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Court : Rajasthan

Decided On : Dec-14-1983

Reported in : 1983WLN(UC)408

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

Appeal No. : D.B. Criminal Appeal No.544/1974

Appellant : Surta

Respondent : The State of Rajasthan

Judgement :

S.S. Vyas, J.

1. These are two appeals by accused Surta (one through jail and the other represented) against the judgment of the learned Additional Sessions Judge, Jodhpur dated July 31, 1974 convicting the appellant under Section 302, IPC and sentencing him to imprisonment for life and a fine of Rs. 50/-.

2. Succinctly stated, the prosecution case is that deceased-victim Mst. Jatna aged about 45 years was living in village Nimli district Jaisalmer. The accused is the real nephew of Mst. Jatna and is a resident of village Jhankali district Barmer. The distance between the two villages is six miles or so. Mst. Jatna had a field in Mauja Nimli which the accused used to till and cultivate on her behalf. In 1973,

Mst. Janta leased out this field in cultivation to one Iedan Charan. This annoyed the accused. On 28-8-73, the accused came to village Nimli from his village and went to Mst Jatna. He asked her to cancel the lease and allow him to cultivate her field. Mst. Jatna declined to do so. The accused started abusing her. Both of them came to the house of PW 1 Khumansingh. There also the accused abused Mst. Jatna. Mst. Jatna went away in the court yard of PW 3 Sawal Singh situate contiguous to the house of Khuman Singh. The accused followed her. He had an axe in his hand. He repeated his demand for field and Jatna again refused. Thereupon accused Surta struck a blow with his axe on the back of the neck of Mst. Jatna. Mst. Jatna fell down. Accused Surta struck one more blow on her neck with his axe. PW 5 Khumansingh who was standing a few paces away, challenged the accused. The accused then ran away taking the axe with him. PW 2 Jhandsingh, who was standing on a sand dune at some distance came there. He also saw the accused running away. There was profuse bleeding from the wounds of Mst. Janta. she did not survive and succumbed to the injuries soon thereafter. Jhandsingh stood near her dead body and Khumansingh went to Sanwalsingh (PW 3) to appraise him of the incident. Sanwalsingh came at the scene of occurrence which was in his own court yard. Balwantsingh (PW 5) and Binjrajsingh (PW 4) were also contacted. Sanwalsingh and Binjrajsingh left in pursuit of the accused. Balwant Singh went to Sarpanch Ratansingh and appraised him of the incident. Ratansingh drew up report Ex. P. 1 and gave it to Balwant Singh with directions to immediately go to Police Station. Balwantsingh reached Police Station, Sangar which is nearly 40 miles away from village Nimli, at about 6-00 PM on 29-8-73 i.e. the day after the occurrence and presented written report Ex. P. 1. The police registered a case and proceeded with investigation. It is alleged that Sanwalsingh and Binjrajsingh, who had gone in search of the accused, caught him outside his village Jhankali. They brought him back to village Nimli in the same night and detained him till the arrival of police. The Station House Officer Anopsingh (PW 24) arrived at the spot on 30-8-73. He prepared the inquest report of the victim's dead body. He also inspected the site and prepared the site plan. The blood stained clothes of the victim were seized and sealed. The post mortem examination of the victim's dead body was conducted by Dr. M.M. Bagri at about 4 00 PM on 30-8-73. He found the following injuries on the person

of the deceased:

(1) Incised wound 3 1/2 x 1 1/2 x 2' over the right side of the neck below cricoid over cartilaged and over cartilaged and over anterolateral aspect. Tearing could not be ascertained, deep vessels cut. Bone exposed but not cut.

(2) Incised wound 3 1/2' x 1' bone deep over the posterior side and neck muscles cut and detached.

(3) Incised wound over the first phalanx of left thumb amputating the whole circumference of thumb, except a skin tag on the dorsal medial aspect.

(4) Abrasion of 2' x 2' over the lateral aspect of the left leg.

(5) Trachea and oesophagus were cut.

