

Teja Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-17-1985

Reported in : 1985WLN(UC)295

Judge : Kanta Bhatnagar and; Shyam Sunder Byas, JJ.

Appeal No. : S.B. Criminal (Jail) Appeal No. 835 of 1981

Appellant : Teja Ram

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Shyam Sunder Byas, J.

1. Accused Tejaram was convicted under Section 302 and 201, I.P.C. and was sentenced to imprisonment for life with a fine of 500/-, in default of the payment of fine to further undergo three months simple imprisonment on the first count and five years rigorous imprisonment with a fine of Rs. 500/-, in default of the payment of fine to further undergo three months like imprisonment on the second count by the learned Sessions Judge, Balotra, vide his judgment dated December 2, 1980. Substantive sentences were directed to run concurrently. The accused has come up in appeal to challenge his conviction and sentence.

2. Khurna Ram Bishnoi (50) was the father of PW 14 Bhagirath and was living with him in village Bhunwar P.S. Serva district Banner. 10-12 days before Chetra Sudi 12 of 1980 (corresponding to March 28, 1980) Khuma Ram went to village Phoolan P.S. Samdari to purchase cattle-fodder. He had taken a sum of Rs. 4000/- with him for this purpose. He was also wearing gold-ring (Article 1) with him, which he had borrowed from PW 1 Haidar. Khuma Ram did not return to village Bhunwar. His son Bhagirath went in his search and came to village Phoolan. He there learnt that his father Khumaram had stayed with accused Tejaram upto March 28, 1980. Bhagirath contacted the accused Tejaram and asked about the whereabouts of his father. Accused Tejaram told him that his father had left his (accused's) house in the afternoon of March 28, 1980. Bhagirath was not satisfied with the information furnished to him by the accused. He therefore, presented written report Ex. P 2 at about 6.00 p.m. on June 18, 1980 at Police Station, Samdari reciting all these facts therein. He expressed his suspicion on the accused Tejaram. The police entered this report in the Rojnamcha, but did not register a case. The Investigating Officer Prem Singh (PW 15) made inquiries and found substantial truth in the report submitted by Bhagirath. Suspicion laid on the accused by Bhagirath was not found baseless. The Station House Officer, therefore, registered a case under Sections 302 and 201, I.P.C. at about 11.00 A.M. on June 20, 1980. The accused was arrested around 1.00 p.m. on June 20, 1980 vide arrest memo Ex. D.1. The accused, after his arrest, made disclosure statement at about 2.30 P.M. on June 20, 1980 that he had buried the dead body of Khumaram a few yards away from his Dhani. The information furnished by accused was reduced into writing in EX. P 13. Since the dead body of Khumaram had already been interred, the S.H.O. approached the Sub-Divisional Magistrate Mr. Banshi Dhar (PW 16) and requested him to cause the dead body of Khumaram to be disinterred. Mr. Banshi Dhar arrived at village Phoolan. The accused took him and the police-party to a place shown by mark 'A' in site plan Ex. P 14, which is a few yards away from his Dhani and there dug a portion. The pit was dug nearly five feet deep. In the pit was found the deadbody of Khumaram. The deadbody was wearing the Dhoti (Article 3) and Chola (shirt) (Article 4). PW 14 Bhagirath, who was present there on the spot, identified the dead body and the clothes Articles 1 and 2 to be of his deceased father Khumaram. The Sub-Divisional Magistrate Mr. Banshi Dhar

