

Mithalal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-07-1980

Reported in : 1980WLN(UC)262

Judge : K.D. Sharma and; S.N. Deedwania, JJ.

Appeal No. : D.B. Criminal Appeal No. 222 of 1979

Appellant : Mithalal

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Dinkerlal Mehta

Disposition : Appeal allowed

Judgement :

K.D. Sharma, J.

1. This Is an appeal preferred by Mithalal alias Mava against the judgment of the learned Sessions Judge, Banswara, dated 13th April, 1979, by which the appellant was convicted for the offence of murder under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 100/-, in default of payment of fine to further suffer rigorous imprisonment for one month.

2. The incident that led to the arrest and prosecution may be briefly described as follows : Nathji Pagola lodged a verbal report with the Police at Police Station Bhakiya on 20-10-1973 at 4 P.M. about an incident of murder of Smt. Lali. It was alleged in the report that on 20-10-1978 in the noon Nathji Informant was ploughing his field and his elder brother's wife Mst, Lali was cutting crops of paddy in her nearby field. At that time Chatra son of Joti Pargi resident of T.B. Jimi came in her field having armed himself with an iron 'Kassi' (known as 'Ko' in dialect of that locality) and struck blows with it on her head and thereafter disappeared from there. It was further alleged in the report that the occurrence was eye witnessed by one Kaba also who was working in his field that lay at some distance from the place of incident. On hearing that her elder brother's wife Mst. Lali was lying injured in her field. Nathji informant claimed to have rushed to the house of Velji son of Taju Gracia & to have informed him that his elder brother's wife had been killed by Chatra. Thereafter he professed to have met Velji member to whom also he gave the aforesaid information. Velji member accompanied the informant to the Police Station for making a report of the incident. Nathji informant further stated in the report that he was further informed by his brother that Chatra owed some money to his elder brother's wife who scolded Chatra upon his failure to make the payment and this led to the incident.

3. The above information was reduced to writing by Bansilal SHO Police Station Bhukia, the very day on 20.10 1978. On the basis of the said report Bansilal registered a criminal case under Section 302 IPC and took up usual investigation into the matter. He rushed to the place where occurrence took place the very day on 20-10-1978 and inspected the site and prepared a 'panchanama' Ex. P. 2 on the dead body and a site plan and site inspection memo Ex. P. 3. He took one Datli and blood stained earth into his possession and sent the dead body of Mt. Lali to village Bagidora for post mortem examination. Dr. Z. N. Ansari conducted an autopsy on the dead body of Mt. Lali and found the following external injuries:

1. One oblique contused wound 5 cm. x 2 cm. x cavity deep over occipital bone, Rt. side with fracture of occipital bone.

2. One horizontal confused wound 5 cm. x 2 cm. x cavity deep over occipital bone with fracture of occipital bone.

3. Contusion of 3 cm. diameter over front of Rt. knee joint.

4. Three contusions .of 1 x 2 cm diameter over the Rt. foot medial side near Rt. great toe. 1 to 2 cm. apart.

Upon dissection of the body the doctor detected fracture of occipital bone as at two places at the side of external Injuries over skull. In his opinion the death of Mt. Lali occurred due to shock and hemorrhage as a consequence of ante mortem external injuries Nos. 1 and 2 According to the doctor the duration of death was 20 to 24 hours at the time of post mortem examination and the external injuries were caused by some hard blunt substance and Injuries Nos. 1 and 2 fatal and the rest of them were simple in nature. After the post mortem examination was over Bansilal SHO took into possession Sari of the deceased which she was wearing on her body and sent the blood smeared soil, control soil, sari & iron rod which was recovered at the instance of the appellant and in consequence of his information to Forensic Science Laboratory Rajasthan Jaipur for analysis. The Director of the said Science Laboratory analysed the aforesaid articles and detected blood on them. He, however, forwarded the stained cuttings samples from the articles to the Serologist for Serological examination, but curiously enough the prosecution could not produce the report of the Serologist for reasons best known to it.

4. It will not be out of place to mention that although in the first information report lodged by Nathji, the crime was alleged to have been committed by Chatra son of Jyoti Pargi resident of village T B Jumi, but in the course of investigation Bansilal SHO came to know Kava, Smt. Gangari Smt. Jeetali and Smt. Makur(sic) eye-witnesses that Mithalal alias Mava appellant was responsible for causing the death of Mst. Lali by striking blows on her body with an iron Kassi. Bansilal SHO therefore arrested the appellant and recovered an iron Kassi which was lying concealed in a Nala near the field of Kalu Solanki at the instance of the appellant and in pursuance of his information which he furnished to the SHO while under the Police custody, The SHO collected other necessary evidence in the case and

eventually filed a charge sheet against Mithalal alias Mava appellant under Section 302 IPC. in the court of Munsif and Judicial Magistrate Kushalgarh, who upon finding prima facie case exclusively triable by the court of Sessions committed the appellant for trial for the offence of murder to the court of Sessions Judge, Banswara. The learned Sessions Judge tried the appellant for the offence of murder, found him guilty thereof and convicted and sentenced him in the manner stated above. Aggrieved by his conviction and sentence the appellant has filed this appeal.

