

Narain Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : May-19-1984

Reported in : 1984WLN(UC)197

Judge : M.C. Jain and; S.S. Byas, JJ.

Appeal No. : D.B. Criminal Appeal No. 405 of 1982

Appellant : Narain

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. N.N. Mathur

Disposition : Appeal allowed

Judgement :

M.C. Jain, J.

1. The appellant Narain was convicted of the offence under Section 302 and also for the offence under Section 201 IPC by the Sessions Judge, Dungarpur and on the first count he was sentenced to imprisonment for life and on the second count no separate sentence was awarded.

2. The prosecution story in brief is that Mohan, the brother of the accused Narain lodged a report Ex. P. 8 at the Police Station Dhamola at about 9.45 P.M. that this

younger brother's wife Mst. Kali had gone from the house in the evening with an earthen pitcher, metal pitcher and a string along with a blouse but she did not return for a sufficient time. Thereupon his brother Narain went to the well. He found the pitchers and blouse lying there but he did not see his wife. He then raised an alarm which attracted Bhaga s/o Rama and Kalu s/o Nava. The dead body was taken out. On this report, proceedings under Section 174 Cr.P.C. were initiated and autopsy on the dead body was got conducted and on receipt of the post mortem report, it was revealed that the death was not caused on account of drowning and the deceased met with homicidal death. The post mortem report was received on 5th June 1982. Thereupon case under Section 302 and 201 I.P.C. was registered. The investigation was undertaken by PW 11 Raj Singh who conducted the investigation. He arrested the accused on 12th June, 1982. Before that he conducted the spot investigation and on the information Ex. P. 10 he recovered one Kose article vide recovery memo Ex. P. 6. Investigation was conducted from the witnesses and after completion of the investigation charge sheet was presented against the appellant. The learned Magistrate before whom the charge sheet was presented committed the accused to the court of Sessions Judge, Dungarpur for trial.

3. The appellant was charged for the offence under Section 302 and 201 I.P.C. The appellant pleaded not guilty and claimed to be tried. At the trial the prosecution examined P.W. 1 Usman Khan, P.W. 2 Bhura, the father of Mst. Kali P.W. 3 Dariyati, the sister of the deceased aged about ten years; P.W. 4 Jamra, the mother of the deceased P.W. 5 Punja, the uncle of the deceased P.W. 6 Nava r/o Sadariya P.W. 7 Dr. Bihari Lal Berwa P.W. 8 Kashi Ram, Motbir of spot investigation. P.W. 9 Bhagwati, Motbir of recovery of Kose P.W. 10 Ganesh Lal Motbir of Panchnama and P.W. 11 Raj Singh, Investigating Officer. Statement of the accused was recorded in which he denied the prosecution case. No evidence was led in defence. The learned Sessions Judge placed reliance on the testimony of P.W. 2 to P.W. 5 and has disbelieved the testimony of P.W. 6 Nava and in the light of the medical evidence and the statements of the above four witnesses found that offence has been brought home to the accused. Consequently he convicted the accused appellant for the offences under Section 302 and 201 I.P.C. Hence this appeal by the appellant.

4. We have heard Mr. N.N. Mathur, learned Counsel for the appellant and Mr. L.S. Udawat, learned Public Prosecutor for the State and we have perused the case record.

5. After perusal of the record we are of the opinion that there is no connecting evidence against the accused on the basis of which the accused can be found guilty of the offences under Sections 302 and 201 IPC. The most material witness in the case was Nava who said to have witnessed the accused throwing a big bundle in the well which raised suspicion in his mind. When he learnt that Mst. Kali was recovered from the well, he thought that that bundle must be of the deceased Kali. The learned Sessions Judge dealt with the evidence of Nava P.W. 6 in sufficient details and has given reason with which we agree for not placing any reliance on the testimony of the witness Nava. There was no occasion for this witness to be present in the evening at the distance of 100 paces from the well from where the dead body was recovered. If this witness would have witnessed the accused throwing the big bundle, then suspicion should have arisen in his mind and at that very moment he should have reached the well and enquired from the accused as to what he has thrown in the well. Such was not the conduct and behaviour of the witness which makes his version unbelievable. No reliance can be placed on his testimony. That apart, this witness is contradicted by the testimony of Bhura and Jamna. According to this witness both were not available at the house whereas Bhura and Jamna state that Nava visited them and gave the version that he had seen the accused throwing a bundle in the well. The other contradictions have also been noted by the learned Sessions Judge which appeared in his investigation statement and the statement at the trial.