prepared the report Ex. P 18 of taking out the dead body of Khumaram from the pit. The dead body recovered had no skin or muscles. It was a skeleton. The post-mortem examination was conducted by PW 10 Dr. Harish Bapna the then Medical Officer Incharge, Primary Health Centre, Siwana, who was called on the spot by the Investigating Officer. Dr. Bapna was of the opinion that the skeleton was of a Hindu male aged about fifty years. He found that the skull-vault having fractured on left side of both the temporal and parietal bones. An injury was also noticed on the neck. The diameter of the fracture was 2-1/2' long going upto mastoid process. Dr. Bapna was of the opinion that the cause of death was the two injuries noted by him. He was also of the opinion that these two injuries were sufficient in the ordinary course of nature to cause death. The post mortem examination report prepared by him is Ex. P 6. The accused again gave information to the Investigating Officer at about 1 J.30 A.M. on June 22, 1980 that he had given the gold ring of deceased Khumaram to Nagga Sonar of Tilwara, which he was prepared to get produced. This information was recorded in Ex. P 15 by the Investigating Officer. In pursuance of this information, the accused took the Investigating Officer and Motbirs to the house of PW 4 Nagga Sonar where Nagga Sonar produced gold ring Article 1. It transpired that the accused had given this gold ring of the deceased Khumaram to PW4 Nagga Sonar in exchange of two ear rings. The gold ring was seized and sealed. Again, on June 27, 1980 the accused whilst in police custody, furnished information to the Investigating Officer that he had concealed the Lathi, which he had used in the commission of the offence, the shoes, Dhoti, Thela (cloth-bag) and the currency notes of Rs. 1000/- of the deceased-victim in his Dhani and that he was prepared to get them recovered. This information was reduced into writing in Ex. P 16. In pursuance to this information, the accused took the Motbirs and the Investigating Officer to his Dhani and from there took out Lathi (Article 5), Shoes (Article 6), Dhoti (Article 7) and Thela (cloth-bag) (Article 8). These articles were seized and sealed and seizure memo Ex. P8 was prepared. In the test identification conducted on July 2, 1980 by the Judicial Magistrate Mr. Ganesh Dan Charan (PW 13), gold ring (Article 1), shoes (Article 6), Dhoti (Article 7) and Thela (Article 8) were correctly identified by Bhagirath to be of his deceased father. The identification memo Ex. P 11/1 was prepared. After when the investigation was over, the police submitted a challan

against the accused in the Court of Munsif and Judicial Magistrate, Siwana, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge framed charges under Sections 302 and 201, IPC against the accused, to which he pleaded not guilty and demanded the trial. In support of its case, the prosecution examined 16 witnesses and filed some documents. In his statement recorded under Section 313, Cr.PC, the accused admitted that the deceased Khumaram had come to his Dhani and left it on Chetra Sudi 12 i.e. March 28, 1980. He also admitted that the dead body was disinterred at his instance. But that dead body was not of Khumaram but that of one Chuna Bishnoi. The deadbody of Chuna Bishnoi was hurried there by his (Chuna's) brother. He also denied that the clothes found on the disinterred deadbody were of the deceased Khumaram. According to him, those clothes were of the deceased Chuna Bishnoi. He denied to have given information relating to the recovery of gold ring and other articles. One witness Mangla (DW 1), who is the accused's father-in-law, was examined in defence. On the conclusion of trial, the learned Sessions Judge held both the charges duly proved against the accused. The accused was consequently convicted and sentenced, as mentioned at the very out-set. Aggrieved against his conviction and sentence, the accused has taken this appeal.

3. We have heard Mr. B.S. Rathore, learned Amicus Curiae and Mr. G.M. Bhandari learned Public Prosecutor for the State. We have also gone through the case file carefully.

4. Admittedly, there is no ocular witness speaking about the occurrence. The prosecution case rests entirely on circumstantial evidence. The circumstantial evidence may, for convenience, be classified as under:

(1) deceased Khumaram came to village Phoolan and stayed with the accused. He was seen in the company of the accused;

(2) the recovery of gold ring in consequence of the disclosure statement made by the accused;

