

Amiya and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-25-1987

Reported in : 1987(2)WLN42

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

Appeal No. : D.B. Criminal Appeal No. 922 of 1976

Appellant : Amiya and anr.

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shyam Sunder Byas, J.

1. Amiya and Mst. Madi the appellants, were convicted under Sections 302 and 201, IPC and each was sentenced to imprisonment for life on the first count and three years' rigorous imprisonment with a fine of Rs. 100/-, in default of payment of fine to further undergo four month' rigorous imprisonment on the second count by the learned additional Sessions Judge (1), Jodhpur by his judgment dated November 8, 1976. They have come-up in appeal and challenged their conviction.

2. Briefly recounted, the facts and circumstances leading to the prosecution and conviction of the appellants may be summed-up as under: Baldeo Bhat had two

wives Smt. Madi and Smt. Magni. He was residing with them in village Gajsinghpura, He passed away two or three years before August, 1975. His widows continued to live together in the same house, but the mutation of his fields was entered separately in favour of each. Smt. Magni, aged about 35 years at the time of her murder, had no issue while Smt. Madi (the appellant) has two daughters. Smt. Sayri and Smt. Jetabai by name. Smt. Sayri is married to the appellant Amiya while Jetabai is married to one Banshi. Accused Amiya has a son by name Gopiya. Smt. Madi, aged about 70 years in 1975, wanted to adopt Gopiya as the son. Smt. Magni, however, opposed this proposed adoption. Smt. Madi and Amiya therefore, took Smt. Magni as a hurdle in the proposed adoption and hatched a plan to finish her for ever.

3. On August 25, 1975, some persons of village Gajsinghpura noticed a dead body floating in the pond situate nearly a kilometre away from the village. The matter was brought to the notice of the Sarpanch Iedan (PW 1). Iedan collected some persons of the village and went to the pond to verify the matter. They also saw the dead body floating in the pond. PW 1 Iedan then upon scribed report Ex. P 1 and sent it to Police Out Post, Asop. The Head Constable Incharge of the Police Out Post was not available there. As such, the Police Constable Girdharising took-up Ex. P 1 to Police Station, Pipar City and presented it there. PW 13 H.C. Shiv Singh decided to hold an inquest proceeding. He came to the pond and arranged to take out the dead-body. He prepared the Panchanama and the inquest of the dead body. The dead body was identified to be that of Smt. Magni. He arrived at the conclusion that the death of Smt. Magni was not natural but homicidal. He drew up report Ex. P 18 and submitted it to the Station House Officer, Police Station, Pipar City. The Police registered a case under Section 302, IPC and proceeded with investigation on August 28, 1975. The post-mortem examination of the victim's dead body was conducted by PW 24 Dr. Jaswant Singh on August 27, 1975. He noticed some external injuries on the dead body. Some of the injuries were on the upper spine chest and left parietal region. The doctor found that the cause of death was due to compression of chest and dead injury. The injuries were cumulatively sufficient in the ordinary course of nature to cause death. He issued post mortem examination report Ex. P 17. The investigation revealed that the appellants along with Hariya and Banshiya Bhat hatched a conspiracy to finish

Smt. Magni. They committed her murder and threw the dead body in the pond tying heavy stones in her clothes. Smt. Magni was in possession of some gold ornaments, of which she was relieved by the miscreants and they tried to sell them to different persons. The appellants were rounded up. Hariya and Banshiya absconded and could not be apprehended. After when the investigation was over, the police submitted a charge-sheet against the appellants in the Court of the Munsif cum Judicial Magistrate, Bilara, who, in his turn, committed the case to the Court of Sessions. The case came for trial before the learned Additional Sessions Judge (1), Jodhpur. He framed charges under Section 302 and 201, IPC and in alternative under Sections 302/34 and 201/34 IPC against both of them, to which they pleaded not guilty and faced the trial. The accused, while denying the whole prosecution story, claimed absolute innocence. In support of its case, the prosecution examined 35 witnesses and filed some documents. In defence no evidence was adduced. On the conclusion of the trial, the learned Additional Sessions Judge found the charges duly proved against the appellants. They were, therefore, convicted and sentenced as mentioned at the very out-set. Aggrieved against their conviction and sentence, the accused have taken this appeal.

4. We have heard the learned Counsel for the appellants and the learned Public Prosecutor. We have also gone through the case file carefully.

