

Mangudass Vs. State of Raj.

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Court : Rajasthan

Decided On : Dec-07-1993

Reported in : 1994(1)WLC617; 1993WLN(UC)255

Judge : M.R. Calla and; Rajendra Saxena, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 7 of 1986

Appellant : Mangudass

Respondent : State of Raj.

Judgement :

M.R. Calla, J.

1. This jail appeal has been directed against the judgment dated 13.12.85 passed by the learned Additional Sessions Judge, Chittorgarh, whereby he found the accused appellant guilty for the offences under Section 302 & 397 I.P.C. and sentenced him to life imprisonment and to ten years rigorous imprisonment respectively and further directed that both substantive sentences shall run concurrently.

2. Briefly stated the prosecution case as unfolded by the evidence is that in the night intervening 17th & 18th Feb. 1992 some unknown persons omitted the murder of Lalu son of Devkishan Jat resident of Village Casma, who was sleeping

in his Nohra. Next morning Godulal came to know about the murder of Lalu Ram. He went to Shri Godulal 'Ward Panch', and informed him about the incident, who lodged an oral report at the SHO Police Station, Akola, which was reduced into writing as Ex. P/6 and the formal FIR Ex. P/7 was drawn. The Investigation Officer rushed to the spot, inspected the site, prepared the site plan, memo of the dead body of Lalu Ram and also seized and sealed the blood stained 'Goodari and Tachhewada' of the deceased. It is alleged that appellant Mangu Dass was seen on the hotel of one Mangilal on the evening proceeding to the alleged incident. The appellant was arrested on 25.8.82. It is alleged that the appellant in pursuance of his information dated 29.8.82 Ex. P. 3 got one gold 'Ram Nawami' article 1, pair of gold Murkis Article 2 recovered on 4.9.82 from the shop of PW/14, Fateh Lal Soni vide recovery memo Ex. P/14. The appellant also volunteered information under Section 27 of the Evidence Act, vide information memo Ex. P/18 dated-31.8.82 and in pursuance thereof got recovered one rusted axe without handle and one 'Jhabba' Article 3 vide recovery memo Ex. P/15 from an open place behind a hill near Gujaria Khera. The case of the prosecution is that PW/6 Mangilal and PW/11 Smt. Sukhi nephew and the daughter-in-law of the deceased respectively, correctly identified those recovered ornaments and the 'Jhabba' before the Tehsildar, Kapasan and stated that those articles belonged to the deceased. After usual investigation, the Investigation Officer submitted the challan against the appellant in the court of learned Munsif & Judicial Magistrate, Kapasan, who committed the case to the learned Additional Sessions Judge. Charge for the offences under Section 302 & 397 I.P.C. was framed against the appellant, who pleaded not guilty and claimed trial. The prosecution examined as many as 18 witnesses. The appellant in his plea under Section 313 Cr.P.C. denied the alleged recoveries and all circumstances appearing against him. However, he did not adduce any evidence in his defence. The learned Sessions Judge relied upon the aforementioned recoveries and convicted the appellant for the offences under Section 302 & 397 I.P.C. and sentenced him in the manner detailed above. Hence this appeal.

3. We have heard Shri Sursh Kumbhat, the learned Amicus Curiae for the appellant and Shri V.R. Mehta, the learned Public Prosecutor for State and carefully perused the record of the lower court in ex-tenso.

4. Shri Kumbhat has emphatically contended that in this case there is no direct evidence and that the case solely hinges on circumstantial evidence, which is vague, incomplete, inconsistent and unreliable. According to him the alleged recoveries have also not been proved beyond reasonable doubt, and no offence either under Sec, 302 or under Section 397 I.P.C. has been proved. He has also contended that appellant is under custody since 25.8.82 and prayed that he be acquitted.

5. The learned Public Prosecutor has reiterated the reasonings given by the learned Trial Judge and tried this best support to support the impugned judgment.

6. We have bestowed our earnest consideration to the rival contentions raised before us. The factum of homicidal death of Lalu Ram is not in dispute and the same has been well-proved by the PW/18 Dr. C.S. Dewra, who has proved the post mortem report Ex. P. 20.

7. Admittedly there is no direct evidence and the case entirely hinges on circumstantial evidence. The alleged occurrence took place in the night intervening 17th, 18th feb. 1982. Informant Godulal has not mentioned in his report Ex. P. 6, that a day prior to the alleged incident he had seen the appellant sitting on the hotel of Mangilal Rao. However during trial he has improved his earlier version and stated that he had seen the appellant sitting in Mangilal Rao's hotel in the evening preceding the incident. This is a material omission in the FIR and in his police statement He has failed to explain this significant and substantial the provement during trial. Mangilal Rao has not been examined by the prosecution, though he was cited as a witness in the challan. In such circumstances, the learned trial Judge has wrongly held that it was well proved that the appellant was seen by Godulal on the said hotel in the evening a day prior to the alleged murder of lalu Ram. Moreover, there is not an iota of evidence to establish that the appellant was last seen with the deceased.

