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Court : Rajasthan

Decided On : Aug-08-1985

Reported in : 1985WLN(UC)645

Judge : Surendra Nath Bhargava and; Vinod Shanker Dave, JJ.

Appeal No. : D.B. and S.B. Cr. Appeal Nos. 334 and 341 of 1980

Appellant : Ram Kishan Alias Kishan and anr.

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Vinod Shanker Dave, J.

1. These two appeals are directed against the judgment of learned Sessions Judge, Jhalawar, dated August, 14, 1980, whereby he convicted the accused-appellants as under:

Ram Kishan : Convicted under Section 302 IPC and sentenced to life imprisonment and a fine of Rs. 400/- and in default of payment of fine to undergo RI for three months, under Section 201 IPC to three years' RI and a fine of Rs. 500/- and in default of payment of fine to undergo RI for three months and under Section 380 IPC to one years' RI and a fine of Rs. 500/- and in default of payment

of fine to undergo RI for three months. All the sentences were ordered to run concurrently;

Parma Nand : Convicted under Section 411 IPC and sentenced to one year's RI;

Mst. Juni Bai and Siriya: Convicted under Section 411 IPC and sentenced to one year's RI.

2. The facts giving rise to this appeal are that at police station Jawar, District Jhalawar a report was lodged on April 25, 1979 at 3.00 p m. by one Mangilal PW 1, where in it was alleged by him that he and his family members had gone to Sultanpur, Madhya Pradesh, along with a marriage party of his nephew leaving behind Parmanand PW 2, his son and his mother Seeta who stays separately from all the brothers. It was stated that since after the death of his father his mother has been living separately all alone in a house and was not even on talking terms with her grand children. She used to put on silver kadies in her legs, a khungali in her neck and four silver bangles in her hands On April 23, 1979, when the marriage party returned to the village his son Parmanand informed him that his mother Seeta had gone to worship Sheetlamata on Sunday and since then she is not seen. On this information it is alleged that he accompanied with Ram Gopal PW 13 and Ram Chandra PW 3 went to the house of the deceased Seeta where she used to stay but she was not traceable. On the contrary they found the goods of the house scattered and some portion of the floor dug. He thereafter went in search of his mother and enquired from his brother Ram Chandra and also went to Rajgarh and Margbas where his sisters stayed but she was not traceable in those villages also. Thereafter they made a futile search at village Chandipur where too some relations stayed. Thus, they inferred that she has been enticed with an intention to take away her goods and has been hidden at some secret place. It was further mentioned in the report that he does not know as to what are the goods which have been removed from the house as she was too secretive to disclose anything even to her sons or grand-children. On the receipt of this report a case under Section 364. 365 and 380 IPC was registered and investigation commended.

3. During the course of investigation Mst. Junibai and Ram Rishan were arrested and it is alleged that they gave information to the effect that they had seen the dead body of Mst. Seeta near the river and it was searched on May 11, 1979, but was not traceable. It was therefore, inferred that either it has been swept away with water or has been eaten up by animals. The police recovered from the house of Ram Kishan one Paraniya, Kudali and a Gandasi and also at his instance recovered from the bank of the river silver kadas which he had hidden under the leaves of a tree. The prosecution also recovered a gold Bajayanti at the instance of the accused Parmanand which he had pawned with Dhulilal through Laxmi Narain. At the instance of Junibai eight silver bangles were recovered. Similarly at the instance of Seeriya a Khungali was recovered. The identification of the stolen property was got done by Sarpanch Mangilal and police during investigation also recorded the statement of one Srikishan who came out with the story that on the night intervening Saturday and early in the morning at about 3 or 4 p.m. he had seen accused Ramkishan and Junibai coming out of the house of Mst. Seeta. They had a lathi on their shoulders on which the corpse was tied and that had gone towards river side. Statements of four witnesses were recorded namely, Ramkishan's father Devi Lal and Shyam Baba who in turn narrated the story to Ram Gopal and Damodar. After completing the investigation the charge-sheet was submitted against these persons for offences under Sections 364, 365, 320 and 411 IPC in the Court of Additional Munsif and Judicial Magistrate, Akkra who committed them to the Court of Sessions for trial. The trial court re-framed the charges and charged Ram Kishan and Mst. Junibai for offences under Sections 302, 301 and 380 IPC, accused Siriya for offence under Sections 302 and 380 IPC and Laxmi Narain, Parmanand and Radhey Shyam for offence under Sections 411 and 414 IPC. The accused denied the charges and claimed to be tried.

