

Mahideeta Singh Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/765709

Court : Rajasthan

Decided On : Feb-06-1987

Reported in : 1987(1)WLN446

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : S.B. Criminal Jail Appeal No. 647 of 1981

Appellant : Mahideeta Singh

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shyam Sunder Byas, J.

1. Mahideetasingh the appellant was convicted under Section 302, I.P.C. and sentenced to imprisonment for life with a fine of Rs. 300/- in default of the payment of fine to further undergo two months rigorous imprisonment by the learned Sessions Judge, Sri Ganganagar by his judgment dated November 4, 1981. He has come-up in appeal and challenges his conviction.

2. Put briefly, the prosecution case is that the accused and his wife Smt. Gurtej Kaur (the deceased-victim) were residents of Chak 54-F. The accused and PW 1 Roopsingh were sharers-crop with Balbirsingh and were working in his field

situated in Mauja Maceasar PS Padampur district Sri Ganganagar in the year 1981. Smt. Gurtej Kaur, aged about 22 years at the time of the incident, also, used to work along with her husband in the fields of Balbirsingh. The accused suspected his wife having illicit relations with Balbirsingh. Five days before the incident, while the accused and his Wife were working in the field of Balbirsingh, he noticed Balbirsingh talking merrily and cracking jokes with Smt. Gurtej Kaur. Smt. Gurtej Kaur was then plucking cotton bolls in the field. She was running here and there and Balbirsingh was following her. This further strengthened the accused's suspicion. In the evening, he asked her as to what was the matter. She confessed before him that she was in illegal intimacy with Balbirsingh for the last five months. She did not disclose this fact to him as she was threatened by Balbirsingh that in case she disclosed this intimacy to the accused, he would put her and the accused to death. The accused asked her to get Balbirsingh caught red handed with her. She promised to do so. However, she did not keep her words. This enraged the accused. In the noon of February 7, 1981, while the accused and his wife Smt. Gurjet Kaur were in their Kotha, he picked up an axe and inflicted blows with it on her neck. As a result, Smt. Gurjet Kaur met instantaneous death on the spot. The accused closed the Kotha, locked it and went to PW I Roopsingh, who was then working in the field of Bilbirsingh. The accused narrated the incident to him and stated that he had killed his wife. He sought his advice as to what he should do. Roopsingh PW 1 advised him to go to the Police Station and report the matter there. The accused thereafter went to Police Station, Padampur and verbally lodged report Ex. P 24 at about 3.30 p.m on the same day. The police registered a case under Section 302, I.P.C. and took tip the investigation. The accused produced two keys which were seized and sealed by the Investigating Officer. The accused was also wearing Lungi (Article 1) which had stains of blood. It was also seized and sealed. The Investigating Officer Balwant Rai PW 7 arrested the accused. The accused made a disclosure statement, recorded in Ex. P 26, to the effect that he had placed his blood-stained shirt which he was wearing at the time of the incident and the axe with which he inflicted the blows near the cot of the deceased in his Kotha. The Investigating Officer took the accused to his Kotha where the lock was opened. The axe (Article 3) and the blood stained shirt were found near the cot on which was lying the

victim's dead body. All these articles were seized and sealed. The investigating officer prepared the inquest report and Panchnama of the dead body. The post-mortem examination over the victim's dead body was conducted by PW 4 Dr. Iqbal Singh the then Medical Officer Incharge, Government Dispensary, Padampur. He noticed the following injuries on the victim's dead body:

External

- (1) Incised wound 5-1/2 c.m. x 1 c.m. x 3 c.m. anterior of neck at thyroid cartilage transversally;
- (2) Incised wound 6-1/2 c.m. x 3-1/2 c.m., transversally anterior-right lateral to neck 3/4 c.m. interior to injury No. 1;
- (3) Incised wound 4 c.m. x 1 c.m. x 3 c.m. transversally anterior to right lateral of neck 1-1/2 cm. interior to injury No. 2;
- (4) Incised wound 3 c.m. x 1/2 c.m. x 1 cm. anterior to neck transversally 1/2 c.m. superior to injury No. 1;
- (5) Incised wound 5-1/2 cm. x 1-1/2 c.m. x 2 c.m. superior to thyroid cartilage transversally anterior to neck.

Internal

Compound fracture of hyoid bone;

Thyroid cartilage 2nd and 3rd and 4th tracial rings.

