

Manak Ram Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Dec-02-1983

Reported in : 1983WLN(UC)464

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

Appeal No. : D.B. Criminal (Jail) Appeal No. 258/77

Appellant : Manak Ram

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

S.S. Vyas, J.

1. This appeal by accused Manak Ram is directed against the judgment of the learned Sessions Judge, Jodhpur dated May 19, 1977, convicting the appellant Under Section 302, IPC and sentencing him to imprisonment for life.

2. Briefly stated, the prosecution case is that the accused is a real nephew of the deceased-victim Pattu Ram. Pattu Ram was residing with his son PW 4 Pukha Ram in a Dhani situate nearby village Lohawat district Jodhpur. The accused had committed a theft in the house of Pukha Ram, for which he was prosecuted and sentenced to imprisonment. He was released from Sub Jail, Phalodi on 9-11-76

and met on that day to PW 6 Bhera Ram of Lohawat near the railway station, Phalodi. During talks with him, the accused told that he would finish Pattu Ram. Bhera Ram advised him not to do so. The accused then left the place. In the intervening night between 9-11-78 and 10-11-76, Pattu Ram and his son PW 4 Pukha Ram were sleeping in the Sal of their Dhani. In the mid-night, Pattu Ram went out side the Sal to look-after a goat. PW 4 Pukha Ram was also awakening at that time. Pattu Ram went out nude because of the superstition that the evil spirits do not affect a nude person. When Pattu Ram was tying the goat with the tag, the accused struck a blow with a plough on his head and the other on his right eye. PW 4 Pukha Ram raised cries and the accused proceeded towards him Pukha Ram closed the doors of the sal and confined himself therein. The accused challenged him to come out but Pukha Ram did not open the door. The accused struck some blows of plough on the shutters of the door but the door did not give way. In the early morning PW 3 Kesu Ram came there and saw the victim lying dead. Pukha Ram name out and told him that his father was done to death by the accused. PW 7 Asu Ram also came there and he too was told about the incident. Kesu Ram went to Police Station, Lohawat (nearly three miles away from the place of occurrence) and lodged written report Ex P 7 of the occurrence The police registered a case and proceeded with investigation. The site was inspected and the inquest report of the victim's dead-body was prepared. The post-mortem examination of the victim's dead body was performed at about 4.00 P.M. on 10-11-76 by Dr. M.M. Shankhla, the then Medical Officer Incharge, Rural Family Planning Centre, Lohawat. He found the following injuries on the victim's dead body:

External

- (1) One bruise measuring 1'x 1/2' on back
- (2) There was a lacerated wound measuring 2' x 1' x bone deep over right eye-brow. Frontal bone of the skull broken, brain matter was coming out
- (3) Bruise on left frontal eminence measuring 2'x 1' parallel to sagital suture.

Internal

- (1) Frontal bone fractured into four pieces
- (2) Right parietal bone fractured into two pieces
- (3) Left parietal bone fractured into three pieces
- (4) Occipital bone fractured into two pieces

In the opinion of the Doctor, the death had taken place due to cynop caused by heavy impact of injury. The post mortem examination report is Ex. P 8. The accused was arrested on 14-11-76 at Bilara. Inconsequence of the information furnished by him whilst under police custody, the wooden plough used in the commission of the offence was recovered lying burried in his Dhani. The plough was seized and sealed and was sent for chemical examinaation. Human blood was found on it. After when the investigation was over, the police submitted a challan against the accused in the Court of Munsiff and Judicial Magistrate, Phalodi, who in his turn committed the case for trial to the Court of the Sessions Judge, Jodhpur. The learned Sessions framed a charge Under Section 302, IPC against the accused, to which he pleaded not guilty and claimed to be tried. He denied the whole prosecution story as a fabricated piece of concoction and claimed absolute innocence. During trial, the prosecution examined 10 witnesses and filed some documents. In defence, no evidence was adduced. On the conclusion of trial, the learned Sessions Judge held the charge duly proved against the accused. The accused was consequently convicted and sentenced, as mentioned above. Aggrieved against his conviction and sentence, the accused has taken this appeal.