4. At trial the prosecution examined 28 witnesses in support of its case. The accused in their statements recorded Section 313 Cr.PC denied the prosecution story. Accused Laxmi Narain however, stated that Parmanand had pawned with him two gold Bejayanti through Dhulilal and at that time Parmanand had stated that it was his own property. Radhey Shyam stated that Kankati and Newli recovered belong to his brother's wife Gayatri Devi which had been made by Ram Narain Sunar. Ram Kishan pleaded alibi and Parmanand also claimed the

property saying it to be his own. The defence examined Ram Narain, Gayatri Devi, Tejbai and Asharam as their witnesses to substantiate their case.

5. The learned Sessions Judge relied upon the statements of Shri Kishan PW 9, Devilal PW 10 and Shyamlal PW 11 and came to the conclusion that Ram Kishan was seen taking the corpse towards the river and, therefore, found him guilty of murder. He also found the recoveries of ornaments proved at the instance of Junibai, Siriya and Parmanand and convicted them also for offence under Section 411 IPC. The learned Sessions Judge however, acquitted Radhey Shyam and Laxmi Narain of both the offences. Aggrieved by the conviction and sentence Ramkishan and Parmanand filed D.B. Criminal Appeal No. 334/80 while Mst. Junibai and Siriya filed S.B. Criminal Appeal No. 341/80. Both these appeals having arisen from the same judgment are disposed of together by one single judgment as mentioned above.

6. The learned counsel for the accused-appellants submitted that the statement of Srikishan PW 9 is not worthy of any reliance and consequently Devilal & Shyamlal to whom the story had been narrated by Srikishan cannot be relied upon. The evidence of Ram Gopal PW 12 and Damodar PW 13 who had derived further knowledge from PW 10 Devilal is firstly here say and secondly become baseless as the very basis i.e. evidence of Srikishan who is the source, is doubtful. Hence it is submitted that as Srikishan's testimony goes out, then only remains the evidence of recovery which also is absolutely useless in the face of the statements of PW 1, Mangilal and PW 2 Parmanand, the son and the grand-son of the deceased who could not have identified the property as they had no occasion to stay with the deceased for last 15 or 16 years.

7. On the contrary it has been argued by the learned Public Prosecutor that Srikishan is a truthful witness who had no enmity with any of the accused and since there is no infirmity in his statement he should be relied upon. It has further been contended that Devilal and Shyamlal corroborated the testimony of Srikishan who immediately after having seen Mst. Ghisi taken away, narrated the incident to his father and Shyambaba. Reliance is also sought to be placed, according to the learned Public Prosecutor, on the statements of PW 12 Ram Gopal and PW 13

Damodar. The learned Public Prosecutor submitted that the identification memo Ex P. 3 should also be relied upon and since the recovery has been affected at the instance of the accused-appellants, their conviction and sentence as recorded by the trial court must be maintained.

8. We have given our thoughtful consideration to the rival contentions and have perused the entire record.

9. At the outset on a bare look at his statement PW 9 Srikishan to us appears to be totally a false witness on whom no reliance can be placed. He in his statement has stated that he had seen the deceased being taken on a stick on the night intervening between Saturday and Sunday at about 3 to 4 p m. which fact is contradicted by the First Information Report itself where in Mangilal, the son of the deceased has stated that his son Parmanand informed him that his grand-mother had gone to worship Sheetlamata on Sunday morning at 9.10 a.m. and since thereafter she is not seen. Mangilal PW 1 has stated the same thing in his statement in the court and so also Parmanand PW 2 which clearly means that Mst. Sita taken on a stick by caused Ram Kishan and Mst. Junibai on night intervening Saturday and Sunday is totally false and concocted story. Besides this, the narration of the incident by Srikishan is also such which cannot inspire confidence in him for a moment. He states that on a stick he saw a potli handing one end of which was on the shoulder of Mst. Junibai and other on Ram Kishan and since, hand of Mst. Sita was visible from the Potli, he inferred that it was none also other than the deceased. This witness in cross-examination has admitted in reply to a question asked by the counsel for the defence that it is his inference that the dead body was of a woman and further that it should be of Junibai but he could not identify This witness admits that he had not narrated this incident to any villager or family member of the complainant Mangilal. He also did not narrate this incident when the police came to his village after three days when the FIR was lodged. It is pertinent to mention here that the statement of this witness was recorded by the police on April 29, 1978, i.e. after six days of the occurrence. This has also admitted by this witness that a case was instituted against the accused Ramkishan and Parmanand for beating Damodar witness a suggestion has been given to this witness that infact he who had been apprehended by the police, was detained by

