

Ramdhan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-02-1984

Reported in : 1984WLN(UC)456

Judge : N.M. Kasliwal and V.S. Dave, JJ.

Appeal No. : D.B. Criminal Appeal No. 132 of 1984

Appellant : Ramdhan

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.M. Kasliwal, J.

1. This appeal by the accused Ramdhan is directed against the judgment of the learned Sessions Judge Jaipur District, Jaipur, dated February 17, 1982, convicted the accused under Section 302 IPC and to a sentence of imprisonment for life.

2. The prosecution case is based on circumstantial evidence. The prosecution case in brief is that in the night intervening 19th-20th April, 1981, Suja Ram PW 3 'TAU' (father's elder brother) of accused Ram Dhan heard the cries of Mst. Kailashi (deceased) wife of the accused. On hearing the cries Suja went to the threshing floor of accused Ramdhan where the cot of the accused was lying.

When Suja raised an alarm, Ramdhan ran away and his wife Kailashi was lying on the cot in a pool of blood and had died by that time. An FIR of the incident was lodged by Suja vide Ex. P 3 at 3 P.M. at Police Station Jamuva Ramgarh mentioning the above fact and it was also mentioned in the report that the accused Ramdhan had run away after killing his wife Mst. Kailashi. It was further mentioned that on raising alarm by Suja, Laxmi Narain Meena, Prabhat Meena and Sri Narain Meena and many others had come on the spot to whom he had narrated the above incident. The police registered a case under Section 302 IPC and arrested the accused at 4 a.m. on April 21, 1981, at Nakti Ghati near Ramgarh Dam. Accused was wearing 'Dhoti' and Sandal which had marks of blood, were also seized. Nails of the accused were also taken as they were found smeared with blood. 'Blouse', 'Lehanga', and 'Gudra' on which Mst. Kailashi was sleeping were also seized. Blood stained earth and all the above mentioned articles were sent to Forensic Science Laboratory. A knife was also recovered on the information given by the accused on April 25, 1981. According to the report of the Chemical Examiner the articles were found stained with blood. So far as 'Sandal' is concerned, it was not sent to the Serologist as sufficient blood was not found over it. The other articles were sent to the Serologist. According to the report of the Serologist, human blood was found on 'Gudra', 'Blouse', 'Lehanga', blood stained earth, 'Dhoti', Nails and knife. According to the report, except the nails, blood 'B' group was found on all the articles.

3. The police got the post-mortem examination of Mst. Kailashi conducted by PW 2 Dr. Ram Lal Solanki on April 20, 1981. In the autopsy conducted by Dr. Solanki following injuries were found on the body of the deceased Kailashi:

1. Incised wound 2 1/2 cm on front of chest, on left side of body of sternum, just below the mid end of left clavicle bone. Ante-mortem in nature.
2. Incised wound 4 2 cm deep (in cm.) on front of abdomen 5' above umbilicus. The wound is in median plane, Ante-mortem in nature.
3. Incised wound 4 1/2 1 cm. on back, of chest. Slightly towards left side 1 x 1/2' out side of the vertebrae. Ante-mortem.

4. Stab (Punctured) wound measuring 6 x 2 Bone Deep (cm) Trimble shape on left side of neck, 1 1/2' below left ear and outside of angle of mandible. Ante-mortem in nature.

5. Stab wound trimble in shape 5 2 muscle deep (in cm) on left side of abdomen on outer border in Axillary plain, 1' below Left Axilla. Ante-mortem in nature.

6. Incised wound 4 x 1 x bone deep (cm.) on vert. column at the level of Lumb. Thrso Vertebrae. Ant-mortem in nature.

7. Incised wound 1 x 1/4 x bone-deep (cm.) on dorsal surface of thumb of left hand. Ante-mortem in nature.

4. The police after completing the investigation filed a challan in the court of Judicial Magistrate No. 1 Jaipur, District, Jaipur, who committed the case for trial to the court of sessions.

