

Uda @ Suda Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Apr-10-2000

Reported in : 2000(2)WLN631

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

Appeal No. : D.B. Criminal Appeal No. 501 of 1981

Appellant : Uda @ Suda

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 25.8.1981 passed by the Sessions Judge, Pali in Sessions Case No. 32/80 convicting the appellant Uda @ Suda son of Dewa for offence under Section 302 I.P.C. and sentenced to imprisonment for life.

2. The brief facts giving rise to the present appeal are that on 8.4.1980, P.W. 3 Himta Ram submitted a written report at the Police Station, Sojat stating inter alia that his niece Mst. Seeta was married to Uda three years back and sister of Uda was married to her brother Laxman in exchange. A day before, his niece had gone

to Kharchiya well for plucking Heena but she did not return. There was a rumour in the locality that Uda had forcibly taken his wife Mst. Seeta at about 10.00 or 11.00 A.M. towards Sojat. They also suspected that Uda might have killed her. The reason for the suspicion was that about one and half year back on the occasion of Holi, Uda had assaulted Mst. Seeta. He was also telling her that some day he will kill and throw her in a pit. There was oral altercation between the brother of Mst. Seeta and accused Uda. In the night, they went in search of Mst. Seeta but that did not yield anything. In the morning, all the caste's panchas assembled on 'badi hathai' in the Sojat City. The Panchayat was attended by large number of people. Panchas namely, Pema Ram S/o Bhola, Pema S/o Chaila, Jora Ram, Tulsi Ram and Gora Ram Ganchi called Uda and his father Dewa. They enquired from Uda the whereabouts of Mst. Seeta. Initially, he did not give any response. Thereafter, the Panchas gave a threat of taking the matter to the police on which he confessed that Mst. Seeta was thrown in Raikabagh Well after tying her mouth. On this report, the police registered a case and proceeded with investigation. The accused uda was arrested. The body of Mst. Seeta was taken out from the Raikabagh Well. The body was sent for post mortem. After, usual investigation, the police laid charge sheet against the accused Uda for offence under Section 302 I.P.C.

3. The accused pleaded not guilty and claimed trial. The prosecution in support of the case examined 15 witnesses and produced certain documents. The accused Uda in his statement under Section 313 Cr. P.C. denied the correctness of the prosecution evidence appearing against him. The accused examined two witnesses in support of the defence. The Trial Court relying on the circumstantial evidence of last seen and the extra judicial confession found the charge of murder of Mst. Sita proved against the appellant. The learned Judge accordingly convicted and sentenced as noticed above.

4. Assailing the conviction, it is contended by learned Counsel Mr. M.L. Garg for the appellant that the learned Judge has committed error in convicting the appellant on the evidence of last seen and the extra judicial confession without satisfying if each of the circumstances were proved by the prosecution against the appellant. On the other hand, learned Public Prosecutor has supported the

judgment of the Trial Court.

5. We have considered the rival contentions and scanned the prosecution evidence carefully. It is not in dispute that Mst. Seeta died of homicidal death. P.W. 15 Dr. Hari Shanker Soni has stated that he examined the dead body of Mst. Sita and found the following injuries on her person:

1. 1'x1-1/2' just below Rt. mandibular region on lateral side of neck in its upper part.
2. Contusion 2' x1" on Rt. side of neck on front lateral side, soft reddish brown colour.
3. Contusion 2' x 2' on left side of neck in its central part.
4. Contusion 1' x 1/2' on Rt. chest in mid clavicle at 9th rib.
5. Multiple Bruise of varying size from 1/4' x 1/2' on back between inter scapular and below scapular.

He has proved the post mortem report Ex/P/9. With respect to the cause, of death, he opined as follows:

In my opinion the probable cause of death in this case may be 'Asphyxia due to throttling' on the neck.

The doctor stated that 'there was fracture of hyoid bone and thyroid cartilage. He also opined that Mst. Seeta must have died 24 to 30 hours prior to the time of post mortem. In the cross-examination, he admitted that the dead body remained in water for less than 12 hours. It may be noticed that the post mortem was conducted at 5.00 P.M. on 8.4.1980. It also appears from the medical evidence that Mst. Sita did not die of drowning but because of asphyxia due to throttling on the neck. It also appears that Mst. Seeta was first killed and then her body was thrown in the Well.

6. As far as the evidence of last seen is concerned, the prosecution has examined P.W. 4 Moda Ram and P.W. 5 Pema. The first witness P.W. 4 Moda Ram stated that he had seen the accused Uda quarrelling with his wife Mst. Seeta in the field.

It is stated that he had gone to the field for grazing cattle he had seen them at about 10.00 A.M. He advised them not to quarrel on which Uda asked him not to interfere in their family affairs. After two days, he came to know that Uda has killed Mst. Seeta by throwing her in water. In the cross-examination, he admitted that the police had recorded his statement two days after the date on which he had seen Mst. Seeta and accused Uda together. He also admitted that he might have seen them last four days back. If he had seen four days prior to the date on which the police recorded the statement, then his evidence cannot be of last seen because there is a gap of two days between his seeing them and the death of Mst. Seeta. He has also admitted in the cross-examination that Uda and Mst. Seeta were not the persons known to him. With regard to Uda, he stated that he had seen him earlier on many occasions but with respect to Seeta, he could not say that he had seen her on earlier occasions. In view of the above, it is difficult to say that he has seen Mst. Seeta with Uda. The evidence of this witness is not of a conclusive nature.

