

Dolia Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-11-1995

Reported in : 1995CriLJ2948

Judge : B.R. Arora and; V.G. Palshikar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : D.B. Cri (Jail) Appeal No. 354 of 1986

Appellant : Dolia

Respondent : The State of Rajasthan

Advocate for Def. : V.R. Mehta, Public Prosecutor

Advocate for Pet/Ap. : Suresh Kumbhat, Adv.

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. These three appeals are directed against the judgment dated 31-7-86, passed by the Additional District and Sessions Judge, Bali, by which the learned Additional Sessions Judge convicted the accused-appellants for the offence under

Section 302/34 IPC and sentenced each of them to undergo imprisonment for life.

2. The appellants were tried by the learned Additional Sessions Judge, Bali, for the offence under Section 302, alternatively under Section 302/34 IPC. The case of the prosecution is that on 11-10-83, Smt. Kesi w/o Samida had gone to graze her she-goats in the jungle. Samida had gone to jungle to call her back and while he was going to bring his wife back, the accused-appellants, at about 7.00 p. m.. met him in the way. Accused Bhuriya was armed with a Kulhari, accused Dolia and Lachha were armed with Lathis. Accused Bhuria inflicted Kulhari blow on the head of Samida and on receiving this blow he fell down on the ground. Thereafter accused Dolia and Laccha inflicted injuries with Lathis to .Samida. Samida cried, 'Maare Re Maare Re' and on hearing his cries, Lakha and Moti went to the place of the occurrence. On seeing them coming, accused Dolia, Lachha and Bhuria ran away. The accused murdered Samida on account of the fact that the jewelleries of Samida's wife were stolen by the wife of accused Lachha and a Panchayat has held and the Panchayat imposed the penalty of Rs. 100/- on accused Lachha. The prosecution, in support of its case, examined ten witnesses. The accused, in their defence, examined two witnesses. The learned Additional Sessions Judge, after trial, convicted and sentenced the accused-appellants as stated above. It is against this judgment dated 30-7-86, convicting and sentencing the accused-appellants that the appellants have preferred these three separate appeals challenging their conviction and sentence.

3. It is contended by the learned counsel for the appellants that the witnesses produced by the prosecution are not reliable one and the ocular testimony of the prosecution witnesses does not find corroboration from the medical evidence as there was no Lathi injury on the deadbody of Samida and the bruises could be caused by a fall on the ground, as is opined by the doctor. It has, also, been contended by the learned counsel for the appellants that the Malkhana Incharge of the Police Station concerned has not been produced and, therefore, the evidence regarding the recoveries of the alleged incriminating articles cannot be read against the accused-appellants. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the Court below.

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

5. The prosecution has produced PW1 Nava and PW2 Ditta to prove the case regarding the theft of the jewellery of the wife of deceased Samida by the wife of accused Lachha and holding of the Panchayat and the imposition of the penalty by the Panchayat on accused Lachha. which has been alleged as the motive for causing the death of Samida by the accused-appellants. PW2 Ditta is, also, a witness to the recovery of the Lathi vide Ex. P 1. PW3 Magga and PW5 Anda Ram are the two Motbir witnesses. PW5 Anda Ram is a witness of the recovery of Kulhari vide Ex. P8 while PW3 Magga is a witness to the preparation of the site-plan. Haalat Moka, Furd Surat Haal Lash, the recovery of the blood- stained soil, the recovery of the clothes of deceased Samida and the recovery of the Lathi. PW6 Lakha, PW7 Moti and PW8 Smt. Kesi have been produced by the prosecution as the eye witnesses of the occurrence. This evidence is sought to be corroborated by the medical evidence of PW4 Dr. Shyam Vaishnava, who conducted the post-mortem examination on the dead body of Samida on 12-10-83. PW9 Mardan Khan was the Constable posted at Police Station, Nana, who took the materials exhibited for examination to the State Forensic Science Laboratory, Jaipur, and deposited the same there. PW10 Inder Singh was the Station House Officer, who conducted the investigation and submitted the challan. The accused in their defence, examined DW1 Sona -- the Sarpanch of the village -- who has stated that the Panchayat was held to find out the murder(s) of Samida as nobody had seen the occurrence. DW2 Dr. R. C. Dinkar has been produced by the prosecution to show that the injury found on the head of Samida was caused by some blunt weapon but the injury appeared to have been caused by some sharp weapon.

