

Mala Ram Vs. State

Mala Ram Vs. State

SooperKanoon Citation : sooperkanoon.com/758805

Court : Rajasthan

Decided On : Mar-13-1984

Reported in : 1984WLN(UC)57

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

Appeal No. : D.B. Criminal Jail Appeal No. 515/79

Appellant : Mala Ram

Respondent : State

Disposition : Appeal allowed

Judgement :

S.S. Byas, J.

1. This is a jail appeal by accused Malaram against the judgment of the learned Sessions Judge, Churu convicting the appellant under Section 302, IPC, and sentencing him to imprisonment for life with a fine of Rs. 5, 000/-, in default of payment of fine to further undergo two months' rigorous imprisonment.

2. Briefly stated, the prosecution case is that the deceased-victim Aaduram Jat was the first cousin of the appellant. Their fathers were real brother inter se. At about 2.00 P M. on 16-2-79, PW 1 Pannalal appeared at police Station, Bmipura, District Churu and verbally lodged a report Ex. P/1. It was stated therein that in the

preceding night at about 3. A.M. the accused came at his residence and told him that the deceased victim Aaduram had sustained some injuries on his person by means of some sharp edged instruments He went there at the house of the deceased-victim. Many persons of the village collected there. A truck was being arranged to make the injured-victim to the hospital for treatment. But before the truck could be arranged, Aaduram did not survive and passed away. It was also stated in Ex. P/1 that the death of Aaduram was not natural, sons body, was could not be ascertained, had killed him The police registered a case under Section 302 IPC. The investigation followed. The Station House Officer, Omprakash, arrived on the spot, inspected the site and prepared the inquest report of the victim's dead body. He seized the blood strined earth. The post mortem examination of the victim's dead body was conducted at about 2.00 p.m. on 17-2-79 by Doctor Hanuman Singh Kaswan (P.W. 5) he then Medical Officer-in-charge, Government Hospital, Sardar Sahar. He noticed some stab wounds on the person of the deceased-victim, as stated in his statement and as further mentioned in the post mortem examination report Ex. P/8 In the opinion of Dr. Hihuman Singh, the cause of death of Aaduram was syncope as a result of extensive haemorrhage, which was because of the injuries inflicted on his person. The injuries were ante-mortem in nature. The injuries were also stated as sufficient in the ordinary course of nature to cause death. It is alleged that the accused went to PW. 9 Manaram, who is the real prother-in-law of the deceased-victim aid confessed before him that he had committed the murder of Aaduram. He sought the halo of Manaram in the matter and requested him to take him to the police station. Manaram contacted to PW. 11 Birbal Both of them took the accused to the police station where he was arrested vide arrest memo Ex. P.12. It is further alleged that in consequence of the information furnished by the accused from time to time, a pair of scissors, his blood stained clothes and a quilt were recovered. The seizure memos of these artictes are Ex. P/9, Ex.P/10 anclEx.P/!4. After when the investigation was over, the police presented a challan against the accused in the Court of Chief Judicial Magistrate, Churu, who in his trun committed the case for trial to the Court of Sessions. The learned Sessions Judge framed a charge under Sec, 302, IPC against the accused to which he pleaded not guilty and faced the trial. In support of its case, the prosecution examined 12 witnesses and filed some documents. In

defence, the accused examined one witness. The defence was that there was a dispute over the truck between the deceased-victim and PW 9 Manaram. On the conclusion of trial, the learned Sessions Judge held the charge proved against the accused. The accused was consequently convicted and sentenced, as mentioned above. Aggrieved against his conviction and sentence, the accused has filed this appeal.

3. We have heard the learned amicus curiae and learned public prosecutor We have also gone through the case file carefully.

4. Admittedly, there is no direct evidence against the accused in the case. The prosecution case entirely rests on the circumstantial evidence. The circumstantial evidence produced by the prosecution consists of two sets, (i) the extra-judicial confession made by the accused before PW .9 Manaram and PW. 11 Biabal; and (ii) the various recoveries of the articles in consequence of the information furnished by the accused from time to time whilst under police custody.