The doctor was of the opinion that Smt. Gurtej Kaur had died due to haemorrhage, shock, syncope and cutting of right carotid vessels. The postmortem examination report prepared by him is Ex. P 13. The seized articles were sent for chemical examination. On the completion of investigation, the police presented a challan against the accused in the Court of Munsif cum Judicial Magistrate, Padampur, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge framed a charge under Section 302, I.P.C. against the accused, to which he pleaded not guilty and claimed to be tried, In support of its case, the

prosecution examined seven witnesses and filed some documents. The defence taken by the accused was that in the noon on the day of the incident, he went to his Kotha and found the door closed. He pushed the shutters, went inside and found his wife bleeding with wounds near the cot was lying an axe. He locked the Kotha and went to the Police Station. He told the SHO that some body had killed his wife and her dead body was lying in the Kotha. His report was not written at that time. Later on, the police registered a case against him with the connivance of Balbirsingh. He denied that he had lodged report Ex. P 24. On the conclusion of the trial, the learned Sessions Judge found no substance in the defence version and held the charge duly brought at the doorsteps of the accused. The accused was consequently convicted and sentenced. Aggrieved against his conviction, the accused has taken this appeal.

3. We have heard Mr. M.L. Garg learned Counsel for the accused-appellant and the learned Public Prosecutor. We have also gone through the case file carefully.

4. Mr. Garg has not challenged the opinion of PW 4 Dr. Iqbalsingh about the cause of death of Smt. Gurtej Kaur We, therefore, need not discuss the medical evidence in details. We have gone through the testimony of PW 4 Dr. Iqbalsingh and find no good or cogent reasons to distrust his opinion. Suffice it to say that the death of Smt. Gurtej Kaur was not natural but homicidal.

5. Admittedly, there is no ocular witness of the incident and the prosecution case rests entirely on circumstantial evidence. The circumstantial evidence adduced by the prosecution consists of the following sets:

(1) the First Information Report Ex. P 24 was lodged by the accused. Though it is confessional, it is not wholly inadmissible in evidence;

(2) the accused made extra-judicial confession before PW 1 Roopsingh;

(3) When the accused appeared at the police station his Lungi (Article 1) was found stained with blood;

(4) in consequence of the disclosure statement made by him, blood-stained axe (Article 3) was recovered; and

(5) at the time of his arrest, the accused handed over two keys (Article 2) to the police. When the Investigating Officer went to the Kotha, the lock was opened with one of these Keys.

6. The learned Sessions Judge was of the opinion that when these five sets of circumstances were read, together, in conjunction with each other, the irresistible conclusion is that the accused is the perpetrator of the crime.

7. In assailing the conviction, it was vehemently contended by Mr. Garg that all these sets of circumstantial evidence do not even suggest that Smt. Gurtej Kaur was done to death by the accused. The First Information Report Ex. P 24 was inadmissible in evidence, though the portion which is not confessional may be read against him. The Lungi and the axe were not sent for chemical examination. As such, it cannot be said that they were stained with blood much less the human blood. PW 1 Roopsingh was a person of no reliance and credit. Though he was present at the time of the inquest and Panchnama of the victim's dead body, he did not come out with extra-judicial confession before the Investigating Officer. Apart from that, no corroborator was there to the testimony of PW 1 Roopsingh. In the circumstances of the case, the testimony of Roopsingh (PW 1) should not have been acted upon without corroboration from the independent sources.

8. In reply, the learned Public Prosecutor did his best and made strenuous efforts to support the conviction.

9. The first and the foremost question, which arises for our decision is as to what extent the First Information Report Ex. P 24 is admissible in evidence. We need not repeat that the FIR Ex. P 24 is confession as such the contents that the accused killed his wife are not admissible in evidence. Ex. P 24 is admissible only to show that the accused was the person who lodged it. It is further admissible in evidence to the limited extent relating to the information leading to the discovery of a fact. In other words, where the First Information Report is lodged by the accused, what is admissible is that the accused had lodged it. Where the discovery follows such information contained in the FIR that information is admissible to the extent mentioned in Section 27 of the Evidence Act,

10. Long back in *Aghnuo Nagesia v. State of Bihar* : 1966 CriLJ100 , which is a leading authority on the point. it was pointed out by their Lordships that the proof of this confession contention the FIR lodged by the accused, is completely excluded by virtue of the ban contained in Sections 24, 25 and 26 of the Evidence Act including the admissions of minor incriminating facts: Only that portion, which is covered by Section 27 of the Evidence Act, is admissible, in *Khatri Hemraj Anukh v. State of Gujrat* 1972 SCC (Criminal) 715), the same view was reiterated and it was observed that the confessional statement of the accused which forms the basis of the FIR is not admissible in evidence as the same is hit by Section 25 of the Evidence Act. Such a statement can, however, be admitted for the limited purpose of identifying the accused as to the maker of the report.

