

State of Rajasthan Vs. Rakesh

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Court : Rajasthan

Decided On : May-03-2000

Reported in : 2000(3)WLC368; 2000(2)WLN191

Judge : N.N. Mathur and; D.N. Joshi, JJ.

Appeal No. : D.B. Cri. Murder Reference and Jail Appeal Nos. 37 of 1999 and 19 of 2000

Appellant : State of Rajasthan

Respondent : Rakesh

Disposition : Appeal allowed

Judgement :

N.N. Mathur, J.

1. This Murder Reference has been made by the learned Additional Sessions Judge, Raisinghnagar, by the judgment dated 14.12.1999 in Sessions Case No. 41/1998 for confirmation of death sentence awarded to the accused Rakesh. The learned Sessions Judge convicted the appellant of the offence under Section 302 IPC on the charge of committing the murder of his elder brother Ramesh in the intervening night of 17th and 18th April, 1998, being proved. Accused has also preferred an appeal from jail challenging the conviction and sentence awarded to

him by the trial court. Accused Rakesh is being represented by learned Counsel Mr. J.S. Choudhary. The Murder Reference and the Appeal are decided by common judgment.

PROSECUTION CASE:

2. The prosecution case in brief is that on 18.4.1998 at 12.45 A.M., P.W. 3 Baldev submitted an F.I.R. Ex. P. 17 at the Police Station, Raisinghnagar, stating inter alia that they are five brothers and they are living separately. The wife of elder brother Krishna died about eighteen years back. He brought second wife and for last two years, he is residing at Loonkaransar. He has got two sons namely Ramesh and Rakesh. They are living in the village Likhmewala. The elder brother Ramesh (deceased) was married and the younger brother Rakesh (accused) is bachelor. In the night at about 11.30 while he was sleeping at his residence, Rakesh gave a call to him in raised voice. On enquiry, Rakesh disclosed that somebody has killed Ramesh. He alongwith his brother-in-law P.W. 4 Mani Ram rushed to the house of his brother Krishna and found dead body of Ramesh lying in the house. He suspected the act of Rakesh as relations between the two brothers were not cordial and there was a foot print at the entrance of the house, of a person not having thumb of the foot. Ramesh was not having quarrel with anybody in the village. On this information, police registered a case for the offence under Section 302 IPC and proceeded with the investigation. The police prepared the inquest and sent the dead body of Ramesh for post mortem. The accused Rakesh was arrested on 18.4.1998. In pursuance of the information given by him, a blood stained Kassi and mattress were recovered. After usual investigation, police laid chargesheet against the accused Rakesh for the offence u/s 302 IPC.

3. The accused Rakesh pleaded not guilty and claimed trial. The prosecution in support of the case examined 14 witnesses and produced number of documents. The accused in his statement under Section 313 Cr. PC stated that the evidence produced by the prosecution against him is false. The trial Court relying on the circumstantial evidence of the recovery of blood stained Kassi and the mattress and the evidence of presence of finger prints of the accused on the handle of the Kassi, held the appellant Rakesh guilty of murder of his elder brother Ramesh and,

accordingly, convicted him for the offence under Section 302 IPC and sentenced as noticed above.

4. We have heard learned Counsel for the parties and examined the record carefully. The prosecution has mainly relied upon the circumstantial evidence of recovery of blood stained Kassi and mattress in pursuance of the information given by the accused u/s 27 of the Evidence Act and secondly, the report of the finger prints expert showing that the finger prints on the handle of the Kassi tallied with the specimen finger prints of the accused Rakesh. The prosecution has also relied upon the evidence of extra judicial confession and motive.

Prosecution Evidence:

5. P.W. 1 Krishna Kumar has stated that on the date of incident in the night at about 11, Lala Ram had come to his house and informed that somebody has killed Ramesh. After sometime, they went to the house of Ramesh. Large number of people had assembled outside the house of deceased Ramesh. This witness has not supported the prosecution case and has been declared hostile.

