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Court : Rajasthan

Decided On : Feb-20-1992

Reported in : 1992(1)WLN298

Judge : Milap Chandra Jain and; B.R. Arora, JJ.

Appeal No. : D.B. Criminal Appeal No. 340 of 1985

Appellant : Lala Ram

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Milap Chandra Jain, J.

1. This appeal has been filed against the judgment of the learned Additional Sessions Judge No. 1, Hanumangarh dated September 4,1985 by which the accused appellant has been convicted under Sections 302 and 376, I.P.C. and sentenced to undergo imprisonment for life and 10 years respectively and to pay fine of Rs. 1,000/- for each offence and in default of payment of fine to further undergo R.I. for six months. The prosecution case may be summarised thus.

2. On October 10, 1988, at 5 P.M. F.I.R. Ex.-P/23 was lodged in the Police Station, Hanumangarh by Chandra Bhan Arora P.W.8, resident of Dabalirathan, in short,

as follows. Ramlila was going on in the village. At about 8.30 P.M. her niece Premlata, aged 8 years and Mamta, aged 4 1/2 years went to see it. At about 11.30 P.M. Premlata alone came back. On enquiry, she told that Mamta had earlier left Ramlila at about 10.30 P.M. saying that she was going back to her home. He and his nephew Kashmirilal left for Ramlila ground for her search and announcements were got made through loudspeakers in Ramlila ground and also near Gurudwara that Mamta daughter of Darshanlal was missing and she might be brought to Darshanlal's house if she was found by anybody. He alongwith Om Batra, Vaidhya Chawala, Parveen, Kashmirilal etc. started searching her in the village. At about 2.45-3 A.M., the dead body of Mamta was seen in the lonely 'Bada' of Sohanlal Midha by .Moolaram Nal and Parveen Gava. He alongwith Darshanlal and Diwan Chand Up-Sarpanch went inside and saw the dead body of Mamta lying in a corner of the said Bada with a lighted torch. Her private parts and other parts of the body and also frock had blood stains showing that she had been raped and murdered. A case was registered under Section 302 and 376, I.P.C. and usual investigation was commenced. Foot prints were found near the dead-body of Mamta and mould of the distinct foot-print was taken and memo Ex.-P/5 was prepared. On 11.10.1983, the accused- appellant was arrested vide arrest memo Ex-P/6. His pants and bus-shirt were seized through seizure Ex.-P/8. His specimen foot-print was taken and memo Ex.-P/10 was prepared. After completing investigation, challan was filed against him under Sections 302 and 376, I.P.C. The plea of the accused is in bare denial. The prosecution examined Dayal Singh P.W. 1 before whom the accused-appellant made extra-judicial confession, Prem Lata P.W. 2 (sister of the deceased], Madanlal P.W. 3 who saw the accused moving in front of his house at about 10-10.30 P.M. that night when he came out of house to ease himself, Dr. Narendra Godara P.W. 4 who conducted the post-mortem examination on the dead body of Mamta, the investigating officers Mohan Singh P.W. 7 and Om Prakash P.W. 6, informant Chandra Bhan P.W. 8, SDM, Hanumangarh Sukhdev Singh P.W. 9 who conducted the proceedings under Section 174, Cr. PC and attesting witness Ramjilal PW 10 and tendered and proved 28 documents. In his statement recorded under Section 313, Cr.PC 1973 the accused-appellant disclosed that the police arrested him from his house, it took him to the police-station and there his foot-prints were taken twice in

presence of Police Officer and also a Magistrate. He has not produced any evidence in his defence.

