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Kamji Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-20-1995

Reported in : 1995CriLJ3860

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

Acts : Evidence Act - Sections 27; Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : D.B. Criminal (Jail) Appeal No. 465 of 1988

Appellant : Kamji

Respondent : The State of Rajasthan

Advocate for Def. : Bhupendra Bhatnagar, Public Prosecutor

Advocate for Pet/Ap. : Sanjay Mathur, Adv.

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 6-12-1988 passed by the Sessions Judge, Banswara, by which the learned Sessions Judge convicted the accused-appellant for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and a fine of Rupees 500/- and in default of payment

of fine further to undergo two months rigorous imprisonment.

2. Appellant Kamji - a resident of village Palodra was tried by the learned Sessions Judge, Banswara, for committing the murder of Smt. Rangi widow of late Kodar. on 1-4-85 in her cotton field. The case of the prosecution is that on 1-4-85 the deceased Smt. Rangi and accused Kamji were collecting the cotton crop in the field of the son of deceased Smt. Rangi. P.W. Narbada, PW. 4 Smt. Kamla W/o PW. 15 Parteng and PW. 15 Parteng were, also, in their field. Smt. Narbada left the field at about 4-00 p.m. after collecting some fodder. Thereafter PW. 4 Smt. Kamla and PW. 15 Parteng also left the field while the deceased and the accused were left in the field. Smt. Rangi was wearing some silver ornaments. Thereafter Smt. Rangi was not seen alive and on the next day the ornaments, which she was wearing, were not found present on the corpse of Smt. Rangi. Accused Kamji was also, not seen thereafter. The prosecution, in support of its case, examined 19 witnesses. The accused did not examine any witness in his defence. The nature of the evidence, produced by the prosecution, consists of the statements of PW. 4 Smt. Kamla P.W. 15 Parteng and PW. 18 Smt. Narbada. who had last seen the accused in the company of the deceased in her field when they were collecting the cotton crop. This evidence is sought to be corroborated from the statements of PW. 19 Ghanshyam Dutta. PW. 6 Jaggi and PW. 16 Anadeng in whose presence the recoveries of the knife - the weapon of offence - and the ornaments of the deceased, which she was wearing at the time when she was collecting the cotton crop, were recovered and the ornaments, which the deceased was wearing, were identified by the witnesses P.W. 3 Parbateng. PW. 4 Smt. Kamla. PW. 5 Narang. PW. 14 Nathji and P.W. 15 Parteng to be belonging to the deceased. PW. I Vithla was informed by P.W. 3 Parbateng. PW. 14 Nathji and PW. 18 Smt. Narbada regarding the murder of Smt. Rangi in the field and that her deadbody was lying in the field and was asked.to go to the village to inform Roopeng and Nareng regarding the murder of Smt. Rangi. PW. 5 Nareng and P.W. 10 Rupeng have been produced to prove that PW. 1 Vithal informed them regarding the murder of Smt. Rangi in her field and her deadbody was lying there P.W. 2 Amrit Lal is a Motbir witness to the site plan; P.W. 11 Amreng is a Motbir witness to the recovery of the deadbody and the other articles while P.W. 12 Nathji is a witness to the recoveries and preparation of various memos P.W. 7 Dr. Bilas Raj was the

Medical Jurist, who conducted the post-mortem on the deadbody of Smt. Rangi. P.W. 8 Mr. Matadeen Gupta was the Chief Judicial Magistrate, Banswara, who conducted the identification of the ornaments and according to this witness, all the witnesses correctly identified these articles. P.W. 9 Nathu Lal was the Police Constable posted at the Police Station, who took the sealed articles for F.S.L. examination and after obtaining the forwarding letter from the Office of the Superintendent of Police, Banswara, deposited the same in the State Forensic Science Laboratory, Jaipur. P.W. 13 Kushal Singh was the S.H.O., who conducted the initial investigation, made certain recoveries, prepared certain memos and the investigation was thereafter taken by P.W. 19 Ghanshyam Dutta. who arrested the accused, recovered the knife - the weapon of the offence - as well as the ornaments and submitted the challan. P.W. 17 Gumanabeng is the son of the deceased, who has slated that on the day of the incident, he had gone to village Koopda and returned in the night to village Thikariya and on his return to the village he was informed that his mother has been murdered. The deadbody of his mother was handed over to him for cremation and at that time he saw that the neck of the deceased was cut. When he saw the deadbody at that time there were bangles in one of the hands but the silver Kada, Sankli, earrings and Gajai were missing, which the deceased was wearing when she left the house. The learned trial Court, after trial, convicted and sentenced the accused-appellant for the offence under Section 302. IPC. as stated above. It is against this judgment dated 6-12-88, passed by the learned trial Court convicting and sentencing the appellant that the appellant has preferred this appeal.