- (3) the discovery of the dead body of Khumaram in consequence of the information furnished by accused whilst in police custody; and
- (4) the recovery of the clothes of the deceased in pursuance to the information furnished by accused whilst in police custody.
5. The learned Sessions Judge found the circumstantial evidence consisting of the above links to be sufficient enough to warrant the conviction of the accused.
6. In assailing the conviction, the first contention raised by the learned Amicus Curiae is that the corpus delicti has not been proved in the instant case. It is even not known whether Khumaram is dead or alive. It was argued that the skeleton disinterred in consequence of the information furnished by the accused under Section 27 of the Evidence Act and at his instance, does not stand proved to be of Khumaram. As such, unless corpus delicti is established, the charge of murder or causing the disappearance of the dead body of the victim should not be taken as proved against him. We have given our anxious consideration to the contention.
7. In a case where the accused faces trial on a charge under Section 302, IPC, it is incumbent on the prosecution to prove the corpus delicti, which means that the death of a person alleged to have been murdered, has in fact taken place. It is generally proved by the identification of the dead-body, if the dead body of the victim is there. If the dead body of the victim is not there, there should be convincing evidence to show that the death of the victim had really taken place.
8. Here in the instant case, Bhagirath (PW 14) is the real son of the deceased-victim Khumaram. He stated that his father Khumaram left his house ten or twelve days before March 28, 1980 and went to purchase cattle-fodder. Khumaram had taken currency note of Rs. 4000/- and a gold ring with him. He was present when the dead body was disinterred from a place near the Dhani of the accused, pointed out by him. When the dead body was disinterred and taken out from the pit, it was wearing Dhoti (Article 3) and Chola (Article 4). Bhagirath (PW 14) has identified these articles to be of his father. The dead body recovered at the instance of the accused was a skeleton. It had no skin and muscles. The clinching question which arises for our deliberation is whether the identification of the skeleton by PW 14

Bhagirath can be treated as sufficient that the skeleton was of his father Khumaram. PW 14 Bhagirath had indentified the skeleton to be of his father because it was wearing Dhoti (Article 3) and Chola (Article 4). The skeleton was in a proper shape of a human body, of course with no skin and muscles. Now, identifying the dead body with the help of the clothes is not a difficult task. Both the clothes, Dhoti (Article 3) and Chola (Article 4) were not in damaged condition and they could be easily identified. In Johar Singh v. State of Rajasthan 1976 Cr.LR (Raj) 386, the dead body of the victim was identified with the help of the clothes of the deceased, which were found on his dead body. The identification of the dead body with the help of the clothes was taken as sufficient to prove his death. More or less, the same situation is there in the instant case in our hands. Bhagirath (PW 14) identified the dead body (skeleton) with the help of Dhoti (Article 3) and Chola (Article 4), which it was wearing when it was disinterred. The learned Sessions Judge was, therefore, perfectly correct in concluding that the dead body disinterred was that of Khumaram. We are unable to take a view different from that taken by the learned Sessions Judge. The dead body disinterred at the instance of the accused was that of the deceased Khumaram. We, thus, find no substance in the first contention of the learned Amicus Curiae.

9. It was next contended that no information under Section 27 of (he Evidence Act was furnished by the accused relating to the discovery of the dead body. The accused has been falsely connected with the information and discovery of the dead body. The contention, again, is not well founded. The accused was arrested at about 1.00 p.m. on June 20, 1980 vide arrest memo Ex. D 1. At about 2.30 p.m. on the same day, he made the disclosure statement recorded in Ex P 13 that he had burried the dead body of Khuma Ram a few yards away from his Dhani. The deadbody was discovered and disintered at his instance and from the place pointed out by him. The entire proceedings took place in the presence of the Executive Magistrate Mr. Banshi Dhar (PW16). Mr. Banshi Dhar prepared Ex. P 18. He stated and also-mentioned in Ex. 18 that it was the accused, at whose instance the dead body was disintered and discovered. We cannot expect, that a Magistrate would falsely state or would forge documents at the instance of the Investigating Officer. Apart from that, the accused, in his statement under Section 313, Cr. PC admitted (vide question No. 3) that he had pointed out the place from

where the dead body was recovered. In view of the aforesaid evidence and circumstances, we are unable to accept the contention of the learned amicus curiae that the dead body was not discovered or disinterred at the instance of the accused or in consequence of the information furnished by him.