3. We have heard the learned counsel appearing for the accused and the learned Public Prosecutor. We have also examined the carefully record.

4. Learned counsel for the accused contended that the court below crept in an error in putting implicit faith on the testimony of the victim's son Pukha Ram (PW 4). It was argued that being a son of the victim, truth cannot be expected from him. The circumstances point-out that he was fast asleep when the occurrence took place. He was, therefore, not in a position to see as to who was the actual

assailant of his father. It was also argued that according to him the accused gave various blows to the shutters of the door with the plough, but no signs of striking was found on the shutters of the door That renders his whole testimony unworthy of belief. We have given our anxious consideration to the contention and find no force in it True that he is a son of the deceased-victim but that hardly constitutes a valid reason to discard his testimony. There is no rule a of evidence that the witness who is a near relative of the victim should not be believed. Generally, relationship of witness to the deceased-victim is a guarantee of truth. A close relative would be last to screen the real culprit and substitute an innocent person in his place. The testimony of Pukha Ram (PW 4) cannot be discarded merely on the ground of relationship. What is required is that his testimony should be scrutinised carefully and closely.

5. PW 4 Pukha Ram deposed that in the night of occurrence, he and his father, who are the only members in his family, were sleeping in the Sal of their Dhani. In the night while he was awakening, his father Pattu Ram went out to look-after the goat. He went out nude due to superstition that the evil spirits do not affect a nude person. When his father was tying the goat with a tag, the accused took-up the plough lying nearby and struck a blow with it on his father's head. He stunk another blow on his father's right eye. It was a moon-lit night. He raised cries. The accused came towards him but he closed the doors of the Sal to prevent the accused from entering in it. The accused gave a number of blows of the plough on the shutters of the door but the shutters did not give way. He continued to raise cries. The accused also challenged him to come out but he could not dare to do so. Early in the morning Kesu Ram (PW 3) came to his Dhani. The accused had left by that time. Seeing Kesu Ram, the witness came out. He told Kesu Ram that his father was done to death by the accused in the proceeding night. A little while later, Nawla Ram and Asu Ram (PW 7) also came there and he narrated the incident to them. The witness was cross-examined at length but nothing could be elicited from which may make his testimony unworthy of belief or credit. He is a real son of the victim and naturally he would not implicate an innocent person, in place of the real culprit. It is true that no marks of violence of striking blows to the shutters were found on them but that fact alone does not render his testimony suspicious. The blows were struck by a wooden plough and no wonder that no

marks could be caused on the shutters. The learned trial judge accepted the testimony of this witness as true and we find no good and cogent reason to take a contrary view.

6. It was next contended that the court below wrongly relied upon the evidence relating to the extra-judicial confession of the accused. It was argued that there was no occasion for the accused to make a confession that he had committed the murder of Pattu Ram. It was also argued that no person would confess the guilt at a busy place like the Railway Station Platform, Jodhpur. Extra-judicial confession is generally made before a person in whom the accused confides. PW 8 Mohan Lal is not person in whom the accused could repose confidence to make a confession of guilt. We have examined the contention and again find it barren and devoid of merit. PW 8 Mohan Lal is a resident of the accused's village. He deposed that at about 8.00 a.m. on 10-11-76 he was at Railway Station Platform, Jodhpur to board a train of Lohawat. The accused met him there running. He asked the accused as to why he was in hurry. The accused told him that the police was after him. The witness asked him how the police was going to arrest him. The accused thereupon told him that he had killed his uncle Pattu Ram, The witness was also cross-examined at length but his testimony on the whole remained unshaken and unshattered. It does appear that PW 8 Mohan Lal bear any grudge or has any animus against the accused or is otherwise interested in falsely implicating him. While examining the extra-judicial confession we should not ignore the fact that the accused was 17 or 18 years old at the time of occurrence It appears that overwhelmed with the sense of guilt, he made a confession before this witness. It has been consistently held that the value of the evidence as to the confession like any other evidence depends on the veracity of the witness to whom it is made. If the witness speaking about the extra judicial confession is trustworthy, the extra-judicial confession cannot be thrown away. Where there is no motive for the witness implicate the accused falsely; the extra-judicial confession should generally be accepted. An extra-judicial confession, if voluntarily and true, can be relied upon by the Court along with other evidence in convicting the accused. Here the evidence relating to the proof of extra-judicial confession of the accused is sound and suffers with no taint. The contention of the learned counsel that the evidence relating the extra-judicial confession of the