5. A charge under Section 302 IPC was read over and explained to the accused. The accused denied the charges and claimed to be tried. The prosecution in support of its case examined 11 witnesses and the accused in his statement under Section 313 Cr.P.C. denied the case of the prosecution in toto. He filed a statement in writing on February 5, 1982 in which he stated that on the fateful night when he reached his field at 2-3 a.m., then his wife was already lying dead. When he moved the dead body then blood oozed out from the body from several places. The persons, who were standing there told him that the police would arrest him and as such ha should run away. On this he ran away from the spot. He had not admitted the murder of his wife. An incident of beating had taken place with witness Radhey Shyam and as such he was deposing against him. He never went to witness Radhey Shyam demanding any money nor he made any confession before Radhey Shyam that he had killed his own wife. The accused also examined DW 1 Nathu and DW 2 Narain in support of his defence.

6. Learned Sessions Judge placed reliance on the statement of PW 3 Suja, who had lodged the first information report and also on the statement DW 10 Radhey Shayam, before whom extra judicial confession was made by the accused and

convicted the accused for offence under Section 302 IPC and awarded a sentence of imprisonment for life.

7. Aggrieved against the aforesaid conviction and sentence the accused-appellant has filed the present appeal.

8. It was contended by learned Counsel for accused-appellant that the evidence of PW 3 Suja cannot be believed in any case he had not said a single word in his statement during trial that he had seen the accused near the dead body of Mst. Kailashi or that the accused had run away after committing the murder as mentioned in FIR. It is submitted that there is no evidence worth the name on record to prove that the accused was seen near the dead body of Mst. Kailashi at the time of committing murder or soon thereafter and so far as Suja PW 3 is concerned, he was declared hostile and he never supported the case as stated in the FIR. It is thus contended that FIR is not a substantive piece of evidence and when Suja in his evidence has not stated anything against the accused, the mere FIR, which is only a corroborative piece of evidence, can have no value. It was further submitted by the learned Counsel for the appellant that the evidence of extra judicial confession as given by PW 10 Radhey Shyam is totally unbelievable. There are inherent contradictions in his own statement given under Section 161 Cr.P.C. and the statement given by him in the court. It is further submitted that he admitted in cross-examination that he had never given any amount on credit to the accused and the portion C to D given by him in this regard in his statement under Section 161 Cr.P.C. was not correct. It was further argued that Radhey Shyam was merely a shop-keeper and the accused was not so much in intimacy with him that he would make any extra judicial confession before him. It was also argued that Radhey Shyam had a shop at village Thali which was not situated on the thorough fare over which the accused, being a truck driver, could not have in the ordinary course purchased any articles from his shop and as such the evidence of Radhey Shyam cannot be believed. It was also submitted that in any case the evidence of extra judicial confession is an evidence of very weak nature and no conviction can be maintained on such evidence.

9. Learned Counsel for the accused appellant also argued that so far as the recovery of knife to connect the accused with the crime is concerned, learned Sessions Judge himself has not placed any reliance on such recovery. As regards the blood stained 'Dhoti' is concerned it is submitted that the witnesses of the recovery of Dhoti are not reliable as they have been held to be unreliable by the learned Sessions Judge himself with regard to the recovery of knife. It is also submitted that no reasonable explanation has been given by the Investigating Officer for calling the same witnesses of the recovery of the 'Dhoti', who were also the witnesses of recovery of the knife. It was also argued that according to the investigating officer the accused was arrested at 4 a.m. while according to the witnesses PW 6 Ghasi Lal and PW 8 Ram Sahai, it is found proved that the accused was arrested near about 8 or 9 a.m. So far as the place of arrest of the accused is concerned there is material discrepancy in the evidence of the investigating officer and the two witnesses PW 6 Ghasi Lal and PW 8 Ramshahai. It is thus, contended that the police has manipulated the record of arrest and the investigation being not fair, the accused cannot be convicted on the basis of such evidence.

10. On the other hand, Mr. Mathur, learned Public Prosecutor supported the judgment of the learned Sessions Judge. We have given our careful consideration to the arguments advanced by the learned Counsel for the accused appellant as well as the learned Public Prosecutor and have thoroughly perused the record.

