

Tola Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-05-1994

Reported in : 1996CriLJ8; 1995(1)WLC144

Judge : J.R. Chopra and; R.R. Yadav, JJ.

Acts : Evidence Act - Sections 8; [Indian Penal Code \(IPC\), 1860](#) - Sections 84 and 302; Code of Criminal Procedure (CrPC) - Sections 328 to 339

Appeal No. : Cri. Jail Appeal No. 412 of 1986

Appellant : Tola Ram

Respondent : State of Rajasthan

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

Advocate for Pet/Ap. : Sukh Ram, Adv.

Disposition : Appeal dismissed

Judgement :

R.R. Yadav, J.

1. This appeal is preferred against the judgment dated 29-9-86 passed by the learned District and Sessions Judge, Jalore in sessions case No. 37/85 by which he found Tola Ram @ Tolia guilty for the offence Under Section 302, IPC and

sentenced him for life imprisonment and a fine of Rs. 100/- and in default to further undergo one month's simple imprisonment.

2. According to the prosecution story it is alleged that on 26-9-85 at about 9.30 a.m. Thakra Ram, real brother of accused appellant Tola Ram, lodged a written report at Police Station Ahore stating therein that his real brother Tolia who is living separately with him had committed murder of his wife by causing injuries on her neck and head by an axe. According to the FIR lodged by his real brother, it is alleged that for some time accused appellant was mentally depressed and emotionally surcharged. It is further disclosed in the FIR that the dead body of deceased Bhikhi is lying in pool of blood in the ori (inner room) of the house of the accused appellant and her blood has also spilled in the courtyard.

3. On the basis of written report Fix. P I. a formal FIR Ex. P/14 was drawn at Police Station Ahore and investigation commenced.

4. It is alleged by the prosecution that on the hue and cry raised by deceased Bhikhi, two sons viz. Dewa PW 2 and Dunga PW 3. sons of Thakra Ram went to the house of the accused. They found the door of the house of the appellant bolted from inside. Then both of these witnesses entered in the house of the accused appellant by jumping from the wall of another house adjoining to the house of the deceased. When both the aforesaid witnesses entered in the house, the accused-appellant opened the door of his house and came out from his house. Both these witnesses caught hold of the accused-appellant and tied him to a Neem tree.

5. After completion of investigation, the challan was submitted by the police Ahore against the accused-appellant in the court of learned Civil Judge and Chief Judicial Magistrate, Jalore who committed the case for trial to the court of learned District and Sessions Judge, Jalore.

6. The learned District and Sessions Judge framed the charges against the accused appellant under Section 302, IPC.

7. The accused appellant pleaded not guilty and claimed trial.

8. The prosecution examined nine witnesses namely PW 1 Thakra Ram, PW 2 Deva Ram, PW 3 Dunaa, PW 4 Smt. Kanku, PW 5 Hadmat Sinah, PW 6 Parbal Singh, PW 7 Dalip Singh, PW 8 Dr. Hanuman Dutt, Medical Jurist and PW 9 Som Singh, Investigating Officer in support of the prosecution story and also produced 17 documents Ex. P/1 to Ex. P/17. The accused-appellant pleaded ignorance about the offence and stated that his mind at present is not working properly.

9. After hearing the learned Public Prosecutor and the learned counsel for the defence, the learned District and Sessions Judge passed the aforementioned sentence against the accused-appellant.

10. We have heard the learned counsel for the accused-appellant Shri Sukh Ram and Shri V.R. Mehta, learned Public Prosecutor appearing on behalf of the State and we have gone through the evidence on record carefully.

11. The learned counsel for the appellant Shri Sukh Ram submitted before us that there is no direct evidence about the commission of the offence by the appellant and the accused appellant was of unsound mind at the time of occurrence. Secondly according to the learned counsel for the appellant, all the witnesses produced by the prosecution in support of prosecution story have been declared hostile and lastly according to him the prosecution story has failed to prove the motive in the instant case.

12. The learned Public Prosecutor Shri V.R. Mehta refuted the aforesaid contention and has submitted before us that in the instant case there is a ring of truth in the circumstantial evidence produced and the witnesses who have been examined on behalf of the prosecution are the kith and kin of accused-appellant, therefore, although at investigation stage they have supported the prosecution story but after lapse of time they have deliberately made an attempt to create confusion obviously to help the accused. According to the learned Public Prosecutor, a critical scrutiny of all these witnesses produced by the prosecution leads to an irresistible conclusion that it was the accused-appellant who committed the murder of his wife. According to the learned Public Prosecutor, it is not necessary for the prosecution to establish the motive which is invariably best known to the accused himself.

13. It is true that in the instant case there is no direct evidence about the commission of offence by the accused-appellant and the case is based on the circumstantial evidence. Before we enter into the merit of the case, it would be well to remember that it is a settled law that a fact is taken to be proved when after considering the matter and natural course of human conduct the court believes to it to exist or consider its existence so probable that a prudent mind ought under the circumstances of the particular case to act upon the supposition that it exists.

