

Dharji Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-17-1993

Reported in : 1993WLN(UC)141

Judge : B.R. Arora and; N.K. Jain, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 56 of 1985

Appellant : Dharji

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated January 25, 1985, passed by the Sessions Judge, Banswara, by which the learned Sessions Judge convicted and sentenced the accused-appellant for the offence under Section 302 I.P.C.

2. The appellant was tried by the learned Sessions Judge, Banswara, for the offence under Section 302 I.P.C. for committing the murder of his wife Smt. Kamla. The case of the prosecution is that on 15.5.84, Nahar Singh (PW 1) came alongwith his bullocks. At that time his sister-in-law was grinding the wheat. He heard the cries 'MAARE RE MAARE RE'. After hearing the cries when Nahar

Singh reached in front of the house his brother, he saw his brother Dharji (accused-appellant) coming out of the house. At that time his brother Dharji was armed with a naked sword, by which he tried to kill him, but he got himself escaped. Udiya (PW 2), also, came there and the accused tried to inflict injury to him, also, but he, also, went inside the house. Thereafter the accused ran-away by asking who wants to die, come near him. Thereafter the accused proceeded towards to village Sarwan. Nahar Singh raised an alarm and on hearing his alarm, Onkariya Jiwan, Walia, Shambhuda, Kaliya, Galba, Deviya, Gautam and certain other persons assembled there. All of them went inside the house and saw Smt. Kamla near the grinding stones (Ghatti). She had multiple injuries on her person and was profusely bleeding. Later on she succumbed to the injuries. The prosecution, in support of its case, examined twelve witnesses. PW 1 Nahar Singh is the brother of the accused and PW 2 Udiya is the nephew of the accused, who had seen the accused coming out from the house and who, after seeing him raised an alarm whereupon number of persons collected there. PW 3 Gelka, PW 7 Shambhuda and PW 8 Nathu the father of the accused are the three witnesses, who immediately after hearing the cries of PW 1 Nahar Singh and PW 2 Udiya, came at the place of the occurrence and before whom PW 1 Nahar Singh and PW 2 Udiya narrated the whole story. PW 4 Gautma and PW 5 Ram Lal are the two Motbir witnesses. PW 4 Gautma is the witness to the Panchnama while PW 5 Ram Lal is the witness to the arrest of the accused and the preparation of the site plan. He is, also, a witness to the recovery of the Dhoti and Baniyan of the accused, which were recovered from the person of the accused, and were found stained with blood. He is, also, a witness to the recovery of the sword, with which the alleged murder was committed and which was found bloodstained. PW 6 Dharji is the maternal-uncle of the accused, before whom he made the extra-judicial confession. He is, also, a witness to the recovery of the sword as well as the Dhoti and other clothes of the accused. PW 9 is Dr. Shanti Lal Jain, who conducted the post-mortem examination on the deadbody of Smt. Kamla. PW 10 Dinesh Chandra, PW 11 Harish Chandra Singh and PW 12 Mohan Lal are the police witnesses. PW 10 Dinesh Chandra Singh was working at the Office of the Superintendent of Police, before whom Constable Harish Chandra Singh produced five sealed packets, which he brought from Police Station, Danpur. He checked

these packets and sent those packets alongwith a forwarding letter (EX.P. 14) for chemical examination to the State Forensic Science Laboratory, Jaipur, alongwith Constable Harish Chandra Singh. PW 11 Harish Chandra Singh was the Constable working at Police Station, Danpur, who, on 24.5.84, took five sealed packets for chemical examination to the State Forensic Science Laboratory, Jaipur. He got these packets checked at the Office of the Superintendent of Police (Crime Branch), Banswara, and then took them for F.S.L. examination to Jaipur, and handed them over there. PW 12 Mohan Lal was the Station House Officer, Police Station, Danpur, who conducted the investigation and presented the chalan against the accused. The learned Sessions Judge, after trial, convicted the accused for the offence under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and a fine of Rs. 100/-and in default of payment of fine to further undergo one month's simple imprisonment. The learned Sessions Judge, while convicting and sentencing the accused, placed reliance over the testimony of PW 1 Nahar Singh and PW 2 Udiya-the two alleged eye witnesses of the occurrence as well as the recovery of the blood-stained sword, Dhoti and Baniyan of the accused and the extra Judicial confession made by the accused before Dharji (PW6).

3, It is contended by the learned Counsel for the appellant that PW 1 Nahar Singh and PW 2 Udiya are not the eye witnesses of the occurrence and they were not even present at the place of the occurrence. They have been falsely introduced as eye witnesses by the prosecution. Their presence at the scene of the occurrence was not possible at the relevant time. Learned Counsel for the appellant has further submitted that the extra judicial confession is a very weak type of evidence and no conviction can be based on such a weak type of evidence and even otherwise the alleged statement made by the accused before PW 6 Dharji, cannot be regarded as an extra judicial confession. It is, also, contended that the recoveries of the blood stained sword, Dhoti and Baniyan have not been proved by the prosecution and the appellant cannot be convicted on the basis of this evidence. She therefore, submits that the appellant has been falsely implicated in the case and he deserves to be acquitted. Learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned Sessions Judge.

