

Madan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-03-1987

Reported in : 1987(1)WLN455

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

Appeal No. : D.B. Cr. Jail Appeal No. 663 of 1981

Appellant : Madan Singh

Respondent : State of Rajasthan

Judgement :

Shyam Sunder Byas, J.

1. The appeal is directed against the judgment of the learned Additional Sessions Judge (2), Hanuman Garh dated Dec. 9, 1981 where by the appellant Madan Singh was convicted under Sections 302 and 201, I.P.C. and was sentenced to imprisonment for life with a fine of Rs. 2000/- on the first count and two years' rigorous imprisonment with a fine of Rs. 1000/- on the second count. Substantive sentences were directed to run concurrently.

2. Briefly recalled, the prosecution case is that the deceased victim Gurudayal Jat was the son of PW 9 Raja Ram and brother of PW 7 Mohar Singh and was residing with them in village Dubli Kalan, Police Station, Tibi District Sri

Ganganagar. The accused is a resident of village Chhajusar District Churu. In 1979, the accused was employed as a 'Haali' (agricultural labourer) by Raja Ram to work on his fields situate in Chak-4 R.R.P. Rohi Mauja Dabbli. The accused had executed the agreement Ex. P 8 in that respect in favour of Raja Ram on June 21, 1979. In the morning on August 31, 1979, the accused went to the fields of Raja Ram to provide water to the standing crops there in. At about 8.00 or 9 00 am. on the same day, the deceased Gurudayal went to the fields of his father and took food 'With him for the accused. At about 12.00 in the noon, the accused and Gurudayal fell-out and a quarrel took place between them. PW 1 Soji Ram, PW 2 Gopi Ram, PW 3 Sukh Ram and PW 4 Mansha Ram, who. were working in their fields nearby came and intervened. Gurudayal was complaining that the accused was not working properly and the accused complained that Gurudayal had addressed vulgar abuses on him. However, the matter got pacified. The accused, at that time, told that he would settle the accounts with Gurudayal later on. The accused worked on the water channel thereafter, while Gurudayal slept under a tree. At about 7.30 or 8.00 p.m., PW 7 Mohar Singh went to the fields to provide food to his brother Gurudayal and the accused, but he found none of them there in the fields. He cried aloud. Soji Ram (PW 1), Gopi Ram (PW 2), Sukh Ram (PW

3) and Mansha Ram (PW

4) apprised him of the quarrel which had taken place between the accused and Gurudayal in the noon of that day. Mohar Singh worked in the Melids and provided water through the channel to the standing crop. After mid-night, he returned to his house and told his father Raja Ram (PW

9) that neither Gurdayal nor the accused was available at the fields. His father Raja Ram took the matter lightly and thought that both of them would have gone towards Gagamandi. Next day, when neither Gurudayal nor the accused returned, the members of the family went in search of them, but could not trace out either. At about 8.00 p.m. on September 2, 1979, when PW 1 Soji Ram was working in his field, he found bad smell emitting from a corner in the water channel. He went to PW 9 Raja Ram and informed him, at about 8.00 p m., of the same. Raja Ram took some persons with him and went to his fields They found a dead body lying

buried in the water channel. He sent PW 6 Mani Ram with two more persons to lodge a report at the police station. Mani Ram reached Police Station, Tibi at about 8.15 p.m. on September 3, 1979 and verbally lodged report Ex. P

1. The police registered a case under Sections 302 and 201, I.P.C. The investigation was taken-up. The Station House Officer Roshanali (PW

13) arrived on the spot, inspected the site and discovered the dead body from the water channel. He prepared the inquest report Ex. P 3 and Panchnama Ex. P 4 of the dead body. The dead body was found to be of Gurudayal. The post-mortem examination of the victim's dead body Was conducted on the same day by PW 8 Dr. Surendra Kumar the then Medical Officer Incharge, Government Dispensary, Tibi. He noticed the following injuries on the victim's dead body:

(1) Incised wound 3-1/2' x 3/4' x 4' on anterior and right side of neck just above thyroid cartilage. Blood clot present in the wound;

(2) Incised wound's' x 1/8' x 1/8' on right side of neck 1' below mandible;

(3) Incised wound 5' x 1/8' x 1/8' on middle of neck left side anterior aspect;

(4) Lacerated wound 4' x 4' on left leg, left to missing. Bone exposed and wound seemed to be post-mortem in nature.

