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Court : Rajasthan

Decided On : Nov-09-1983

Reported in : 1983WLN(UC)364

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

Appeal No. : D.B. Criminal (Jail) Appeal No. 572 of 1973

Appellant : Poonma

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Doongar Sirgh

Judgement :

M.C. Jain, J.

1. The appellant Poonma was convicted of the offence under Section 302, 404 and 201, IPC, by the Sessions Judge, Balotra, by his judgment dated July 18, 1975. He was sentenced to imprisonment for life and to pay a fine of Rs. 500/-, in default to undergo 5 months' rigorous imprisonment on the first count and on the second count he was sentenced to three years' rigorous imprisonment and to pay a fine of Rs. 200/ in default, to undergo two months' rigorous imprisonment. No separate sentence was awarded for the offence Under Section 201, IPC. The substantive sentences on the first two counts were ordered to run concurrently.

2. The prosecution case, in brief, is that the deceased Moti Tath left his house some 5-7 days before Deewali of 1973 and thereafter was not seen alive. He did not return on Deewali and a search was made for him. On 27-12-1973, it is alleged that the appellant Poorma went to Bhur Singh Rajput of village Bhiyada and he disclosed him that some 7-8 days before Deewali he had killed Motinath with axe in the field Dhaniwala Nalawala. It was also revealed to him that Motinath wanted to have illicit relations with his wife. He wanted some sort of help from him but Bhur Singh took him to the Police Station Shiv, and lodged the report to that effect. Ganesh Ram, SHO (PW 24) registered the case on the verbal report of Bhur Singh Under Section 302, IPC, and commenced the investigation. The report was lodged on 28-12-1973 at 4.15, p.m. Soon thereafter the accused was arrested On the information and at the instance of the accused the dead body of Moti Nath was recovered from near the Dhani of the accused in his field and articles belonging to the accused were also recovered on the information and at the instance of the accused, which were also lying buried in the field. On the various information and at the instance of the accused, the clothes of the deceased and golden and silver ornaments of the deceased and other articles of the deceased, were recovered. On the information and at the instance of the accused one axe and one spade were also recovered. Dr. Keshav Kotwani (P.W. 19) conducted the autopsy on the body of Moti Nath and the dead body was in an advance stage of decomposition and putrefaction. The skull was found separated from the rest of the body, but there were clothes belonging to the deceased, found on the body, on the basis of which the dead body was identified to be of Moti Nath. Dr. Kotwani could not give the cause of death, as it was not ascertainable. After the arrest of the accused, spot investigation was also conducted and blood smeared soil was recovered from the spot. The clothes of the deceased found on the dead body, were also seized and one Tewata and one Safa of the deceased, recovered at the instance of the accused, were also seized and their packets were sent for chemical examination. Blood was detected on the clothes, found on the skeleton of the deceased and further blood was detected on the two clothes, namely, Tewata (Chadar) and Safa. Blood was further detected in blood-smeared soil as well as control soil. Only four articles were sent for Serological examination, namely, under wear and shirt found on the dead body, Tewata (Chadar) and blood-smeared soil. Human blood was

detected only on blood-smear soil and on the rest of the three articles, origin could not be determined, as blood was found disintegrated. After completion of investigation, charge-sheet was presented against the accused to the Court of Munsif and Judicial Magistrate, First Class, Barmer, who committed the accused for trial to the Court of Sessions Judge, Balotra. The accused was charged of the offences under Sections 302, 201 and 404, I.P.C. He however, pleaded not guilty to the charges and claimed to be tried. At the trial, the prosecution examined in all 25 witnesses. In his statement, the accused denied the prosecution case. He stated that the version given by Bhur Singh was false. However, he admitted that he was arrested. No evidence was led in defence. The learned Sessions Judge, on the basis of the circumstantial evidence consisting of recovery of the dead body and other articles belonging to the deceased, on the information and at the instance of the accused and also on the circumstance of extra judicial confession, found the accused guilty of the offence under Sections 302, 404 and 201, I.P.C. Consequently, he convicted and sentenced the appellant, as aforesaid. Dissatisfied with his conviction and sentence, the present appeal has been filed.