5. We have carefully perused the record and heard Mr. Dinkarlal Mehta learned Counsel for the appellant and Mr. H.N Calla Public Prosecutor to the State.

6. It has been strenuously urged before us by Mr. Dinkarlal Mehta learned Counsel for the appellant that the omission of the name of the appellant in the FIR which was lodged with the Police without loss of time by Nathji eye witness was a serious infirmity in the prosecution case, but the learned Sessions Judge did not consider this aspect of the case in its proper perspective and committed a grave error in holding the appellant guilty of murder of Mt. Lali inspite of the fact that the alleged eye witnesses did not come forward for two days to tell the Police that they had seen the appellant inflicting fatal blows with an Iron Kassi on the body of deceased in her field. It was further urged on behalf of the appellant that Chatra whose name was disclosed in the first instance in the FIR, as assailant of the deceased was the real brother of the deceased and so Lalsingh, husband of the deceased and his brother Natha and the other eye witnesses who were Ms caste fellow later on substituted the name of the appellant as assailant for the name of Chatra and falsely implicated him in the commission of the crime.

7. Mr. H.N. Calla Public Prosecutor on the other hand contended that the explanation given by Natha informant for later on substituting the name of the appellant as assailant of the deceased in place of Chatra is convincing and the trial Judge committed no error in placing implicit reliance on the testimony of as many as 4 independent witnesses, namely, Kava, Mst. Gangari, Mst Jeetli and Mst. Hakuri eye-witnesses, who clearly stated in their depositions at the trial that no other person but the appellant was the perpetrator of the crime of murder. As

for the delay in interrogation of the (sic)aloresald eyewitnesses by the police in the course of investigation it was submitted by the Public Prosecutor that Kava eye-witness was not available on 20th and 21st October, 1978 and it was only on 22nd of October 1978 that Kava was examined by the Police and from his statement it was revealed that Mst. Gangari Mst, Jeetli and Mst, Hakuri also were eyewitnesses to the actual occurrence.

8. We have given our earnest consideration to the rival contentions. At the out set we may observe that omission of the name of the appellant as assailant of the deceased in the first information report raises an element of doubt about his identity, specially when Nathji informant was an eyewitnesses of the actual occurrence and would have known the name of the steal assailant of the deceased It is not disputed before us that Nathji was the author of the first information report which was verbally lodged by him with the Police at the Police Station Bhukia a few hours after the occurrence which took place in the field of Mst. Lali deceased on 20.10.1978 at noon. Nathia was admittedly ploughing his field which lay at a distance of about 227 steps from the field in which the occurrence took place. He is the real younger brother of the husband of the deceased and was naturally interested in bringing to book the real assailant of his elder brother's wife. If the appellant was the person who struck fatal blows on the body of the deceased with a Kassi, Nathia who was eye witnessing the occurrence would not have omitted to mention the name of the appellant in the first information report as assailant of the deceased because there appears to be no reason for him to screen the real culprit. Nathia on the other band, mentioned the name of Chatra son of Jyoti Pargi resident of T.B. Jumi as assailant of the deceased and perpendicular of the crime of murder in the FIR and in his subsequent statement before the Police (with which he was confronted and contradicted at the trial) Consequently such an omission to name the appellant creates a reasonable doubt In our mind as to the veracity of the prosecution case specially when Nathia could not reasonably account for the omission, The explanation given by Nathia for omission to name the appellant in the F.I.R. and in hit subsequent statement before the Police is a fantastic one in as much as he changed his earliest version by stating that he did not eyewitness the actual occurrence but it was the appellant who informed him in the way that Mst. Lali was

killed by Chatra. Nathji was conformed with and contradicted by his first information report Ex P.10 wherein he claimed to eyewitness the occurrence and did not mention the name of the appellant assailant of the deceased. When confronted with his first Information report he merely stated that he informed the Police that the appellant had disclosed to him that Chatra was the person who killed Mst. Lali, but he could not say why this fact, was not written in his report by the Police. He was again confronted with and contradicted by portion K to Kh of his statement Ex.D.4 which he gave before the Police on 22-10-1978 and wherein he claimed to rush to the field of his elder brother's wife Mst. Lali on hearing the hue and cries of Kaba and to see the appellant running from the field after striking blows on her head. In his statement at the trial on the other hand he gave an altogether different version by stating that he neither saw Mithia or Meethalal alias Mava appellant killing Lali, nor did he see Chatra causing any injury to her body. Non-mention of the name of the appellant in the first information report in the peculiar circumstances of the case is sufficient by itself for his acquittal because the prosecution could not afford any reasonable explanation why the name of Chatra was mentioned in the F.I.R. in the first instance as assailant of the deceased instead of the name of the appellant, if in fact Mst. Lali was done to death by no other person but the appellant.