6. P.W. 2 Suresh has stated that on being called by Dayala Ram, he went to the house of deceased Ramesh. He also stated that he went to the Police Station alongwith Baldev for lodging the F.I.R. This witness has also not supported the prosecution case as such, he has been declared hostile.

7. P.W. 3 Baldev has also been declared hostile. He however, admitted that on 17.4.1998 on call given by the accused Rakesh, he went to the house of deceased Ramesh, where his dead body was lying. He also admitted that FIR Ex. P. 17 was lodged by him. He also admitted that his statement u/s 164 of the Code of Criminal Procedure was recorded by learned Magistrate vide Ex. P. 20. However, when he was confronted with his statement. ^s dke jkds'k us fd;k Fkk] D;ksfd jkds'k tc gekjs ikl vk;k Fkk rc mld gkFkks ij o diM+ks ij [kwu yxk gqvk Fkk A^^ he denied to have given such statement before the learned Magistrate. The learned trial Judge found that this witness has deliberately given a false evidence, and accordingly, directed for initiation of the proceedings for the offence u/s 194 IPC.

8. P.W. 4 Mani Ram has stated that he reached on the place of the incident on the next day. He heard that Rakesh has killed his brother Ramesh. This witness has also not supported the prosecution case and, as such, he has been declared hostile.

9. P.W. 5 Nirmal Singh is a formal witness. He has taken the photographs of the dead body. P.W. 6, 7, 8 and 9 namely Ram Ratan, Hari Ram, Omprakash and Krishna Kumar respectively, have also been declared hostile.

10. P.W. 10 Chiranjilal Joshi, A.S.I., Police Station, Raisinghnagar. has stated that under the instructions of the Investigating Officer Ganesh Nath, he produced the accused before the S.D.M. Shri Rajendra Mishra. He has stated that the specimen of the finger prints were taken vide Ex. P. 36 to Ex. P. 40 in the presence of the learned Magistrate Shri Rajendra Mishra.

11. P.W. 11 Jaibir Singh has stated that he had gone to Ganga Nagar for collecting the letter of Superintendent of Police for delivery of the articles at the F.S.L.P.W. 12 Bhagirath Lakhara has supported the statement of P.W. 11 Jaibir Singh. P.W. 13 Shankerlal has supported the prosecution case and has been declared hostile. P.W. 14 Ganesh Nath is the Investigating Officer, who has given all the details of the investigation.

12. The post mortem report has been admitted by learned Counsel for the accused, which has been marked as Ex. P. 45. The doctor found the following injuries on the dead body of deceased Ramesh:

1. Incised wound-8cm x 1/2cm x 1/2cm back of neck, sharp object;
2. Incised wound-15cm x 5cm x 5cm, Right side face cutting upper jaw, sharp object;
3. Incised wound-2x1 x 1cms, Right side face, sharp object;
4. Incised wound 1.5 x 1cm x 1, Right side face, sharp;
5. Incised wound 5x2x 2cms, Right side face below eye, sharps.

6. Incised wound 15cm x 6cm x 7cm, Right side neck cutting all large blood vessels, trachea and oesophagus, sharp object;

7. Lacerated wound 1.5 cm x 1cm, Right middle finger, Blunt;

8. Lacerated wound 1 x1 x .5cm, Right index finger, Blunt.

13. In the opinion of the doctor, Ramesh died due to wounds on neck and face, cutting large blood vessels and oesophagus, shock. Thus, it is proved that Ramesh died of homicidal death.

Circumstantial Evidence:

(A) Finger prints on the handle of the Kassi tallied with specimen finger prints of appellant Rakesh:

14. The accused was arrested on 18.4.1998 vide Ex. P. 34. A blood stained Kassi was recovered from the possession of the accused vide recovery memo Ex. P. 13. Shri Inderlal, a photographer of district M.O.B. Sriganganagar, took photographs of chance finger prints available on the handle of the Kassi vide Ex. P. 15. It is not in dispute that the said photographs of the chance prints were not sent to the finger prints expert. The photographer Inderlal has also not been produced. It appears from Ex. P. 47, the letter of the Director, Finger Print Bureau, Rajasthan, Jaipur, that the Kassi was sent to the Laboratory on 1.5.1998 through special messenger Sh. Prabhu Ram. On examination, it was found that the handle of the Kassi (shovel) bears blood stained chance prints, which were marked as J1, J2 and J3. They were photographed in the photo Section of the Laboratory. After photography, the shovel was returned to the Superintendent of Police, Sriganganagar, through special messenger Sh. Prabhu Ram. P.W. 10 Chiranjilal Joshi has stated that on 20.4.1998, he was posted as A.S.I. at Police Station, Raisinghnagar. Under the instructions of S.I. Shri Ganesh Nath, he produced accused Rakesh before the S.D.M. Shri Rajendra Mishra. The specimen finger prints were taken on ten sheets in the presence of S.D.M. Shri Rajendra Mishra. He has proved finger print search slips Ex. P. 36 to Ex. P. 40. He has stated that all the sheets bears his signatures. He has also identified signatures of Shri

Rajendra Mishra and the seal of the S.D.O., Raisinghnagar. The finger print expert found the chance print photographs marked J1 and J3 unfit for comparison for the reason that ridge details were not readable. As regards chance print photograph marked J2, the finger print expert found it similar and identical with the specimen portion of right hand palm print, photograph marked 'S' of Rakesh.

15. We have carefully seen the finger print search slips Ex. P. 36 and 37 and we do not find mark 'S' anywhere. The palm print is available only on Ex. P. 36. We do not find mark 'S' on Ex. P. 36. In the record, we find an envelope in which two photographs have been kept. They have not been exhibited. The photographs bear the mark 'S'. It appears that the finger print expert must have taken the photographs of the specimen thenar portion of right hand palm on Ex. P. 36. However, in absence of any mark on the sheet, it is difficult to say that the photographs of which specimen of the right hand palm has been taken. The finger print expert ought to have put mark 'S' on the portion of the right hand palm before taking the photographs. The photographs have not been exhibited. No question has been put to the accused in that regard in his statement u/s 313 Cr. P.C. Thus, there is no evidence to show that the finger print expert had compared the chance print photographs marked J2 with the specimen finger prints taken before the S.D.M., Raisinghnagar vide Ex. P. 36 to Ex. P. 40.

16. It is submitted by Mr. Jagmal Singh Chaudhary, learned Counsel for the accused Rakesh that the specimen finger prints Ex. P. 36 to Ex. P. 40 cannot be used against the accused as in absence of the evidence of S.D.M., there is no evidence to show that the accused had given the specimen finger prints voluntarily. It is not in dispute that the S.D.M. Shri Rajendra Misra has not been examined at the trial. Learned counsel has placed reliance on a decision of the Apex Court in Amarjit Singh v. State of U.P. reported in 1998 SCC (Cri) 1609. In the said case, the S.D.M. was not examined and, therefore, it was held that there is no evidence to show that the specimen writing was given by the accused voluntarily. The Hon'ble Supreme Court relying on its decision in Sukhvinder Singh v. State of Punjab reported in 1994 SCC (Cri.) 1376, held that the specimen writing under such signatures could not be used against the accused. We find substance in the contention advanced by Mr. Chaudhary.

17. Another difficulty for accepting the opinion of the finger print expert is that the prosecution has not explained as to why chance prints photo taken vide Ex. P. 15 were not sent to the finger print expert, more particularly when they were taken by the photographer Shri Inder Lal of district M.O.B. Sriganganagar. Further it appears from the Ex. P. 47 that the sealed packet marked 'J' was received in the Finger Print Bureau through special messenger Shri Prabhu Ram, LHC.P.W. 12 Bhagirath Lakhara has stated that on 29.4.98, he had sent parcel marked 'J' with Prabhu Ram, H.C., to F.S.L., Jaipur. He has also stated that on 2.5.1998, he brought the parcel back after chance print examination. Prabhu Ram has not been examined to show that the packet remained sealed during the period from 29.4.1998 to 1.5.1998. The non-examination of Prabhu Ram in the instant case for the reason that Kassi was received back by Superintendent of Police, Sriganganagar and it was again sent to the F.S.L. at Jodhpur. Thus, the aforesaid lacuna has totally destroyed the relevancy of the evidence of the expert. Thus, the learned trial Court has committed error in using the first circumstance against the appellant as incriminating circumstance.