11. We shall first deal with the evidence of PW 3 Suja, who is the star witness of the prosecution. PW Suja is the uncle of the deceased and he is the author of the FIR Ex. P. 3. As already mentioned above in the FIR Ex. P 3 it was mentioned that on a cry raised by Mst. Kailashi, Suja had gone towards the threshing floor of Ram Dhan and on raising an alarm, Ramdhan ran away from the spot. The wife of Ramdhan was lying on the cot in a pool of blood and had succumbed to the injuries. It was further mentioned that Ramdhan had run away after committing the murder of his wife. Suja, however, in his statement during trial clearly stated in the examination-in-chief that when he went near the place where Ramdhan and Kailashi used to sleep, the dead body of Kailashi was lying but he did not see any other thing. He did not see any person committing murder nor he saw any person

going from that place. He further stated that he did not know as to who had gone to the police station for lodging the report. Report was written but he did not know whether the same was written by the Sarpanch or the Sub-Inspector. He denied to have put his thumb impression over the report. However, when he was read over report Ex, P 5 then he said that he had lodged the same report in police station by in the same breath, he stated that he did not lodge such report. He further stated that his statement was also recorded in the court of Magistrate where he had given the true narration of the incident. He heard the cry made by a woman but he did not know as to who was that woman then he specifically said that he did not see Ramdhan running from the place. Thereafter the witness was declared hostile on the request of the Public Prosecutor. The witness Suja stated that the police had recorded his statement during investigation and he had narrated the true story. He heard portion A to B of Ex. P 4 statement recorded under Section 161 Cr.P.C. and as far as portion A to B is concerned it was wrong. Similarly for portions E to F, G to H, and I to J also he stated that he never gave such statements to the police under Section 161 Cr.P.C. He again stated that he never saw Ramdhan running from the place after committing murder. As regards his statement Ex. P 5 recorded under Section 164 Cr.P.C. he stated that he never gave his statement portion A to B:

jke/ku dks Hkkxrs ns[kk A

He also denied portion E to F in Ex. P 5. On further cross-examination by the defence counsel Suja stated that the accused had gone in his truck two days prior to the murder of Kailashi. He further stated that when his statement was recorded in the court of Magistrate, the Sub-Inspector was also present in the court room. A perusal of the above statement of Suja shows that he has completely resiled from the case as stated by him in the FIR or in his statements under Section 161 and 164 Cr. PC. FIR could have been used only as a corroborative piece of evidence and not as a substantive piece of evidence for proving the fact that Ramdhan was found near the dead body of Kailashi or soon after murder of Kailashi and was seen running from the spot. A perusal of the entire statement of Suja PW 3 given during the trial clearly shows that he never supported the prosecution story and stated in clear terms that he had not seen Ramdhan running from the spot or near

the dead body of Mst. Kailashi. We are constrained to observe that Suja PW 3, in our opinion, appears to be a turn-coat type of witness and being a relative of the accused appears to have gone in the influence of the accused and has resiled from his statement given during investigation as well as under 164 Cr.P.C. given before the Magistrate. In our view, he has given a false statement' during the trial and has committed perjury in order] to save his nephew. Be that as it may, a conviction cannot be maintained merely on the basis of FIR which is merely a corroborative piece of evidence j and not a substantive piece of evidence. As there is no substantive evidence. I on record for the fact that accused was seen running after committing the murder, this circumstance can not be taken against the accused.

12. So far as the evidence of extra judicial confession as given by Radhey Shyam PW 10 is concerned, we are not convinced with the statement given by him in the Court. Firstly, there is a difference in the exact words regarding confession as stated by this witness under Section 161 Cr.P.C. and the statement given by him in the Court in this regard. That apart, this witness has stated that on April 20, 1981 when he was opening his shop as usual at about 5.30 or 6.00 a.m., Ramdhan accused came to him. Accused was completely disturbed and asked him to give Rs. 100/- on which this witness declined to give the amount. He further stated that he asked the accused as to what was the reason for which he was demanding the amount, then the accused, in the first instance, did not disclose the reason but when he was given assurance then he told that he was sleeping with his wife in the night. He had killed his wife in the night and as such he was in need of Rs. 100/- Radhey Shyam further stated that he refused to give the amount as he had no money with him and thereafter went to his house asking the accused to sit on his shop. On returning back he found the accused missing. Thereafter he stated that the accused had told him to give Rs. 100/- or to hold htm in getting bail. Radhey Shyam further stated that the accused had told something of that kind.

