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Court : Rajasthan

Decided On : Feb-25-1987

Reported in : 1987WLN(UC)314

Judge : Shyam Sunder Byas and; Ashok Kumar Mathur, JJ.

Appeal No. : D.B. Criminal Appeal No. 673 of 1976

Appellant : Khusala

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. P.R. Chaudhary

Judgement :

Shyam Sunder Byas, J.

1. The appeal is directed against the judgment of the learned Additional Sessions Judge, Jalore dated July 29, 1976, by which the appellant Khusala was convicted under Sections 302 and 309, IPC and was sentenced to imprisonment for life with a fine of Rs. 200/- on the first count and to six months' rigorous imprisonment with a fine of Rs. 500/- on the second count. Substantive sentences were directed to run concurrently.

2. Briefly recapitulated, the prosecution case is that Smt. Aaiji was married to the accused Khusala nearly 10/12 years before 1975. Smt. Aaiji give birth to two

children. The accused and Smt. Aaiji along with their children were living separately from his parents in a Dhani which they had raised in a field in village Oadkha P.S. Barmer. The relations between the husband and wife, however, could not remain sweet.

3. At about 6.45 p.m. on May 5, 1975, PW 3 Raichand uncle of the appellant, appeared at Police Station, Banner and presented written report Ex.P. 3. It was stated there in that the father of the accused came to him and informed him that the appellant had committed the murder of his wife Aaiji and her dead body was lying in his Dhani. The police registered a case under Section 302, IPC and proceeded with investigation. The Station House officer deputed the Assistant Sub Inspector Daulatsingh (PW 12) to make the investigation. PW 12 Daulatsingh arrived on the spot and found the victim's dead body lying in the accused's Dhani. Since night had over-come, he could not proceed with the investigation. Next day, he prepared the inquest report of the victim's dead body and prepared the site plan. He found the blood scattered around the dead body. There were injuries on the neck of the victim's body. He collected the blood-stained soil and seized and sealed it. The post mortem examination of the victims dead body was conducted at about 2.45 p.m. on May 26, 1975 by PW 1 Dr. Calla the then Medical Officer Incharge, Government Hospital, Barmer. The doctor noticed the following ante-mortem injuries on the victims dead body:

External--(1) Cut wound on the neck side extending from the medial end of right clavicle to the back right side to the spines and deep upto the muscles 6' deep. It is 8' x 8' x 6';

(2) Cut wound on the neck front part. It is 4' x 4' x traches oesophagus deep.

Internal--(1) Trachea was cut into two parts transversely.

The doctor was of the opinion that the cause of death was injuries sustained on the neck with sharp weapon cutting trachea and right side of the neck, resulting in external bleeding and shock. The post mortem examination report, issued by him is Ex P 1. The accused was arrested at about 9.00 p.m. on May 27, 1975 at a place nearly two miles away from his Dhani in village Oadkha. At the time of his

arrest, letter, Ex.P 6 was found in his possession. Specimen hand writing of the accused were taken and were sent to the State Forensic Science Laboratory, Jaipur to find out whether Ex P 6 is in his handwriting. The finding of the Forensic Science Laboratory is that the accused was the scribe of the letter Ex P 6. In Ex.P 6, he admitted to have killed his wife Aaiji. The investigation also revealed that before his arrest, the accused went to PW 4 Bankaram of his village and confessed before him that he had killed his wife Aaiji by inflicting injuries to her with a sword. He requested Bankaram to help him as Bankaram had been a peon in the judicial court. Bankaram advised him to approach the police. A bloodstained sword was recovered in consequence of the information furnished by the accused whilst in police custody. On chemical examination, blood found on the sword was of human origin as per report Ex.P 35 of the Serologist. A search of the Dhani of the accused was taken. Letters Ex.Ps 18&19 were found in a tin-box. They were seized and sealed. It also transpired during investigation that after committing the murder of his wife Aaiji, the accused tried to commit suicide. On the completion of investigation, the police presented a crime report against the accused in the Court of the Judicial Magistrate, Jalore, who, in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge framed charges under Sections 302 and 309 IPC against the accused, to which he pleaded not guilty and faced the trial. He denounced the whole prosecution story and claimed absolute innocence. Regarding letter Ex. P 6, he admitted that it was in his handwriting. He, however, avoided letter Ex. P 6 by saying that it was got written from him during investigation by the Investigating Officer by playing a trick on him. The accused pleaded alibi and stated that on the day of the alleged incident, he was away at Barmer. In support of its case, the prosecution examined 17 witnesses and filed some documents. In defence, the accused examined two witnesses, one of whom is his father Laxman. On the conclusion of the trial, the learned Sessions Judge found no merit in the defence plea of the alibi and held 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, the accused has taken this appeal.

4. We have heard Mr. P.R. Chaudhary learned Counsel for the appellant and the learned Public Prosecutor. We have also gone through the case file carefully.