The learned trial Court did not believe the statement of PW8 Smt. Kesi, as according to him Smt. Kesi was not the eye witness of the occurrence. The learned trial Court, also, did not believe the recoveries made at the instance of the accused and while convicting the accused, he mainly relied upon the statements of the two eye witnesses, viz., PW6 Lakha and PW7 Moti.

6. The prosecution case mainly rests upon the statements of PW6 Lakha, PW7 Moti and PW8 Smt. Kesi -- the alleged three eye witnesses of the occurrence and the recoveries of the blood-stained weapons used in the perpetration of the crime, recovered on the information and at the instance of the accused-appellants. PW6 Lakha is the brother of deceased Samida, who, also, lodged the FIR in the case. He is an eye witness of the occurrence and has, also, stated the motive with the accused to murder Samida. He is also, a witness to the recoveries made in his presence. He has stated that Samida was killed by the accused present in the Court. According him, accused Bhuria inflicted injury by Kulhari and accused Dolia and Lachha inflicted injuries to Samida with the Lathis. Accused Bhuria inflicted two injuries by the Lathi on the person of Samida whereas accused Dolia and Lachha inflicted injuries on the waist of Samida. Samida's wife had gone to graze her she-goats. When she did not return in the evening. Samida went in search of her. The incident took place near Salarwali Magri, which is situated at a distance of fifty Paundas from his house. He heard the cries 'Maare Re Marre Re' raised by Samida and on hearing the cries he and Moti went to the place of the occurrence and saw (he accused inflicting injuries to Samida. On seeing them accused Bhuria, Lachlia and Doha ran away. When he and Moti reached near Samida, at that time Samida was alive but thereafter he succumbed to the injuries. In the night, there was dark and, therefore, the matter was not reported to the police. On the advice of the Public Prosecutor, this witness further stated that there was some showers in the previous night. He has further stated that the FIR (Ex. P9) was lodged by him. He has, also, admitted that various recoveries were made before him and he appended his signatures on the various Memos purporting to the recoveries. He has, also, stated that accused Lachha's wife had stolen silver Hansli and Rs. 20/- of the wife of Samida; the matter was reported to the Panchayat and the Panchayat imposed the penalty of Rs. 100/ - upon accused Lachha and Lachha did not pay the amount of Rs. 100/- but gave a goat and it was on account of this enmity that Samida was given beatings by the accused. In the cross-examination this witness has admitted that Smt. Kesi regularly used to go to jungle to graze her she-goats and earlier Samida never went to bring back his wife. He has, also, stated that he and Moti were sitting near the door of a Kolha and saw the incident from there. But their seeing the incident from that place was

not possible because the incident took place in the backside of the house while the doors of the house are on the other side and nobody could have seen the incident sitting in front of the house. He has further admitted in the cross-examination that in the FIR Ex. P9 it is stated that he did not go to lodge the report immediately as there was raining but the fact is that on account of darkness he could not go to lodge the report. When confronted with the statement recorded under Section 161 Cr.P.C. that a foul smell was coming from the deadbody, he stated that this fact was wrongly been mentioned in his statement and actually he did not notice any foul smell. Regarding imposition of the penalty of Rs. 100/- by the Panchayat on accused Lachha and the theft took place before; a year, these facts do not find mention in his statement and on being confronted he stated that he said so before the police but why the same have not been written in his statement recorded under Section 161 Cr. P. C, he cannot say. This witness has, also, admitted that when he went to lodge the report at the police station, one policeman was, also, with him. He has, also, stated that Smt. Kesi, is his sister-in-law but he and Moti did not have a talk with her and she immediately went to the house. This witness, though is the brother of the deceased and his presence in the house of deceased Samida was natural as both the brothers were living together, but he could not have seen the occurrence from the place where he and Moti were sitting. As per the statement of this witness, he and Moti were sitting near the door of the Kotha. The incident tookplace on the backside! of the house and not in the front side of the house of Samida. PW10 Inder Singh, SHO, has, also, admitted that the door of the house of Lakha is not on the same side where the dead body of Samida was lying. Samida never used to go to bring back his wife from the jungle wherever she had gone there for grazing the she-goats. It was also, not so late on the relevant day when Samida had gone to bring back his wife. So far as the motive is concerned, the incident of alleged theft of the jewelleries of the wife of Samida took place a year before and the fact of imposition of penalty by the Panchayat on accused Lachha was not a sufficient motive for the murder of Samida. Moreover, it has not come in the evidence that the accused had seen Samida going towards the jungle. As per the prosecution case, there were only six houses, out of which three were of the accused and three of the complainant party. The accused party, if they had any grudge against Samida on account of the alleged incident of theft, there were

