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Anwar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-29-1985

Reported in : 1986WLN(UC)48

Judge : Dinkar Lal Mehta and; Farooq Hasan, JJ.

Appeal No. : D.B. Criminal (Jail) Appeal No. 704 of 1976

Appellant : Anwar

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

1. This appeal is directed against the judgment dated 20-8-1976, passed by the Additional Sessions Judge, Gangapur City. Learned Additional Sessions Judge has convicted the accused appellant Anwar Under Section 302 IPC and sentenced him to rigorous imprisonment for life and a fine of Rs. 200/- In default of payment of fine the accused-appellant has been convicted to undergo three moths rigorous imprisonment.

2. On 3rd April 1975 Shiv Narain, PW 1 father of the deceased, lodged the FIR at police station Karoli and submitted that he is suspecting the accused appeallant as the murderer of his son. He informed the police that the dead body is lying nearby the Tal. He also produced the letter Ex. P1 received by him on the very day at 9

a.m. After investigation a charge-sheet was submitted before the Judicial Magistrate, who committed the case to the Court of Sessions for trial. Learned Sessions Judge examined 18 witnesses on behalf of the prosecution. The prosecution has also produced 18 documents before the trial court. From the perusal of Ex. P. 18, post-mortem report it is clear that the case of death of the deceased Prem Chand is head injury sustained by him. There is no direct evidence in this case. The case is solely based on the circumstantial evidence. The learned Sessions Judge found the following circumstance against the appellant:

(i) That on 29th March, 1975 accused went in the shop of Kedar, PW 4 and asked Kedar to call Prem, but the deceased prem was not available at his house and as such, he instructed Kedar whenever he (Prem) comes inform him; (ii) the second circumstance is that on 3rd April, 1975, Shiv Narain after receiving letter Ex. P 1 went at residence of accused and asked him about Prem. It is said that the accused was shivering; (iii) the third circumstance, it is alleged by the prosecution against the accused appellant that the letters Ex. P. 1 and Ex, P 8 were written by PW 10, said Ahmed, at the instance of accused and the letter Ex. p. 3 was written by Jagan Singh. It is further alleged that the letter Ex. P. 8 was recovered from the trouser of the accused. It is further alleged that Ex. P. 3 letter was produced by Nemi Chand, PW. 3. The next set of evidence relied upon by the learned Sessions Judge is recovery of clothes of the deceased from nearby a Tal at the instance of the accused. It is said that accused gave information Under Section 27 of the Evidence Act and in consequence of the information so given the clothes were recovered from the Tal. It is also alleged that the lathi Article 4 was recovered at the instance of the accused.

3. Learned Counsel for the accused-appellant submits that there is no evidence of the last seen which may connect the accused with the crime. Learned Public Prosecutor has invited our attention to the statement of PW 2 Geeta, to show that Geeta is the witness of last seen. The trial court has rejected the testimony of Geeta on the ground that she has stated before the trial court that she saw appellant Anwar taking Prem from her house on a Saturday. This fact has not been mentioned in the statement of Smt. Geeta recorded Under Section 161 Cr.

PC. We are of the view that the trial court has rightly rejected the testimony of Geeta and we are not inclined to interfere with the inference drawn by the court below.

4. As far as the testimony of PW 4 Kedar is concerned, he has only stated that accused Anwar came at his shop for the purpose of shaving and he wanted to call deceased Prem but he was not available at his residence, and as such he was instructed by the appellant to intimate Prem. He has not stated that Prem met Anwar any time. It is an admitted position that Prem deceased, and appellant were having some relations with each other and they used to move out together PW .1, Shiv Narain has stated in his statement that previously Prem was taken by Anwar Ali, the accused, out side the city and after some days they returned. This goes to show the intimacy of deceased and the appellant and to call a friend who is known cannot be taken into consideration unless otherwise the motive is proved nor the prosecution has tried to establish any motive. The evidence of PW 4 Kedar does not help the prosecution at all for this purpose. As far as the evidence and conduct of the accused appellant is concerned, PW 1 Shiv Narain, has stated that on 3rd April, 1975, he went at the residence of the accused Anwar and asked about Prem. He has further stated that Anwar Ali was shivering. Learned Addl. Sessions Judge has discussed this point at length and has drawn a conclusion that the conduct of Anwar Ali is a link to establish the complicity of accused Anwar Ali. We have also gone through the statement of PW 1, Shiv Narain. He has stated that he went at the residence of the appellant and as soon as he entered the house he saw the accused appellant shivering. He has further stated that he told to the appellant that you have taken away the deceased earlier also and if you are having any address please let us know. The accused denied and said that let us go to Chulidhah and should inquire about Prem. Ram Khilari and accused then went to Chulidah and approached Nanhe Musalman. Nanhe told him that he is not in a position to say at this time. He will be able to fore-cast something about Prem after performing Namaj. This type of evidence is a weak type of evidence and also is not sufficient to connect the accused appellant with the commission of the crime. The next set of evidence relates to the letters Ex. P. 1, Ex. P. 3 and Ex. P. 8. Prosecution has produced two witnesses, namely, PW10, Syed Ahmed PW3 Jagan Singh to prove that these letters were written by them at the instance of the

