

Sankla Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-18-1993

Reported in : 1993WLN(UC)200

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

Appeal No. : D.B. Criminal Appeal No. 196 of 1985

Appellant : Sankla

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated April 11, 1985, passed by the Sessions Judge, Sirohi, by which the learned Sessions Judge convicted and sentenced the accused-appellant Sankla for the offence under Section 302 I.P.C.

2. The incident, which led to the prosecution of the appellant Sankla, took place in the night between November 16th and 17th, 1983 in village Positara(district Sirohi) when Smt. Laxmi (wife of the accused) was murdered. A written report of the incident was sent by one Bhanwar Lal at Police Station, Anadra, with Mansha Ram naming the accused-appellant Sankla as the perpetrator of the crime. The

case of the prosecution is that in the intervening night of November 16/17, 1983, accused Sankla murdered his wife Smt. Laxmi by a Khunt and in the morning when an enquiry was made from him as to what had happened, he confessed his guilt before his brother PW 2 Rawta, PW 3 Laxmi W/o Rawta and PW 4 Raghu W/o Roopa. He, also confessed his guilt before Bhanwar Lai-a Gram Sewak cum Secretary posted at Panchayat Samiti, Positara. The prosecution, in support of its case, examined ten witnesses. PW 1 Mansha Ram is the Motbir witness, who was sent by Bhanwar Lai alongwith the written report at Police Station, Anadra, and who lodged the First Information Report. He is, also, a witness to EX.P. 2 site plan, EX.P. 3 site inspection note, EX.P. 4 Panchayat and the recoveries of the clothes of the deceased vide EX.P. 5 and EX.P. 6, by which Ghagra, Chundri and undergarments of the deceased were taken in custody. He is, also, a witness to the arrest of the accused vide EX.P. 7 and the recovery of the clothes of the accused vide EX.P. 8. He is, also, a witness to the recovery of Khunt vide EX.P. 9, which was recovered at the instance and on the information supplied by the accused. PW 2 Rawta (the brother of the accused), PW 3 Smt. Laxmi and PW 4 Raghu are the three witnesses, before whom the extra-judicial confessions are alleged to have been made by the accused. These witnesses have not supported the prosecution case and, therefore, they have been declared hostile. PW 5 Laliya is the brother of the deceased, who has been produced to prove the motive for causing the death of the deceased by the accused. According to this witness, the accused used to give beatings to his sister Smt. Laxmi, the complaint of which was made by the deceased before this witness and his parents sometime before the incident. PW 8 Bhanwar Lal is the Gram Sewak cum Secretary, Panchayat Samiti, Positara, who wrote the report EX.P.1 and sent the same with Mansha Ram (PW 1) at Police Station, Anadra. He is, also, a witness to the extra-judicial confession. PW 6 Dharam Singh, PW 7 Padam Singh and PW 9 Chain Singh are the three police witnesses. PW 6 Dharam Singh was a constable working in the Crime Branch of the Office of the Superintendent of Police, Sirohi, who received eleven sealed packets from Padam Singh and after checking the seals and finding them intact, gave them to Padam Singh Constable to hand them over at the State Forensic Science Laboratory, Jaipur, for FSL examination. PW 7 Padam Singh is the Constable who, at the relevant time, was posted at Police Station, Anadra,

who took the sealed packets for FSL examination first to the Office of the Superintendent of Police, Sirohi, and thereafter to Jaipur, where he handed-over the same in the State Forensic Science Laboratory. PW 9 Chain Singh is the investigating officer and the Incharge of Police Station, Anadra, who registered the FIR, conducted the investigation, arrested the accused, prepared the site plan, site inspection note and recovered certain articles and thereafter presented the challan against the accused. PW 10 Dr. Narendra Kumar Mathur is the Medical Officer posted at Primary Health Centre, Reodar, who conducted the post-mortem examination on the deadbody of deceased Smt. Laxmi. The learned Sessions Judge, after trial, found the appellant guilty for committing the murder of his wife Smt. Laxmi and sentenced the accused-appellant to undergo imprisonment for life and a fine of Rs. 200/- and in default of payment of fine to further undergo six months' rigorous imprisonment. It is against this judgment dated April 11, 1985, passed by the learned Sessions Judge, Sirohi, convicting and sentencing the accused-appellant that the appellant has preferred this appeal.