The doctor was of the opinion that the cause of death of Gurudayal was shock and asphyxia due to excessive haemorrhage by cutting of carotid artery right side and trachea by injury No. 1 by sharp weapon. The injuries were ante-mortem. Injuries No. 1,2 and 3 were found individually as well as collectively sufficient in the ordinary course of nature to cause death. The post-mortem examination report prepared by him is Ex. P 10. The accused was arrested on September 7, 1979. In consequence of the informations furnished furnished by him whilst under police custody, wrist watch (Article 1), Kassi (Article 6), torch (Article 7) and bag (Article 8) were recovered. The wrist-watch (Article 1) was that of Gurudayal which he was wearing when he went to his fields. The torch and the bag were also alleged to have been taken by him when he left the house. On the completion of investigation, the police presented a challan against the accused in the Court of

the Judicial Magistrate, Hanumangarh, who, in his turn, committed the case for trial to the Court of Sessions. The learned Additional Sessions Judge framed charges under Section 302 and 201, I.P.C. against the accused, to which he pleaded not guilty and claimed to be tried. In the course of trial, the prosecution examined 14, witnesses and filed some documents. In defence, no evidence was adduced. The defence taken by the accused is that of complete denial. In his statement under Section 313, Cr. PC he even denied that he was employed as a Haali by PW 9 Rajaram and was working in his fields in August, 1979. On the conclusion of the trial, the learned Sessions Judge found the charges duly brought home to the accused beyond all orbits of reasonable doubt. The accused was consequently convicted and sentenced as mentioned at the very out-set.

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

4. The learned amicus curiae did not challenge the opinion of PW 8 Dr. Surendra Kumar about the cause of death of Gurudayal. We have also carefully gone through his evidence and find no reason; to distrust his opinion. Gurudayal had received three incised wounds all on neck and one lacerated wound on the left leg. The three incised wounds were individually as well as collectively sufficient in the ordinary course of nature to cause death. The death of Gurudayal was, thus, not natural but homicidal.

5. Admittedly, there is no ocular witness of the incident and the prosecution case entirely rests on circumstantial evidence. For case and convenience, the circumstantial evidence adduced by the prosecution may be categorised under the following heads:

(1) the accused was employed as a Haali by the victim's father Raja Ram (PW 9);

(2) on August 31, 1979, the accused went to the fields to work there;

(3) the deceased-victim Gurudayal went to the fields and took food with him for the accused;

(4) in the noon or so, the accused and Gurudayal fell-out and a quarrel took place between them. PW 1 Sojiram, PW 2 Gopiram, PW 3 Sukha and PW 4 Mansha Ram, who were working in their fields nearby, came there, intervened and pacified the matter. The accused then hurled out the threat that he would later on settle the accounts with Gurudayal;

(5) in the evening when Moharsingh (PW 7) the brother of the deceased went to the fields to provide food to Gurudayal and the accused, he found none of them there. Both were missing. Gurudayal was thereafter found dead, his dead body was lying buried in the water channel;

(6) the accused made extra-judicial confessions of his guilt before PW 5 Govind Ram and PW 10 Birbal Ram;

(7) in consequence of the informations furnished by the accused whilst under police custody, the wrist watch, Kassi, torch and bag were recovered. The wrist watch was that of Gurudayal which he was wearing on the day of the incident;

(8) the accused took the police and the Motbirs to the place from where the dead body of Gurudayal was discovered and.

(9) the conduct of the accused that he absconded just after the incident.

6. The learned Sessions Judge, after making an analysis of the circumstantial evidence, rejected the evidence relating to extra-judicial confessions. He further found that the recoveries of Kassi, torch and bag at the instance of the accused were of no significance and constituted no incriminating circumstance against the accused. Likewise, the accused taking the police and the Motbirs to the place from where the victim's dead body was discovered, was found of no significance as the dead body was already disintegrated before that. The remaining sets of evidence were found sufficient to connect the accused with the murder of Gurudayal. The learned Sessions Judge was of the opinion that the circumstantial evidence unerringly pointed out that the accused was the perpetrator of the murder of Gurudayal.

