

Dhulla Ram Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/764807

Court : Rajasthan

Decided On : Mar-07-1990

Reported in : 1990(1)WLN654

Judge : A.K. Mathur and; R.S. Verma, JJ.

Appeal No. : D.B. Cr. Appeal No. 16 of 1986

Appellant : Dhulla Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. B.R. Arora, Mr. Arora

Disposition : Appeal allowed

Judgement :

A.K. Mathur, J.

1. This appeal is directed against the judgment of conviction of the accused appellant by the learned Sessions Judge, Merta dated 3-1-1986 whereby the learned Judge has convicted the accused appellant under Section 302 read with s. 34 IPC and sentenced him to life imprisonment with a fine of Rs. 500/- and in default of payment of fine to further undergo 5 months rigorous imprisonment. The learned Sessions Judge also convicted the accused appellant Under Section 201 IPC and sentenced him to three years rigorous imprisonment with a fine of Rs.

200/- and in default of payment of fine to further undergo 2 months rigorous imprisonment. The accused appellant was also convicted Under Section 404 IPC and sentenced to 2 years rigorous imprisonment with fine of Rs. 100/- and in default of payment to further undergo one month's rigorous imprisonment. The learned Sessions Judge also directed that the camel and Chhakra which are in possession of Bhanwarlal son of Sabla Ram may be given to widow of deceased Mst. Birjudi or his heirs and the sum of Rs. 1840/- recovered from accused Dhulla Ram be forfeited to the State.

2. The brief fact, giving rise to the appeal, are that on 29-10-1983 Sanwanta Ram PW 1 Sarpanch of Gram Panchayat, Nandoli Mertiya filed a written report Ex. P 7 at Police Station, Gachhipura where in it was stated that in Kalanada (Pond) a dead body of some one is floating. He on receiving this information from the Shepherd reached on the scene where he also found the dead body floating. But the identity of the dead body could not be known. On this information the police took up the matter Under Section 174 Cr. PC. The Incharge police station, Gachhipura PW 16 Hakam Ali after usual investigation seized the dead body and sent the same for post-mortem Doctor after conducting the post-mortem found that the deceased was murdered. On receipt of this information a report Ex. P. 20 was registered at Police Station, Gachhipura and on that basis a case Under Section 302 IPC was registered and the investigation was taken up During the course of the investigation PW 2 Bhanwar Lal filed a written report Ex. P. 11 that the deceased was his brother Pema Ram It was stated that 4 days prior to this incident i.e. 27-10-1983 his brother went with Dhulla Ram who took his Chhakra (Camel Cart) on rent and thereafter his brother did not return home. Prior to this report since no one claimed the dead body of the deceased, the dead body was got cremated by the police after taking photographs of the dead body. It is further alleged that father of the deceased Sablaram happens to visit Gachhipura and he saw the dead body in the Hospital, but he could not recognise the same due to weak eye sight. However, he suspected that it might be of Pema Ram, his son. On returning from Gachhipura he informed him that he has seen the dead body of Pema Ram but he is not sure about it. Therefore, he asked him to go and verify it. He along With Sukhdeo, Sarpanch of Dobri went to Gachhipura. They inquired about the dead body from the passengers of the bus which came from

Gachhipura. Thereupon he was told by passengers that the dead body has been cremated. Therefore, they returned back to village. On the next day in the morning he enquired at the Police Station and police showed the photographs and clothes of the deceased. After seeing the photographs he recognised that the dead body was of his brother Pema Ram. A case was registered on 31-10-1983 at about 8 30 A.M. against the accused and the investigation was taken up and during the course of investigation the police apprehended the accused Dhulla Ram, Uda Ram, Mohan Ram and Bahadur Singh. During the course of investigation, accused Dhulla Ram gave an information, on the basis of that camel and camel cart were recovered from PW 12 Panney Khan. It is alleged that this camel was sold to Panney Khan PW 12 for a sum of Rs. 2,500/- and he left the camel cart at the house of Panney Khan to be carried later on. On search of accused Dhulla Ram a sum of Rs. 1,840/- was recovered from bin possession. After close of the investigation the police filed a challan against the accused Udaram, Mohan, and Dhulla Ram Under Sections 302 and 120B IPC and accused Bahadur Singh Under Section 467 IPC. The prosecution in support of its case examined as many as 20 witnesses and got a large number of document exhibited. The accused also examined about 7 witnesses in defence. The learned Sessions Judge, after due trial, convicted and sentenced the accused appellant Dhulla Ram only as aforesaid, but acquitted accused Mohanram and Bahadursingh. During trial, accused Udaram expired. Therefore, his name was deleted.