3. There is no eye-witness to the occurrence and the case of the prosecution rests upon the circumstantial evidence. The learned Sessions Judge relied upon the four circumstances, i.e., (i) the last seen of deceased Smt. Rangi in the company of the accused-appellant in her field while they were collecting the cotton crop and at that time the deceased was wearing the silver ornaments which were not found on her corpse when the deadbody was seen by PW. 18 Smt. Narbada and the other witnesses; (ii) recovery of the blood-stained knife, having 'A' Group of human blood, on the information and at the instance of the accused-appellant; (iii) recovery of the ornaments of the deceased which she was wearing at the time of the incident and their identification by P.W. 18 Smt. Narbada. P.W. 5 Nareng, P.W.

15 Parteng and PW. 17 Gumanabeng; and (iv) the motive with the accused to commit the robbery of the ornaments which deceased Smt. Rangi was wearing at the time of the incident. Now, it has to be seen whether these, four circumstances, which have been relied-upon by the prosecution and believed by the learned trial Court, stand established from the evidence produced by the prosecution and whether these circumstances, if so established, are of conclusive nature and unerringly pointing out towards the guilt of the accused and whether these circumstances complete the chain and excludes any other hypothesis except the guilt of the accused-appellant?

4. The first circumstance relied upon by the prosecution and believed by the learned trial Court, is the last seen of the accused-appellant in the company of deceased Smt. Rangi in her field. The prosecution, on this aspect, has produced three witnesses, viz., P.W., 4 Smt. Kamla, P.W. 15 Parteng - the neighbours of the field - and PW. 18 Smt. Narbada - the daughter of the deceased. P.W. 4 Smt. Kamla has stated that on the date of the incident, she, along with her husband, had gone to their field for collecting the cotton crop at about 2, 3 or 4 p.m. At the lime when they were collecting the cotton crop, she saw Smt. Rangi and accused Kamji in the field of Rangi and they were, also, collecting the cotton crop. Smt. Narbada - the daughter of Smt. Rangi - was, also, in the field who was cutting the fodder. Smt. Narbada came towards Smt, Rangi with a bag containing cotton. When she left the field, she asked them to bring Smt. Rangi with them while returning to the house. When they left the field, they called Smt. Rangi but Smt. Rangi told them to proceed and told that she would come later on. At that time Smt. Rangi and accused Kamji both were in the field. When they reached the house, P.W. 1 Vithlacame there after about one hour to call Nareng and Rupeng and he informed them that someone had killed Smt. Rangi. In the cross-examination, this witness has slated that in her statement Ex. D. 2, she did not state that about ten days before, at about 4-00 p.m., she along with her husband was in her field, Rangi asked them that they should call her while going to the village as she would accompany them and when they reached in the field at that lime Smt. Narbada was not in the field. When she was con-fronted with her statement Ex. D. 2 regarding the presence of Smt. Narbada and her leaving the place after cutting the fodder and the fact of the other agriculturists working in the

neighbor field etc. she disclosed that she stated so to the police but why the police has not mentioned the same in her statement Ex. D. 2. she cannot say. She has, also, admitted in the cross-examination that she had not seen accused Kamji working in the field of the deceased prior to that day and for the first time she had seen accused Kamji on that day. She has, also', admitted that prior to that day she had not seen accused Kamji in the field and for the first time she had seen him on that day only. She has, also, admitted that she did not know accused Kamji. The accused was hot known to this witness. She had not seen him in the village prior to that day. She has, also, not seen the accused either in the village or in the field. She only stated that she knows the name of the accused, but how she knows his name, she is unable to explain. This witness has made several improvements in her statement before the trial Court from her earlier statement. A reading of the statement of this witness clearly shows that she had not seen the accused in the field of Smt: Rangi on the day of the incident along with the; deceased. The evidence of this witness does not inspire confidence.

The next witness produced by the prosecution, who alleged to have last seen the accused in the company of the deceased, is P.W. 15 Parteng - the' husband of P.W. 4 Smt. Kamla P.W. 15 Parteng has staled that on the day of the incident, at about 3-30 p.m., he, along with his wife Smt. Kamla, had gone to his field for collecting the cotton crop. Smt. Rangi, who was his aunt, was also, collecting the cotton in her field. The accused was, also, collecting the cotton in the field of his aunt Smt. Rangi. He along with his wife, left the field at about 5-30 p.m. He did not have any talk with Smt. Rangi at that time. While leaving the field they asked Smt. Rangi to accompany them to the village, upon which Smt. Rangi told him to wait near Boriyawala field where Smt. Narbada was standing and she was, also, coming. While they were returning to the village, Smt. Narbada, who was waiting for her mother, was found sitting near Boriyawala field. Smt. Narbada enquired about her mother, upon which they replied that they have come from the direct way while she is coming from the regular way. Thereafter they left that place while Smt. Narbada remained there. Sometime thereafter P.W. 1 Vithla came to the village and informed Nareng that someone has killed Smt. Rangi in the field. In the morning she was wearing the silver ornaments when she left the house and on the next day when he went at the place of the incident, at that time the silver