5. It was vehemently contended by the learned amicus curiae that the accused was wrongly convicted on the basis of extra-judicial confession. It was also argued that PW 9 Manaram is the real brother-in-law of the deceased-victim. It is humanly impossible that the accused would go to him and make a clean breast confession before him to have killed the victim. It was further argued that PW 11 Birbal was falsely introduced to make the extra-judicial confession before him. This witness never stated before the police during investigation that the accused had made any extra-judicial confession. It is further urged that in the calendar of witnesses, this witness was not cited by the prosecution as a witness at all. In reply, the learned public prosecutor tried to impress us that the extra-judicial confession alleged to have been made by the accused has been rightly held as duly proved. We have taken the respective submissions into consideration.

6. PW. 9 Manaram is admittedly the brother-in-law of the deceased-victim. His sister PW 2 Mst. Chunni was married to the deceased-victim. He stated that on 22-2-79, the accused came to him and sought his help. He told him that he had killed Aadam He begged for help and asked him to take him to police station. To us, this extrajudicial confession does not appear reliable. The value of extrajudicial

confession depends on the veracity of the witness to whom it is made. The extrajudicial confession made by the accused is considered to be a weak type of evidence. In order to convict the accused on the basis of extra-judicial confession, it must be affirmatively proved that it was really made. We fail to understand as to why the accused would go to PW 9 Manaram, who is a close relative of the deceased-victim, to make confession before him. After all, the confession is made before a person in whom the accused has reposed confidence. We are unable to imagine that the accused would reposit confidence in PW. 9 Manaram, whose sister has been married to the deceased's victim. Moreover, there was no occasion for the accused to make a confession. As such, we are unable to agree with the learned Judge of the trial Court that the extra-judicial confession made before Manaram should be accepted as genuine and true. We are unable to give any value to the extra-judicial confession alleged to have been made by the accused before PW 9 Manaram.

7. PW 11 Birbal appears to have been falsely introduced as witness to prove the extra-judicial confession. He was never examined by the police during investigation. He is a motbir of the arrest memo. PW. 9 Manaram does not say that the accused made a confession before this witness. PW. 11 Birbal, of course, says that the accused made a confession before him. But in the present case, PW. 9 Manaram denies this fact. As such, there is a direct contradiction between the statement of these two witnesses. PW. 11 Birbal also did not state before the police that the accused made a confession before him. As such, the lower Court was again wrong in accepting the extra-judicial confession as true alleged to have been made before this witness.

8. Thus, the extra-judicial confession alleged by the prosecution stands to discredit and cannot be relied upon for any purpose. In fact, the whole story of the extra-judicial confession seems fabricated and no reliance can be placed on such witnesses like that of PW. 9 Manaram and PW. 11 Birbal.

9. The next set of evidence is the recovery of the pair of scissors, the clothes of the accused and the quilts. It is alleged that the accused whilst under police custody gave informations recorded in Ex. P/13 and Ex. P/14. In consequent of

these informations, a pair of scissors, clothes of the accused and the quilt were recovered. On chemical examination, human blood was detected on them. It was argued that the recovery of these articles and the fact that the human blood was found on them, are not sufficient to connect the accused with the murder of Aadam. In State v. Sardar Singh 1969 RLW 68, a Division Bench of this Court held that the recovery of blood stained articles can be used only to corroborate the other evidence. It cannot in itself prove the case of the prosecution and does not connect the accused with the commission of the offence. As such, the recovery of the blood stained articles is of no help to the prosecution in the absence of any other evidence. It could have been used by the prosecution only to corroborate the other sets of evidence, which are completely missing in the present case.

10. PW. 2 Mst. Chunni is the widow of the deceased-victim. She deposed that when she came to know that her husband was severely injured by some unknown person, she immediately sent for the accused. The accused being a relative of the deceased-victim instantly came to help her. PW. 3 Mst. Rukali is the real sister of the deceased-victim. She also narrated the same fact. She deposed that since her brother was lying in a seriously injured condition, she went and asked the accused to come. The accused came readily and, thereafter, helped the victim injured. He also took steps to arrange for truck to take him to the hospital, this act of the accused speaks heavily against the prosecution. That shows his innocence rather than his complicity in the crime.

11. No other contention was raised. The conviction of the accused under Section 302, IPC, cannot be maintained. His conviction is bad.

In the result, we allow the appeal of accused Malaram. His conviction and sentence under Section 302, IPC are set aside and he is acquitted thereof. He is in jail and shall be immediately set-forth at liberty if not wanted in any other case.