

Bagda Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-23-1995

Reported in : 1995CriLJ2129

Judge : B.R. Arora and; P.P. Naolekar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 201, 300, 302 to 304 and 340; Code of Criminal Procedure (CrPC) , 1974 - Sections 164

Appeal No. : Criminal (Jail) Appeal Nos. 35 and 39 of 1988

Appellant : Bagda Ram

Respondent : State of Rajasthan

Advocate for Def. : U.C.S. Singhvi, Public Prosecutor

Advocate for Pet/Ap. : P.R. Choudhary, Adv.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. These two appeals arise out of the judgment dated 2-12-87. passed by the Sessions Judge. Jodhpur. by which the learned Sessions Judge convicted and sentenced the accused-appellant for the offence under Section 302 IPC.

2. Accused-appellant Bagda Ram. along with accused Dhagla Ram. Mishri Lal, Shesha Ram and Joga Ram, was tried by the learned Sessions Judge. Jodhpur. for the offences under Section 302, 120B, 201 and 340 IPC. The case against the accused-appellant is that he committed the murder of his wife Smt. Bhuri by strangulation and throttling and removed (he clothes of the deceased, concealed them in his house and tried to give it the shape of committing suicide by deceased Smt. Bhuri. Accused Dhagla Ram and Mishri Lal, with a common intention to cause murder of Smt. Bhuri, also participated in the crime of strangulation and throttling her while accused Shesha Ram and Joga Ram, with an intention to screening accused-appellant Bagda Ram from the legal consequences of the crime, gave a false information to the members of the parental house of Smt. Bhuri that she had committed suicide whereas actually she was murdered by her husband. The case of the prosecution is that Smt. Bhuri (the sister of P. W. 4 Roopa Ram) was married to accused-appellant Bagda Ram about fifteen years before the date of incident and the Muklawa ceremony was performed only about four years before the date of the incident. After she went to her in-laws' house, she was maltreated by her husband as well as by the other members of her in-laws' house and she was asked to bring a Timaniya (a gold ornament) from her parents' house. About fifteen days before the date of the incident she had gone to her parents' house and informed her brother P. W. 4 Roopa Ram that she is being ill-treated by her husband and was asked time and again that she had brought less dowry and should bring Timaniya from her parents house. She refused to go to her in-laws' house but on being .persuaded, she went there about fifteen days before the incident. On 19-10-85, at about 6.30 p.m., Bhuri's brother-in-law Shesha Ram, along with Joga Ram and Sura Ram, came to the field of P. W. 4 Roopa Ram and informed him that Smt. Bhuri had committed suicide by hanging near a well situated adjacent to the Piou of Diwan Sahib. On receiving this information, P. W. 4 Roopa Ram along with P. W. 5 Mangla Ram and some other persons, went to the Bera of Joga Ram (the father of accused Bagda Ram). The dead body of Smt. Bhuri was lying hi a room. There were injuries on the person of Smt. Bhuri and the ligature marks were present on her neck. Roopa Ran} and the other persons, who were with him. did not believe the theory of committing suicide by Smt. Bhuri and a suspicion arose. They enquired from Bagda Ram how that happend. whereupon

accused Bagda Ram disclosed that some altercations took place between him and Smt. Bhuri and he, along with Dhagla Ram and Mishri Lal, committed the murder of Smt. Bhuri by throttling her. The accused, also admitted before them that he gave her beatings also. They, thereafter, went to the well of Pukha Ram, who, also, informed them that he was taking his she-buffaloes to the water-course for their drinking water and saw accused Bagda Ram, Mishri Lal and Dhagla Ram giving beatings to Smt. Bhuri. Thereafter P. W. 4 Roopa Ram wrote the report (Ex. P8) of the incident and produced it before Jethu Singh, ASL on 19-10-85 at about 4.00 p.m. Jethu Singh, ASL registered the FIR. (Ex.P8) and on telephone informed P. W. 13 Mr. Bhanwar Lal, the Deputy Superintendent of Police (Circle Officer), who reached at the Police Station and started investigation and after completion of the investigation, presented the challan. The prosecution, in support of its case, examined thirteen witnesses. The accused did not examine any witness in defence. The learned Sessions Judge, after trial, convicted the accused-appellant for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life but did not impose any fine looking to the draught condition in the area. He, however, acquitted accused Dhagla Ram, Mishri Lal, Shesha Ram and Joga Ram of all the offence for which they were tried. It is against this judgment dated 2-12-87, passed by the learned Sessions Judge, convicting and sentencing accused-appellant Bagda Ram that the appellant has preferred these two appeals. D. B. Criminal (Jail) Appeal No. 35 of 1988) has been filed by the appellant through jail while D. B. Criminal Appeal No. 39 of 1988 has been filed by him through his counsel.