5. It may be stated before proceeding further in the matter that the opinion of Dr. Jaswant Singh (PW 24) relating to the cause of death of Smt. Magni was not challenged before us by the learned Counsel. We have also gone through the testimony of Dr. Jaswant Singh and find no reasons to distrust his opinion. Since his opinion was not challenged before us, we need not touch his evidence. Suffice it to say that the death of Smt. Magni was not natural but homicidal.

6. Admittedly, there is no ocular witness of the incident and the entire prosecution case rests on circumstantial evidence. We have gone through the judgment of the learned Sessions Judge and we are unable to decipher the reasons which prevailed over him in taking the charges duly proved against the appellants. It is difficult to discern from his judgment as to what were the circumstances connecting the appellants with the murder of Smt. Magni. We, therefore, have to

make a survey of the circumstantial evidence adduced by the prosecution in order to find out whether the conviction of the appellants is proper and should, therefore, be maintained. The circumstantial evidence, for case and convenience, be categorised under the following heads:

(1) witnesses who had seen the victim's dead body floating in the pond:

(2) evidence of the persons to whom gold ornaments were offered for sale;

(3) the motive which prompted the appellants to end the life of the victim;

(4) the statement made by the appellant Smt. Madi before PW 5 Chetanram. She is alleged to have stated before him that Amji (appellant) and Heeriya had committed the murder of Smt. Mangi.

7. The first piece of circumstantial evidence relating to the villagers' seeing the dead body of Smt. Magni floating in the pond is not open to any doubt. The prosecution has examined nearly 18 witnesses to prove that the dead body was floating in the pond and that dead body was of Smt. Magni. This circumstance only shows that the death of Smt. Magni was not natural but homicidal. We need not discuss the evidence of the witnesses relating of this aspect.

8. Coming to the second piece of circumstantial evidence, the prosecution has examined PW 13 Jadu, PW 14 Bankatlal and PW 15 Gulam Hussain all residents of Aasop to prove that some persons came to them and offered to sell gold ornaments to them. The gold ornaments were not shown to them but only an offer was made. These three witnesses, in their cross-examination, very clearly admitted that the appellant Amiya was not among these persons who had come to them to sell the gold ornaments. They have stated nothing against Smt. Madi. They did not state that she ever came to them to sell the gold ornaments. This piece of circumstantial evidence, thus, render no help to the prosecution.

9. PW 5 Chetan Ram is the nephew of Baldeo who was the husband of appellant Madi and the deceased Smt. Magni. He deposed that after when the dead body of Smt. Magni was taken out of the pond, the appellant Smt. Madi came to him and stated that Smt. Magni was done to death by Heeriya (the absconding accused)

and the appellant Amji. We fail to understand how this statement of this witness furnishes any incriminating material against the appellants. What was stated to this witness by the accused Smt. Madi does not amount to any confession or admission of guilt. What she stated to this witness implicating the appellant Amji and connecting him with the murder of Smt. Magni is not admissible in evidence against the appellant Amji. The statement of a co-accused exculpating him and inculpating the co-accused cannot be pressed into service against the co-accused for any purpose. Thus, the statement of PW 5 Chetanram is of no assistance to the prosecution.

10. Coming to the last piece of circumstantial evidence, it was alleged that the appellant Smt. Madi wanted to adopt her daughter's son Gopiya. The deceased Smt. Magni was not agreeable and opposed the proposed adoption. Smt. Magni was issue less. It is true that there is acceptable evidence on this point that the deceased Smt. Magni was not in favour of the proposed adoption of Gopiya by the appellant Smt. Madi and it served as a strong motive for the appellants to finish Smt. Magni. Motive constitutes a strong link in the chain of circumstantial evidence but in itself is not sufficient to warrant the conviction. Had there been other sets of circumstantial evidence connecting the appellants with the murder of Smt. Magni, this strong motive would have been a formidable link in that chain. But, as discussed earlier, no circumstance was there to connect the appellants with the murder of Smt. Magni and as such the motive, however strong it may be, is not sufficient to base or sustain the conviction of the appellants. Merely on the ground of strong motive, they cannot be connected with the murder of Smt. Magni.

11. We may reiterate here that the trial Court did not enumerate the circumstances speaking against the appellants and connecting them with the murder of Smt. Magni. We, therefore, have no reasons before us which induced the trial Court to connect the appellants with the victim's murder.

12. It is a case almost of nil evidence against the appellants. We are therefore unable to sustain their conviction.

13. In the result, the appeal of accused Amiya and Smt. Madi is allowed. Their conviction and sentence under Sections 302 and 201, IPC are set-aside and they

are acquitted of the said offences. They are already on bail and need not surrender. Their bail bonds shall stand cancelled.

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