

Dharmendra Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-21-2005

Reported in : I(2006)DMC430; 2006(3)WLC408

Judge : V.K. Bali and; Dalip Singh, JJ.

Acts : Evidence Act - Sections 27; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 201, 302, 471 and 498A

Appeal No. : Criminal Appeal Nos. 135 and 100 of 2000

Appellant : Dharmendra

Respondent : State of Rajasthan

Advocate for Def. : B.N. Sandhu, Adv. and; Arun Sharma, Public Prosecutor

Advocate for Pet/Ap. : Praveen Balwada,; Om Prakash,; Manoj Kumar and;

Judgement :

Dalip Singh, J.

1. These two appeals arise out of the same judgment. D.B. Criminal Appeal No. 135/2000 has been filed by the accused appellant Dharmendra against the judgment dated 8.3.2000 passed by the Additional Sessions Judge, Kishangarh,

District Ajmer in Sessions Case No. 1/1998 convicting the appellant Dharmendra for the offences under Sections 302 and 201 IPC. The appellant Dharmendra was sentenced to imprisonment for life and a fine of Rs. 1,000 and in default of payment of fine to further undergo rigorous imprisonment for six months for the offence under Section 302 IPC. He was further sentenced to three years rigorous imprisonment and a fine of Rs. 500 for the offence under Section 201, IPC and in default of payment of fine to further undergo three months rigorous imprisonment. Both the sentences were ordered to run concurrently.

2. In S.B. Criminal Appeal No. 100/2000 the accused appellant Madanlal was convicted of the offence under Section 201, IPC by the judgment dated 8.3.2000 in Sessions Case No. 1/1998 by the Additional Sessions Judge, Kishangarh, District Ajmer and was sentenced to three years rigorous imprisonment and a fine of Rs. 500 and in default of payment of fine to further undergo three months rigorous imprisonment

3. Since both the appeals arise out of the same judgment dated 8.3.2000, hence were heard together.

4. The facts in brief are that on 20.3.1996 P.W. 14 Totaram submitted a written report Exhibit P-33 at Police Station, Kishangarh, District Ajmer wherein it was stated that his sister Smt, Nirmla who was married to the accused appellant Dharmendra has been missing. It was stated in the said report that marriage took place about six years ago. It was further stated that on 17.3.1996, the appellant Dharmendra along with one Tarachand came to Ajmer at about 1.00 p.m. and conveyed that Nirmal was missing since 17.3.1996 from about 6.00 a.m. It was stated that her two children were at home. They were reported to be four years and six months old respectively. In the report it was also alleged by P.W. 14 Totaram that his sister was treated with cruelty and was often given a beating by her husband and in-laws and they used to even keep her starving and used to abuse her. It was stated that either she had been murdered by her in-laws or she might have committed suicide. In the report the name of suspects were given as Dharmendra son of Sukan Lal, Madan Lal son of Sukan Lal and Chuki wife of Madan Lal. On the aforesaid report, First Information Report No. 54/1996 was

registered for the offence under Section 498A IPC and investigation started.

5. After the aforesaid report was registered and the investigation started, the police were unable to make any headway in the investigation. As no headway was made in the investigation, as is evident from the statements of P.W. 29 Prem Prakash Tak, the Investigating Officer, the brother of the deceased Totaram, moved a habeas corpus petition before the High Court and on the directions of the High Court in its judgment dated 28.8.1997, the investigation was handed over to CID (Crime) Branch, Range Cell, Ajmer. It has come in the evidence of P.W. 29 Prem Prakash Tak, Additional Superintendent of Police, that in the order dated 28.8.1997, the High Court even directed that accused persons be arrested and case be investigated.

