

**Roopa Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Feb-03-1984

**Reported in :** 1984WLN(UC)11

**Judge :** D.L. Mehta and; S.S. Vyas, JJ.

**Appeal No. :** D.B. Criminal Appeal No. 25/1979

**Appellant :** Roopa

**Respondent :** State of Rajasthan

**Disposition :** Appeal allowed

**Judgement :**

**S.S. Vyas, J.**

1. This is a jail appeal by accused Roopa against the judgment of the learned Additional Sessions Judge, Sirohi dated November 30, 1978 convicting the accused under Sec. 302 IPC and sentencing him to imprisonment for life with a fine of of Rs. 250/-, in default of payment of fine to further undergo three months' rigorous imprisonment.

2. Briefly stated the prosecution case is that the deceased-victim Mst. Vanju was the daughter of PW 11 Smt. Kesar Bai. Mst Vanju was living in village Upalgarh. A few days before Gangaur fair in the year 1978, Mst. Kesar Bai went to Upalgarh to

her daughter. From Upalgarh, she and her daughter came together at Abu Road. At Abu Road, accused Roopa met them at the Railway Station. Mst. Kesar Bai went to her village. The accused and Mst. Vanju remained together at Railway Station Abu Road. It is alleged that they left Abu Road together. One Hema (PW 5) met them in the way while they were going on foot from Abu Road to Upalgarh. Six or seven days after the fair the dead-body of Mst. Vanju was found floating in the well of Dhanna situated in Mauja Upalgarh. Report Ex P/5 was submitted by Hemaram to Police relating to it. The police arrived at the well and took out the dead-body of Mst. Vanju and prepared the inquest report. The post mortem examination of the dead body of Mst. Vanju was conducted by PW. 10 Dr. Suresh Gupta, the then Medical Officer-in-charge, Government; Dispensary, Abu Road on 11-5 1987. The post-mortem examination report is Ex. P./12. Dr. Gupta was of the opinion that the cause of death was drowning On 26-6-78, PW. 1 Fata resident of village Uplagarh submitted written report Ex. P/1 at Police Station, Abu Road stating therein that the death of Mst. Vanju was not natural and that she was put to death by the accused-appellate. The police thereafter registered a case under Section 302, IPC and proceeded with investigation. The accused was arrested on 26-6-78. In consequence of the information furnished by him, he got the silver ornaments and ingots recovered. It is alleged that he had removed the silver ornaments from the person of the deceased-victim and sold it to PW. 14, Rameshchandia for a sum of Rs. 90/- and Rs. 123.75 It is also alleged that the accused made extra-judicial confession before several persons that it was he who caused the death of Mst. Vanju. On the completion of investigation,, the Police submitted a challan in the Court of the Munsif and Judicial Magistrate, Abu Road, who in his turn committed the case to the Court of Sessions for trial. The learned Additional Sessions Judge framed a charge under; Section 302, IPC against the accused to which he pleaded not guilty and faced the trial. During trial, the prosecution examined 16 witnesses and filed some 1 documents. In defence no evidence was adduced. On the completion of the trial, the learned Additional Sessions Judge found the charge duly proved against the accused. The accused was consequently convicted and sentenced. Hence this appeal.

3. We have heard Mr. J.L. Putohit, learned Amicus Curiae for the accused and the learned Public Prosecutor for the State. We have also gone through the case file

carefully.

4. Before proceeding further, we may state that there is no direct evidence in this case. The case against the accused rests squarely on the circumstantial evidence which consists of the following sets:

(1) The accused and the deceased-victim were seen together at Railway Station, Abu Road and thereafter in the way while they were going together.

(2) The extra-judicial confession of the accused made before the several persons; and,

(3) Recovery of the articles belonging to deceased-victim.

5. It was vehemently contended by the learned Amicus Curiae that the above three sets of evidence are wholly insufficient to seek the conviction of the accused. It was argued that neither the sets of evidence stand proved nor they lead to the conclusion that Mst. Vanju was done to death by the accused. In reply, the learned Public Prosecutor strived hard to sustain the judgment of the court below.

6. We shall first take up the evidence relating to the last scene. There are two witnesses speaking on this point. They are : PW 11 Mst. Kesar Bai and PW 5 Hansa. Mst. Kesarbai simply stated that she and her daughter Mst. Vanju went to Railway Station, Abu Road and there accused Roopa met them. From Railway Station when she returned, the accused and Mst. Vanju remained there. Her testimony takes us nowhere as there were so many persons present at the Railway Station.

7. PW. 5 Hansa deposed that two or three days before the fact he was going from Abu Road to Upalgarh. In the way, he found the accused and Mst. Vanju going together. This testimony is also not sufficient to drive us to the conclusion that the accused was with Mst. Vanju when she fell in the well or was thrown in the well by the accused. The testimony of this witness is also of no help to the prosecution.

8. Next set of evidence relates to the extra-judicial confession of the accused. The witnesses speaking about it are : PW. 1 Fatu, PW. 2 Khema, PW. 3 Gabra

and PW. 4 Hemaram. According to them, the villagers collected after 8-10 days of the recovery of the victim's dead-body, which was taken out from the well. Before them the accused was questioned and he admitted that he had committed the murder of Mst. Vanju by throttling her. The learned Additional Sessions Judge accepted this extra-judicial confession of the accused and held that he had committed (the murder. In our opinion, he crept into an error in doing so. The extra-judicial confession of the accused is wholly false and does not find corroboration, from the medical evidence. According to Dr. Gupta, the cause of death of Mst. Vanju was drowning whereas according to the extra judicial confession made by the accused, it was strangulation. As such the extra-judicial confession of the accused stands falsified by the medical evidence. We may point out that in order to act upon the extra-judicial confession, it is necessary that it should be made voluntarily and that it should also be true. In the instant case, there is major contradiction between the extra-judicial confession made by the accused and the cause of the death of the victim narrated by the doctor. According to the medical evidence, it was drowning whereas according to the accused's extra-judicial confession, it was strangulation. Since the death of the victim had not taken place due to strangulation, his extra-judicial confession can not be read in evidence against him. There is no such extra-judicial confession, which may induce us to convict him on its basis. The learned Additional Sessions Judge has failed to take this important contradiction into consideration and wrongly relied upon the extra-judicial confession in convicting the accused. Thus, the extra-judicial confession made by the accused furnishes no incriminating material against him.

9. Coming to the last set of evidence relating to the recovery of the articles belonging to the deceased-victim, the position is still worse. There is no evidence that the deceased-victim, was wearing silver ornaments when she went together with her mother at Railway Station, Abu Road,, The prosecution has failed to prove that the ornaments sold to PW. 14 Rameshchandra by the accused are the same, which were on the body of the deceased-victim.

10. PW. 13 Rama was examined to establish that Barli (Article 2) was given to him by the accused. But he himself admitted that Barli (Article 2) is not that which was with deceased-victim. As such, the recovery of this article also furnishes no

incriminating material against the accused. There is no other evidence against the accused. The evidence produced by the prosecution is wholly insufficient to warrant the conviction of the accused under Section 302, H.C. It is not a case where we are extending the benefit of doubt. Here is the case where there is no evidence to connect the accused with the death of Mst. Vanju. We may say that there is no evidence as to how Mst. Vanju fell in the well.

11. As a result of the above discussion, we are unable to maintain the conviction of accused Roopa under Section 302, IPC.

12. The appeal of accused Roopa is consequently allowed. His conviction and sentence under Section 302, IPC are set aside and he is acquitted thereof. He is in jail. He shall be immediately set forth at liberty, if not wanted in any other case.

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