3. We have heard Shri Doongar Singh, learned Counsel for the appellant, and Shri Niyazuddin Khan, learned Public Prosecutor, for the State.

4 In this case, there is no direct evidence against the accused. In order to connect the accused with the commission of the offences, the prosecution placed reliance on the evidence of the extra judicial confession and on the evidence of recovery of dead body on the information and at the instance of the accused and on the evidence relating to recovery of articles of the deceased on his information and at his instance. It is on the basis of the aforesaid nature of the evidence that the appellant has been found guilty of the aforesaid offences.

5. The main evidence for connecting the accused with the commission of the offence of murder, is the evidence relating to extra judicial confession, which finds mention in the first information report, lodged by Bhur Singh on 28-12-1973 at 4.15 p.m.

6. On behalf of the appellant Shri Doongar Singh urged that the alleged confession is said to have been made after two months of the occurrence. There was no

reason for the appellant to have made such a confession to Bhur Singh (PW 4), with whom he has no intimacy. It is inconceivable that the accused would have made such a confession to Bhur Singh, a person who is a resident of a different village situated at some distance and the accused was not a frequent visitor to him. As per the statement of Bhur Singh himself, prior to 27-12-1973, the accused had not seen him for about 4-6 months. Bhur Singh has himself admitted that there is no friendship of him with the accused. When such is the connection of the accused with Bhur Singh, it should not be believed that the accused would have confided in Bhur Singh and would have made such a confessional statement to him. Mr. Doongar Singh urged that the confessional statement has not been made soon after the occurrence under any repentant mood. Almost two months' time had elapsed. This time factor also weakens the credibility of making such a statement by the accused to Bhur Singh. If this circumstance of confessional statement is not believed and is excluded from consideration, and he urged that it should be so excluded, then, according to him, there does not remain any material, on the basis of which the appellant can be held guilty of the offence under Section 302, IPC. In the alternative he submitted that in the first information report (Ex. P/3), which is proved by Bhur Singh and Ganesh Ram, it clearly finds mention that the deceased wanted to have an illicit intercourse with his wife. In case it is found that the confessional statement is worthy of credence and it is found from the other circumstances that appear in the record that the accused caused the death of the deceased, then it should be found that whatever the accused did, he must have done under grave and sudden provocation. There was no reason for the deceased to have visited the house of the accused. The dead body of the deceased was found near the Dhani of the accused and other articles belonging to the deceased, were also found near his Dhani in a concealed state, which shows that the deceased visited the house of the accused. Whatever statement, the accused had made to Bhur Singh, there is mention of this fact in that statement that the deceased wanted to engage in sexual intercourse with his wife. Seeing the deceased having visited the house for such an object and when he was engaging, in having illicit relation, such a conduct on the part of the deceased must have provoked the accused and the accused must have lost his self control in that situation. If the accused had acted in that situation, then his act would fall under

Exception One of Section 300, IPC, and he would not be liable for the offence of murder. He could only be held guilty of the offence under Section 304, Part I, IPC.