3. It has been contended by the learned Counsel for the accused-appellant that the learned Additional Sessions Judge has not properly and correctly appreciated the evidence oh record, no reliance can be placed on the testimony of Dayal Singh PW 1 as there is nothing on the record to indicate any reason or cause which promoted the accused-appellant to make extra-judicial confession before him and he was not his friend or relative or a man of his confidence. He relied upon Rahim Beg and Anr. v. State of U.P. : 1972 CriLJ1260 , Ramdhan v. State of Rajasthan 1984 RCC 344, Kondagiri Daitara and Anr. v. State of Orissa 1985 Cr.LJ 1011. He further contended that despite disclosure of commission of offence to him, Dayal Singh PW 1 neither went to Police Station to lodge a report nor told about it to any person in the village and this unnatural conduct shows that no extra- judicial confession in fact was made to him by the accused-appellant. He relied upon Nathu v. State of Rajasthan 1980 RCC 1 36. He also contended that the prosecution case that food-print of the accused-appellant was found near the dead-body of Mamta was neither probable nor correct as the 'Bara' of Sohanlal wherein the dead-body was found was being used by the neighbours to throw the refuge, its surface was hard and it is neither mentioned in the FIR Ex.P/23 nor in the site-plan Ex.P/13 that foot-prints of the culprit were visible. It was further contended that before the police came to the said 'Bara', several persons had come there to see the dead- body of Mamta and as such there was no question of the foot- prints of the culprit remaining undisturbed and visible He also contended that several photographs of the place where the dead- body of Mamta was lying were admittedly taken but none has been produced in the case. He further contended that the prosecution has utterly failed to prove that seals of the packets remained intact till they were handed over to the Forensic Science Laboratory & Finger Prints Bureau. Jaipur and it is also not proved that the samples of the seal were separately sent there. He relied upon Inder Singh v. State of Rajasthan 1 990 Cr.LR (Raj.) 393. He lastly contended that the chain of the circumstantial evidence produced against the accused is not complete

4. The learned Public Prosecutor duly supported the judgment under challenge He contended that the accused-appellant made extra-judicial confession to Dayal Singh PW 1, his foot-print was found quite near the dead-body of Mamta; he was found roaming in the village with a naked sword during that night and on chemical examination blood was found on his under-wear.

5. The first question for consideration in this case is whether the accused-appellant confessed before Dayal Singh PW 1 that he had raped and murdered Mamta that night. Dayal Singh PW 1 admits in his cross-examination that he did not have friendship or visiting terms either with the accused-appellant or with his father, no land of the accused-appellant is near to his land and he never had any dealing with him. He further admits in his cross-examination that the accused-appellant was not under the influence of any drink when he made the said extra-judicial confession, he did not make any enquiry about the girl upon whom he committed rape and he did not tell anybody or report to the police that the accused-appellant has committed the said rape and murder. In his statement given before the court, he said that the accused addressed him as uncle but this was not disclosed in his earlier statement recorded under Section 161, Cr.PC. It is thus clear that Dayal Singh P.W. 1 was not a man of confidence of the accused-appellant. There is nothing on the record to indicate as to why he made extra-judicial confession to Dayal Singh P.W. 1. The conduct of the witness is also most unnatural. If the conduct of the witness is also most unnatural. If the extra-judicial confession would have been made to him by the accused-judicial confession would have reported the matter to the police and also the father of the deceased Mamta. Admittedly, this was not done. There is no material on record to corroborate him. Extra-judicial confession is of a very weak type of evidence. Reference of Rahim Beg v. State of U.P. 1972 SCC (Cr.) 827 para 18, may be made here. It would be highly unsafe to place reliance on the statement of Dayal Singh P.W. 1.

6. The next question of consideration is whether the foot- prints of the culprits were available in the 'Bara' of Sohanlal where the dead-body of Mamta was found lying. Om Prakash PW 6 has deposed that photographs of the place where the dead-body of Mamta was lying were taken the photographer and the photographs and

their negatives were taken from him (photographer) through the recovery-memo Ex.-P/9. Admittedly, neither photogarphs nor their negatives have been produced and proved. No explanation has been offered for the non-production of any photograph or its negative. These photographs would have thrown some light about the condition of the surface where the dead-body of Mamta was found lying. The investigating officer Mohan Singh P.W. 7 admits in his cross-examination that at a distance of 2' - 2 1 /2' 'Ruris' [heaps of cow-dung and refuge) were lying in the Bara' A.S.I. Sukhdev Singh P.W. 9 admits in his cross-examination that the place wherefrom foot-print of the culprit was taken has not been shown in the site-plan Ex.P/13. This fact is also not mentioned in the FIR Ex.P/23. In view of these facts and circumstances, it cannot be said with certainty that the foot prints of the culprit appeared on the surface and they were visible near the dead-body of Mamta when the site was inspected by the Investigating Officer.

