

**Ratna Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/768690](http://sooperkanoon.com/768690)

**Court :** Rajasthan

**Decided On :** Sep-16-1987

**Reported in :** 1987(2)WLN756

**Judge :** Shyam Sunder Byas and; Milap Chandra, JJ.

**Appeal No. :** D.B. Criminal Appeal No. 179 of 1977

**Appellant :** Ratna

**Respondent :** State of Rajasthan

**Advocate for Pet/Ap. :** Mr. Mehta

**Judgement :**

**Shyam Sunder Byas, J.**

1. By his judgment dated March 1, 1977, the learned Sessions Judge, Udaipur convicted the appellant Ratna under Section 302, I.P.C. and sentenced him to imprisonment for life. By the same judgment, he further convicted the appellant under Section 387, I.P.C. and sentenced him to five years' rigorous imprisonment with a fine of Rs. 500/-, in default of the payment of fine to further undergo six months' like imprisonment. The appellant has come-up in appeal and challenges his conviction.

2. Briefly stated, the prosecution case is that the deceased Smt. Leela was the wife of PW 2 Khema and was living with him in village Ieteli Khera P.S. Jhalara district Udaipur. On February 4, 1976, Khema went to his field and Smt. Leela went in the jungle to collect and bring firewood. When she left the house, she was wearing silver Karas (Article 1), Silver Hansli (Ar. 2) and clothes Blouse-Peticot and Odni (Articles 3 to 5). She was also wearing Boar (Head ornament) Article 6 and bangles (Article 7). Khema (PW 2) returned to the house in the evening but Smt. Leela did not. A search was made in the night but she could not be traced out. Next day, PW 7 Nathu found the dead body of Smt. Leela near fences of the Bagad. There were multiple injuries on her body. Silver Hansli and Karas were found missing Nathu (PW 7) informed her husband Khema and PW 1 Amra that he had seen the victim's dead body in Bagad. Amra went to the Police Station, Jhalara and found the Station House Officer Sharif Mohammed (PW 13) at the bus-stand. Amra verbally lodged the report which was taken down by the Station House Officer in Ex. P 6. A case under Section 302, I.P.C. was registered. The SHO arrived on the spot and inspected the site. He prepared the site plan and the inquest of the victim's dead body. The post-mortem examination of the victim's dead body was conducted at about 12.15 p.m. on February 5, 1976 by Dr. Nand Kishore Sharma. In the opinion of Dr. Sharma, the cause of death was fatal injury to vital organ of body i.e. brain, leading to brain haemorrhage and shock. The post-mortem examination report prepared by the doctor is Ex. P 1. The doctor had noticed as many as eight external injuries. The right frontal bone had fissured fractures. The accused was arrested on February 11, 1976 and in consequence of the disclosure statement made by him on the same day, silver Karas (Article 1) and silver Hansli (Article 2) were recovered lying concealed under a stone in the channel of Bagad. The blood-stained clothes of the deceased were seized and sealed. Human blood was found on the recovered ornaments and the clothes of the deceased. On the completion of investigation, the police submitted a challan against the accused in the Court of the Munsif cum Judicial Magistrate, Salumber, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge framed charges under Sections 302, 404 and 387, I.P.C. against the accused, to which he pleaded not guilty and faced the trial. In support of its case, the prosecution examined 14 witnesses and filed some documents. In

defence, no evidence was adduced. On the conclusion of the trial, the learned Sessions Judge found the charges under Sections 302 and 387, I.P.C. duly brought home to the accused. The charge under Section 404, I.P.C. was held as not proved. The accused was consequently convicted under Sections 302 and 387, I.P.C. and sentenced as mentioned at the very out-set. Aggrieved against his conviction, the accused has taken this appeal.

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

4. Mr. Mehta learned Counsel for the appellant did not challenge the cause of death of Smt. Leela as stated in the post-mortem examination report Ex. P 1, which was admitted during trial by the accused. Ex. P 1 shows that as many as eight injuries were inflicted on the victim. Her right frontal bone was found fractured. The death of the victim had taken place on account of the injury to brain resulting in brain haemorrhage and shock. The death of Smt. Leela was, thus, homicidal and not natural.

5. Before dealing with the contentions of the learned Counsel for the appellant, it would be useful to notice that the accused was convicted solely on the basis of the recovery of the silver ornaments (Article 1 and Article 2) in consequence of the disclosure statement Ex. P 11 made by the accused on February 11, 1976 whilst under police custody. There is no other evidence to connect the appellant with the murder of Smt. Leela.