ample opportunities with them and, therefore, the motive suggested by the prosecution for committing the murder of Samida by the accused-appellants, does not appear to be believable one. The incident can take place even without any motive and the motive gives an additional-assurance and as such the absence of motive will not shatter the prosecution case. This witness, in his earlier statement recorded during investigation, has not given the version regarding imposition of penalty by the Panchayat on accused Lachha and giving a goat in place of the penalty of Rs. 100/- by accused Lachha. This witness has specifically stated that it was not on account of shower on the earlier night but on account of darkness that he could not go to lodge the report. It has come in the evidence that still one 'Ghadi' day was left in the Sun-set and as such the conduct of this witness in not going to the police station to lodge the report on the day of the incident and giving false explanation and not calling any person to keep a watch over the dead body and not bringing the dead body to his house and the other attending circumstances, make the testimony of this witness suspicious. We are, therefore, of the opinion that the evidence of this witness does not inspire confidence.

7. The next eye witness of the occurrence is PW7 Moti. His statement is almost similar to the statement of PW6 Lakha. The evidence of this witness, also, does not inspire confidence for the same reasons on which we have disbelieved the statement of PW6 Lakha. The further circumstance against this witness is that he is a chance witness. He is not the resident of the village where the incident took place. He had come to the house of Samida only nearabout the time of the incident. The reason for his coming to the house of Samida, though was not given in the examination-in-chief by this witness, but in the cross-examination he stated that he had come there because his wife Smt. Bhuri had sent him to call her brother Lakha as he stated in his police statement but the same was denied by this witness and he stated in the cross-examination that he did not make such statement before the police. This witness has, also, admitted that they heard the cries 'Maare Re Maare Re' when they were sitting in the court yard of the house of Samida and were talking. The accused did not inflict any injury by Kulhari in their presence because there were rains but later on this witness stated that accused Bhuria inflicted two Kulhari blows to deceased Samida before him.

8. PW8 Smt. Kesi has not stated that the incident took place in her presence. She has only stated that she saw the accused running and when she reached near the place of the incident she saw the deadbody of her husband and saw Moti and Lakha sitting by the side of the dead body of her husband and saw them weeping and on being enquired, Moti and Lakha informed her that accused Bhuria, Lakha and Dolia, after killing Samida, had run away. This witness was, therefore, not an eye witness to the occurrence.

9. So far as the recoveries of the blood-stained articles made on the information and at the instance of the accused-appellants are concerned, they, also, do not inspire confidence because these recoveries were made from the open places accessible to all and no evidence to establish the fact that the articles remained in the same sealed condition, has been produced by the prosecution and the Malkhana Incharge of the concerned police station, in whose custody these articles remained, has not been produced by the prosecution. As the recoveries do not inspire confidence they cannot, therefore, connect the accused with the crime. So far as PW1 Nana and PW2 Ditta the Panch witnesses with respect to the earlier incident of theft of the jewellery of the wife of deceased Samida by the wife of accused Lachha are concerned, their evidence also does not inspire confidence because they were examined by the police after ten to fifteen days of the incident.

10. As discussed above, the evidence of PW6 Lakha, PW7 Moti and PW7 Smt. Kesi is not of sterling worth and does not inspire confidence and there is no other evidence connecting the accused- appellants with the crime, therefore, we are of the opinion that the learned Additional Sessions Judge was not justified in convicting and sentencing the accused-appellants for the offence under Section 302/34 IPC.

11. In the result, all the three appeals, filed by accused-appellants Dolia, Lachha and Bhuria, are allowed. The judgment dated 31-7-86, passed by the learned Additional Sessions Judge, Bali, convicting and sentencing the accused-appellants for the offence under Section 302/34 IPC, is set aside and the accused-appellants are acquitted of the aforesaid offence. The appellants are in jail. They shall be

released forthwith if they are not required in any other case.

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