7. Chandrabhan P.W 8 has deposed that the dead-body of Mamta was first seen in Sohanlal's Bara in the light of the torch at about 2.45 - 3.00 A.M. during the night intervening 9th and 10th October, 1983. The FIR Ex.-P/23 was lodged at 5 A.M. in the Police Station, Hanumangarh which is a distance of six miles from the village Dablirathan where the said occurrence took place. The Investigating Officer Mohan Singh P.W. 7 says that he reached Dablirathan at 6.50 A.M. There is nothing on the record to indicate that precautions were taken to keep said the foot-prints of the culprit which were visible near the dead-body of Mamta. Before his arrival at the place where the dead-body was lying, several persons had been there to see the dead-body, Mohan Singh P.W. 7 himself admits that when he came to the said place he found several persons standing there. As a result of the visit of several persons near the dead-body of Mamta, the foot-prints, if any of the culprit would have disappeared by that time and in any case must have been disturbed.

8. The prosecution evidence is that the mould of the foot- print appearing near the dead-body of the accused-appellant was also taken and sealed and both sealed packets were sent to the Finger Print Bureau, Rajasthan, Jaipur. There is nothing on the record to show that the marks of the seals with which these packets were sealed were separately sent to the Finger Print Bureau, Rajasthan, Jaipur. There

is no such reference in its report Ex.P/20. It is simply mentioned in it that one sealed packet containing one chance foot impression would lifted from the crime-scene and another sealed packet containing specimen right foot impression would have been received for examination. There is nothing in it to indicate that these packets had the same seals which were used at the time of sealing them. The investigating officer Mohan Singh P.W. 7 has deposed that the sealed packets were deposited in the Police Station. The constable Ramjilal P.W. 10 has stated that on 14.11.83 he was given 9 sealed packets far taking to Jaipur, he went there, he deposited 7 packets in the Forensic Science Laboratory and two packets in the Finger Print Bureau. Neither the Malkhana incharge nor the entries of the Malkhana register have been produced to prove that the sealed packets remained intact from 10.10.83 to 14.11.83. It has been observed in State of Rajasthan v. Daulat Ram AIR 1933 SC 1314 at p. 1315 as follows:

It is the admitted case of the prosecution that the samples changed several hands before reaching the public analyst. In other words, the samples remained in the custody of S.K. Aidanram, P.S. Udai Mandir, Nathu Singh, Gajraj Singh, Jawan Singh and the Assistant Public Analyst and yet none of these witnesses were examined by the prosecution not tampered with. The inevitable effect of this omission is that the prosecution failed to rule out the possibility of the samples being changed or tampered with during this period - a fact which had to be proved affirmatively by the prosecution. This is the main infirmity which has been relied upon by the High Court in holding that the 'prosecution has not proved that right from the stage of the seizure of the opium upto the time when the samples were handed over to the public analyst the seals remained intact.

9. Dr. Narendra Godara PW 4 deposed that on 11.10.83 at 6.30 P.M. he examined the accused-appellant. He admitted in his cross- examination that he did not find any injury or swelling or Semen or Blood on the penis of the accused-appellant. It has been observed in Rahim Beg v. State of U.P. 1972 SCC (Cr.) 827 that if a virgin girl of 10 - 12 years was alleged to be raped by fully developed man, there were likely to be injuries on the male organ of the accused and the absence of such injuries on his male organ would thus point to his innocence. In this case Mamta was only 4 1 /2 years old. The chances of appearance 8 injury on the male

organ of the culprit were greater. This fact also leads to the conclusion that the accused-appellant is not the culprit who committed the said offences.

10. It is not mentioned in the report Ex.P/3 that fresh marks of blood and semen were noted on the underwear of the accused-appellant. On chemical examination blood was detected on it vide report Ex.-P/27. Blood stains may exist on an underwear of a young man for variety of reasons and would not necessarily connect him with the offence of rape. See Rahim Beg v. State of U.P. 1972 SCC (Cr.) 827 para 25. It has been observed. In Shankar Lal G. Dixit v. State of Maharashtra 1981 SCC (Cr.) 315 page 322 para 23 as follows:

The discovery of a blood-stain of the 'B' Group measuring 0.5 cm in diameter on the appellant's pant and of a dried stain of semen on his underpant are circumstances far too feeble to establish that the appellant raped or murdered Sunita. 'B' Group is not an uncommon group of blood and no effect was made to exclude the possibility that the blood of the appellant belonged to the same group. As regards the direct stain of semen on the appellants underpant, he was a grown up man of 30 years and no compelling inference can arise that the stain was caused during the course of the sexual assault committed by him on the girl.

Thus the accused-appellant deserve acquittal.

11. In the result, the appeal is allowed. The accused- appellant Lala Ram is acquitted of the offences punishable under Sections 382 and 376, IPC. He will be released forthwith if not wanted in any other case.

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