4. The prosecution case mainly rests upon the statement of PW 1 Nahar Singh - the brother of the accused appellant and PW 2 Udiya the nephew of the accused, who have seen the accused coming out from the house where Smt. Kamla (the wife of the accused) was murdered. At that time the accused appellant was carrying a naked sword, which was found blood-stained. The accused threatened these two witnesses to face dire consequences if they would come near him. PW 1 Nahar Singh has stated that the accused is his real elder brother. At the time when the incident took-place, he came from his well alongwith his bullocks. At that time nobody except Karuna (aged three years) and Nana (aged one year) were present in the house. His father had gone to the field and his mother had gone to village Kotda. At about 6.00 p.m. Smt. Kamla was grinding the wheat. When he reached near the house of the accused, he heard the noise of Smt. Kamla 'MAARE RE MAARE RE, DAURO'. He heard the voice twice and when she raised this voice, the grinding stones (Ghatti) was stopped. He ran towards his father's house. When he reached near the house, he saw accused Dharji coming out from the house with a naked sword. The accused ran towards him and asked him why he was coming near the house. PW 2 Udiya, also, came there. The accused tried to kill him and Udiya. Udiya entered in his house and closed the doors. Thereafter the accused again went inside the house, took out his Bushirt and went towards village Shrawan. He raised the alarm, upon which Onkariya, Jiwan, Walia, Shambhuda, Kaliya, Gabla, Deviya, Gautam and certain other persons came there. They thereafter went inside the house and saw Smt. Kamla injured near the grinding stones. He thereafter lodged the report. A lengthy cross-examination has been conducted on this witness, but the evidence of this witness remained unshaken. A suggestion was made in the cross examination that a quarrel took-place between the accused and this witness and Smt. Kamla tried to intervene and got injury from the hand of this witness and thereupon the accused snatched the sword from this witness and ran away and, thus, though Smt. Kamla died at the hands of this witness but a false case has been foisted against the accused, which suggestion was denied by this witness.

5. The statement of PW 2 Udiya is almost on the identical lines except the aforesaid lines of cross-examination in the form of a suggestion, which was performed on PW 1 Nahar Singh. The testimony of this witness, also, remained

unshaken. Both the witnesses are the close relatives of the accused and no enmity between these witnesses and the accused has come on record. The relations were cordial. PW 1 Nahar Singh is the real brother of the accused while Udiya (PW 2) is his nephew and they could not have falsely implicated the accused if he was not connected with the crime. Nathu (PW8) is the father of the accused, who has, also, supported the evidence of these witnesses. Nathu (PW 8) came at the place of the occurrence after the accused had ran away, but to whom Nahar Singh and Udiya narrated the whole incident. This evidence stands corroborated by the evidence of PW 3 Gabla and PW 7 Shambhuda, who came to the place of the occurrence immediately after the occurrence. The learned trial Court was justified in placing reliance over the statements of these two witnesses, who appear to be trustworthy. The evidence of these two witnesses further finds support from the extra-judicial confession made by the accused before PW 6 Dharji, who is the real maternal uncle of the accused. The accused after committing the murder of Smt. Kamla went to the house of PW 6 Dharji. At that time he was armed with a sword and on enquiry made by this witness, he disclosed that he had murdered his wife Smt. Kamla. Dharji (PW 6) is the real maternal-uncle of the accused and had no grudge against the accused and he could not have falsely implicated the accused in the crime. He has stated whatever was narrated to him by the accused. The extra judicial confession made by the accused before PW 6 Dharji finds support from the other circumstances of the case, also.

6. The learned trial Court, also, placed reliance on the recovery of the sword made at the instance of the accused. PW 5 Ram Lal and PW 6 Dharji are the two witnesses of the recoveries. PW 5 Ram Lal has stated that the police recovered the sword from the house of the Dharji. The sword was taken-out by the policeman and not by the accused, but the accused was with them. Thereafter the sword was sealed and Ex. P. 7 was prepared. PW 6 Dharji has stated that the accused came to his house and at that time he was armed with a blood stained sword and on enquiry informed him that he has killed his wife. He gave him shelter and placed the sword in the heap of grams. He slept in the night. In the night, the police came, the accused was arrested and he handed over the sword to the police. The recovery nemo Ex. P. 7 was prepared. In the cross-examination, he has admitted

that he gave the information to the police regarding the sword and the sword was recovered at his instance. The recovery of the sword, thus, is of no help to the prosecution because it was not recovered at the instance or information supplied by the accused. The recovery of the sword, as per PW 6 Dhanji was made on the information supplied by him and from the place which was shown by him. PW 5 Ram Lal - the other witness to the recoveries, has stated that the police personnels themselves had taken out the sword. The recovery of the sword, therefore, cannot be said to have been made on the information supplied by the accused or at his instance.

7. Then remains the evidence of the recovery of the Baniyan and Dhoti of the accused. The Baniyan and the Dhoti were recovered from the person of the accused in the presence of PW 5 Ram Lal vide Ex. P. 6 PW 5 Ram Lal and PW 12 Mohan Lal, S.H.O., have proved these recoveries. The accused has not denied these clothes belonging to him. The clothes of the accused were sealed and were sent for chemical examination. The seals on these articles remained intact through out. On F.S.L. examination, these clothes were found positive for human blood. The blood group on Baniyan as well as on Dhoti and the clothes of the deceased were of 'A' group blood. This evidence, therefore, also, connects the accused to some extent with the crime. The accused could have got these blood-stains while inflicting injuries to the deceased. The evidence of PW 1 Nahar Singh and PW 2 Udiya supported by the evidence of PW 3 Gabla, PW 7 Shambhuda and PW 8 Nathu alongwith the recoveries of the blood stained clothes of the accused, which were found blood stained for 'A' group of human blood and the extra judicial confession made by the accused before PW 6 Dhanji prove the case against the accused appellant beyond any reasonable manner of doubt. The accused has rightly been convicted and sentenced by the learned lower Court.

8. In the result, we do not find any merit in this appeal and the same is hereby dismissed.