dqN blh izdkj dgk Fkk

He further stated Ramdhan had worn Sandal and Dhoti and there were spots of blood on the Dhoti. He knew Ramdhan for the last 2-4 years as he used to

purchase goods from his shop. In the cross-examination he admitted that Ramdhan was resident of Kharwa-ki-Dhani while the shop of the witness is in village Tholai. He further admitted that when the accused had come at his shop, other shops had been opened and nobody also was present when this talk took place. When he asked the accused then he uttered the following words:

og viuh vkSjr ds lkFk lks jgk Fkk jkr es viuh vkSjr dks [kRe dj fn;k A

Only the above statement was made and apart from this he did not tell anything else. He further admitted in the cross-examination that he did not tell this fact to any body also as the entire village had come to know regarding the incident. He never went in the police to give this information. Police had interrogated on 26th April. The Police had come on the shop but he was called at the police station. He had never given any loan earlier to the accused. A perusal of the above statement clearly shows that though in the examination-in-chief he tried to state that the accused had come and demanded Rs. 100/- but in the cross-examination he said that nothing else was stated by the accused except the fact that he was sleeping with his wife in his field in the night and had killed his wife in the night. Admittedly, he had never given any loan to the accused earlier and this story of demanding Rs. 100/- by the accused from this witness appears to be totally false and unbelievable. It is also not believable that the accused after committing the alleged murder in the dead of night will go to Radhey Shyam in the morning at 5.30 or 6.00 at Tholai which is at a distance of 2-3 miles from the place of residence of the accused and would make an extra judicial confession before him. There is nothing on the record to show that the accused was so intimate with this witness Radhey Shyam. That apart, it is not clear from the record as to how the police come to know regarding the fact of extra judicial confession made by the accused to Radhey Shyam when according to Radhey Shyam himself he had not disclosed this fact to anybody else in the village. Learned Public Prosecutor in this regard has argued that it might have been on the basis of source of information that police had come to know about the extra judicial confession made by the accused to Radhey Shyam. In the circumstances of this case we are not prepared to believe this explanation as nothing has come in the evidence of the investigating officer as to how it came to his knowledge that extra judicial confession had been made by

the accused to Radhey Shyam and apart from that the evidence of extra judicial confession itself given by Radhey Shyam does not appear to be reliable. As a rule of prudence it is unsafe to maintain conviction on the basis of such extra judicial confession which is not corroborated by other evidence.

13. Now coming to the evidence of recovery of knife and blood stained Dhoti. Suffice it to say that so far as the recovery of knife is concerned the learned Sessions Judge has given detailed reasons for not placing reliance on such recovery and we do not find any reason to take a different view. The circumstance regarding recovery of Dhoti also becomes weak when the evidence of PW 6 Ghasi Lal and PW 8 Ram Sahai becomes shaky and unreliable for the recovery of knife. That apart, there is clear discrepancy in the statement of these two witnesses and the investigating officer about the time and place of arrest of the accused. PW 6 Ghasi Lal was also declared hostile at the request of Public Prosecutor. There are serious contradictions in the statement of these two witnesses PW 6 Ghasi Lal and PW 8 Ram Sahai and the investigation officer regarding the time and place of the arrest of the accused and seizure of Dhoti. According to the investigating officer the accused was arrested at 4 a.m. Dhoti was also seized at the time of his arrest and all the memos were prepared at that time within a span of 3-4 minutes under the light of the street lamp. The above facts are totally contradicted by PW 6 Ghasi Lal and PW 8 Ram Sahai, according to whom, the accused was arrested in the day light at about 8 or 9 a.m. and it was not written in the light of lamp post, as it was already daytime. In view of these circumstances, the evidence of seizure of Dhoti by the investigating officer cannot be relied and it would be unsafe to take it as a circumstance for connecting the accused with the crime.

14. Thus, taking in view the entire facts and circumstances of the case we have given the benefit of doubt to the accused. In the result, this appeal is allowed, the conviction and sentence of the accused under Section 302 IPC are set aside and he is acquitted of all the charges levelled against him. He is directed to be released forth with if not required in any other case.

15. Before parting with the case we would like to mention that though we were inclined to order prosecution of Suja PW 3 for his false evidence in this case but

looking to his old age. which was mentioned as 60 year in 1981, we don't consider it in the interest of justice to order for his prosecution.

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