14. It is important to mention here that in Ex. P/1 written report lodged by the real brother of accused it is clearly mentioned that the accused-appellant Tola Ram was living separately from his brother. It has come on the record in the statement of PW 2 Deva Ram and PW 3 Doonga that at the time of occurrence when they heard a hue and cry from inside the house of the accused appellant, the door of his house was bolted from inside. It is further deposed by the aforesaid two witnesses that when they entered into the house of accused-appellant there were only three persons in the house i.e. accused-appellant, deceased Bhikhi and their son aged about 2 or 2½ years, who was sleeping in the room. The statement of PW 2 and 3 further throws a flood of light that when they found that the door of house of the accused-appellant was bolted from inside they jumped into the house of accused-appellant from, a wall of another house adjoining to his house. It is also came in the evidence of PW 2 Deva Ram that when they jumped into the house of Tola Ram, he unbolted the door and went outside which clearly means that he alone was in the house at the time of his wife's murder in addition to the child aged 2 to 2½ years. PW 3 has however stated that he and Deva Ram both caught hold of the accused and tied him to a Neem tree and at that time clothes of Tola Ram were blood stained. When the news of the murder of his wife by him became known to the residents of the village, they assembled at the house of the accused-appellant immediately thereafter then he saw Mst. Bhikhi lying dead in the room and lot of blood was flowing from her body. PW 1 Thakra Ram has lodged the written report at the Police Station at 9.30 p.m. about this incident. These statements of PW 2 Deva Ram and PW 3 Doongae entering into the house of accused Tola Ram further get supported by the testimony of PW 4 Mst. Kanku.

There is yet another clinching evidence to prove the involvement of the accused in the crime. As per PW 3 Doonga clothes of the accused were blood stained when he came out of his house. These clothes have been seized and chemical and serological report Ex. P 17 shows that clothes of the deceased and of the accused were stained with B Group of blood along with the Kulhari recovered on the information and at the instance of the accused. PW 8 Dr. Hanumandutt has proved the post-mortem report of Mst. Bhikhi marked as Ex. p. 13. He found as many 9 incised wounds on her body by which her both parietal bones, occipital bones and 2nd servical verterbra were fractured. These injuries in the opinion of the Doctor were anti mortem and sufficient to cause her death in ordinary course of nature. These, injuries as per doctor could be caused by an axe.

15. In view of the aforesaid discussion, the argument of the learned counsel for the appellant that since in the instant case there is no direct evidence about the commission of offence by the accused-appellant, therefore, the learned Sessions Judge has committed an error in convicting the appellant on the basis of circumstantial evidence is not acceptable to us. The argument of the learned counsel to the effect that an accused, person should always be convicted only on the basis of direct evidence is also not acceptable to us inasmuch as it is a settled principle of law that if there are chain of circumstances which indicates about the guilt of the accused and the circumstantial evidence is clinching then an accused can be convicted on the basis of circumstantial evidence also. In the present case there is a complete chain of circumstances discussed by the learned District and Sessions Judge which leads to an irresistible conclusion that it was the accused-appellant alone who has committed the murder of his wife after bolting the door of his house from inside and when PWs 2 and 3 entered in his house by jumping the wall of another house adjoining to his house then it was he who opened the door and made an attempt to leave his house but PWs 2 and 3 caught hold of him and tied him to a Neem tree.

16. The story of the defence that at the time of commission of offence the accused-appellant was not mentally fit to understand his action, is not believable. Had it been so as suggested by the learned counsel for the appellant then he would not have made an attempt to leave the house when PWs 2 and 3 entered

into his house by jumping from a wall of an adjoining house. The attempt of the accused-appellant to escape from the scene of occurrence after arrival of PWs 2 and 3 further throws a flood of light on this aspect of the matter that he was mentally in a fit condition and he was capable to understand what is wrong and what is right and therefore, he is not entitled to get the benefit of Section 84 of IPC.

17. Insanity contemplated Under Section 84, IPC to be recognised as an exception to criminal liability must be such as to disable to an accused person from knowing the character of the act he was committing when he commits a criminal act. If at the time of commission of the offence, the accused-appellant knew the nature of the act he was committing, he cannot be absolved of the responsibility for the offence of committing murder of his wife. In this connection it is important to mention that the Burden of proof that the mental condition of the accused was at the crucial point of time was such as is described by Section 84, IPC lies on the accused who claims the benefit of this exemption. As a matter of fact hence where there is no evidence whatsoever brought on record by the accused to prove that at the time of the commission of the murder of his wife, he was of unsound mind and as such incapable of knowing the nature of his act and was not able to understand that his act is either wrong or contrary to law. Therefore, the argument of the learned counsel about the plea of unsoundness of mind of accused-appellant is repelled.

18. There is yet another reason to repel the argument of the learned counsel for the appellant about the unsoundness of mind of the accused-appellant inasmuch as in such cases a separate Chapter XXV, Cr. P. C. is provided where specific provisions under Section 328 to 339 have been made. Had it been a truth that the appellant was of unsound mind then the accused-appellant or his counsel appearing before the learned District and Sessions Judge ought to have made an application for deciding the trial by following the procedure provided for trial of an accused person of unsound mind as provided in the aforesaid Sections of Cr.P.C. In our humble opinion the plea of unsound mind of the accused appellant cannot be permitted to be; raised in appellate jurisdiction before us.