7. In assailing the conviction, it was argued by the learned amicus curiae that the various acts of circumstantial evidence relied upon by the Court below were not sufficient for convicting the accused. It was argued that though the accused and the deceased-victim were found missing since the evening of August, 31, 1979, the victim's father or brother took no steps to report the matter to the police. It was also argued that according to Dr. Surendra Kumar, semi-digested food was found in the victim's stomach. It means, the death must have taken place in the afternoon of August 31, 1979. The prosecution could not point out the place where Gurudayal was done to death. If he was killed in the afternoon, the persons working in the fields nearby must have seen the incident. All these circumstances were not taken into consideration by the trial Court. The conviction is, therefore, unsustainable. It was, on the other hand, contended by the learned Public Prosecutor that the various sets of circumstantial evidence were sufficiently strong to show that Gurudayal was done to death by the accused and none else. We have taken the respective submissions into consideration

8. The first question arising for our decision is whether the various circumstances which were taken into consideration by the trial Court for convicting the accused stand proved. The circumstances enumerated above as number (1), (2), (3) and (4) may be taken together because the evidence is common in respect of all of them. PW 9 Raja Ram is the father of the deceased-victim. He stated that he had employed the accused as a Haali to work in his fields. The accused was to be paid Rs. 3000/- per year along with food. The agreement Ex. P 8 was executed by the accused in his favour on June 21, 1979. PW 10 Birbal is the scribe of this agreement Ex. P 8. He stated that the accused was employed as a Haali by Raja Ram (PW 9) for an year and he had scribed Ex. P 8 on the request of the accused. The accused appended his thumb impression on it in his presence. The accused's brother Bhanwar Singh was also present who appended his thumb impression on Ex P 8 as a token of attestation. PW 1 Soji Ram, PW 2 Gopiram, PW 3 Sukh Ram and PW 4 Mansha Ram are the persons whose fields are situate nearby, in which they had raised the crops. They stated that the accused was working as a Haali in the fields of Raja Ram (PW 9) and they had seen him also working in the fields on the day of the incident. They further stated that deceased Gurudayal came to the field of incident at about 10.00 a m on August 31, 1979 with food for the accused.

They further stated that in the noon on that day, the accused and the deceased fell out and a quarrel took place between them. They went where the accused and the deceased were quarrelling. The deceased told that the accused was not working in the fields where as the accused told that the deceased Gurudayal was hurling vulgar abuses on him. These witnesses further stated that they intervened and pacified the matter. The accused went to work in the fields and they returned to their fields. The accused hurled out the threats that he would settle the accounts with Gurudayal later on. All these witnesses were cross-examined at length, but nothing could be elicited from them which may make their testimony unworthy of belief. PW 1 Soji Ram, PW 2 Gopi Ram, PW 3 Sukh Ram and PW 4 Mansha Ram are independent persons, not belonging to the caste of the deceased or the accused. The accused is a resident of another district. These witnesses had no grouse against the accused or a soft corner for the deceased. We are unable to conceive that they would falsely depose against the accused for no apparent reasons. The accused has denied that he was employed as a Haali to work in the fields of PW 9 Raja Ram. His denial is useless in view of the over-whelming evidence of these witnesses. The trial Court was, therefore, justified in concluding that the accused was employed as a Haali by PW 9 Raja Ram to work in his fields. The accused went to work in the fields in the morning of August 31, 1979. The deceased Gurudayal went to the field at about 8.00 or 9.00 a m. on that day to provide food to the accused & in the noon the accused and the deceased fell-out in the field. The accused threatened to settle the accounts with Gurudayal. This quarrel between the accused and the deceased served as a motive to the accused and he hurled out threats in that sequence. Gurudayal was not seen alive thereafter.

9. Coming to the other circumstances, Mohar Singh (PW 7) stated that in the evening on August 31, 1979, he went to the fields where Gurudayal and the accused were working to provide food to them. He did not find either of them there. Gurudayal as well as the accused were missing. After working in the fields, he returned to his house in the midnight and narrated the incident to his father Raja Ram (PW 9). Raja Ram told him that probably both of them viz., his son Gurudayal and the accused may have gone to Gogamandi. There is nothing to discredit the testimony of Mohar Singh (PW 7). This circumstance, thus, also,

stands proved.