accused should be disbelieved, holds no ground.

7. There is then a very valuable piece of circumstantial evidence against the accused and that is the recovery of blood-stained plough (weapon of offence) in consequence of the information furnished by him whilst under police custody. The accused was arrested on 14-11-76 by the Investigating Officer PW 9 Shanker Lal vide arrest memo Ex. P 10. On 16-11-76 the accused gave the information that he had buried the plough in his Dhani which he would get recovered. The memo of information is Ex. P 11. The accused thereafter took the Investigating Officer and the Motbirs to his Dhani, dug a place and took out the plough from there. This plough was seized and sealed vide memo Ex. P 1. It was sent for chemical examination. As per reports Ex. P 14 and Ex. P 15 of the Forensic Science Laboratory and Serilogist, human blood was found on the plough. This constitutes a very valuable link of implicating evidence against the accused.

8. The accused had a strong motive against the deceased-victim. He had committed a theft of Rs. 1536/- in the house of the victim and was prosecuted for that. He was sentenced to imprisonment and got released only on 9-11-76. Report Ex. P 12 is of that theft case. The accused, therefore, nursed an ill-will against the victim. He did not conceal his ill-feelings against the victim and told PW 6 Bhera Ram that he would kill the victim. PW 6 Bhera Ram is again an independent witness not belonging to the caste of the victim. No reasons appear as to why he would falsely testify against the accused. Since the accused was prosecuted and convicted on a theft-charge alleged to have been committed by him in the house of the victim, he had developed enmity against him. This worked as a strong motive for the accused to finish the victim.

9. The last contention raised by the learned counsel for the accused-appellant is that the offence made out is not covered by Section 300 but by Section 304, IPC. It was argued that the accused went unprepared without any weapon. As such no intention to commit murder could be attributed to him. We are not impressed by the contention. The accused went in the night having a strong motive to finish the victim. He sat out-side the home of the victim like a hawk waiting for its prey. The plough is a formidable , weapon/instrument which can be easily used for deadly

effect. The accused > struck blow on the head of the victim, almost resulting in the fracture of whole skull. The frontal, right parietal, left parietal and occipital bones got fractured due to the blow caused by the accused. That shows the force and impact with the blow was inflicted. Dr. Shankhla (PW 6) categorically stated that the injury on the head was sufficient in the ordinary course of nature to cause death. The case is, therefore, covered by Clause II and III only of Section 300, IPC. The accused well knew that by the infliction of injury on the head, the death was likely to be caused. The material on record unerringly points out that the blow was inflicted to the victim by the accused with the intention of causing such bodily injury as he knew to be likely to cause the death. The case, therefore, falls within the ambit of Section 300, IPC. We are unable to accept the contention that the offence is made out only Under Section 304, IPC.

10. The testimony of the eye witness, the extra-judicial confession, the recovery of the blood-stained plough used in the commission of the offence and the motive leave so room to doubt that the accused is the pre-petrator of the crime and it is he and he alone who caused the murder of Pattu Ram. His conviction Under Section 302, IPC is unassailable. He was rightly convicted.

11. In the result, we find no force in this appeal of accused Manak Ram and dismiss the same.