

Falku Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-12-1999

Reported in : 1999CriLJ2138; 1999WLC(Raj)UC408

Judge : V.G. Palshikar and; Mohd. Yamin, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 498A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 225 of 1998

Appellant : Falku

Respondent : State of Rajasthan

Advocate for Def. : Chandralekha, P.P.

Advocate for Pet/Ap. : N.L. Joshi, Adv.

Disposition : Appeal allowed

Judgement :

V.G. Palshikar, J.

1. Being aggrieved by the judgment and order dated March 9, 1998 passed by the Additional Sessions Judge (Atrocities on Women), Sri Ganganagar, convicting the appellant under Sections 302 and 498A of the Indian Penal Code and sentencing

him to suffer imprisonment for life and to pay a fine of Rs. 1000/- and in default of payment of fine to suffer simple imprisonment for three months and two years' rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to suffer simple imprisonment for one month respectively, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal and as canvassed before us by the learned counsel for the appellant.

2. The facts giving rise to the present appeal, stated briefly, are that on 9-2-95 at about 8.30 P.M. Navibux filed a written first information report Ex. P/I in Police Station, Suratgarh alleging therein that his daughter Rajabi was married to Falku, the present accused about six years ago and Falku was torturing her for bringing additional dowry. The first information report further quotes previous incident of such demand of dowry and torture on non fulfillment thereof. It clearly recites that on 9-2-95 one Sikander and Jawaya came to the complainant and told him that his daughter Rajabi is lying dead in the compound of Falku, the accused. The complainant with others came to Suratgarh and saw that Rajabi had been killed by strangulation. The first information also recites the confession made by the accused before the persons named in the first information report and request is then made that action against Falku be taken. Investigation was thereafter taken up. The accused was arrested and after completion of investigation the accused was prosecuted for committing murder of Rajabi, his wife. The prosecution examined 10 witnesses to prove its case and two witnesses were examined by the accused to prove his defence of alibi. According to the accused he was not present in the town Suratgarh when his wife met death and was at his village, Thukrana for cultivation purposes. On appreciation of oral and documentary evidence the learned Judge came to the conclusion of guilt and sentenced the accused as aforesaid to suffer imprisonment for life.

3. This judgment and order of conviction is assailed before us by the learned counsel Shri N. L. Joshi appearing on behalf of the accused on several grounds mentioned in the memo of appeal as also argued before us. The main and substantial contention of the learned counsel is that the entire story is false and concocted. No attempt has been made by the prosecution to bring forth the truth before the Court. There are inherent improbabilities in the depositions, material

evidence which was available was not brought before the Court and, therefore, the order of conviction is unsustainable. According to the learned counsel even if the prosecution has proved the death of Rajabi to be homicidal, but has miserably failed to prove that the homicidal death was caused by the accused. The circumstances as disclosed by the evidence on record even if accepted as correct, do not lead to the only conclusion of guilt. Several doubts arise for which there is no answer in the evidence as led by the prosecution and in any event benefit of doubt is liable to be given to the accused. It was then contended by the learned counsel that the accused relied on certain judgments of the Supreme Court and this Court that normal human reaction to throttling of a human being by a human being is physical resistance and normally even weak persons fiercely resist. If the prosecution evidence is to be accepted in relation to the occurrence there should have been sufficient evidence on the person of accused Falku for marks of scuffle which in all probability must take place in every case of strangulation, unless of course the allegation is of strangulation by deceit.

4. The learned Public Prosecutor relied on the extra judicial confession made by the accused to five persons and claimed maintaining of order of conviction as no other conclusion is possible on such evidence but that of guilt.

5. With the assistance of the learned counsel for both the sides we have reappraised the evidence on record and have scrutinised the documentary evidence.

6. In all 10 witnesses have been examined by the prosecution, of which P.W. 1 to P.W. 5 are persons who accompanied the father of the deceased Rajabi to Suratgarh and are related to each other. They accompanied the father Navibux on receiving the information about the death of Rajabi. Their testimony is almost identical. All of them state that when they arrived at the house of accused Falku they saw the dead body of Rajabi lying on a cot and covered with a quilt. They deposed that the parents of Falku were sitting around the dead body of Rajabi and so was his mother in law and others. It has come in evidence of these persons that at the time when they reached the scene of offence i.e. Falku's house accused Falku was not there and each witness with individual difference and estimate of

timing has stated that Falku came thereafter and confessed to his father in law that he has killed Rajabi and he should be excused for the error. This evidence of P.Ws. J to 5 does not vary and the cross examination is mainly directed towards dowry demand by the accused. There is no attempt in the cross-examination regarding homicidal death of the deceased.

