

Mst. Sarmi Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-13-1987

Reported in : 1987WLN(UC)569

Judge : Ashok Kumar Mathur and; Navin Chandra Sharma, JJ.

Appeal No. : D.B. Cr. (Jail) Appeal No. 266 of 1982

Appellant : Mst. Sarmi

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Navin Chandra Sharma, J.

1. Mst. Sarmi has been convicted by the Additional Sessions Judge, Sirohi, under Section 302 IPC for the murder of her mother-in-law Mst. Roopi by his judgment dated January 29, 1982, and sentenced to imprisonment for life along with a fine of Rs. 100/- and in default of payment of fine to rigorous imprisonment for one month. She has come in appeal to this Court.

2. Prosecution case, in brief, is that the deceased Mst. Roopi was mother of Bhaira (PW 4) who is resident of village Telpi-khera, Tehsil Sirohi. Ghaira was the only son of his father named Husa. His father expired in the year 1972 or 1973.

Bhaira had been married to Devli of village Isra. Devli had given birth to a daughter from Bhaira named Paboo. However, relations between Bhaira and Devli became strained and Bhaira deserted Devli. Paboo continued to live with Bhaira. The appellant Mst. Sarmi was brought by Bhaira in 'nata' some time in the year 1973 or 1974. Mst. Sarmi gave birth to two daughters from Bhaira. It is alleged that the appellant used to ill treat Paboo (daughter of Bhaira from Devli) and used to beat Bhaira, therefore, did not want to keep the appellant also with him. He sent the appellant back to her parents through her father Kela and brother Chatra. He had told them that he will not keep the appellant with him. The appellant had been sent back to her parents house by Bhaira about a month before the incident. However, the appellant voluntarily came back to the house of Bhaira and despite being told by the latter that he will not keep her, she insisted that she will live with him and will not go back. On the date of the incident i.e. on the evening of October 30, 1980, Mst. Roopi, mother of Bhaira, had gone to the nursery of the forest Department at about 5 or 6 p.m. to collect grass. At that time, the appellant was in the house of Bhaira in village Telpi-Khera. After some time the appellant also went out from the house, while Bhaira remained at his house. After some time thereafter Sameera (PW 5), who is sister's husband of Bhaira, came to the house of Bhaira and informed him 'nata' wife Mst. Sarmi had murdered his mother Mst. Roopi. Bhaira went near the forest nursery and found her mother lying dead near the nursery with several injuries on her body. Sameera (PW 5) and his sister's husband Rawata (PW 7) informed Bhaira that at about 6 p.m., after collecting firewood, they were sitting on the 'tekri' of Kalwar hillock, which is at a distance of 300 foot-steps from the place where the dead body of Roopi was lying and they were smoking bidi. At that time they saw that while Roopi was coming out from the nursery with a stack of grass, the appellant Mst. Sarmi came at that place with an axe and dagger. The appellant gave a push to Roopi and the stack of grass fell down from her head. Then the appellant inflicted various injuries on the body of Roopi and also cut her nose from the dagger. Sameera and Rawata rushed towards the place of incident raising a cry and seeing them the appellant ran away inside the nursery with the axe and dagger in her hand. When these two persons reached to the spot, Roopi had died. Sameera left Rawata at the place where Roopi was lying dead and he himself came to the house of Bhaira in the village

and informed him of the incident. After Bhaira arrived on the spot along with Sameera, four or five other villagers also reached there, Bhaira, Sameera and Rawata remained near the dead body of Roopi during the night. In the morning of October 31, 1980, Bhaira went to Krishna Ganj to lodge a report. He happened to meet police people at Krishna Ganj. He got a First Information Report written from Babulal and presented the same before Chain Singh who was SHO of PS, Anadra. On receiving the report Ex. P 6, Chainsingh along with Salig Ram Head Constable PW 8 came to the place of the incident. They inspected the site and prepared the site inspection note and inquest report. The post-mortem examination of the deceased was conducted by Dr. Bhoora Singh (PW 1) on November 1, 1980 and he gave his report Ex. P. 1. According to the post-mortem report, Roopi deceased had 12 injuries on her body and she died due to shock as a result of haemorrhage from multiple wounds. On Nov. 3, 1980, Ram Ballabh Mukul, Deputy Superintendent of Police, Sirohi undertook further investigation from Chain Singh. He arrested the appellant on November 3, 1980 at about noon. From the hilly area known as Danta-ki-Pahari which was at a distance of one K.M. from village Telpi-khera. According to the prosecution, the appellant gave information Ex. P 16 to Ram Ballabh Mukul that the dagger and axe were lying concealed near a 'Palas' tree on the ground under a large sized stone near a foot-track which meets the road from Telpi-khera leading to Danta. In pursuance of this information, Ram Ballabh Mukul recovered the axe Article 1 and dagger Article 2 from the place pointed out by the appellant and seized it under the seizure memo Ex. P 5. The dagger and the axe along with other articles seized during the course of investigation were sent to the Director, Police Forensic Science Laboratory for chemical examination. The Chemical Examiner gave his report Ex. P 9 and according to the report, the 'chhuri' and 'kulhari' were stained with human blood. The blood group could not be determined on the 'chhuri' and axe because the stains were not sufficient for test. After necessary investigation, the police filed a charge-sheet before the Judicial Magistrate, Sirohi, who committed the appellant to the court of Sessions and after trial, the Additional Sessions Judge, Sirohi, convicted and sentenced the appellant as aforesaid.