10. It was next contended that the gold ring (Article 1) has been wrongly connected with the accused. It was argued that no information was given by the accused which led to the discovery of the gold ring (Article 1) from Nagga Sonar. The prosecution case relating to the accused making the disclosure statement and getting the gold-ring recovered is a planted one. As stated earlier, the accused was arrested on June 20, 1980. At about 11.30 A.M. on June 22, 1980, the accused, whilst in police custody, furnished information recorded in Ex. P 15 to the Investigating Officer PW 15 Prem Singh that the gold ring of the deceased Khumaram had been given by him to Nagga Sonar of village Karwara and that he would get it recovered. Thereafter he took the Investigating Officer and the Motbirs to the house of Nagga Sonar (PW 40). At the instance of the accused, Nagga Sonar produced gold ring (Article 1) before the Investigating Officer. The gold ring was seized and sealed and seizure memo Ex. P 5 was prepared. PW 4 Nagga Sonar stated that nearly four months before the recovery of gold ring from him, the accused came to him with his relative Prema. The accused gave him gold-ring (Article 1) and in exchange took two gold-ear rings. The ornaments which were exchanged, weighed equal. Nagga Sonar was cross-examined at some length, but nothing could be elicited from him which may impair his testimony. He bears no grudge or ill-will against the accused so as to falsely implicate him. The learned Sessions Judge rightly held that gold-ring (Article 1) was given to PW 4 Nagga Sonar by the accused in exchange of two gold ear-rings. There is nothing wrong in this approach of the learned Sessions Judge. It, thus, stands proved that the accused had given gold-ring (Article 1) to PW 4 Nagga Sonar in exchange to two gold ear-rings.

11. The gold ring (Article 1) was of PW 1 Haidar. The deceased-victim Khumaram approached Haidar (PW 1) for a loan of Rs. 4000/-. Haidar advanced a sum of Rs. 3000/- as loan to him. As he had no more cash with him, Haidar also gave him gold ring (Article 1). PW 1 Haidar identified gold ring (Article 1) as his own. He also

correctly identified it in the test identification conducted during investigation by a Judicial Magistrate. The identification memo is Ex. P 11. Haidar is an independent person and we have no reasons to distrust his sworn testimony. Thus, the prosecution evidence shows that when the deceased Khumaram left his house and went to village Phoolan, he had currency note of Rs. 4000/- and the gold ring (Article 1) with him. The gold ring (Article 1) was subsequently recovered in consequence of the information furnished by him at his instance. This recovery furnishes a very valuable link in the chain of circumstantial evidence against the accused.

12. It was next contended that the prosecution evidence relating to the recovery of shoes (Article 6), Dhoti (Article 7) and Chola (Article 8) is discrepant. It was argued that these articles were said to have been recovered in the house of the accused in consequence of the information furnished by him. It was urged that no culprit would keep the incriminating articles in the house so as to create evidence against him. The recovery of these three articles shoes, Dhoti and Chola was, thus, planted by the police. We have given our anxious consideration to the contention and find no substance in it. After his arrest, the accused again gave information to the Investigating Officer Prem Singh which he recorded in Ex. P 16. Thereafter, the accused took the Investigating Officer and the Motbirs, to his Dhani. From there, he took out currency note of Rs. 1000/-, shoes (Article 6), Dhoti (Article 7) and Chola (Article 8) and produced them before the Investigating Officer. These articles were seized and sealed and seizure memo Ex. P 8 was prepared. The shoes, Dhoti and the Chola have been identified by the deceased's son Bhagirath (PW 14) to be of his father. He also correctly identified them in the test identification conducted by a Judicial Magistrate during investigation. The identification memo is Ex. P 11. Bhagirath (PW 14) stated that when his father Khumaram left the house, he was wearing shoes (Article 6), Dhoti (Article 7) and Chola (Article 8) were with him. Though he was cross-examined at length, his statement relating to these articles which his father took with him when he left his house, could not be successfully impeached or shattered. We find no substance in the contention of the learned amicus curiae that these articles were falsely planted in the house of the accused and a false recovery thereafter was shown by the Investigating Officer. The prosecution evidence establishes that shoes (Article 6),

Dhoti (Article 7) and Chola (Article 8) belonging to the deceased-victim were concealed by the accused in his Dhani and that they were recovered in consequence of the information furnished by him and at his instance.