3-4. It is contended by the learned counsel for the appellant that the FIR, in the present case, was lodged after consultation. His further contention is that the extra-judicial confession, on which reliance has been placed by the learned trial Court, is at variance. A different version has been given in the FIR and the statements of the four witnesses before whom the alleged extra-judicial confession has allegedly been made by the accused and, therefore, the extra-judicial confession, which itself is a weak type of evidence, cannot be made the basis for convicting the appellant as there is no other circumstance to corroborate the evidence of extra-judicial confession. Alternatively, it is submitted that even from the extra-judicial confession, alleged to have been made by the accused before P.

W. 11 Narain Singh, it is clear that first deceased Smt. Bhuri gave four-five slaps to the appellant and, therefore, in the sudden provocation he may have caused the murder of deceased Smt. Bhuri and, therefore, the case of the appellant falls within the ambit of Section 304 IPC but the learned Sessions Judge has not considered this aspect of the case and the appellant, therefore, deserves to be acquitted on this count. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the Court below and submitted that the FIR was lodged by P. W. 4 Roopa Ram promptly and is not the result of any consultation; the extra-judicial confession, made by the accused-appellant before the four witnesses is true and voluntary and is not the result of any inducement, threat or promise and, therefore, it has rightly been believed by the learned trial Court and no case of any sudden provocation, as argued by the learned counsel for the appellant, is made-out and the judgment, passed by the learned trial Court, convicting and sentencing the appellant, does not require any interference.

5. We have considered the submissions made by the learned counsel for the parties.

6. There is no eye witness of the occurrence. The only witness, whose name has been given in the FIR, is P. W. 6 Pukha Ram, who has stated that he had gone to the water-pond to make his she-buffaloes drink water and there he heard the cries of a lady in the field of Narain Singh and saw accused Bagda Ram and Mishri Lal. He informed his father Roopa Ram when he came after the death of Smt. Bhuri that he had seen Mishri Lal and Bagda Ram in the field. This witness, in the cross-examination, has admitted that he knows Bagda Ram only and the other person present in the field was not known to him. This he has stated before the Magistrate who recorded his statement under Section 164 Cr. P. C. The evidence of this witness, viz., P. W. 6 Pukha Ram, is therefore, of no avail to the prosecution and he has not seen any incident. He only saw the accused in the field and heard the cries of a lady and nothing more.

7. The prosecution case, therefore, rests mainly upon the extra-judicial confession made by the accused-appellant before P. W. 4 Roopa Ram (the brother of the deceased), P. W. 5 Mangla Ram (the cousin of the deceased), P. W. 8 Bagda

Ram (the uncle of the deceased) and P. W. 11 Narain Singh, the Advocate, from whom the well including the land was purchased by Shesha Ram and others. The prosecution has, also, placed reliance over certain other circumstances including the recoveries.

8. The first contention, raised by the learned counsel for the appellant is that the FIR was lodged after consultation with the family members and, therefore, it does not disclose the true genesis and the facts of the case. The learned counsel for the appellant, in support of his contention, has taken support of the admission made by P. W. 4 Roopa Ram in his statement that he wrote the FIR in the presence of Mangla Ram and after showing it to him he went to the Police Station and gave the information to the police. Merely because when the report of the incident was written at the residence in the presence of Mangla Ram and showing it to Mangla Ram, who is, also, the cousin of the deceased and in whose presence, also, the extra-judicial confession was made by the accused, the FIR cannot be said to be lodged after consultation. Whatever the true facts relating to the events of the occurrence came to the knowledge of both these persons, they put those facts in writing and lodged the FIR and, therefore, the FIR cannot be said to be a piece of concoction and or consultation.

9. The second ground, raised by the learned counsel for the appellant, is that the alleged extra-judicial confession, made by the accused-appellant, does not inspire confidence and cannot be read against the accused for the purpose of his conviction if it does not find corroboration from the other evidence. Now, we take the different extra-judicial confessions made by the accused-appellant before P. W. 4 Roopa Ram, P. W. 5 Mangla Ram, P. W. 8 Bagda Ram and P. W. 11 Narain Singh. So far as P. W. 4 Roopa Ram and P. W. 5 Mangla Ram are concerned, they were present together when the extra-judicial confession was made by the accused on the enquiry made by them how the incident took place because the theory of committing suicide by Smt. Bhuri was not believed by them and on enquiry the accused-appellant admitted that he committed the murder of Smt. Bhuri with the help of Mishri Lal and Dhagia Ram by strangulating her with a rope. The extra-judicial confessions made by the accused-appellant before P. W. 4 Roopa Ram and P. W. 5 Mangla Ram, read as under:-

^geus cxnkjke ls iwNk ;g dSlS gqvKA bl ijcxnkjke us dgk fd esjs o Hkwjh ds
cksypky gqbZ mlus dgk eSaus

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