19. It is true that the aforesaid argument was also raised before the learned District and Sessions Judge and the learned District, and Sessions Judge has rightly rejected the aforesaid argument after analytical discussion of oral and documentary evidence on record with which we are in full agreement.

20. The second argument of the learned counsel for the appellant before us is that almost all the witnesses in the present case have been declared hostile, therefore, the learned District and Sessions Judge has illegally placed reliance on the deposition of the aforesaid witnesses which has occasioned injustice to accused-appellant. It is settled law that the evidence of the witnesses who are declared hostile is not wiped out of the record. It is as much relevant as any other piece of evidence and whatever part of such testimony is reliable it can be acted upon.

21. We have given our thoughtful consideration of the aforesaid arguments and have critically examined the finding of guilt recorded by the learned District and Sessions Judge against the accused-appellant and we are of the opinion that the substratum of the story narrated by PW 1 Thakra Ram, PW 2 Deva Ram, PW 3 Dunga, PW 4 Smt. Kanku leads towards an irresistible conclusion that it is the accused-appellant who committed the murder of his wife after bolting the door of his house from inside and when PWs 2 and 3 entered in his house from jumping a wall of an adjoining house then he made an attempt to escape but he was caught hold by PWs 2 and 3 and was tied to a Neem tree.

22. We have also examined the prosecution story from the natural course of human events coupled with all surrounding circumstances in the present case and we are of the opinion that in the house of accused-appellant there were only three persons at the time of occurrence i.e. firstly the accused, secondly the victim, his wife Bhikhi and thirdly their son, who was 2 or 2 1/2 years old, who was sleeping there at the time of the occurrence.

23. In view of the aforesaid circumstances, if in a bolted house of the accused appellant only aforesaid persons were inside and when PWs 2 and 3 entered in the house of the accused-appellant after jumping from a wall of another house then had it been truth that other than accused-appellant anybody else has committed the murder of his wife then the accused-appellant must have disclosed

the identity of that person or the circumstances leading to the commission of the murder of his wife. The conduct of accused-appellant immediately after occurrence is relevant Under Section 8 of the Indian Evidence Act.

24. The aforesaid argument that since all the witnesses have been declared hostile by the prosecution agency, therefore, no reliance should be placed on them was also raised before the learned District and Sessions Judge but the learned District and Sessions Judge who after analytical discussion of the oral and documentary evidence on record rightly rejected the aforesaid argument. The learned District and Sessions Judge has given cogent and convincing reasons to arrive at a conclusion that although the witnesses have been declared hostile but their testimony when scrutinized in its totality inspire confidence about the fact that it is the accused-appellant who committed the murder of his wife as alleged by the prosecution coupled with surrounding circumstantial evidence. We are in full agreement with the aforesaid reasons given by the learned District and Sessions Judge in relying upon the testimony of the aforesaid witnesses, therefore, the second argument of the learned Counsel for the accused-appellant is also not acceptable to us.

25. The last submission of the learned Counsel for the accused-appellant is that the prosecution has miserably failed to establish and to prove motive. It is well settled that in criminal jurisprudence, motive is not required to be proved by the prosecution inasmuch as motive is known to the accused himself. It is true that where the prosecution is coming with alleged motive and evidence is adduced in support of motive then in such situation the adequacy or inadequacy of the motive for commission of the offence can be examined by the courts of law. In the instant case there is clinching circumstantial evidence against the accused-appellant to the effect that it is he and he alone who had committed the murder of his wife after bolting the door of his house from inside. At the time when the murder of his wife was committed except the accused-appellant there was none else except his son of 2 or 2½ years' old who was sleeping inside the house. It is admitted by the prosecution witnesses and also natural that when the accused-appellant was caught hold by PWs-2 and 3 and was tied to a Neem tree, large number of residents of village assembled. Had it been a truth that the murder of his wife was

committed not by the appellant but by somebody else, in human course of events, he ought to have disclosed the name of other person or any other circumstance leading to the murder of his wife. His conduct to keep mum in the presence of villagers, who were assembled in large number throws a flood of light that it is the accused-appellant who had committed the murder of his wife and no one else and the argument contrary to it is not acceptable to us. This argument was also raised before the learned District and Sessions Judge and the learned District and Sessions Judge has rightly after analytical discussion of the oral and documentary evidence on record repelled the argument advanced on behalf of the accused-appellant. We are in full agreement with the cogent and convincing reasons given by the learned District and Sessions Judge in rejecting the argument advanced on behalf of the accused-appellant with regard to motive.

In the result of the aforesaid discussion, the finding of guilt recorded by the learned District and Sessions Judge against the accused-appellant vide his judgment dated 29-9-86 is eminently just and proper and is based on cogent and convincing reasons and as such does not require interference by us. The finding of guilt recorded by the learned District and Sessions Judge is, therefore, hereby confirmed and the instant appeal is dismissed for the reasons stated above.