7. P.W. 6 and P.W. 7 are neighbouring witnesses who have gone hostile. P.W. 8 is the police official before whom the first information was lodged. P.W. 9 is doctor who conducted the postmortem and opined that the death was homicidal. P.W. 10 is the Station House Officer who investigated the complaint of murder. This in all is the evidence on record.

8. The learned Judge, accepting the extra judicial confession made to P.W. 1 to P.W. 5 recorded the conviction and sentenced the accused accordingly. It is maintainability of this conviction which we have to consider in the circumstances. We find it very difficult to accept the order of conviction. It has come admittedly on record that the father and mother of accused Falku along with mother in law of Falku were present when P.W. 1 to P.W. 5 arrived from Udaipur to Suratgarh. It has come in evidence that parents of Falku were residing thereabout. It has also come in evidence that sister of Rajabi was married to P.W. 2 Rashid Ahmed and was staying nearby and had come on the scene of offence immediately. According to us, these persons should have been examined by the prosecution inspite of the strong possibility of their turning hostile because they could have led the best evidence in relation to the attending circumstances, if not in relation to commission of crime by any person. Corroboration to a great extent to the allegations pertaining to arrival of Falku and making of extra judicial confession by him would have been obtained. The prosecution in the circumstances has failed to bring forth the material evidence in this regard before the Court. In such circumstances it becomes increasingly difficult to accept the evidence of extra judicial confession which in itself is a weak evidence.

9. As has been rightly contended before us by the learned counsel for the accused, it is inherently improbable that the accused would confess to his in-laws and claim forgiveness. Normal human conduct does not approve of such action.

Normally a person committing a crime would confess to his own kins. Where father and father-in-law both are present and the confession is made to the father, corroboration can flow from either of the witness. In the instant case the possibility of such confession not have been made by Falku is enhanced by the fact of non examination of the father of Falku though his presence is proved.

10. It has come in evidence that the rope which was allegedly used for strangulation of the deceased was found at the scene of the offence by the police hanging on the girder of the roof. It was contended on behalf of the prosecution that the accused was scheming enough to have strangled the wife with the rope, threw it on the girder to make appear to be a case of suicide, if this hypothesis is accepted, the accused is a scheming person and cannot be accepted to make an extra judicial confession in the manner and of the kind that has been alleged by P.W. 1 to P.W. 5. The circumstances of rope being found on the girder. therefore, militate against the story of confession by the accused of strangulating his wife.

11. If the accused has murdered his wife by strangulating her or throttling her by hands, attempts could have been made to find the finger prints of his hand on the throat of the deceased if it is the case of the prosecution that strangulation took place by the rope which was found hanging on the girder. Attempt could have been made to prove that there were prints on the rope and those were of the accused. These obviously are the faults of the investigating agency and because of such serious infirmities doubt arises regarding the claim of the prosecution that the accused murdered his wife. Possibility of some one else murdering or the wife committing suicide is not excluded by any evidence on record. It is an established position in law that the prosecution must prove beyond reasonable doubt that the death of the deceased was caused by the accused.

12. D.W. 1 is the brother of the accused and the D. W. 2 is the co-brother of the accused (wives of these two are real sisters). Both have deposed that accused was at Thukrana when allegedly the crime had taken place and was called to Suratgarh by the D. W. 1. There is nothing in their cross-examination to discredit their testimony. The accused also has stated in his statement under Section 313, Cr. P.C. that he was at his village Thukrana. All the witnesses P.W. 1 to P.W. 5

state that the accused reached scene of occurrence after they reached Suratgarh and the accused states that he was out of Suratgarh in those two days creates a reasonable possibility of the accused being true. If the accused was really responsible for the killing he would not have returned so meekly to the scene of occurrence. Cumulative effect of these circumstances, therefore, does not create a reasonable doubt as to involvement of the accused in causing homicidal death of the deceased Rajabi. Material evidence who could have throw much more light has not been collected by the investigating agency. Witnesses who were naturally present at the scene of occurrence like the father and mother of Falku, mother-in-law of Falku, his sister-in-law and her husband have not been examined by the prosecution. In such circumstances we do not find it legally possible to uphold the order of conviction.

13. In the result, the appeal succeeds and is allowed. The accused appellant is hereby acquitted of the charges framed against him. He be set at liberty, if not required in any other offence.

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