6. It is in the light of the aforesaid and more particularly the directions of the High Court contained in the order dated 28.8.1997 that on 3.9.1997 the accused appellant Dharmendra who is a police constable was arrested vide Exhibit P-26. The accused appellant, as per the case of the prosecution, on 6.9.1997 made a disclosure statement by furnishing information under Section 27 of the Evidence Act which is Exhibit P-53 on the record. In the said statement, the accused appellant Dharmendra disclosed the fact that dead body of his wife Smt. Nirmla lay buried in the field of one Kanhaiya Lal Jat, Ex-Sarpanch of Gram Panchayat, Barna about 3-31/2 feet below the surface at a spot which on the Northern-Eastern corner near a Aakda bush. Pursuant to the aforesaid disclosure statement, the police along with Sub-Divisional Magistrate, Kishangarh P.W. 20 Khayaliram Meena and P.W. 15 Dr. V.N. Mathur reached the spot which was pointed out by the accused appellant Dhamendra. The spot was dug and skeleton found. The recovery of the skeleton of Smt. Nirmla has been recorded in pursuance of the information furnished by the accused appellant Dharmendra under Section 27 of the Evidence Act vide Exhibit P-5 recovery memo dated 6.9.1997 at 8.00 p.m. Rameshwar Lal and Damodar Lal were the witnesses. The skeleton was removed and the bones were removed and sealed. Along with the same, there were some other items viz. Odhana (Saree), Lahenga, blouse, ribbon for tying hair, bangles, a Mangalsutra, hair pin and some hair. All these items were seized and sealed and the aforesaid memo was written. A video film and still photographs of this was also

conducted which are Article 1 and Exhibits P-43 to P-51 respectively.

7. Medical examination of the skeleton was conducted by a Medical Board comprising of four Doctors on 8.9.1997 at Jawahar Lal Nehru Medical College and Associated Groups of Hospital at Ajmer. The report of the Medical Board is Exhibit P-32. As per the finding of the Board the bones belonged to a human being. There was a fracture on the left side of the 10th rib. The aforesaid report was proved by P.W. 13 Dr. P.K. Saraswat. It may be relevant here to mention that in the report Exhibit P-32 while examining the bones of the hand on the phalanges a ring was also found. It was noted in Exhibit P-32 at page 2 that 'Metallic Ring fixed on it. There are greenish fine crystals deposited on the ring as well as on the phalanges bearing it.' P.W. 13 Dr. P.K. Saraswat who was member of the Board who conducted the medical examination has stated that bones were of a human being. On examination of the bone more particularly the skull and after X-Ray, it was revealed that the age of the deceased was between 19 to 21 years 2 years. He has also deposed that anatomical features suggested that the bones were of female. He has also stated in his statement that a ring and hair-pin were also found along with the bones.

8. During the investigation the police also recovered letters written by the accused appellant Dharmendra to his brother Madan Lal. The said letters are Exhibits P-18, 19 and 20. The police also recovered a Life Insurance Policy at the instance of the accused appellant Dharmendra. The recovery memo is Exhibit P-7 and the Life Insurance Policy is Exhibit P-8. With a view to prove the same, the prosecution examined P.W. 8 Brajesh Singhal who was Development Officer in the Life Insurance Corporation. In the said Insurance Policy (Exhibit P-8) the accused appellant Dharmendra had given the name of his wife as Smt. Lali with whom he had illicit relations. Certain other recoveries were also made at the instance of the accused appellant Madan Lal more particularly that of the Gainti and Phawra vide Exhibit P-9 where the accused appellant Madan Lal disclosed the fact that these had been used for digging and burying the body of deceased Nirmla. The information by way of disclosure statement given by Madan Lal in this behalf is Exhibit P-57. Madan Lal also gave information under Section 27 of the Evidence Act (Exhibit P-59) about the use of the motorcycle. The recovery of the said

motorcycle was made vide Exhibit P-10 at the instance of the Madan Lal. The police also took the specimens of the handwriting of the accused Dharmendra with a view to prove the letters written by him.

9. Learned Trial Court recorded the statement of the prosecution witnesses and the statement of the accused under Section 313, Cr. P.C. and came to the conclusion finding the accused appellant Dharmendra guilty of the offence under Section 302, IPC as well as Section 201, IPC. The accused appellant Madan Lal was found guilty of the offence under Section 201, IPC. The appellants were acquitted of the offence under Sections 498A, 471 and 120B, IPC. Madan Lal, the appellant was acquitted of the offence under Section 302, IPC vide impugned judgment dated 8.3.2000.