10. The accused was arrested on September 7, 1979, vide arrest memo Ex. P 18. On September 13, 1979, whilst under police custody, the accused gave the disclosure statement Ex. P 23 that he had concealed the wrist watch of the deceased Gurudayal in his house and that he would get it recovered. In pursuance to this information in Ex. P 23, the accused took the Investigating Officer and the Motbirs to his house in village Chhajusar and took out H.M.T. wrist watch (Article 1) lying concealed in the wall. The witnesses speaking on this information and recovery are the Investigating Officer and PW 12 Budh Ram. There is no material on record to suggest or show that this recovery of the wrist watch at the instance of the accused was planted.

11. It was argued by the learned amicus curiae that the prosecution has not been able to show that the deceased Gurudayal was wearing this wrist watch (Article 1) when he was working in the fields on the day of the incident. We find no substance in the contention. PW 1 Sojiram, PW 2 Gopiram, PW 3 Sukhram and Pw 4 Mansha Ram have state that when they went to the field of Rajaram (PW 9), where the accused and the deceased were quarrelling, they saw the wrist watch (Article 1) tied on the hand of Guru Dayal. PW 7 Moharsingh, who is the brother of the deceased, identified this wrist watch (Article 1) to be of Gurudayal and stated that he used to wear it. Thus, the recovery of the deceased's wrist watch (Article 1) in consequence of the information furnished by the accused stands proved. The accused has furnished no explanation as to how he came in possession of this wrist watch belonging to the deceased. This recovery constitutes a very formidable link in the chain of circumstantial evidence.

12. It was contended by the learned arnicas curiae that no presumption on the basis of this recovery of wrist watch can be raised against the accused that he had killed Gurudayal. He has cited a number of decisions before us in support of his contention. We agree with him that the mere recovery of the deceased's property (here the wrist watch Article I) is not sufficient to raise a presumption of the offence of murder against the accused. Here in the instant case, we are taking this recovery of the wrist watch as a circumstance linking the accused with the

commission of the crime. Had there been only this circumstance on record and no other evidence, we would have certainly not raised a presumption of murder against the accused. But as has been discussed and as will be discussed here in after, there are other pieces of circumstantial evidence also against the accused. This recovery and those circumstances will have to be taken together into consideration and not in isolation.

13. The conduct of the accused also speaks heavily against him. He was employed as a Haali and was working in the fields of PW 9 Rajaram on August 31, 1979. He worked there till afternoon and thereafter disappeared. He, thus, absconded and could be arrested only on Sept. 2, 1979. There was no reason for the accused to abscond from the after noon of August 31, 1979. His abscondance is a material circumstance which cannot be lost sight of while assessing his guilt. We are quite conscious that the mere abscondance of the accused is not of much significance because people, out of fear, at times abscond. But here in the instant case, the sequence of events is such that the abscondance of the accused speaks heavily against him. Had he been honest, he would have returned to the house of PW 9 Rajaram with whom, he was working as a Haali. There was no reason for his leaving the fields and absconding. His abscondance discloses a guilt-conscious conduct on his part.

14. When the conviction of the accused is sought on circumstantial evidence, what is required is (1) each of the circumstances, on which the prosecution relies, must be affirmatively established, (2) these circumstances considered in their totality must be consistent and consistent only with the guilt of the accused and (3) the circumstances must be incompatible with the hypothesis of the innocence of the accused. The various links of the chain of circumstances are to be weighed and the result of such weighing must lead to the, irresistible conclusion that in all probabilities the accused is the perpetrator of the crime. Here in the instant case, the chain of circumstances adduced to above is so complete that it leaves no room for the inference that the deceased may have been done to death by some one other than the, accused. The chain of circumstantial evidence is complete and the accused can have no escape. He was rightly convicted and sentenced under Section 302, I.P.C. No interference is called for.

15. The accused was also convicted under Section 201, I.P.C. But there is no evidence on record to show that the accused had buried the victim's dead body at the place in the water channel from which it was discovered. His conviction under Section 201, I.P.C. is unsustainable.

16. In the result, the appeal of accused Madensingh is partly allowed. His conviction and sentence under Section 302, I.P.C. are maintained. However; his conviction and sentence under Section 201, I.P.C. are set-aside. The appeal shall stand accordingly disposed of.

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