the police besides being given threat and this is for this reason that in order to save his own skin he has falsely invented a story and implicated the accused. His testimony that on his challenge as to why they were taking the dead body accused Ramkishan threatened him with dire consequences, cannot for a moment be digested. The learned Sessions Judge has wrongly found corroboration of this witness from the statement of Shyamlal and Devilal. These two witnesses have categorically stated that Srikishan did not tell them as to who was the other person than Ramkishan. These witnesses also did not come out with story to police immediately and in turn communicated to Ram Gopal and Damodar who admittedly are on enemical terms with the accused. Thus, it appears to us that the enemies of Ramkishan fabricated the story to implicate him in this case. In our considered opinion whatever Srikishan has stated in the court is not a truth but a fiction. The story of Srikishan has also not been corroborated as no dead body has been recovered from the river where according to this witness it was thrown. Corpus delicti having not been recovered coupled with the fact that the statements of the aforesaid witness are not found worthy of reliance Ramkishan's conviction cannot be maintained for offence under Section 302 or 201 IPC,

10. The another circumstance which has been relied upon by the learned Sessions Judge to infer the implication of Ram Kishan and three other accused in crime due to the recovery of the various ornaments, in our opinion is also unworthy of reliance. It is an admitted case of Mangilal, his brothers and his son Parmanand that Mst. Sita deceased was a lady of quarrelsome nature and was absolutely secretive, Even during life time of her husband she used to stay separate from her children and other members of the family and would not show them as to what are her belongings. It has also come on record that she used to do money lending and would not trust anybody. Bejayanti, Kadies, Bangles and Kankati in the village are the ornaments which are generally worn by ladies and are of common pattern: It is true that such articles of common pattern can at times be identified either by the user or a person who has an opportunity of seeing it everyday without there being any distinguishing mark which can be disclosed. But with us is a case, where according to the prosecution witnesses themselves the deceased was living separate for last 15 or 16 years and was not even on talking terms with the grand-children. According to the FIR itself her own son Mangilal stated that Mst. Sita was

very secretive and he does not know anything about her ornaments and properties. In face of such a situation it is too risky and venture some to come to a definite conclusion that the witnesses were in a position to identify the goods. No reason has been assigned as to why the identification of the goods has been got conducted in a Panchayat when a Magistrate could be available. It is always a rule of caution and prudence which has been given by various courts that the identification proceedings must be conducted by such a person in such circumstances which may inspire the confidence of the Courts before they base conviction on such identification proceedings. In the instant case the Sarpanch has admitted that he had removed the seals and sent the ornaments prior to his asking the police people to bring similar such ornaments for mixing. This sort of procedure is unwarranted by any cannon of jurisprudence. We are, therefore, unable to rely on this identification and consequently hold that the goods recovered have not been properly identified and further that they belong to deceased Mst. Sita. There is no evidence on the basis of which conviction of any of the accused can even be thought of and as a result of the aforesaid discussion we are firmly of the opinion that it is a proper case where the prosecution story must be disbelieved.

11. In the result, we allow both these appeals, set aside the conviction and sentence imposed on the accused-appellants and acquit them of all the charges levelled against them. Accused Ram Kishan is in jail and he shall be released forthwith if not required in any other case. The other three accused-appellants, namely, Parmanand, Mst. Junibai and Siringa are on bail and they need not surrender to their bail bonds as such their bail bonds are discharged.