10. In the instant case the submission of the learned Counsel for the appellant is that there is no direct evidence to convict the accused appellants, inasmuch as, there is no eye-witness and the case is purely based upon circumstantial evidence and these are not sufficient to prove the guilt of the accused.

11. So far as the case of the accused appellant Dharmendra is concerned, in the instant case the circumstances which are borne out from the prosecution evidence are that at the instance of the accused appellant Dharmendra on the basis of the disclosure statement made by him Exhibit P-53 stating that dead body of his wife Smt. Nirmla lies buried about three and half feet below the surface in the northeast corner near the Aakda bush in the field of Kanhaiya Lal Jat, Ex-Sarpanch which he pointed out and pursuant to the aforesaid disclosure statement Exhibit P-53, the police recovered the skeleton after digging the earth vide Exhibit P-5. The aforesaid recovery is at the instance of the accused in the presence of Rameshwar (P.W. 7) who is a witness to the said recovery as also P.W. 15 Dr. V.N. Mathur and P.W. 20 Khayaliram Meena, the Sub-Divisional Magistrate and based upon the disclosure statement made under Section 27 of the Evidence Act. The recovery of the skeleton, in the aforesaid manner on the basis of the disclosure made by the accused appellant Dharmendra vide Exhibit P-53, is amply proved on record. The very fact that the recovery has been made vide Exhibit P-5 on the basis of the disclosure statement made by the accused appellant

Dharmendra is the most important circumstance as the place where the deceased Nirmla had been buried after being murdered was only known to the accused appellant. She was living with him upto her death.

12. In the instant case, another salient feature is that entire process of recovery was video-filmed as has been stated by P.W. 15 Dr. V.N. Mathur who is an independent witness. This fact also finds corroboration from the statement of P.W. 20 Khayaliram Meena, the Sub-Divisional Magistrate. The video cassette itself is Article-1. The prosecution has examined P.W. 19 Soloman David who has deposed that the accused appellant Dharmendra while walking ahead pointed out the place where he had concealed and buried the dead body. The place was dug out. The skeleton found, recovered and seized in his presence and he had carried out the videography and still photography of the entire process and that the video cassette is Article-1, Thus, the recovery in the instant case by pointing out the place and digging the earth by the accused appellants is amply proved.

13. Apart from the aforesaid circumstance, there is the evidence of P.W. 13 Dr. P.K. Saraswat who was a member of the Medical Board which examined the bones and prepared the report Exhibit P-32, he has stated that bones of the skeleton recovered whose medical report by the Board has been produced and proved as Exhibit P-32 is that the bones are of a human being and in the opinion of the Doctor were those of a female aged 19 to 212 years. The age of the deceased Nirmla as given out by Totaram was about 23 years. In the instant case, therefore, on the basis of the disclosure statement of the accused appellant Dharmendra and the recovery of the skeleton at the spot pointed out by the accused appellant Dharmendra and the bones which were found by the Medical Board to be of a female human being of the same age as the deceased wife of the accused appellant Dharmendra is a very important circumstances in the instant case.

14. Learned Counsel for the appellants submitted that there was no evidence to suggest that bones which were recovered were in any way of the deceased Nirmla. He submits that the articles that were found and recovered by the police along with the bones are very common and can be easily available in the market

