

**Mohan Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Aug-05-1987

**Reported in :** 1988WLN(UC)61

**Judge :** S.N. Bhargava and; G.K. Sharma, JJ.

**Appeal No. :** D.B. Cr. Appeal No. 477 of 1984

**Appellant :** Mohan

**Respondent :** State of Rajasthan

**Disposition :** Appeal allowed

**Judgement :**

G.K. Sharma. J.

1. This appeal is directed against the judgment dated 25th Aug., 1984, passed by the Sessions Judge, Sikar, convicting the appellant under Section 302, IPC and sentencing him to imprisonment for life, and a fine of Rs. 1,000/- and in default of payment of fine to further undergo six months' rigorous imprisonment; he has further been convicted under Section 201, IPC and sentenced to two year's rigorous imprisonment and a fine of Rs. 500/-and in default of payment of fine, to further undergo three months' rigorous imprisonment. Both the sentences awarded to the appellant, were however, ordered to run concurrently.

2. One Sukharam Balai gave a Parcha-Bayan at PS, Dantaramgarh, on 29th April, 1984 at about 1 p.m., alleging that Nathuram and Prabhu Balai used to cultivate the field of Hanuman Pareek. His field was adjacent to the field of Hanuman Pareek. His real sister was married to Prabhu Balai, and as such, he was very well-acquainted with their family. Mohan appellant is also brother of Prabhu, Mohan was helping Prabhu in cultivation for the last about 15 days. He had illicit relation with the wife of Nathuram. Mohan and Nathuram were not on cordial terms on account of that fact. Prabhu had gone to village, while Mohan and Nathuram were at the field. The report further was that on the previous day, Chhitar Balai had come to his well and informed him that Nathuram had fallen into the well of Hanuman Pareek. Thereupon, in the evening, he told the said fact to Magan Singh Rajput. It is then mentioned in the Parcha-Bayan that last evening at about 8-9 O'clock, the dead body of Nathu was taken out from the well, and he was silently cremated. Sukharam further stated in the Parcha-Bayan that it was rumour everywhere that Mohan and Mst. Barji, wife of Nathu both had murdered Nathu and dropped him into the well, and that without informing the police, the dead body had been cremated.

3. On this report, the police registered a case under Sub-sections 302 and 201, IPC and investigated the matter.

4. After having usual investigation, the police submitted a challan against Mohan and Mst. Barji.

5. The learned Sessions Judge framed charges against both the accused persons who pleaded not guilty and claimed trial.

6. The prosecution examined 9 witnesses to establish its case. No witness was, however, examined by the accused persons in their defence.

7. The learned Sessions Judge, after concluding the trial found no case established against accused Barji, and so, she was acquitted of the charges framed against her. The trial Judge, however, found-appellant Mohan guilty and sentenced him as mentioned above.

8. The learned Counsel for the appellant have argued that in this case, there is no eye-witness to the alleged occurrence, and that the entire case depends on the circumstantial evidence only. According to them, the only statement in this case, is that of Mst. Mangli PW 1, wife of Prabhu Balai, who is brother of the appellant. It was then argued that the only evidence on the basis of which the accused-appellant has been found guilty, is the extrajudicial confession made by him to Mst. Mangli PW 1 and as such, the entire case rests on the statement of Mst. Mangli, and the extar-judicial confession made to her by the appellant, alleged by the prosecution.

9. The learned Public Prosecutor, on the other hand, has argued that the accused very clearly made confession before Mst. Mangli, and he has rightly been convicted and sentenced by the trial court, on the basis of the said extra-judicial confession.

10. We have considered the arguments advanced by both the learned Counsel for the parties. The only point to be considered in this case is as to whether the statement of PW 1 Mst. Mangli is reliable or not It is to be seen whether any confession was made by the accused-appellant to Mst. Mangli.

11. Mst. Mangli PW 1, in her statement, has stated that deceased Nathu was real brother of Mohan accused, and her 'Jeth' (elder-brother of husband). Mohan had illicit relation with Mst. Barji, wife of deceased Nathu On account of this fact, her Jeth Nathu (deceased) was annoyed with Mohan accused-appellant. Her statement further is that on the night of the alleged occurrence, she was sleeping in her 'Tapri' (hut) her husband Prabhu had gone to village to meet his brother. In the midnight, accused Mohan came and opened the 'Gumti'(small room) where there was electric-connection of the well. She was sleeping near the Gumti she woke up and asked Mohan as to why he opened the Gumti; to which the latter replied as to what business she had got Then, after an hour or two Mohan again came back to Gumti and opened it. So, she again asked him the same question, whereupon Mohan asked her to keep silent if she wanted to be alive. As such, she did not go to Mohan. On the next morning, she asked Mohan about her Jeth Nathu, at which, Mst. Barji told her that he had gone to take tea. After about two

hours she again inquired about Nathu, and then Mohan asked her to pardon him, and replied that he had dropped his 'Dadya' (elder brother) into the well. In her cross-examination, she has said that Mohan used to visit the house of Nathu for the last five years, who also lived with him, and that, she had never seen any dispute or quarrel between Nathu and him. She has also said that she had not told her husband about the confession made by Mohan nor did she tell this fact to any other person. Even, she did not tell it to the police. She has also said that she was not threatened by Mohan when the latter asked to pardon him.

12. After reading the entire statement of Mst. Mangli PW 1. we are of the opinion that her statement is a most unreliable one. According to her Mohan was living with Nathu for the last 5 years, and she had not seen any dispute between the two brothers. Then, when Mohan confessed to her about his guilt and did not threaten her, why did she not tell this fact to her husband? It is in the evidence that Mohan appellant had gone to village and informed his brother Prabhu and other villagers about the fact that Nathu had fallen into the well. Prabhu had gone to his 'Dhani'. Had it been a fact that Mohan had confessed to Mst. Mangli his guilt, she should have informed her husband Prabhu about the same. She knew that Nathu had been murdered by Mohan, and Nathu was her Jeth, so she should have told about the confessional statement made by the accused to her, husband as well as the other villagers. Why did she keep silent? This all shows that Mst. Mangli PW 1 is an unreliable witness, and has been subsequently made out as such; and the story of extra judicial confession has been concocted. It cannot be believed that Mst. Mangli would not disclose anything about the confessional statement to anyone, especially, to her husband. If Mohan had actually murdered his own brother, he would not have gone to village to inform his brother Prabhu and other villagers about this fact. Therefore, the extra-judicial confession as alleged by the prosecution is unbelievable. The statement of Mst. Mangli PW 1 is unnatural and untrustworthy. The learned Sessions Judge, in our considered view has not been able to appreciate the statement of Mst. Mangli, correctly, and he has incorrectly arrived at the conclusion. We are, therefore, unable to agree with the finding recorded by the learned trial Judge. So the judgment of the learned Sessions Judge, cannot be maintained.

13. In view of our above discussion, we find that the prosecution has failed to establish its case against the accused-appellant, who has been wrongly convicted under Sections 302 and 201, IPC.

14. In the result, the appeal filed by accused Mohan is accepted. The conviction and the sentence passed against him by the trial court under Sections 302 and 201, IPC, are set aside, and he is acquitted of the said charges. He is in jail. He be released forthwith, if not required in any other case.

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