8. The appellant was arrested on 25.8.82 and the place where the dead-body of Lalu Ram was found was already known to the Investigation Officer, who had prepared the site plan and the memo of dead-body on 18.2.82. In such circumstances, the alleged information memo Ex. P/17 of the appellant and the

memo Ex. P. 3 regarding discovery of the place of occurrence are meaningless.

9. From the statement of PW/9 Sammad Mohd., SHO it stands well-proved that appellant had volunteered information Ex. P/13 dated 29.8.82 under Section 27 of the Evidence Act, which led to the recovery of one gold Ram Nawmi and pair of gold Murkis from the shop of Fatehlal Sunar situated in Bhopal Sagar. PW/13, Ambalal and PW/14, Fatehlal have corroborated the sworn testimony of PW/9 Samd. Mohd. They have consistently deposed that the appellant got recovered the afore-mentioned ornaments Articles 1 & 2. PW/14 Fatehlal has stood the test of the cross-examination valiantly and stated that the appellant had sold the said Ramnawami and pair of Murkis to him for an amount of Rs. 1300/- about 5-10 days prior to the said recovery. PW/6 Ranglal and PW/11 Smt. Sukhi have deposed that they had correctly identified Ramnawami Article 1 before the Tehsildar. However Sukhi did not identify the gold Murkis. They have also proved their signature/thumb impression on the identification memo Ex. P/16. They have stated that those ornaments belong to deceased Lalu. Since both these witnesses have proved the memo of identification parade Ex. P/16, the non-production of Tehsildar, who conducted the said test parade is not material. Therefore, from the prosecution evidence it stands well-established that the appellant had sold ornaments Articles 1 & 2 to Fatehlal and those articles belonged to deceased Lalu Ram. The appellant has not given any explanation as to how he came in possession of those ornaments Article 1 & 2.

10. PW/6 Ranglal, has stated that he had found deceased Lalu Ram lying murdered in his Nohra, that Lalu had extensive injuries on his mouth, ears and other parts of the body. However he has specifically deposed that at that time Dhoti, tericot 'Jhabba' and Pagari of the deceased were on the dead body and that only his gold Murkis and Ramnawmi were missing. Hence from his testimony it stands well established that when PW. 6 Ranglal, found the dead-body of Lalu Ram, the letters tericot 'Jhabba' was on his dead body. In such circumstances, the alleged recovery of 'Jhabba' Article 3 vide recovery memos. Ex. P/15 at the instance of the appellant appears to be fabricated and manipulated. Hence this recovery does not implicate/connect the appellant with the crime. As regard the recovery of axe, it will suffice to mention that it was not blood-stained as is evident

from recovery memo Ex. P/15. The Serologists' report Ex. P/21 also does not reveal that the recovered axe was stained with blood. More-over, the alleged recovery of the axe as well as that of Jhabba Article 3 was effected from a place, which was accessible to one and sundry. Hence the alleged recovery of axe also does not incriminate the appellant with the alleged crime. It may be mentioned here that the said axe was not also produced before the trial court. Therefore, the circumstances of the recovery Jhabba and axe at the instance of the appellant has been wrongly relied by the learned Trial Judge. There is no other evidence connecting the accused with the crime. Thus in this case the evidence regarding the appellant being last seen in the company of the deceased is missing and the only circumstance against the appellant is regarding the recovery of Ram Nawmi Article 1 and pair of Murkis Article 2, which belonged to the deceased. In our considered opinion this solitary circumstance is not sufficient to successfully bring home the offence under Section 302 I.P.C. or 397 I.P.C. against the appellant. Therefore, his conviction for the afore-mentioned offences cannot be sustained.

11. As mentioned earlier, the appellant has not given any explanation as to how he had come in possession of gold Ramnawami Article 1 and pair of Murkis Article 2, which belonged to the deceased. Thus a presumption can safely be drawn against him, that he knowingly came in possession of there ornaments dishonestly and as such the offence under Section 411 I.P.C. is fully made out against him beyond all reasonable doubt.

12. In the result, we partly allow this appeal, set aside appellant's conviction and sentences under Section 302 & 397 I.P.C. but find him guilty for the offence under Section 411 I.P.C. and sentence him to two years rigorous imprisonment. Since the appellant has already been under detention since 25.8.92, he has served out the sentence and as such he need not be further detained. Hence he should be released forthwith, if not required any other case.