7. We have considered the above submissions of Mr. Doongar Singh, but we are unable to agree with his first submission. To us Bhur Singh (PW 4) appears to be an independent witness. It is true that the confessional statement has been made by the accused after about more than two months or two months, but on that basis his credibility cannot be doubted and it would remain unaffected and the truthful character of the statement made by the accused is also not in any way affected. It is true that Bhur Singh had no friendship or intimacy with the accused, but the fact remains that the accused visited the house of Bhur Singh on 27-12-1973 and disclosed to him that he had killed Moti Nath with axe in his field. Simultaneously in this statement he also stated what led to this killing. It is of great significance that the accused went along with Bhur Singh to the Police Station. It finds mention in the first information report itself that the accused was with Bhur Singh, when he went to lodge the report. The appearing of the accused along with Bhur Singh at the Police Station adds to the credibility of the version given by Bhur Singh that the accused came to him and when it is found that the accused came to him, then this version, in our opinion, is also strengthened that the accused made statement to Bhur Singh, as stated by him. Thus, the evidence of Bhur Singh relating to the confession made to him in our opinion, is reliable and can be employed against the accused, and if this evidence is taken into consideration along with the evidence of recoveries, which have been made on the information and at the instance of the accused, then it further strengthens the prosecution case, and it can be held that the accused was responsible for causing the death of Moti Nath. Undoubtedly, there is no medical evidence to prove that the death was homicidal and for that purpose the medical evidence cannot be pressed into service. Moti Nath died, is amply proved, as the clothes, which were found on the skeleton of Moti Nath, have been proved to belong to him and that has not been either disputed before us. Whether the death was homicidal or not, the statement of Bhur Singh relating to extra judicial confession is sufficient and on the basis of his statement, coupled with the recoveries, it can be found that the accused was responsible for causing the death of the deceased.

8. A question arises that under what circumstances the accused caused the death of the deceased? Can it be reasonably and probably found that the accused caused the death of the deceased, while he was deprived of self control under a grave and sudden provocation? If it is that the accused acted under such a situation, in that case he cannot be held guilty of the offence of murder and he can be held liable for the offence of culpable homicide not amounting to murder punishable under Section 304, Part I, IPC. Bhur Singh, in the first information report, clearly and categorically states as to why the accused killed the deceased. The reason given by him is that the deceased wanted to engage himself in illicit relation with his wife. The words, which find mention in the first information report, in our opinion can be taken to mean that the deceased was trying to engage himself in having illicit intercourse with the wife of the accused and it is such a conduct of the deceased, which must have necessarily provoked the accused and it is in such a situation that the accused must have done Moti Nath to death, while resorting to violence with axe. ' The statement of the accused, made to Bhur Singh, has to be read as a whole. The confessional part of his statement has to be read along with this part of his statement as to what Moti Nath deceased actually wanted to do with his wife. From this part of his statement, it can legitimately be gathered that whatever the accused did, he did under a grave and sudden provocation. Thus, in our opinion, the accused-appellant cannot be found guilty of the offence under Section 382, IPC. Reasonably and in all probability he can only be found guilty of the offence Under Section 304, Part I, IPC. So far as the conviction of the appellant under Sections 414 and 201, IPC, are concerned, they have not been challenged before us. Besides that we find that there is ample evidence on record to hold the accused guilty of the offence under Sections 404 and 201, IPC. The dead body of the deceased and the various articles of the deceased, have been recovered on the informations and at the instance of the accused and a large number of the witnesses have been examined by the prosecution to prove the same and the brothers of the deceased and the other witnesses have proved that the articles recovered, belonged to the deceased. The accused misappropriated and converted the articles of the deceased to his own use by selling and pledging them. Thus, the offence under Section 404, IPC, is amply brought home to the accused and it is not necessary to discuss the

evidence of the recovery and identification of each of the articles of the deceased.

9. Thus, we hold the accused guilty of the offence under Section 304, Part I, 404 and 201, IPC. The accused is at present on bail. He remained in custody from 28-12-1973 to 21-11-1976. Thus, he has remained in custody nearly for a period of five years. In our opinion, the ends of justice would be served, in case he is sentenced to the period of his custody for the offence Under Section 304, Part 1, IPC.

10. In the result, the appeal of the appellant Poonma is partly allowed, the conviction and sentence of the accused under Section 302, IPC, are set aside and he is convicted for the offence under Section 304, Part I, IPC, and sentenced to the period of his custody. He is also sentenced to three years' rigorous imprisonment for the offence under Section 201, IPC. His sentence under Section 404, IPC, is maintained. His sentences of fine are set aside. All the substantive sentences shall run concurrently.

11. The appellant is already on bail, so he need not surrender to his bail bonds. His bail bonds are cancelled.