11. Thus, FIR Ex. P 24 is not admissible in evidence and cannot be read against the accused except to the extent that he lodged it and that he had placed his blood-stained clothes and the axe near the cot of the deceased victim.

12. The Investigating Officer seized Lungi (Article 1) of the accused which he was wearing when he lodged the FIR Ex. P 24. He further recovered axe (Article 3) lying in the Kotha of the accused near the victim's cot. Unfortunately, all these articles were not sent for chemical examination. It cannot; therefore, be said that they had stains of human blood on them. Thus, the seizure of the Lungi and the axe does not constitute any incriminating circumstances against the accused. Even if they were found having human blood on them, it could not have led to the conclusion that the accused had killed his wife. The recovery of blood-stained articles at the instance of the accused is only a circumstance to be taken into consideration.

13. Turning to the extra-judicial confession alleged to have been made by the accused before PW 1 Roopsingh, the contention of Mr. Garg is that he is the person on whom reliance cannot be safely placed. There is considerable force in the contention of Mr. Garg. PW 1 Roopsingh admitted that after when the accused had confessed the guilt of killing his wife, he disclosed it to one Labhsingh at about 4.00 p.m. on the same day. Labhsingh has been cited in the Calendar of witnesses, but he was not produced during trial for the reasons best known to the

prosecution. Labhsingh was the person who could give material corroboration to the testimony of Roop Singh (PW 1). PW 1 Roopsingh admitted in his cross-examination that he was present when the Panchnama Ex. P 3 of the victim's dead body was prepared by the Investigating Officer on the very day of the incident. He further stated that he was with the police till 8.00 p.m. on that day and he had told the Investigating Officer that the accused had confessed before him that he had killed his wife. Panchnama Ex. P 3 shows that he was really present when the inquest of the dead body was prepared. Unfortunately, no statement of this witness was recorded on February 7, 1981 though he was present at the time of the inquest and was with the police upto 8 00 p.m. on that day. His statement was recorded on the next day i.e. February 8, 1981 and that too in the afternoon. These circumstances show that he did not come-out with the story of extra-judicial confession immediately at the first opportunity available to him. His late examination by the police persuades us to hold that what he stated about the extra-judicial confession is not true. He had the opportunity to disclose the extra-judicial confession on February 7, 1981, but he remained quiet. This stoic quietness on his part destroys his credibility. There is then no corroboration of his testimony.

14. The accused has denied that he confessed the guilt before this witness Roopsingh (PW I); Even if, the accused made the extra-judicial confession before this witness, it was retracted later on during trial. An accused can be convicted on the basis of extra-judicial confession even without corroboration provided the witness speaking about the extra-judicial confession has credential of truth and his testimony is above board and free from suspicion. In the instant case in our hand, it would not be free from risk to accept the testimony of PW 1 Roopsingh. The circumstances of the case impel us that even if the extra-judicial confession was there, it cannot be safely acted upon without corroboration from the independent sources. Risk is involved when the retracted extra-judicial confession is acted-upon without corroboration from independent sources. We are, therefore unable to maintain the conviction of the accused on the sole strength of the testimony of PW 1 Roopsingh.

15. The learned Public Prosecutor drew our attention to the report of the State Forensic Science Laboratory, Rajasthan, Jaipur where in the Lungi, Kurta and the axe recovered at the instance of the accused were found stained with blood. The report cannot be read in evidence against the accused for the simple reason that the accused was not examined with reference to this report. No question was put to him in his statement recorded under Section 313, Cr. PC that blood was found on these three things. Unless a question was put to the accused and he was offered an opportunity to explain this incriminating circumstance, it cannot be used against him. Apart from that, there is no evidence to show that blood found on these articles was of human origin.

16. The resultant position is that:

(1) the First Information Report Ex. P 24, containing the confession of the accused, is not admissible in evidence against him, save to the extent discussed above;

(2) the extra-judicial confession alleged to have been made by the accused before PW 1 Roop Singh does not stand proved and it cannot be acted upon in absence of corroboration from independent source; and

(3) the recovery of the various articles in consequence of the information of the accused or at his instance, constitutes no incriminating in evidence against the accused.

We are, therefore, unable to maintain his conviction. He is entitled to acquittal.

17. The appeal of accused Mahideeta Singh is allowed. His conviction and sentence under Section 302, I.P.C. are set aside and he is acquitted thereof. He is serving the sentence in jail and shall be immediately set-forth at liberty if not wanted in any other case.