3. We have heard Mr. B.R. Arora learned Counsel for the appellant, Mr. N.D. Khan, learned Public Prosecutor assisted by Mr. J.R. Choudhary, learned Counsel appearing for the complainant.

4. Mr. Arora, learned Counsel for the appellant took as to the entire record and submitted that there is no direct evidence against the accused appellant in this case and whole case hinges on the two circumstances, namely, of last seen and the recovery of camel as well as the Chhakra at the instance of the accused. Learned Counsel submitted that these two circumstances are not sufficient to bring home the guilt of the accused.

5. As against this, Mr. Khan, learned Public Prosecutor and Mr. Choudhary, learned Counsel for the complainant strenuously urged that these two circumstances are sufficient in the present case to clinch the guilt of the accused.

6. We have given our thoughtful consideration to the rival contentions advanced before us by the learned Public Prosecutor and have also gone through the record.

7. In the instant case, it is true that the whole case hinges on the circumstantial evidence as there is no direct evidence. The prosecution has heavily relied upon the two circumstances i.e. of last seen of the accused in the company of the deceased and the recovery of camel cart at the instance of the accused.

8. So far as the evidence regarding last seen is concerned, in this connection, the prosecution has examined father of the deceased PW 3 Sablaram, wife of the deceased Birjudi PW 4 and PW 10 Khema Ram, PW 13 Asuram and PW 16 Ramdeen.

9. PW 3 Sablaram has deposed that in the morning when he went to the field of his son deceased Pemaram where he found that accused Dhulla Ram wanted to hire the camel cart of the deceased for transporting his goods. The accused Dhulla Ram was prepared to pay Rs. 70/- but his son was demanding Rs 80/- He deposed that he asked his son that he should not engage his Chhakra on rent as the Bajri has to be collected on the next day. On the next day morning when he again sent to the field of deceased Pemaram, he asked about Pemaram, from his children and wife. On enquiries he was informed by the wife of deceased Brijudi that Pemaram had gone with Dhulla Ram as Dhulla Ram has taken his camel cart on rent. Since then Pemaram did not return for the last three days. He deposed that after three days when he went to Gachhipura he saw a dead body in the Hospital, but since his eye-sight was weak he could not recognise and he came back and informed his son Bhanwar Lal that he suspects that the dead body was of Pemaram. Then Bhanwar Lal went to the Sarpanch and both went to Gachhipura But returned back from the way as they were informed that the dead body has already been cremated.

10. PW 4 Birjudi wife of the deceased has deposed that on the fateful day when she was working in the field and her husband was also working in the field, accused Dhullaram came to her husband at about 10 am. and asked him that certain wool bags have to be transported from Makrana and he was interested in engaging his Chhakra. Her husband demanded Rs. 30/-. When her husband and Dhullaram were talking at that her father-in-law Sablaram came there and told him that he should not taken out his Chhakra on rent as Bajri has to be collected. Then again in the evening accused Dhullaram came and persuaded her husband to take his cart on this job. Her husband informed her that be is taking his cart for transporting Dhullaram's goods and she should take care at the house. Since then deceased did not turn up.

11. PW 10 Khemaram has also deposed that on 26-10-1983 be went to Borawar to purchase camel. There at Borawar on 27-10-1983 he could not get the camel of his liking, therefore, he came to the railway station in the evening. Thereafter he came to Gachhipura by train about 1-1-30. a.m. After getting down from the train at Gachhipura railway station he want to have a cup of tea stall near the railway station. Thereafter he went to the house of one Mangejsingh, Master. But no response was given by Mangejsingh on calling him. Therefore, he returned back to Bhaguram's shop. Thereafter near the water tank of the railway station he met accused Udaram. He was accompanied by one more person. He further deposed that thereafter he sat on the bench, After some time deceased Pemaram and accused Dhullaram came on the camel cart. It is alleged that Pemaram and Dhullaram came to the hotel. It is alleged that Dhullaram after getting down from the cart went to the railway station. He asked Pemaram as to where they are going. On this he told him that he was going to Basroli He also told him that he has to go to Khatu with bags of wool. Thereafter Dhullaram returned back and both of them went to northern side. He further deposed that after 8-10 minutes one more camel cart from northern side. In that camel cart one Mehram son of Sukhram, accused Mohanram and another Mohanram son of Poosaram of village Shivrasi were sitting. They also stopped there camel cart near the hotel and on enquiry they told him that they are going to Khatu. Whereupon he told them that the way on which they are going does not go to Khatu and they are wrong way. He further deposed that on their enquiry he told them that Pemaram has gone in that