accused appellant, Anwar. It will be proper to reproduce one letter Ex. P. 1 for appreciating the other letters also. Ex. P. 1 letter reads as under:

vknj.kh; firkth iz.kke A

izse ds lekpkj ekywe eS vkxs ;gka eS djksyh ls egw dk cgkuk ysdj tk jgk gwW A vkSj eS M+dSrh fxjksg es tk jgk gwW mUgksus eq>s ugh j[kk rks eS viuh dgh tkdj tku ns nwaxk A djkSyh es dHkh ftanxh es okil ugh vkmaxk A vkxs ;g fd eSus jkeckcw vkSj yrhQ dks HkkHkh ls yxs gq, ns[kk vkSj eSus muls dgk rks HkkHkh us eq>s ;g dgk fd jsorh ?kokbZ us esjh bTtr ywVh rsjs firkth vkSj rsjs HkkbZ us D;k fd;k eS jkeckcw vkSj yrhQ dks nks ckj ns[k pqdk gwW vkSj rhljh ckj blds eaqg ls lquh gS eSus muls iwNk rks jke ckcw vkSj yrhQ us eq>s pkdw dh /kedh nh A eS xaxk dh dle [kk dj dg jgk gwW AeSus vius vka[kks ls ns[kk gS A bTtr viuh lcdks I;kjh gksrh gS vkSj vxj HkkHkh yk[k dle [kk, rks lp ugh ekus A ;g eS fy[k jgk gwW ;g fcYdqy lp gS A ;g lc ds ihNs viuh tku ns nwaxk A

vkidk

izse

5. The contents of the other letters are practically the same and have been addressed to the different persons Ex. P 3 and Ex. P 8 letters have been addressed to his brother Nemi Chand. In all these three letters it has been mentioned that his Bhabhi is having illicit connection with Ram Babu and Latif. It has also been mentioned therein that he has seen them in compromising position with his own eyes. He has further stated in the letters that it is a question of prestige of the family and if something is not done he will not return to the house and may commit a suicide. Even if it is assumed that these letters were written by Sayeed Ahmad and Jagan at the instance of the accused appellant even then they do not suggest to connect the accused with the commission of crime. The next set of evidence which has been relied upon by the learned Sessions Judge is about the recovery of Article 4 Lathi. This lathi has been recovered at the instance of the accused, but it was not found blood stained. There is no evidence to corroborate that this lathi was used for the purpose of inflicting a blow on the head of the deceased. There is also no linking evidence to show any connection of the lathi

Article 4, with the commission of the crime. Learned Sessions Judge has relied on the statement of Dr. D.B. Mishra, who has stated that the injury sustained by the deceased can be caused by a lathi. This type of evidence cannot connect the accused with the commission of crime. It is said that the accused gave information Under Section 27 of the Evidence Act and in consequence of that recovery was effected. Both the documents have been marked as Ex. P. 16 and Ex. P. 17 respectively. Bush-shirt, Baniyan,shoes were also recovered from the Tal Kherli and were identified by the witnesses before the learned Judicial Magistrate. Mr. Gupta appearing on behalf of the appellant has convicted our attention to the statements of PW 8 Gulab and PW 9, Devi Lal who are the motbirs of the recovery. PW 8. Gulab has stated in his examination in chief that one bush-shirt, one Baniyan and shoes were recovered from a place which was inside the water. He has further stated that he brought the articles from the Tal. He has been confronted with his police statements Ex. D. 4. In police statement he has stated that Anwar first pointed out the place and there after threw the stone towards the place where the articles were lying. He has further stated that he had dived 4 to 5 times before the recovery of the clothes. He has further stated that he dived at the instance of Thanedar to find out clothes. PW 9 Devi Lal has stated that Anwar threw the stone and showed us the place where the clothes were lying. He has further stated that we remained at the Tal for about 2-1/2 hours. He has further stated that at the Tal Anwar told to the SHO. 'Please show the correct place otherwise you will also face the same difficulty'. He has further stated that in the first dive some articles were recovered and, thereafter, Gulab had to dive more to recover the other articles. However, he has been confronted with the police station Ex. D. 5 in which he has not stated about the mode of information given by the appellant. Mr. Gupta has also invited our attention to the recovery memo Ex. P. 11. It has been mentioned therein that beneath the water from a Chajja, the articles clothes and shoes were recovered. It has also been mentioned that a stone of about 250 Grams was also recovered. Though the recovery does not inspire the confidence but even if it is assumed that the recovery was made then too it does not connect the accused with the commission of crime specially Under Section 302, IPC. Thus, the linking evidence is missing to connect the present accused with the commission of the crime. The benefit of doubt goes to the

present accused.

6. The appeal is accepted. The judgment of the trial court dated 20-8-1976 is set aside. The appellant is acquitted of the charge levelled if not required in any other case. The appellant is on bail he need not surrender. His bail bonds are hereby discharged.

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