B. Similarity of blood group on the clothes of accused and deceased:

18. The trial court relying on the F.S.L. report Ex. P. 48 found similarity of blood on the clothes of the deceased and that of the accused. It is submitted by Mr. Jagmal Singh Chaudhary that the findings of the learned Judge are based on misreading the F.S.L. report Ex. P. 48.

19. In order to appreciate the contention of Mr. Chaudhary, it would be convenient to extract the relevant portion of the F.S.L. report, Ex. P. 48:

'Description of Articles

S. No. Packed Exhibit No. Details of Exhibits

Marked Marked by Me

1 A 1 Blood smeared soil.

2 B 2 Control soil.

3 C 3 Blood smeared soil.

4 D 4 Control soil.

5 E 5 Blood stained Darati.

6 F 6 Blood stained Takiya.

7 G 7 Blood stained Gadela.

8. H 8 Blood stained Pant.

H 9 Blood stained baniyan

9. I 10 Blood stained shirt.

I 11 Blood stained pant.

I 12 A pair of blood stained Chappal.

10. K 13 Gudara

Result of Examination

1. On Serological examination, the blood stains on the following exhibits were to be of HUMAN origin:

1. (from A), 3 (from C), 5(from E), 6(from F), 7(from G), 8, 9 (from H), 10,11, 12(from I), 13 (from K).

2. Blood could not be detected in the following exhibits:

x

3. The origin of the stains on exhibits noted below could not be determined for the reason stated:

x

Not Sufficient for Test

Report of Blood Group

4. The following exhibits were found to be stained with 'A'... group blood: 8(from H).

5. The blood group of the stains on the exhibits noted below could not be determined for the reason stated:

1(from A), 3 (from C), 5(from E), 6(from F), 7(from G), 9(from H), 10, 11, 12(from 1)&,13(from K).

20. We proceed on the assumption that the clothes of the deceased were in packet marked 'H' and the clothes of the accused were placed in packet marked T. As per the report, at item No. 1 under the heading 'Result of Examination', the clothes of the deceased and the accused were stained with human blood. However, it cannot be said that they were stained with blood group 'A'. Item No. 4 under the heading 'Report of Blood Group' only speaks of clothes in packet 'H' i.e. the clothes of the deceased, found to be stained with 'A' group blood, but with respect to the clothes of the accused in packet 'I', the expert in para 5 has stated that the blood group of stains on the exhibits could not be determined. It nowhere states that the clothes were stained with 'A' group blood. Thus, the finding of the trial court is ex facie illegal being based on misreading of evidence.

C. Recovery of blood stained Kassi and Mattress:

21. The accused was arrested on 18.4.1998 at 3.30 PM vide Ex. P. 34. P.W. 14 Ganesh Nath has stated that on receiving the F.I.R., he immediately reached on the spot in the night itself. However, he inspected and prepared the site plan in the morning. The accused was arrested on the same day. The accused while in custody made a disclosure statement vide Ex. P. 46 to the effect that he has kept blood stained Kassi and the mattress on the terrace of the Kotha constructed in the house. In pursuance of the said information, he got recovered Kassi and mattress vide recovery memo Ex. P. 13. He also stated that there being possibility of chance print on the handle of the Kassi, photographs were taken by the M.B.O. Incharge Inderlal. Thereafter, Kassi and mattress were seized and sealed. P.W. 12

Bhagirath, Incharge, Malkhana, Police Station, Raisinghnagar, has stated that Shri Ganesh Nath deposited eleven packets in F.I.R. Case No. 140/1998. He made entry of the said articles in the Malkhana Register at item No. 43. He also stated that on 29.4.1998, he had given parcel 'J' to Head Constable Prabhu Ram for delivery to the F.S.L. at Jaipur. The recovery memo Ex. P. 13 shows that the recovered Kassi was kept in parcel marked 'J'. The letter of the Director, Finger Print Bureau Ex. P. 47 shows that the sealed packet marked 'J' was received on 1.5.1998 through special messenger Prabhu Ram. After photography, the Kassi was returned to the Superintendent of Police, Ganganagar through the special messenger Prabhu Ram. This shows that the seal of packet 'J' was broken in the office of the Director, Finger Print Bureau and thereafter the photograph of the Kassi was taken. There is nothing to show that the Kassi was re-packed and re-sealed in the Finger Print Bureau.