at any point of time. So far as this submission is concerned, along with bones, as has come in the evidence of P.W. 13 Dr. P.K. Saraswat, a ring was also recovered as is mentioned in the report of the Medical Board. The aforesaid ring was identified by the mother of the deceased P.W. 22 Smt. Kol Devi who has stated that this ring along with twenty such rings was purchased by her when she went to Haridwar after the death of her husband. The ring (Article-7) was shown to her and she identified the same and also pointed out that she herself is wearing a similar ring which was one of the rings purchased by her and one such ring was given by her to her deceased daughter Nirmla, wife of accused appellant Dharmendra, at Haridwar. The witness has also identified the other articles as belonging to her deceased daughter Nirmla. However, in the present case, the identification of ring (Article-7) found in the bones and a similar ring being available with the witness P.W. 22, mother of the deceased, in the circumstances narrated by her that same was purchased from Haridwar and the identification of the other articles as belonging to the deceased Nirmla is ample proof that bones which were recovered on the basis of the disclosure statement and at the instance of the accused appellant were those of the deceased, in the instant case is sufficient as a circumstance to link the accused appellant Dharmendra to the crime.

15. In the instant case, there is also a motive which the prosecution has been able to prove. The letters, Exhibits P-18, 19 and 20 written by the accused appellants Dharmendra to Madan Lal show that the relations between the appellant Dharmendra and the deceased Nirmla, his wife, were not cordial. The appellant Dharmendra in the letter Exhibit P-18 clearly wrote to his brother Madan Lal that he does not require his wife and that she should not be allowed to even enter the house. These letters were written after the appellant was selected as a police constable and sent for training to the Police Academy at Jaipur. In this chain of events, the evidence of accused appellant having obtained an Insurance Policy which has been produced and proved as Exhibit P-8 by the Development Officer P.W. 8 Brajesh Singhal. In the said Policy, the appellant Dharmendra had mentioned the name of the nominee as Lali Devi and had described her as his wife. The fact of taking such a policy and mentioning the name of third person as the nominee and describing her as his wife instead of the deceased Nirmla goes to show that the accused had extra-marital relations with Lali and also that he had

contracted a marriage with her. He could not have done so while Nirmla was alive and, therefore, by describing Lali as his wife, he must have known that his marriage with Nirmla has ended with her death. So he knew about the fact of death of Nirmla, his wife, which fact was not known to any other person except to the accused appellant Dharmendra. Thus, the circumstances in the instant case which have been mentioned as well as which find place in the judgment of the learned Trial Court are sufficient to complete the chain to hold the accused guilty for the offence under Section 302, IPC of having committed the murder of Nirmla, the wife of the accused appellant Dharmendra and, as such, the accused appellant Dharmendra has been rightly convicted for the offence under Section 302, IPC.

16. So far as the conviction of accused appellant Dharmendra under Section 201, IPC is concerned, the disclosure statement made by him and the recovery of skeleton from the place pointed out by him which was found to be that of Nirmla, wife of the appellant Dharmendra are sufficient evidence to convict the accused appellant Dharmendra for the offence under Section 201, IPC. Since the fact as to where the body had been concealed or disposed of so as to screen the evidence of the offence of murder was only known to the accused appellant Dharmendra and the information provided by him leading to the subsequent recovery and its identification to be that of the deceased Nirmla, in the facts and circumstances, conclusively prove the guilt of the accused appellant Dharmendra and he has rightly been convicted for the offence under Section 201, IPC by the learned Trial Court.

17. So far as the accused appellant Madan Lal is concerned, in the instant case he has only being convicted for the offence under Section 201, IPC. Having gone through the judgment of the learned Trial Court as well as the evidence led by the prosecution in this case, concededly there does not appear to be sufficient evidence to convict the accused appellant Madan Lal for the offence under Section 201, IPC. Even the learned Trial Court has not spelt out any specific cogent evidence in that behalf.

18. Consequently, the D.B. Criminal Appeal No. 135/2000 filed by the accused appellant Dharmendra for the conviction and sentence under Sections 302 and 201 IPC is dismissed and the conviction and sentence is maintained. The accused appellant Dharmendra is in jail, he shall serve out the remaining part of the sentence.

19. S.B. Criminal Appeal No. 100/2000 filed by the accused appellant Madan Lal is allowed. He is acquitted of the offence under Section, 201, I.P.C. He is on bail. He need not surrender to his bail bonds. Same are discharged.

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