7. P.W. 5 Pema has stated at about 10 or 11 A.M., he was going on towards the Raikabagh Well. He found the accused Uda @ Sudia and his wife Mst. Seeta quarrelling. He advised them not to quarrel. The accused Udia agreed that they will not quarrel and then they left. He had gone just two fields and heard the voice of somebody falling in the Well. Thereafter Udia went towards Sojat all alone. The statement of this witness is false on the very face. According to his statement, he has seen Mst. Seeta alive and just after some time, he heard the voice of somebody falling in the Well. By this statement, he wants the court to draw an inference the Mst. Seeta must have been thrown in the Well. It is strange that he did not try to know about the incident. Otherwise also, his statement is contrary to medical evidence, in as much as, that Mst. Seeta did not die by drowning. Thus, the prosecution has failed to establish the circumstance of last seen against the appellant.

8. As regards, the extra judicial confession, the prosecution has examined P.W. 2 Gorla, P.W. 3 Joria, P.W. 6 Tulsi Ram and P.W. 7 Laxman Singh.

It is contended by the learned Counsel Mr. Garg that there is no consistency amongst the prosecution witnesses as to what exactly the accused blurred out. The alleged extra judicial confession is in contradiction with the medical evidence. P.W. 2 Goria has stated that Uda made a confession that he had thrown Mst. Seeta in the Raikabagh Well. His statement reads as follows:

fQj mnk us dgk fd jkbZ dk ckx ds dq,a es lhrk dsk Mky nh g SA

Thus, according to the deposition of this witness Mst. Seeta was thrown in the Well but this statement is in contradiction of the medical evidence in as much as Mst. Seeta has not died because of drowning. P.W. 15 Dr. Hari Shanker Soni has stated that Mst. Seeta died due to asphyxia due to throttling on the neck.

P.W. 3 Joria stated that on enquiry Uda confessed that he killed Mst. Seeta. He also stated that she was thrown in Raikabagh Well. It would be appropriate to notice the exact words spoken by the witness which reads as follows:

igys rks nsok us dgk fd yM+ds us lhrk dks ekj dj dqvk es Mky nh g SA fQj mnk dks Hkh iwNk rks mlus dgk fd ekj nh A jkbZ dk ckx ds dqvk es Mky nh g SA

He was confronted with his earlier statement Ex. D/4. He admitted that in Ex. D/4, it is not written that Mst. Seeta was killed by him. In the statement Ex. D/4, the statement is to the effect that Deva and Uda both said that they have killed Mst. Seeta and thrown in the well. He has simply stated that the statement has not been correctly recorded. This clearly shows that he has made improvement in his statement before the Trial Court.

P.W. 6 Tulsi Ram has stated that the accused made a confession to the effect that Mst. Seeta was killed and thrown in Raikabagh Well. The statement in this regard reads as follows:

bldks ekj dj jkbZ dk ckx dqvk es Mky nh A blds cki nsok us dgk fd cPps us /kqy [kWk yh gS U;kr xaxk gks vius tPps tSlk djks A

When this witness was confronted with his earlier statement Ex. D/10, he admitted that in the statement, it is not written that Mst. Seeta was killed and thereafter

thrown in the Well. This shows that this witness has also improved his statement to fit in with the medical evidence.

P.W. 7 Laxman has stated that the accused Udia made a confession before the Panchas that he tied the mouth of Mst. Seeta and then threw her in Raikabagh Well. The relevant statement reads as follows:

mfn;k us dgk fd ekj dj eqag cka/kdj jkbZ dk ckx ds dqvka es Mky nh gS lhrk dsk A

The statement of this witness is also in contradiction of the medical evidence as the cause of death of Mst. Seeta is not drowning.

Thus, there is inconsistency in the statements of four prosecution witnesses with respect to exactly the words blurred out by the accused Uda. The witnesses have also moderated their statements to fit in with the medical evidence. They have improved their statement from their earlier version. In the Court, they have tried to state that Mst. Seeta was killed and thereafter her body was thrown in the Well. P.W. 2 Goriya and P.W. 6 Tulsi Ram has categorically stated that Udia made statement to the effect that Mst. Seeta was thrown in the Well. They have not said that she was killed before her body was thrown in the Well. It is well established that as a matter of practice and procedure, the Court will not act upon the retracted version unless it is found to be credit worthy. The evidence adduced in the instant case with respect to the extra judicial confession does not inspire confidence.

9. Thus, in our opinion, the prosecution has failed to establish the case against the appellant beyond reasonable doubt. The learned Sessions Judge has committed an error in convicting the appellant Uda on the charge of murder of his wife Mst. Seeta.

10. Consequently, this appeal is allowed and the judgment of the Sessions Judge, Pali dated 30.7.1981 is quashed and set aside. The accused appellant Uda @ Suda s/o Dev is acquitted of the offence under Section 302 I.P.C. The appellant is on bail. The bail bonds stand discharged.