6. The other clinching circumstances which render the statement of this witness incredible are that he is said to be present at the time when the police arrived and the dead body was recovered. Had he seen the accused throwing the bundle in the well, this fact certainly would have been brought to the knowledge of who had assembled at the well. Bhura and Punja would have revealed this particular fact to the police. The statement of Nava was recorded by the police as late as 17-6-82. This alone is sufficient to discard the testimony of this witness. Thus in our opinion the learned Sessions Judge was right in disbelieving the statement of this witness.

If the statement of this witness is excluded from consideration then there remains the testimony of the aforesaid four witnesses viz. Bhura, Dariyati, Jamna and Punja. Out of these four witnesses the material statement is of Dariyati. According to the prosecution case, as deposed to by Bhura and Jamna she was sent to fetch Kali as her brother was ill. According to Dariyati when she visited the house of Kali. Kali was found sitting on the back sick of her house and according to her, Kali disclosed to her that she is not in a position to move and she may tell her parents that she has been threatened to be beaten to death. Dariyati informed Bhura and Jamna what Kali said to her. It may be stated that this threatening part said by Dariyati in her trial statement, does not find mention in her police statement Ex. D.2. She did even divulge the version given by Kali to her parents Bhura and Jamna. The version given by Dariyati to Bhura and Jamna is that Narain has caused the death of Kali. Thus the statements of Bhura and Jamna are contradictory to the statement of Dariyati and the versions given by Bhura and Jamna is not given out by Dariyati, If the matter is examined in the light of the statement of Dariyati then it cannot be found as to who extended the threat to Mst. Kali. Dariyati has nowhere stated that such threat was extended by the accused Narain. Thus Dariyati's statement does not in any way advance the prosecution case. From her statement it cannot be inferred that the accused was in any way responsible for the death of Mst. Kali.

7. So far as the statements of the other three witnesses are concerned, their statements do not in any way establish commission of the offence. Jamna and Punja were other persons who were sent by Bhura Jamna's version is that when she visited the house of the appellant Narain, Narain said that he will not permit her to meet Kali and he asked her to go away. Narain ran after her but thereupon she fled away. This version does not find mention in her police statement Ex D.3. So far as Punja is concerned, his statement, is that Narain's Baba Punja told that children say that Kali has fallen in the well Punja was already informed by Bhura that Narain has killed Kali so he may go and find out. The statement of Punja does not in any way link the accused with the offence. The learned Sessions Judge in view of the medical opinion, arrived at the finding on the basis of inference drawn from the testimony of PW 2 to PW 5. Such an inference is nothing but a conjecture. On the basis of suspicion the appellant cannot be found guilty of

the office with which he has been charged. Suspicion however grave cannot take the place of proof.

8. So far as medical evidence is concerned, is categorical. Dr. Bibari Lal Berwa stated that the injuries on the person were ante mortem in nature. There was fracture of 4th cervical vertebrae which was ante mortem in nature and there was bruise on the back side of neck which was also antemortem in nature. He did not find water inside the body. He categorically opined that the death was not caused by drowning the body into the well. Although Dr. Berwa stated that the fracture on 4th cervical vertebrae can cause shock and it may result into instantaneous death but it cannot be conceived that if any one falls in the well that such a fracture of 4th cervical vertebrae may result in instantaneous death in the process of falling. On the basis of the medical evidence it can reasonably and legitimately be found that the death of Kali was homicidal in nature but how she met her death is not at all established by the prosecution and in our opinion prosecution has miserably failed to prove that the appellant was responsible for causing the death of his wife Kali.

9. Thus conviction of the appellant for the offences under Section 302 and 201 deserves to be set as de.

10. Accordingly this appeal is allowed. The convictions of the appellant for the offences under Section 302 and 201 are set-aside and he is acquitted. He is in custody. He shall be released forthwith if not required in any other case.