9. Apart from this there is another infirmity in the prosecution case for which there is no reasonable explanation from the side of the prosecution. The infirmity is that the other eyewitnesses, namely, Kava, Mst, Gangari. Jeetli and Hakuri were not examined by the S.H.O. earlier than 22-10-1978, although there is nothing on the record to show that they were not available for interrogation on 20th or 21-10-1978. The name of Kava P.W.10 was mentioned in the F.I.R. as an eyewitness to the occurrence. He admitted in his cross examination that he was present at the place of occurrence when Panchnama was prepared by the Police on the dead body of Mst. Lali, from the statement of Bansilal it is obvious that the Panchnama was prepared on 20-10-1978. If Kava was present, as admitted by Kava himself in his deposition at the trial, at the spot where Panchnama was prepared on the dead body on 20-10-1978 by Bansilal S.H.O. there appears to be no reason why his statement was not recorded by the Police on 20-10-1978. The statement of Kava regarding his presence on the spot at the time of preparation of the Panchnama on

the dead body appears to be true as it finds support from the testimony of P W 4 Shambulal Motbir, who clearly stated in his cross-examination that the person Cava by name also was present there along with 10 or 12 persons, when Panchnama was prepared by the police. Likewise the houses of Sent. Gangari. Smt. Jeetli and Smt. Hakuri were not far of from the place of occurrence. These witnesses also were examined late on 20-10-1978 for reasons best know to Bansilal S.H.O. It appears that for 2 days i.e. 20th and 21-10-1978 there was no substitution of the name of the appellant as assailant of the deceased for the name of Chatra, but laterton 22-10-1978 the investigation took a sudden turn for reasons unknown and the name of the appellant was Introduced in place of Chatra as an accused In the case. Be that as it may all the eyewitnesses could no afford any reasonable explanation why they themselves did not come forward to say before the villagers or before the police for two days that they had seen the appellant striking bellows on the head of the deceased with an Iron Kasi. Curiously enough Mst. Jeetli P.W. 9 did not inform her husband Somaji also about the identity of the deceased because if she had disclosed to her husband that the appellant was responsible for causing Injuries to the deceased the latter would have surely informed Lalsing husband of the deceased about this fact Lalsingh P.W.13 clearly stated in his deposition at the trial that Somaji came to him after the occurrence and merely informed him In the bus that Ms Lali had been murdered. There is another circumstance which throws considerable doubt on the evidence of these eye-witnesses. The circumstance is that they admittedly did not go to the field neither at the time of occurrence nor thereafter which is not an usual phenomenon specially when they claimed to have seen the appellant committing the crime and thereafter running away from there. Kava gave an unconvincing reply when he was asked in his cross-examination as to why he did not go to the field, of the deceased at the time of occurrence or soon thereafter. His reply was that he did not go there because he was controlling the bullocks at that time and apprehended that the bullocks could go astray if he had left them in his field and gone away to the field of the deceased. Apfrom this he stated at the trial that before making an assault on Mst. Lali the appellant had dragged her by catching hold of her hand for 10 minutes. The above statement does not find place in his earlier statement Ex. D 2 with which he was confronted and contradicted in cross-exam' Ination. The

appellant was a lad of 16 or 17 years at the time of occurrence. If Kava had seen him dragging Mst. Lali for 10 minutes by catching hold of her hand the natural conduct of Kava would have been to rush to the field of Mst. Lali for her rescue. Likewise the natural conduct of the three women eye witnesses would have been to raise a hue and cry at least on seeing the appellant committing the crime of murder by causing fatal injuries on the head of Mst. Lali with an iron Kasi, but their evidence is that they kept quiet at the time of the occurrence and later on disclosed to the police on the third day of the incident that they had seen the appellant committing the crime. Their above statement does not find support from the testimony of Bansilal SHO who on the other hand, claimed to have recorded their statements after 2 days i.e. on 22-10-1978 Hence for reasons stated above we are of the view that it was not safe to rely upon the evidence of the eye-witnesses and to convict the appellant on its basis.

10 The Public Prosecutor further urged that a Kassi was recovered from the bed of a Nala at the instance of the appellant and in consequence of his Information which he furnished to Bansilal SHO while in the police custody and the Kassi was found stained with blood by the Director Forensic Science Laboratory Jaipur and so this circumstance also may be taken into consideration in determining the guilt of the appellant. The above contention has no force because there is no report of the Serologist that the Kassi was stained with human blood. Hence the recovery of the Kassi is of no material significance in this case.

11. For the foregoing reasons we are unable to maintain the conviction of the appellant under Section 302 IPC.

12. We, therefore, accept the appeal of Meethalal alias Mava s/o Pemji by caste Adivasi, district Banswara, set aside his conviction and sentence under Section 302 IPC and acquit him of the same. The appellant is in Jail. He shall be set at liberty forthwith if not required in connection with some other case.

13. The Public Prosecutor orally prayed for grant of certificate for leave to appeal to the Supreme Court. As the appeal has been decided on application of evidence and as no substantial question of law is involved in this appeal which requires authoritative decision by the Supreme Court, the oral prayer for leave to appeal is

rejected.

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