ornaments were not present on the corpse of Smt. Rangi. In the cross-examination this witness has admitted that accused Kamji's field is near the field of the deceased and he had not seen the accused working in the field of Smt. Rangi earlier to that day. He has also, admitted that he has no talking terms with the accused, he has, also, admitted that the cotton crop was standing in all the fields but he cannot say whether the other persons were collecting the cotton in their field or not. He has, also, admitted that at about 8-00 or 8-30 p. m, they came to know regarding the murder of Smt. Rangi by the accused but they did not go to the place of the incident in the night and went there only in the next morning. The cotton crop was standing in the field of all the agriculturists and the agriculturists had started collecting the cotton crop. The accused has, also, his own field there. Prior to this date he never worked with Smt. Rangi. They received the information in the night itself regarding commitment of murder of Smt. Rangi in her field but none of them went to the field in the night and it was only in the next day's morning that they went to the field. If they would have got the information regarding the murder of Smt. Rangi in the night itself then they should have gone to the field in the night and would have taken care of the corpse. Their not going to the field in the night and going there only in the morn-ing, clearly shows that they came to know regarding the murder of Smt. Rangi only in the morning and they are deposing against the accused only on the basis of the suspicion. The other villagers, whose fields are situated nearby the field of Smt. Rangi. were, also, collecting the crop. The evidence of this witness that he was in the field and had seen the accused working in the field of Smt. Rangi along with her, does not inspire confidence. Moreover, PW, 18 Smt. Narbada has specifically stated that when she left the field, at that time the accused had already left the field and only Smt. Kamla and Parteng were in their field. According to P.W. 18 Smt. Narbada these were P.W. 4 Smt. Kamla and P.W. 15 Parteng who were last seen with the deceased and not the accused-appellant. It seems that in order to over-come this suspicious circumstance this witness has tried to implicate the accused-appellant with the crime. The evidence of this witness, also, does not inspire confidence.

The next witness produced by the prosecution to prove this circumstance of last seen is P.W. 18 Smt. Narbada - the daughter of the deceased. She has stated that she, along with her mother deceased Smt. Rangi, had gone to the field for

collecting the cotton crop. Her mother was collecting the cotton crop and at that time she was wearing Kadlas, Sankli, Boliya and Berai. She went to the field for taking the fodder at about 4-00 p.m. At that time her mother was collecting the cotton crop and accused Kamji was also collecting the cotton from the field of her brother. Accused Kamji came there with the cotton and handed-over the collected cotton crop to her mother. She asked her mother, 'Let us go to the house', whereupon accused Kamji informed that sufficient time is left in the Sun-set and he will return after sometime. Parteng and Smt. Kamla were, also, collecting the. cotton. She left the place with the fodder and was waiting for the return of her mother near the small bridge. When she was sitting over the small-bridge, Nathji and Parwateng came there and enquired from her why she was sitting there, where-upon she told that she was waiting for the return of her mother from the field. She asked them to wait there and herself went to the field but her mother was not seen there. She started weeping, whereupon Nathji and Parvateng enquired from her what had happened. She informed them that it had become! dark but her mother is not in the field. Thereafter they all searched for her mother in the field and saw| her deadbody in the field. In the meanwhile, P.W. 1 Vithla came there, they sent him to the village to inform Nareng regarding the death of Smt. Rangi. She, also, came to the village. Thereafter the villagers, along with Nareng, came to the place of the incident. Next day, she saw the deadbody of her mother and at that time the ornaments were not found on the corpse of her mother. In the identification parade, this witness has, also, identified the ornaments belonging to her mother, in the cross-examination she has admitted that the accused has his own field adjacent to the field of her brother and he, also, cultivates the cotton in his field. She has, also, admitted that her marriage took place ten years before the date of the incident and she does not know wherefrom her mother purchased the silver ornaments. She has, also, admitted that the ornaments were blood-stained and they were, also, containing soil thereon and such type of ornaments are being worn by the common villagers. According to her, in, the night when they saw the dead body of her mother it was dark and, therefore, she cannot say whether at that time the corpse was having the ornaments on it or not. As per the statement of this witness when she left the field, at that time the accused was not present in the field nor he was in the company of

the deceased at that time as he had left the field by saying that he would come after sometime. She, in the examination-in-chief, has staled as under:-