22. P.W. 12 Bhagirath Lakhara has stated that on 2.5.1998, Prabhu Ram deposited the article after chance print inspection. He also stated that on 14.5.1998, he delivered all the parcels 'A' to 'I' and 'K' in sealed condition to P.W. 11 Jaibir Singh for delivery in the F.S.L. at Jodhpur. He also stated that on the same day, he delivered parcel 'J' to Prabhu Ram for delivery at the F.S.L., Jodhpur. He also stated that on 18.5.1998, Prabhu Ram produced the receipt of delivery of packet 'J' to the F.S.L. at Jodhpur. A reading of Ex. P. 47 does not show that parcel marked 'J', which was opened for the chance finger print examination, was re-sealed. In absence of such statement of fact, it is not warranted for supposing that it must have been re-sealed. Prabhu Ram, who had carried the parcel 'J' from Malkhana to Finger Print Bureau, Jaipur and taken it back and delivered back to Malkhana at Sri Ganganagar, has not been produced. The non-production of Prabhu Ram coupled with the fact that there is no mention in the Ex. P. 47 about the re-sealing of the Kassi, is that the prosecution has failed to rule-out the possibility of tampering with the incriminating article namely Kassi. It was obligatory on the prosecution to prove affirmatively that the parcel 'J', before it was opened in the F.S.L., had remained intact. Ex. P. 49 speaks that the packet marked 'J' was found properly sealed bearing impressions, which tallied with the specimen seal impressions. There is nothing to show that if the Kassi was re-sealed in the Finger Print Bureau or by P.W. 12

Bhagirath Lakhara, Malkhana Incharge. In view of this, no reliance can be placed on the FSL report Ex. P. 49. Thus, there is nothing to show that Kassi was stained with human blood.

23. There is one more reason to discard the evidence of recovery. The Kassi and the mattress have been recovered from the terrace of the Kotha. The site plan Ex. P. 14 clearly shows that it is an open place. This place was inspected by the Investigating Officer in the morning before the arrest of the accused. This place has been shown at mark 'P'. Thus, the place was inspected by the Investigating Officer prior to the arrest of the accused. For this reason also, the recovery of the blood stained Kassi deserves to be discarded.

D. Weapon of Offence:

24. We have also seen the weapon of offence i.e. Kassi (shovel). This is an agricultural instrument having broad blade. There is nothing unusual in using agricultural instrument as a weapon of offence for committing offence like murder, particularly by agriculturists in villages. If the incident takes place at a spur of moment, one may pick-up any available article, but in a case of cold blooded murder, when a person has time to choose a weapon, it is improbable to use a shovel as a weapon, even from among the agricultural instruments. Our observation is in the context that on case being proved, the learned trial Judge has awarded death penalty, considering a cold blooded murder.

25. In view of the aforesaid discussion, we conclude that the prosecution has failed to establish the case against the accused appellant beyond reasonable doubt. The trial Court was in error in convicting the appellant on the basis of discrepant and untrustworthy evidence. The appellant is entitled to the benefit of doubt.

26. Consequently, the appeal is allowed. The judgment dated 14.12.1999 passed by the Addl. Sessions Judge, Raisinghnagar, convicting the appellant of the offence Under Section 302 IPC and sentence to death is quashed and set aside. The accused appellant Rakesh is acquitted of the offence Under Section 302 IPC. The Murder Reference No. 3/1999 'State v. Rakesh' is rejected. The accused

Rakesh shall be released forthwith if he is not required in any other case.

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