

Hariya Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-02-1984

Reported in : 1984WLN251

Judge : D.L. Mehta and; S.S. Byas, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 56 of 1979

Appellant : Hariya

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

S.S. Byas, J.

1. This is a jail appeal by accused Hariya against the judgement of the learned Session Judge, Jalore dated January 24, 1979 convicting the appellant under Section 302, IPC and sentencing him to imprisonment for life with a fine of Rs. 1000/-, in default of the payment of fine to further undergo one years' rigorous imprisonment.

2. Briefly stated, the prosecution case is that PW 4 Chelaram, PW 10 Ramjilal, deceased victim Prabharam alias Prabhuram and accused Hariya were traveling in a bus from village Jhab and got down at bus stand Ankhol. From the bus stand

Ankhol, all the four left on foot to go to Bali. In the way, the deceased-victim lagged behind as he was an old man. The remaining three persons stayed at a water-hut. There the accused told that since he had lost a ten-rupee note he was going back in search of it. The other two persons viz., PW 4 Chelaram and PW 10 Ramjilal proceeded further PW 4 Chelaram went to Bhoparam (PW 2) who is son of the deceased victim. He informed him that his father had sent information that he was coming and he (son) should go to with water. PW 2 Bhoparam thereupon went to his father with jar of water. He found to him lying dead near a field. There upon he went of police Station, Chitalwara district Jalore and verbally lodged report Ex. P 4 of the occurrence. The police registered a case under Section 302, IPC and took up the investigation. The investigating Officer prepared the inquest report and sent the victim's body body for post mortem examination. The autopsy was conducted, on 4-3-78 by Dr. Pukhraj Mehta, the then Medical Officer Incharge, Government Dispensary, Jhab. He found the following injuries on the victim's dead body:

- (1) There were six crestic marks of finger-nails on either side of the wind-pipe, and
- (2) One abrasion on the centre of scrotum. Clotted blood was present around the glands of penis and over the abrasion.

According to Dr. Mehta, the death was throting causing asphyxia. The report of his post mortem examination issued by him is Ex. P 10. The site was ins(sic)end and the site plan was prepared The accused was arrested on 16-5-78. In consequence of the disclosure statement was made by him, one blanket one Saafa, one Dhoti, one Kamiz alleged to be belonging to the deceased-victim and a pair of shoes belonging to the accused himself were recovered from different places. The clothes of the deceased-victim were put for identification test and they except the turban were correctly identified by the victim's son Bhoparam (PW 2). It is alleged that certain foot-prints were also found at the place were the victim's dead body was found lying. On completion of investigation, the police presented a challan against the accused in the Court of the Munsif and judicial Magistrate, Sanchore who committed the case for trial to the Court of Sessions. The learned Sessions Judge, Jalore framed a charge under Section 302, IPC against the

accused to which he pleaded not guilty and faced the trial the trial. During trial the prosecution examined 12 witnesses and filed some documents. In defence, the accused adduced no evidence. The defence taken by him was that of total denial. On the conclusion of trial, the learned Sessions Judge found the charge duly brought home to the accused. The accused was consequently convicted and sentenced as mentioned at the very outset.

3. We have heard the learned amicus curiae and learned Public Prosecutor. We have also gone through the record of the case.

4. Admittedly there is no direct evidence against the accused to connect him with the murder of deceased victim Prabhuram. The case rests entirely on circumstantial evidence consisting of (1) the accused and the deceased victim were travelling together in the bus and were also together upto a little distance away from the water hut; (2) recovery of the clothes of the deceased victim in consequence of the information and at the distance of the accused and (3) the foot prints found at the place where the victim's dead body was found lying.

5. It may be mentioned that no expert evidence relating to the identification of the foot prints was made available by the prosecution during trial. As such this evidence was rightly rejected by the learned Sessions Judge. We, are, therefore concerned with remaining two sets of evidence referred to above.

6. (sic)Khumbhat, the learned amicus curiae vehemently contended that the above two sets of circumstances are not sufficient to connect the accused with the murder of deceased victim Prabhuram. It was argued that PW 4 Chelaram, PW 10 Ramjilal the accused and Prabhuram were travelling together in the bus and thereafter on foot from the bus stand Ankhol. This circumstance in itself is not sufficient to arrive at a conclusion that deceased victim was throttled by the accused. We have given our thoughtful consideration to the contention and find considerable force in it. Even if the testimony of these two witnesses PW 4 Chelaram and PW 10 Ramjilal is taken to as it stands, it is not sufficient to hold that it was the accused who had throttled the victim and put him to death. The testimony of these two witnesses simply reveals that they and the accused together with the deceased victim started on foot from village Ankhol. Nothing

more can be inferred against accused from what they stated above.

7. It is stated that the accused left the water hut on the pretext that he had lost a ten rupee note and he was going in search of that. This fact in itself is also not sufficient to drive us to a conclusion that the victim was throttled to the death by accused. These 2 witnesses do not state that the accused went upto the deceased victim. In other words, there is no evidence to show that the deceased victim and the accused were seen last together and thereafter the victim was not found alive. Merely because the accused went back in search of his lost currency note, we cannot infer that he went to the deceased victim and caused his death.

8. Coming to the evidence relating to the recovery of the clothes of the deceased victim at the instance of the accused, it is not of any help. PW 4 Chelaram and PW 10 Ramjilal do not state that the coat, blanket, shirt, Dhoti and the turban, which were recovered were being worn by the deceased victim when he was in their company. In order to make this sort of evidence helpful to the prosecution it was required that these two witnesses PW 4 Chelaram and PW 10 Ramjilal must have stated that the deceased victim was wearing these clothes when he was with them. Thus, the recovery of the clothes at the instance of the accused furnished no incriminating evidence against the accused so as to induce us that he was the perpetrator of the crime.

9. It may be notified that the recovery of these clothes of the victim was made nearly after 2-1/2 months of the incident. We are unable to see any logic or reason that the accused would keep them hidden or concealed for no rhyme or reason for such a long time. The recovery of the shoes of the accused at his instance is also of no evidentiary value. It does not connect him with the commission of the offence.

10. While parting away with the case, we are at pains to note that the approach of the learned Sessions Judge was wholly erroneous and unsustainable. The accused was convicted on entirely insufficient rather nil evidence. The learned Sessions Judge took superficial view of the entire matter and convicted the accused unnecessarily and thereby he has been detained for a pretty long time since his conviction.

11. For the reasons discussed above, we are unable to maintain the conviction of the accused.

12. In the result, the appeal of accused Hariya is allowed. His conviction and sentence under Section 302, IPC are set aside. He is in jail and shall be forthwith set at liberty if not wanted in any other case.

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