13. There is yet another set of evidence which shows that the deceased Khumaram had come to village Phoolan and was seen moving in the company of the accused. PW 6 Mohan of village Phoolan deposed that the deceased Khumaram had come to village Phoolan and was seen moving in the company of accused Tejaram. Khumaram remained in village Phoolan upto two or three days before Chetra Sudi 15. There is again nothing in his testimony which may put it at a discount. He is a neighbour of the accused and his house is merely a few feet away from the accused's house. We find no cogent and convincing reasons that PW 6 Mohan would invent story to falsely rope-in the accused. PW 7 Tejaram is a resident of village Dhoorimauri. He deposed that he had seen the accused and the deceased Khumaram going towards village Rakhi. There is again nothing in the testimony of PW 7 Teja to suspect what he deposed on oath. There is, thus, convincing evidence to show that the deceased Khumaram came to village Phoolan and was seen moving along with the accused. It is pertinent to note that in his statement under Section 313 Cr. PC the accused, vide question No. 3) admitted that Khumaram came to his village, but left his house on Chetra Sudi 12. It is an admitted fact that Khumaram was not seen alive after Chetra Sudi 12 of 1980.

14. The various sets of evidence, referred to above, establish that:

- (1) deceased Khumaram had come to village Phoolan;
- (2) he was having gold ring (Article 1) and various clothes, referred to above;
- (3) he remained with the accused upto Chetra Sudi 12, (of 1980) and thereafter he was not seen alive;
- (4) the dead body of Khumaram was recovered in consequence of the information furnished by the accused and at his instance from a place situate nearby his Dhani;

(5) the gold-ring (Article 1) was recovered in consequence of the information furnished by the accused and at his instance; and

(6) the shoes and clothes of the deceased (Articles 6, 7 and 8) were recovered in consequence of the information furnished by the accused from his Dhani.

15. When all these circumstances are taken together, they unerringly point out that it was the accused and the accused alone who is the perpetrator of the crime. We are quite conscious that the chain of circumstantial evidence should be such as to lead to the irresistible conclusion that in all probabilities it is the accused and the accused alone who had committed the crime. The various links of circumstantial evidence alluded above, leave no room to doubt that Khumaram was done to death by the accused and none else.

16. As regards the nature of offence, it was vehemently contended by the learned amicus curiae that the only offence made out against the accused is that under Section 201, IPC. None had seen him causing death of Khumaram. In these circumstances, the conviction of the accused under Section 302, IPC would not be free from risk. In support of his contention, reliance was placed on *Ratna v. The State of Rajasthan* 1978 Cr.LR (Raj) 469 and *Ramdhan Singh v. State of Uttar Pradesh* : 1971 CriLJ1451 .

17. We have gone through these judgments. In both the cases, the only evidence against the accused was of discovery of the dead body of the victim in consequence of the information furnished by him and at his instance. No other evidence was there. In view of the aforesaid evidence, the conviction of the accused under Section 302, IPC was not maintained and the conviction was altered to that under Section 201, IPC.

18. Here in the instant case, the matter is otherwise. As discussed above, there is overwhelming circumstantial evidence connecting the appellant with the murder of Khumaram.

19. We are, therefore, unable to subscribe the view put before us by the learned counsel that the only offence made out against the accused is that under Section

201, IPC. The accused was rightly convicted and sentenced under Sections 302 and 201, IPC. No interference is called-for.

20. In the result, the conviction and sentence of the accused Tejaram are maintained and his appeal is dismissed.

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