3. The learned Sessions Judge, while convicting and sentencing the accused relied upon the evidence of the prosecution regarding the strained relations between the deceased and the husband(accused). which supplied a motive to the accused to commit murder of his wife. The learned Sessions Judge. also, believed the evidence regarding extra-judicial confession made by the accused. The learned Sessions Judge.also, believed the recovery of Khunt at the instance and on the information furnished by the accused. So far as the circumstance that the clothes of the accused were found stained with blood is concerned, that circumstance was not relied upon by the learned trial Court in convicting and sentencing the accused.

4. Now, we will consider these circumstances which have been relied upon by the learned trial Court and we have to see whether the circumstances are sufficient to convict the accused for committing the murder of his wife Smt. Laxmi?

5. The first circumstance, which has been relied upon by the learned trial Court is the strained relations between the accused and his wife Smt. Laxmi and the prosecution, on this aspect, has produced four witnesses, viz., PW 2 Rawta, PW 3

Smt. Laxmi (W/o Rawta), PW 4 Raghu and PW 5 Laliya. So far as the evidence of PW 2 Rawta, PW 3 Smt. Laxmi and PW 4 Smt. Raghu is concerned, they have not supported the prosecution case on this point during the trial and, therefore, they were declared hostile. There, thus, remains the evidence of PW 5 Laliya-the brother of the deceased. PW 5 Laliya has merely stated that the relations between accused Sankla and his wife Smt. Laxmi were not cordial. According to him, the accused wanted to take his wife to Abu but she refused to accompany him and therefore, the accused used to give beating to Smt. Laxmi. He has further stated that his sister Smt. Laxmi informed him regarding this strained relation. Some strained relations might exist between the accused and his wife but they did not give any motive to the husband(accused) to kill his wife. Every husband would like that his wife should stay with him where he is working and for that purpose if he asked his wife to accompany him and when his wife refused then if on that count some altercation took place between them then that will not give any motive to the husband to murder his wife. This cannot be a sufficient motive, which could give a cause to the accused to murder his wife. The learned trial Court was, therefore, not justified in placing reliance over this strained relations as a motive to cause the murder of his wife by the accused-appellant.

6. The next evidence, which has been relied upon by the learned trial Court, is the recovery of khunt at the instance and on the information supplied by the accused. The learned trial Court, in the first part of the judgment, has found this evidence connecting the accused with the crime while at page number 13 of the judgment, he has specifically observed that this recovery is of no consequence because though the human blood was found on various items including the Khunt, but as the group of the blood was not known, therefore, this evidence could not be read against the accused. The learned trial Court has, thus, given two contradictory findings relating to this Khunt. The Khunt was recovered near from the dead body of mt. Laxmi from an open house which has no doors. It was not found in a concealed position and a number of persons reached there and, therefore, the recovery of the Khunt, made from the house, cannot be said to be 'a recovery made at the instance and on the' information supplied by the accused.' This circumstance, also, does not connect the accused with the crime.

7. So far as the other recoveries are concerned, they have, also, not been relied upon by the learned trial Court. As per the trial Court itself, as the group of the blood on these articles was not known and, therefore, these recoveries cannot connect the accused-appellant with the crime.