5. Mr. Chaudhary did not challenge the opinion of PW 1 Dr. Calla, who performed the medico legal autopsy of the victim's dead body. The doctor noticed two cut wounds on the neck of the victim and each of these cut wounds was individually sufficient in the ordinary course of nature to cause death. We have gone through the testimony of Dr. Calla and find no reasons to distrust his opinion. The death of Smt. Aaiji was, thus, not natural but homicidal.

6. Admittedly, there is no eye witness of the incident and the entire prosecution case rests squarely on circumstantial evidence. The circumstantial evidence adduced by the prosecution consists of the following sets:

(1) The accused and his wife were living together in a Dhani separately, from his parents. In the morning of the day of the incident, both were together;

(5) Smt. Aaiji was found killed in her Dhani and the accused was missing;

(3) the accused was seen going with a naked sword in his hand after the commission of the murder;

(4) when he was arrested, letter Ex P 6 was found in his possession. He had confessed his act of killing Aaiji in it. He was the author of this letter;

(5) before his arrest, he made extra judicial confession before PW 4 Bankaram that he had killed his wife;

(6) the blood-stained sword was recovered in consequence of the disclosure statement made by him after his arrest and whilst in police custody ; and

(7) realising the horror of the murder, he attempted to commit suicide.

7. All these sets of circumstantial evidence were taken as proved and sufficient to seek the conviction of the appellant by the trial Court.

8. In assailing the conviction, it was vehemently contended by Mr. Chaudhary that in the first place the above circumstances do not stand proved and even if taken as proved, they were wholly insufficient to connect him with the murder of Smt. Aaiji. The chain of circumstantial evidence was incomplete for want of motive. The

prosecution has alleged no motive and that is sufficient to crumble down the entire prosecution case. The learned Public Prosecutor supported the judgment of the Court below and submitted that the circumstances leave no room to doubt that it was the accused and none else who was the perpetrator of the crime. Looking to the contentions raised by Mr. Chaudhary, it would be proper to take them at seriatim.

9. It was not disputed that the accused and his wife Smt. Aaiji were living together in their Dhani which they had raised. PW 5 Binja stated that in the morning of the day of the incident, he went to the Dhani of the accused and found him and his wife there. His wife was dusting the Dhani. He had a talk with the accused and demanded the payment of Rs. 5/- which the accused owed to him. The accused promised to pay back the money next day. The witness thereafter left the accused's Dhani and went to Barmer. He was cross-examined, but nothing could be elicited which may render his testimony suspicious or unworthy of belief. The witness belongs to the caste of the accused and it does not appear that he has any grudge against the accused so as to falsely depose against him. The testimony of this witness shows that in the morning of the day of the incident, the accused and his wife Smt Aaiji were together in their Dhani. That proves the presence of the accused with the deceased just before the incident.

10. Admittedly, the accused was not found in his Dhani and remained absconding after the killing of his wife till he was arrested on May 27, 1975. This guilt-conscious conduct on the part of the accused is a circumstance which cannot be lightly ignored or brushed aside.

11. The most formidable piece of circumstantial evidence against the accused is that of his extra-judicial confession made verbally as well as in writing. PW 4 Bankaram Jat is a resident of the accused's village. He had been an employee in the judicial court. He deposed that before his arrest the accused came to him in the noon in his field. The accused told him that he had committed a blunder by killing his wife with a sword. He sought his advice as to what he should do. He also told the witness that he was seeking his advice as he had been an employee in the judicial court. The witness stated that he advised him to go to the police and state

all things there. The accused left his field and was arrested late in the evening of the same day. The witness was cross-examined but nothing could be extracted from him to show that he is not a witness of truth. There is nothing in his statement which may induce us to dismiss his testimony. He appears to be an independent person having no grouse against the accused or a soft corner for the deceased. The extra-judicial confession constitutes a very valuable link in the chain of circumstantial evidence. Whether an extra-judicial confession has been orally made or not, depends largely on the veracity and truthfulness of the witness to whom it is made. If the witness coming forward to prove an extra-judicial confession is an independent person having no grudge against the accused, his testimony should be ordinarily believed till there is some inherent thing in it to discard it. We are unable to conceive that this witness, who has no axe to grind against the accused, would falsely depose against him and implicate him in a criminal case of serious charge. Mr. Chaudhary could not subscribe any good or cogent reasons as to why the testimony of this witness should not be accepted and acted upon. The Court below treated him to be a witness of truth and we find no reasons to take a different view.

12. There is also a written extra-judicial confession of the accused contained in Ex P 6. The accused, in his statement under Section 333, Cr. PC has admitted that it is in his handwriting. The Investigating Officer Daulat Singh (PW 12) stated that the accused was arrested at about 9.00 p.m. on May 27, 1975 and when his personal search was taken* at that time, Ex. P 6 was found in his pocket. Ex. P 6 was seized and sealed in the presence of the witnesses. The arrest memo is Ex. P 7. Ex P 7 bears the signatures of PW 10 Gemalram and PW 11 Maccaram, in whose presence the accused was arrested and Ex P 6 was recovered from his pocket. The defence taken by the accused is that though Ex. P 6 is in his handwriting, it was not written from him after his arrest by the Investigating Officer by practising a trick on him. PW 10 Gamelaram, who is a Motbir witness of this recovery of Ex. P 6, is an independent person belonging to the accused's caste and village. No reasons are there for disbelieving the testimony of this witness. We, therefore, find no merit in the defence of the accused that Ex. P 6 was got written from him by the Investigating Officer under some trick. The finding of the trial Court that Ex. P 6 was recovered from the accused when he was arrested, is

correct and we are unable to disturb it.