6. In impeaching the conviction, Mr. Mehta contended that the murder of Smt. Leela was committed in the night between February 4 and 5, 1976. The accused was arrested on February 11, 1976 vide arrest memo Ex. P 5. The information contained in Ex. P 11, was given by the accused on February 11, 1976 and the recovery of the silver ornaments (Article 1 and Article 2) was made on the same day. There is no other evidence to connect the accused except this recovery of the ornaments, with the murder of Smt. Leela. It was argued that the conviction of the accused merely on the basis of this recovery of the ornaments is bad and unsustainable. Since the accused was found in possession of the two silver ornaments, which the deceased was wearing at the time of her murder, he can be

convicted only under Section 411, I.P.C. Looking to the long lapse of seven days intervening between the commission of the offence and the recovery of the ornaments of the deceased a presumption under Section 114, Evidence Act is not permissible that it was the accused who had committed the murder of Smt. Leela. Reliance in support of the contention was placed on (1) Hukamsingh v. The State of Rajasthan : 1977 CriLJ639 ; (2) Nagappa Dondibe Kalal v. The State of Karnataka AIR 1980 SC 1953; (3) Kammo v. State of Rajasthan 1983 Cr. LJ 694; (4) Earabhadruppa v. State of Karnataka and (5) Pratap Singh v. State of Rajasthan 1984 RLW 166, decided by Division Bench of this Court, to which one of us (Justice S.S. Byas) was a party.

7. It was, on the other hand, contended by the learned Public Prosecutor that the trial Judge was perfectly justified in raising a presumption of the offence under Section 302, I.P.C. against the accused as he was found in possession of the silver ornaments which the deceased was wearing at the time of her murder. We have taken the respective submissions into consideration.

8. In Pratap Singh's case (supra), the authorities cited by Mr. Mehta were discussed and it was observed:

Where the possession of the stolen property could not have been transferred from the deceased to the accused except by murder. What presumption should be drawn depends on the facts and circumstances arising in a given case. No hard and fast rules can be formulated as to what type of presumption should be raised. The presumption of guilt from recent possession of property which had been removed from the person of the deceased at the time of murder is one of the facts and the court has a discretion to draw it or not. However, the courts are reluctant to draw from the mere fact of the production by the accused of the property of the deceased an inference that the accused committed the murder and have required the letting in of evidence to connect the accused with the crime. If there is no other linking evidence except the recovery of the property of the deceased at the instance of the accused, generally no such presumption for graver offence is drawn. The accused was found in possession of the silver Karas just after seven days of the occurrence. A presumption can, therefore, be legitimately raised

against him that he had committed the theft of the Silver Karas (Article 1) from the victim's house. He can, therefore, be safely convicted under Section 380, I.P.C. It may be mentioned that the accused was, also, convicted under this section by the trial court. The conviction of the accused under Section 302, I.P.C. is solely on the basis of the recovery of the silver Karas (Article 1) in pursuance to his disclosure statement made under Section 27 of the Evidence Act, cannot be maintained.

9. In Nagappa Dondiba Kalal's case (supra), the only evidence against the accused was the recovery of the ornaments of the deceased at his instance and in consequence of the disclosure statement. He was convicted by the trial Court and his conviction was maintained in appeal by the High Court. The matter reached the Supreme Court and their Lordships set-aside the conviction. It was observed by their Lordships;

Taking however, the evidence as it stands, there is nothing to connect the appellant with the murder of the deceased or even with any assault the accused may have committed on the deceased or having robbed her of her ornaments. At the most, as the ornaments have been proved to be stolen property received by the appellant, knowing that they were stolen property, the accused can, thus, be convicted on the basis of presumption under Section 114 of the Evidence Act and under Section 411, of the Penal Code as a receiver of the stolen property knowing the same to be stolen.

10. In the instant case, in our hands, there is no evidence except the recovery of the silver ornaments of the deceased in pursuance to the disclosure statement of the appellant to connect him with the murder of Smt. Leela. Had there been any other linking evidence, we would have drawn a presumption of a graver offence of murder against the accused by virtue of the provisions of Section 114 of the Evidence Act. Except the recovery of the two silver ornaments, any other sort of connecting or linking evidence is completely missing. It would, therefore, be not free from risk in raising a presumption of graver offence of murder against the accused. The only presumption which can be legitimately raised against the appellant on account of the recovery of the silver ornaments of the deceased at his instance and in consequence of the disclosure statement made by him, is that he

received the stolen properties, namely silver Karas (Article 1) and silver Hansli (Article 2) knowing well that they were stolen properties. He can be therefore, convicted only under Section 411 of the Penal Code as a receiver of the stolen properties knowing the same to be stolen. His conviction under Sections 302 and 387, I.P.C. cannot be maintained.

11. The accused has been in custody nearly for 2-1/2 years during investigation, enquiry, trial and thereafter. An offence under Section 411, I.P.C. is punishable with imprisonment of either description for a term which may extend to three years.

12. In the result, the appeal of accused Ratna is partly allowed. His conviction and sentence under Sections 302 and 387, I.P.C. are set-aside and he is acquitted thereof. He is, however, convicted under Section 411, I.P.C. and is sentenced to imprisonment for 2-1/2 years. Since he has already served this sentence, he need not surrender. His bail bonds shall stand cancelled.

13. The appeal shall stand accordingly disposed of.