According to doctor Bagri, all the injuries were antemortem. In his opinion the cause of death was severe haemorrhage due to injury No. 1 was sufficient in the ordinary course of nature to cause the death. Injury No. 4 being an abrasion could be caused by the victim's fall. The accused was arrested. The axe, which he had with him, was seized and sealed. He was wearing a Dhoti at that time and it was also seized and sealed. The seized articles were sent for chemical examination. The clothes of the victim and the Dhoti of the accused were found stained with human blood. Blood was also found on the axe but since the quantity of blood was found too small, it was sent for Serological examination. On the completion of investigation, the police submitted a challan against the accused in the Court of Munsif and Judicial Magistrate, Jaisalmer, who in his turn committed the case for trial. The case on transfer, came for trial before the learned Additional Sessions Judge, Jodhpur, who framed a charge under Section 202, IPC against the accused, to which he pleaded not guilty and faced the trial. Denouncing the whole prosecution story as a false and fabricated piece of concoction, the accused claimed absolute innocence. The defence put forward by the accused is that he was in his village Jhankali. Sanwal Singh and Binraj Singh came on camel to him and told him that he was immediately required in village Nimli as his aunt Mst Jatna was seriously ill. Believing to be true what they stated, he came with them to

village Nimli There he found Mst. Jatna lying dead in the court yard of Sanwal Singh. Later on, a false charge of murder was foisted on him by Khumansingh Sanwal Singh and Balwant Singh. On the conclusion of trial, the learned Sessions Judge found the charge duly established against the accused. Eventually, he was convicted and sentenced as mentioned at the very outset. Aggrieved against his conviction and sentence, the accused has taken this appeal.

3. We have heard the learned counsel for the accused and the teamed Public Prosecutor. We have also gone through the case file carefully.

4 There is no room for doubt that the death of Mst. Jatna was homicidal in nature. The accused was convicted on two sets of evidence i.e., the direct evidence of PW 1 Khumansingh and PW 2 Jhandsingh and extra judicial confession alleged to have been made by the accused before PW 4 Binjrajsingh and others. Dr. Bagri was cross-examined but his opinion about the cause of death of Mst. Jatna could not be challenged. Before us also, learned Counsel appearing for the accused did not challenge the finding of the trial court that the death of Mst. Jatna was homicidal.

5. In challenging the conviction, the learned Counsel appearing for the accused vehemently contended that the conviction was wholly bad and unsustainable. The accused was convicted on false evidence of interested witnesses. The learned Sessions Judge has not properly scrutinized the evidency of the prosecution witnesses. It was argued that Jhandsingh had not seen the occurrence according to his earlier statement recorded during investigation and yet latter on he asserted to have seen the incident. The presence of PW 1 Khumansingh on the spot was also not free from suspicion. We have given our anxious consideration to the contention.

6. We agree with the learned Sessions Judge that PW 2 Jhandsingh had not seen the occurrence. In his statement Ex. D. 1 recorded during investigation under Section 164 Cr. PC he did not state that he had seen the accused striking blows to the victim with his axe. Therein he simply stated that he had seen the accused running away with an axe in his hand. However, during trial, he deposed that he had seen the accused striking blows to the victim when he (witness) was standing

on the sand dune. Since he did not state to have seen the occurrence earlier in his statement Ex D. 1 the learned Sessions Judge rightly held that the witness had wrongly claimed to have seen the occurrence. The learned Sessions Judge, however, held that he had seen the accused running away with an axe in his hand. This finding of the learned Sessions Judge does not appear incorrect.

7. PW 1 Khurnan Singh is an eye witness of the occurrence. A look into the site plan Ex P. 4 reveals that his house is situated contiguous to the house of Sanwalsingh. There is no wall in between these two houses. Therefore, the man standing in the house of Khumansingh can easily see as to what is happening in the open court-yard of Sanwalsingh. PW 1 Khuman Singh deposed that at sun setting time on the day of occurrence he was sitting in his court yard. Accused Surta and Mst. Jatna came there. They were talking loudly. The accused asked Mst. Jatna to cancel the lease of her field and give it to him for cultivation. Mst. Jatna refused to do so. The accused started abusing her. Mst. Jatna went away in the court-yard of Sanwalsingh (shown by mark '1' in site plan Ex. P. 4). The accused followed her. He had an axe in his hand. In the court-yard of Sanwalsingh, the accused repeated his demand and Jatna again declined. There upon the accused struck a blow of his axe on the neck of Mst. Jatna. Mst. Jatna fell down. The accused struck one more blow again on the neck of Mst. Jatna. The witness stated that he challenged the accused and the accused took to heels. Jhandsingh, who was on the sand dune nearly 100 paces away, came there. There was profuse bleeding from the wounds of the victim. The witness further continued that he went to Sanwalsingh and apprised him of the incident. Later on, the accused was brought by Sanwal Singh and Binjrajsingh. He was detained there till the arrival of police. The witness was cross-examined at length but nothing could be extracted from him which may render his testimony unworthy of belief. He deposed that in his house he was alone and the members of his family had gone to the field. No reasons have been subscribed before us as to why the testimony of this witness Khumansingh should not be accepted as true. He denied his relationship with the deceased victim. He also refuted the suggestions that he had any enmity with the accused. The testimony of a witness given on oath is presumed to be true unless it has been successfully challenged in cross-examination. There is nothing in the testimony of this witness which may induce

us to hold that he is not a witness of truth. His testimony in itself is sufficient to warrant the conviction of the accused.