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When P.W. 18 Smt. Barbada left the field, at that time P.W. 4 Smt. Kamla and P.W. 15 Parteng were there in the field and as per P.W. 4 Smt. Kamla several other persons were also, collecting the cotton in their fields. According to this witness, she had not seen the accused in the company of the deceased when she left the field as the accused had already left the field, as staled by this witness. This circumstance, which has been believed by the learned trial Court that the accused was last seen with the deceased, thus, does not stand proved, rather the accused had already left the place as per the statement of P.W. 18 Smt. Narbada by saying that he would return after sometime. The learned trial Court was therefore, not justified in accepting and believing this circumstance against the accused-appellant.

5. The next circumstance, relied upon by the prosecution and believed by the learned trial Court is the recovery of the blood-stained knife and the ornaments of the deceased which she was wearing when she left the village in the morning. The knife as well as the ornaments were recovered in pursuance to the alleged information given by the accused vide Ex. P. 26 immediately after his arrest. According to P.W. 19 Ghanshyam Dutta. the accused was arrested on 1-4-1985 at 10-5 a.m. and he gave the information under Section 27 of the Indian Evidence Act (Ex. P. 26) at about 11-00 a.m. Though this witness has state that the accused was arrested on 1-4-85 but the other witnesses, produced by the prosecution, clearly stated that the accused was arrested on the next day of the incident, i.e. on 2-4-85. In pursuance to this information Ex.P. 26. as per the prosecution, the accused got the ornaments recovered vide Ex. P. 4 and the knife (the weapon of the offence) vide Ex. P. 5 from a water-course after digging the soil in the presence of P.W. 6 Jagji and P.W. 16 Anandren. The recoveries have been made, as per the prosecution case itself, from the distance of twenty feet from the place of the incident from an open place accessible to all. If the accused had committed

the murder of Smt. Rangi for the purpose of taking away her ornaments then he would not have left the ornaments near the place of the incident and would have taken away those ornaments with him. The recoveries of the ornaments as well as the weapon of the offence from the open place accessible to all do not inspire confidence. Moreover, the identification of these ornaments during the identification held by P.W. 8 Mr. Maladeen Gupta, the Chief Judicial Magistrate. Banswara. also, does not inspire confidence. All the witnesses to the identification, viz., P.W. 18 Smt. Narbada. P.W. 5 Nareng, P.W. 15 Parteng and P.W. 7 Gumanen. have admitted that all these articles were smeared with blood and the soil was, also. found on the ornaments, while the articles, which were mixed with these articles to be identified, did not contain the soil. According to P.W. 8 Mr. Maladeen Gupta, he placed red-ink on the other ornaments which were mixed with these ornaments. There is a mark difference between the blood and the red-ink. When the articles, which were to be identified, were containing the blood-stains as well as the soil on them, were, therefore, clearly distinguishable from the other articles which were mixed with these articles and the witnesses could have easily identified the articles. The identification parade was not held in a proper manner and the identification of these articles, which were distinguishable from the articles mixed, is of no avail to the prosecution. The recovery of the knife - the Weapon of the offence - as well as the ornaments of the deceased, which were made from the open place accessible to all and their identification, for the aforesaid reasons, do not inspire confidence. The learned trial Court was, therefore, not justified in believing these circumstances against the accused-appellant.

6. The last circumstance. which has been relied upon by the prosecution and be lived by the learned trial Court, is the motive in the commission of the crime. According to the learned trial Court the accused was motivated to commit the murder of Smt. Rangi in order to take-away her ornaments. The recovery of these ornaments, on the information and at the instance, as alleged by the prosecution, has not been believed by us. We have, also, not believed the prosecution case regarding the last seen of the accused with the deceased. According to PW 18 Nathji. the accused had left the field and as per PW 4 Smt. Kamla. certain other agriculturists were working in the nearby fields and were collecting the cotton crop. The prosecution has. also failed to prove the motive with the accused to commit

the murder of the deceased for the purpose of taking- away her ornaments. We are, therefore, of the opinion that the prosecution has failed to prove this circumstance, also, against the accused-appellant.

7. There is. therefore, no evidence to connect the accused with the crime and the learned trial Court was not justified in convicting and sentencing the accused-appellant. As the prosecution has failed to prove the aforesaid offence against the accused- appellant, he. therefore, deserve to be acquitted.

8. In the result, the appeal filed by accused- appellant Kamji is allowed. The judgement dated 6-12-88. passed by the learned Sessions Judge, Banswara. convicting and sentencing the accused- appellant is set-aside and the appellant is acquitted of the aforesaid offence. The appleate is in jail. He may be released forthwith if he not required in any other case.

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