13. Now, in Ex. P 6, which has been addressed by the accused to Lord Shiva, he has clearly admitted that he had killed his wife by striking blows on her neck with a sword. It appears that the accused was overwhelmed with a sense of sorrow and realised the horror of committing the murder of his wife. He could not contain his grief and the guilty conscience. It was why he expressed remorse and repentance in Ex. P 6 addressing it to the Lord Shiva. Ex. P 6 does not appear to have been falsely planted on the accused. If it was not falsely planted and the accused is the author of it, the confession contained in it must be taken into account in assessing his guilt.

14. A free and voluntary confession whether judicial or extrajudicial, whether written or oral, if clearly proved, is among the most effectual proof in law and deserves the highest credit. If the confession is a written one, generally, there is no difficulty to hold it that it was made by the accused. Of course, the extra-judicial confession should not be tainted. It should have been made voluntarily and should also be true. Free and willing mind of the accused and voluntariness of the confession are corner stones of an extrajudicial confession. Here in the instant case, as we have discussed above, PW 4 Bankaram is an independent person who is not expected falsely implicate the accused by fabricating the story of extrajudicial confession. So also, Ex P 6 is not a planted document. The extrajudicial confessions made by the accused before PW 4 Bankaram and in letter Ex. P 6 addressed by him to Lord Shiva, appear to have been made voluntarily. An accused can be safely convicted on the basis of extra judicial confessions.

15. After his arrest, the accused made the disclosure statement before the Investigating Officer Daulatsingh (PW 12) that he would get the sword discovered. This disclosure statement was reduced into writing by the Investigating Officer in Ex P 14. The accused thereafter took him and the Motbirs in a lonely place and took out sword (Article 1) lying concealed in a Jaala. This sword was seized and sealed and on chemical examination, it was found stained with human blood. The discovery of the sword stained with human blood constitutes another valuable link

in the chain of circumstantial evidence.¹⁶ It is true that the prosecution could not adduce evidence to prove the motive. The relations between the accused and his wife are said to be strained. The parents and inmates of the accused's family could be the only best persons to speak about the strained relations between the accused and the deceased. But the accused's father Laxman and his uncle Raichand (PW 3) did not state anything about these bitter relations. Being the close relatives of the accused, it was idle to expect from them that they would state anything unfavourable to him. However, the absence of evidence on the question of motive is not of much material significance as there is other overwhelming circumstantial evidence strongly connecting the accused with the murder of his wife.

16. Thus, in the chain of circumstantial evidence, we have--(1) the accused and his wife were living together in a Dhani and they were together in the morning of the day of the incident; (2) the accused made extra-judicial confessions admitting that he had killed his wife; (3) the accused remained absconding till he was arrested; and (4) the recovery of the blood-stained sword and the blood being of human origin, is consequence of the disclosure statement made by the accused and at his instance; as the links. These links, when taken and assimilated together, leave no room for doubt that it was the accused and the accused alone who was the perpetrator of the murder of his wife.

17. In a case resting entirely on circumstantial evidence, the various links of the chain are to be weighed and the effect of such weighing should be that they should unerringly point out the accused with the commission of the crime. Here the chain of circumstantial evidence is complete, leaving no hypothesis consistent with the innocence of the accused. The accused, in all probabilities is the person who had committed the murder of his wife Smt. Aaiji. His conviction under Section 302, IPC is, thus, correct and calls for no interference.

18. The accused was convicted under section 309, IPC. But we are unable to maintain his conviction under this Section. The learned Sessions Judge was very much impressed due to the presence of a contusion on the neck of the accused. He inferred from this injury that the accused made an attempt to kill himself. We

are unable to maintain this finding in view of the testimony of Dr. Calla (PW 1). Dr. Calla stated that the injury found on the accused's neck could not be caused by tying a rope around the neck and thereafter hanging himself. This opinion of Dr. Calla shows that the injury on the neck was not sustained by the accused in committing any attempt of suicide. His conviction under Section 309, IPC is, therefore, uncalled for.

19. In the result, the appeal of accused Khusala is partly allowed. His conviction and sentence under Section 302, IPC are maintained. However, his conviction and sentence under Section 309, IPC are set-aside and he is acquitted thereof. The accused was on bail during the pendency of the appeal and is not present today. He is directed to surrender himself within one month before the learned Sessions Judge, Jalore to serve out the unexpired portion of his sentence, failing which the Sessions Judge will proceed against him in accordance with law.

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