direction on his Chhakra. Thereafter these three person followed him. When he was confronted with his police statement Ex. D 6 portion A to B where in he significantly omitted to mention this fact. He was examined 18 days after the incident. He was also examined in the court Under Section 164, Cr PC after 24 days which is Ex. D 7.

12. There is another statement of PW 13 Asuram with regard to the circumstance of last seen. He has also deposed that on the fateful night he was going on his camel cart to Degana. It was night time. He was sleeping in his camel cart and about 1-1/4 kaus away from Gachhipura he was suddenly woke up as his camel stopped. Then he got down from his Chhakra and he found that one person was lying down and three persons namely, Dhullaram Mohana and Udaram were standing there and the person who was lying on the ground was none the else then deceased Pemaram. It is alleged that Pemaram was lying on the ground and was meaning with pain. He was confronted with his statement Ex D 8 recorded Under Section 164, Cr. PC in the court and asked to explain as to why he has not mentioned that the person who was moaning with pain was deceased Pemaram. He was further asked to explain the omission in his statement Ex. D 8 that he has mentioned in his statement in the court that three persons were standing, but in the statement Ex. D 8 he has only stated about 2 persons He was also confronted with his police statement Ex. D 9 but he failed to explain omission in that.

13. Then the next witness is PW 6 Ram Deen. He has deposed that he met the accused Dhulla Ram after 4-5 days of the murder of Pemaram and he asked the accused Dhullaram as to where he was for the last 3-4 days. He told that he was at Makrana and thereafter he asked him about the whereabouts of Pemaram to which he replied that Pemaram had gone with his camel cart from Gachhipura to Basroli, but he was killed by two persons. He is also a witness to the arrest of Dhullaram and so also of the recovery of Rs. 1869/- from Dhullaram.

14. This is the total evidence which has been led by the prosecution so far as the circumstances of last seen. A bare reading of all this evidence in chronological order would reveal that except Birjudi PW 4 and PW 10 Khema Ram none could be assigned as a witness of last seen. PW 3 Sablaram was the father of

deceased. He only saw the accused talking with the deceased, but when they left together is not known to him PW 13 Asuram is absolutely a chance witness and he styled himself as one of the eye-witness, but he is nothing but a false witness. It is impossible that he could see the deceased lying on the ground and moaning with pain at that dead of night at a distance of 7 to 8 paundas. Secondly, he did not mention this fact in his statement Under Section 164, Cr. PC. Therefore, this witness is unworthy of any credit.

15. PW 6 Ram Deen is not a witness of last seen but he is a witness who asked the accused after 3-4 days of the incident about the whereabouts of the deceased Pemaram.

16. Now, we are left with the evidence of only two witnesses, namely, PW 4 Birjudi and PW 10 Khemaram. PW 4 Birjudi has of course deposed that the accused and the deceased left together on the fateful day and since then the deceased was not heard alive.

17. Next is the testimony of PW 10 Khemaram He is also a chance witness and it is difficult to say that at dead of night he would be roaming at the railway station and will come across with the deceased and the accused More so, this witness was also examined by the police after 18 days of the incident. Therefore, the sanctity of this witness is also in serious doubt. At best after scrutinising the testimony of this last seen circumstance, only PW 4 Mst. Birjudi can be said to be a witness of last seen. She saw the accused leaving together their field with the deceased and thereafter the deceased was not heard alive.

18. The next circumstance against the accused is of recovery of camel and Chhakra. PW 12 Panney Khan has deposed that this accused came to him with Chhakra and camel and they settled out the bargain for camel only and he, has purchased the camel from the accused on payment of Rs. 2,500/-. He has also deposed that since Chhakra could not be taken by the accused as camel was not available at the relevant time for transporting the Chhakra, therefore, the same at his house Chhakra and the camel was recovered at the instance of the accused from the possession of PW 12 Panney Khan.

19. It has also been suggested that there could be two motives for the accused. One, that it is alleged by PW 3 Sablaram father of the deceased that accused once tried to outrage the modesty of his daughter but he was caught left after administering the beating. The another motive, which has been suggested is the wrongful gain by selling the camel as well as the cart. Both these motives are too far-fetched in the present case.