8. Coming to the extra judicial confession, PW 3, Sanwalsingh and PW 4 Binjrajsingh deposed that they went in the pursuit of the accused and found him out side his village Jhankali. They brought him back to the place of occurrence. There, the accused stated before them that he. had killed his aunt Mst. Jatna. He begged for mercy and help. PW 3 Sanwalsingh and PW 4 Binjrajsingh have clearly stated that the accused confessed before them that he had killed his aunt and asked for their help to save him. PW 6 Vijaysingh and PW 7 Bheeksingh also stated about the accused's making confession before them that he had killed his aunt Mst. Jatna. The learned Sessions Judge, accepted the evidence of these four witnesses relating to extra judicial confession. The learned Counsel for the accused-appellant contended that the evidence of these four witnesses was discrepant and should not be accepted as true to prove the alleged extra judicial confession. Now it does not appear that these four witnesses have any animus against the accused so as to falsely implicate him on a serious charge like that of murder. It is true that these four witnesses are the residents of village Nimli where the victim resided. But that is no reason to discard what they testified on oath against the accused. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It does not appear that these four witnesses had any motive to implicate the accused falsely. We are, therefore, unable to accept the contention of the learned Counsel that the evidence relating to extra judicial confession was wrongly relied upon by the learned Sessions Judge.

9. There is then a strong motive for the accused to commit the offence. PW 13 ledan deposed that Mst. Jatna had leased out her field for cultivation to him in the year of the occurrence. The accused came to him and asked him to leave the field of Mst. Jatna. He asked the accused to contact Mst Jatna and he would leave the field if she asked him to do so. The witness further deposed that the accused had an axe with him at that time. He went away telling him that he would soon bring his aunt Mst. Jatna to him. The testimony of this witness was also not shaken and shattered, in cross-examination. He is an old man of 70 years in age and does not

belong to the caste and village of the deceased-victim. On the other hand this witness ledan (PW 13) is a resident of the village of the accused him self. It is difficult to bold that he would falsely state against the accused for no rhyme or reason. Since the deceased victim did not allow the accused to till and cultivate her field and leased it out to witness PW 13 ledan, the accused got annoyed. This acted as a strong motive and prompted the accused to finish his aunt Mst. Jatna.

10. The three factors, viz , (1) the direct testimony of PW 1 Khuman Singh, (2) the extra judicial confession made by the accused before four witnesses viz., Sanwalsingh, Binjrajsingh, Vijaysingh and Bheeksingh and (3) the strong motive which prompted the accused to finish his aunt, leave no room for doubt that it was the accused and the accused alone who committed the murder of Mst. Jatna. The accused has been rightly taken by the learned trial court as the perpetrator of crime.

11. It was also argued that the court below wrongly rejected the evidence adduced by the accused in defence. The accused examined five witnesses viz., DW 1 Bhanwersingh, DW 2 Chandan Singh, DW 3 Kishansingh, DW 4 Binjrajsingh and DW 5 Veersingh to show that he was taken to village Nimli on a false pretext. The learned Sessions Judge put no reliance on the testimony of these witnesses. It was argued that there were no reasons to discard the testimony of these witnesses. It was also argued that the accused is not required to prove his defence to the hilt. Such type of evidence can be easily manufactured. The direct and positive evidence led in by the prosecution cannot be thrown away over-board on the strength of such defence evidence which can be procured without any difficulty. The defence evidence does not stand to logic and reason and was rightly rejected by the trial court.

12. For the reasons stated above, we are unable to accept the contention of the learned Counsel for the accused that the accused was wrongly convicted. We are unable to take a view different from that of the learned Sessions Judge. The accused was rightly convicted and sentenced.

13. The appeals of accused Surta are consequently dismissed. He was on bail during the pendency of appeal and is absent today. He is directed to surrender

himself within three weeks before the trial court. In case he fails to do so, the learned Additional Sessions Judge will get the accused arrested and send him to prison to serve out the unexpired portion of his sentence.

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