8. The last circumstance, on which reliance has been placed by the prosecution and which has been believed by the learned trial Court, is the extra-judicial confession alleged to have been made by the accused-appellant before PW 2 Rawta, PW 3 Smt. Laxmi, and PW 4 Smt. Raghu and PW 6 Bhanwar Lal. PW 2 Rawta, PW 3. Laxmi and PW 4 Smt. Raghu have not supported the prosecution case regarding the Crime the judicial confession made by the accused before them. They were declared hostile. It is, no doubt, true that the evidence of a hostile witness does not ipso facto vanishes on his being declared hostile and that part of the evidence can be relied upon which inspires confidence. But in the present case, the evidence of these three witnesses is not sufficient to connect the accused-appellant with the crime and is not sufficient to prove the case so far as making of extra-judicial confession by the accused.

9. Thus, there remains the evidence of PW 6 Bhanwar Lal on the point of extra-judicial confession being made by the accused-appellant before this witness. PW 6 Bhanwar Lal, who was a Gram Sewak cum Secretary, Panchayat Samiti, Positara, has stated that the wife of the accused died on 16.11.83. On 17.11.83, he was informed by the Sarpanch that accused Sankla has killed his wife and he should lodge the report at the Police Station after going to the site. He went to the house of the accused.who, at that time, was sitting in the house. He made enquiry from the accused, upon which the accused made a confession that he had killed his wife. He made enquiry where the deceased was lying, then the accused took him inside the house and showed the deadbody of deceased Smt. Laxmi, who was lying on the ground near a cot. The head of deceased was chopped-off from the body. After seeing this, he returned and informed the Sarpanch that in fact the accused has killed his wife. This witness was not of any status nor was he in friendly relations with the accused, to whom the statement admitting his guilt could be made by the accused. He was not in a position to save the accused from being involved in a police case. Moreover, this witness sent the report EX.P.I to the

Police Station regarding the incident through Mansha Ram (PW1). In the written report, no reference regarding the extra-judicial confession made by the accused, was made. It was only mentioned the report that Bhanbhi Sankla R/o Positara, has killed his wife Smt. Laxmi by chopping off her neck and, therefore, action may be taken. The police, on this report, further made enquiry from Mansha Ram and in that further enquiry by the police, the reference of this extra-judicial confession finds mention. PW 1 Mansha Ram, in his statement before the Court, has not stated that on enquiry by the police, he narrated the fact regarding extra-judicial confession made by the accused. Even PW 9 Chain Singh, S.H.O., who investigated the case, in his statement before the Court, has not stated that portion E to F in EX.P. 1 was written on the information supplied by Mansha Ram. He has merely stated that portion E to F has been written by him. If any confessional statement would have been made by the accused before Bhanwar Lal (PW 6) or before any of the witnesses before the FIR was sent to the Police Station, then this fact would have been mentioned by Bhanwar Lal in his report. The non-mentioning of this fact in the FIR, sent by Bhanwar Lal through Mansha Ram and making an addition in the portion E to F in the 'Kariyawahi Police' has not been proved as to at whose instance it has been written and, therefore, the evidence of this extra-judicial confession, also, cannot be relied upon. The extra-judicial confession is a weak type of evidence, but it can be acted upon and a conviction can be based on it provided it is found that the extra-judicial confession made by the accused is voluntary one, true and trustworthy. In the facts and circumstances of the case, we are of the opinion that the prosecution has not been able to prove beyond reasonable manner of doubt whether such type of extra-judicial confession was made by the accused before PW 6 Bhanwar Lal, PW 2 Rawla, PW 3 Smt. Laxmi or before PW 4 Smt. Raghu. This evidence of extra-judicial confession, thus, does not inspire confidence. The prosecution has, therefore, failed to prove the case against the accused-appellant beyond reasonable manner of doubt.

10. In the result, the appeal filed by the accused-appellant Sankla, is allowed and the judgment dated 11.4.85, passed by the learned Sessions Judge, Sirohi, convicting and sentencing the accused-appellant, is set-aside and the accused-appellant is acquitted of the offence for which he was charged. The appellant is in jail. He may be released forthwith if he is not required in any other case.

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