20. In the present case, the prosecution named three more accused persons as party criminus in the present crime. The learned Sessions Judge has acquitted the remaining three accused persons though one died during the course of trial. But none-the-less as per prosecution there were more than one person involved in the crime. However, the learned Sessions Judge found the only accused Dhulla Ram guilty and convicted him.

21. We have given our best of the consideration to both the circumstances and we are constrained to say that if both the circumstances taken together it cannot entail the conviction of the accused. As mentioned above, there is only a single testimony of PW 4 Birjudi which is of worth credence. Rest of the witnesses who have been produced by the prosecution are absolutely got up witnesses and their presence at the time when the accused and the deceased went together is wholly un-believable. Her evidence is also to this extent only that deceased and the accused left on 27-10-1983 but the dead body was found floating on 29-10-1983. Therefore, it is difficult to infer that deceased and the accused both remained together till deceased died. There is a time lag between 27-10-1983 to 29-10-1983. Ought we know that accused might have remained in the company of many more persons. Therefore the last seen evidence of PW 4 Mst. Birjudi is not enough to lead to only and only conclusion of guilt of the accused.

22. The remaining evidence is of camel and camel cart at the instance of the accused. This bare recovery is also not sufficient to fasten the responsibility on the accused. It is quite possible that to her there are more than one according to the prosecution story and some one might have killed the deceased and given the articles to the accused to dispose of them. Therefore, this circumstance is also not sufficient to connect the accused with the commission of murder.

23. These two circumstances are not enough to conclude that it is the accused alone who is responsible for causing the murder of the deceased. Something more substantial is required to connect the accused with the crime so as to exclude all hypotheses of innocence of the accused. It is not known as to why the deceased was murdered and specially when the prosecution has brought forward more than one accused. It is very doubtful to say as to who has murdered the deceased. It is just possible that as share of booty the accused might have received the camel and Chhakra which have been recovered at his instance.

24. Mr. Arora, learned Counsel for the appellant, has invited our attention to *Pohalya Motya Valvi v. State of Maharashtra* (1979) Cri. LJ. 1310 where in it has been observed as under:

Where two accused were last seen with the deceased and though both should explain the disappearance of the deceased One of them is acquitted of the charge of murder and no appeal is filed against his acquittal the very circumstance that the deceased was last seen with, them ceases to be of an incriminating character and the other accused cannot also be convicted solely on that basis.

25. Likewise, learned Counsel has also invited our attention to *State of Maharashtra v. Annappa Bandu Kavathe* (1980 SCC (Cri.) 155). It has been pointed out in this case that in a case of circumstantial evidence the breach in chain of circumstances is very fatal. It was held that sufficient interval between the death of the deceased and recovery of his dead body creates a doubt and as such the benefit of doubt was given to the accused. In the present case--also the dead body was recovered after 4 days from the date the deceased was last seen alive. More-so as pointed out above these two circumstances in itself are not sufficient to convict the accused-appellant as between these two links there is no continuity so as to make one chain leading to the guilt of the accused only. In these circumstances, we are unable to sustain the conviction of the accused appellant Under Section 302 IPC.

26. The only case made out against the accused in the present case is the recovery of the articles belonging to the deceased at the instance of the accused. That will not take the case beyond Section 404 IPC. The accused can only be

convicted Under Section 404 IPC for being in possession of the articles belonging to deceased. For this offence, the maximum punishment prescribed is only three years. Therefore we uphold the conviction of the accused appellant Under Section 404 read with Section 34 IPC and maintain the sentence awarded by the learned sessions Judge. The accused has also been convicted Under Section 201 IPC but there is no evidence to show that the accused removed any evidence of commission of the offence. As we have found that accused cannot be connected with the murder of the deceased therefore the offence Under Section 201 IPC is not made out against the accused.

27. In the result, we allow the appeal and acquit the accused of the charges Under Sections 302 and 201 read with Section 34 IPC. However, we maintain the conviction of the accused Under Section 403 and so also the sentence awarded by the learned Sessions Judge. The accused is in jail for more than two years. Therefore, he may be released forth-with if not required in any other case.

28. So far as the direction of the learned Sessions Judge regarding delivery of camel and camel cart to Birjudi and heirs of the deceased is concerned, the same will remain intact.