the last one and a half months and he was to examine the same. He has further stated that the dead body had decomposed and the bones disjointed.

Soft tissues had completely decomposed and could not be identified. The ribs had also separated. No organ was identifiable. Hair were separate from the head and they appeared to be that of a woman. It was difficult for him to give any opinion about the the cause of death. In cross-examination, he stated that he did not try to reconstruct the skeleton of bones, and it was not possible to find out the cause of death or the period as to how much time before the death had taken place. The dead body as such could not be identified. Father, mother or sister of the deceased, or who were closely related from the husband side were also not examined by the prosecution to identify the dead body, or the clothes which were recovered from the dead body. The prosecution has recorded statement (Ex. P. 15) of the accused-appellant under Section 27 of the Evidence Act on the basis of which the dead body was recovered vide recovery memo (Ex.P.5). It is really very strange that the doctor was called even before the dead body was recovered under the intimation that he has to examine the dead body which is lying burried for the last one and a half months. The recovery witnesses (PW 6) Mahavir Prasad and (PW 7) Jagmal have also deposed that the dead body was not taken out in their presence. They had seen only the separate bones. They have further deposed that the clothes were not sealed in their presence and they were not able to identify the clothes. Ex.P.8 is the recovery memo of clothes, but no identification test was held even for the clothes. It was only Gangu Singh (PW 9) uncle of the deceased who has identified the clothes. During the examination-in-chief he has stated that he had seen one petticoat having been recovered. His statement was deferred as the packet containing the clothes was not available in the court on that day. He was further examined after a month, and on opening the packet it was found that there was one petticoat, one blouse and one torn odhna. It is not believable that if the clothers were along with the dead body, how it was possible for anyone much less PW 9 Gangu Singh, who is an uncle of the deceased, to identify the clothes of the deceased. Therefore, in our opinion recovery of separated bones of a dead body and the clothes is of no avail.

7. As regards the second circumstance regarding the recovery of one Kasia, it may be mentioned that there was no blood found on the Kasia and the same is not connected with the crime. The doctor does not say that the death had occurred on account of some injury by weapon like Kasia. Therefore, this circumstance also

does not carry us any further.

8. Now, coming to the extra-judicial confession, it may be stated that the only evidence is of Gangu Singh (PW 9), who is an uncle of the deceased. Megh Singh, who was admittedly present at that time has not been examined. He was an independent witness and his non-examination is fatal to the prosecution, and an adverse inference has to be drawn against the prosecution for not examining Megh Singh. Extra-judicial confession in the very nature of things is a very weak piece of evidence, as has been observed by the Supreme Court in : 1975 CriLJ282 , (State of Punjab v. Bhajansingh) : 1974 CriLJ1010 (Jagta v. State of Haryana : 1983 CriLJ149 (Heramba Brahma v. State of Assam) and 1977 WLN (UC) 531 Remni v. State of Rajasthan). The exact words stated by the accused have not been reproduced by PW 9 Gangu Singh. It is very doubtful whether it was voluntary, because PW 9 Gangu Singh has stated that he and Megh Singh had assured the accused-appellant that they will not involve him in any criminal proceedings. Therefore, in our opinion, the evidence of extra-judicial confession is unworthy of belief and lacks in probability. Learned Counsel for the appellant also brought to our notice the observations of the Supreme Court in State of Punjab v. Bhajan Singh 1975 Cri LJ 282 (supra) that in a case when the dead body is decomposed, the matter should be referred to anatomy expert, and since in the present case the body had decomposed, the bones had fallen out and were separate, it was incumbent upon the doctor to have referred the matter to anatomy expert, and this is a serious lacuna in the prosecution case. Since it is a case of circumstantial evidence alone, motive undoubtedly plays an important part, and since there is no evidence of motive in the present case and the case is entirely based on circumstantial evidence, the accused is entitled to the benefit of doubt. It will be profitable to refer the recent decision of the Supreme Court in Sharad v. State of Maharashtra : 1984 CriLJ1738 , where their Lordships relying on the earlier basic decision in : 1953 CriLJ129 (Hanumant v. State of M.P.) have laid down the following conditions which must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be'

established.

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

3. The circumstances should be of a conclusive nature and tendency.

4. They should exclude very possible hypothesis except the one to be proved, and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

9. Since these conditions are not fulfilled in the present case, in our opinion the accused is entitled to the benefit of doubt.

10. In the result, this appeal is allowed, the judgment of the learned Sessions Judge, Jhunjhunu is set aside, and the accused-appellant Bhanwar Singh, who is in jail shall be released forthwith, if not wanted in any other case.

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