3. It may be mentioned that it is not in dispute that Bhaira's first wife was Devli and Paboo was daughter of Bhaira from Devli. It is also not in dispute that on account

of the relations between Bhaira and Devli having become strained, Devli was turned out from his house by Bhaira and Paboo continued to live with Bhaira. It is also not in disputed that in the year 1974 or so, Bhaira had performed 'nata' with the appellant and the appellant had given birth to two daughters from Bhaira. It is also not in dispute that subsequently relations between Bhaira and the appellant also became strained and Bhaira did not want to keep with him the appellant also. It is also a fact that father and brother of the appellant had taken the appellant back to their house from Bhaira's house. These facts are admitted by the appellant in her examination under Section 313 Cr. PC. The appellant further stated that Bhaira wanted to oust the appellant from his house and wanted to bring some other lady and to keep her with him. She has however denied that she used to beat Paboo who was daughter of Bhaira from his first wife Devli.

4. It is well established by the prosecution that Roopi deceased mother of Bhaira died as a result of murderous assault. She sustained as many as 12 incised wounds and her nose was also cut from its root. Dr. Bhoora Singh had conducted the post-mortem examination and according to him injuries Nos. 3 and 4 were individually sufficient to cause death in the ordinary course of nature. The deceased died instantaneously after receiving the injuries. According to the doctor, injuries Nos. 4, 5 and 6 could be caused by axe while remaining injuries could be caused by knife (chhuri). The deceased must have died within ten minutes of the infliction of injuries because juglar vain had been cut. Neither there is suggestion nor it was possible that these injuries could be self inflicted. It is thus clear that Roopi died as a result of homicide.

5. The prosecution has examined Sameera (PW 5) and Rawata (PW 7) as eye witnesses to the incident. Both of them have deposed that they had gone to collect lire-wood. After collecting fire-wood, they were sitting on a 'tekri' of Kalwad hillock which recording to them was 50-60 steps above the ground level and 400 foot steps from the place of the incident. They have stated that while Roopi was coming out of the nursery with grass stack on her head, the appellant came and gave a push to Roopi. Thereafter, the appellant inflicted injury on the head of Roopi by 'kulhari'. Roopi fell down. The appellant cut the nose of Roopi and inflicted other injuries by 'chhuri'. Both these witnesses rushed towards the spot

but before they could reach, the appellant ran away inside the nursery and Roopi died. Sameera (PW 5) came to the house of Bhaira in village Telpi-khera and informed him of the incident. The house of Bhaira is about two furlongs from the place of incident. Bhaira on being informed by Sameera came on the spot. According to Bhaira they guarded the dead body of Roopi during the night and in the morning he went to lodge the First Information Report. Police people were found at Krishnaganj where he lodged a written report Ex. P 6. The police people then came on spot and inspected the site. They seized the blood smeared sand and also the clothes of the deceased.

6. The next set of evidence adduced from the side of the prosecution is that of Ram Ballabh Mukul (PW 11) and Jawan Lal (PW 3) regarding the recovery of the axe and the 'chhuri' from under the stone near 'Palas' tree on the information and at the instance of the appellant and its seizure under the seizure memo Ex. P 5. The prosecution has also adduced evidence that axe Article 1 and 'chhuri' Article 2 were sent for chemical examination and the report of the Chemical Examiner mentions that these articles were stained with human blood. This is in all the prosecution evidence adduced in the case.

7. It was contended by the learned counsel for the appellant that Sameera (PW 5) and Rawata (PW 7) are highly interested witnesses in as much as Sameera is real brother-in-law of Bhaira and Rawata is brother-in-law of Sameera. According to the contention of the learned counsel, Sameera and Rawata have been falsely introduced as eye witnesses to the incident as Bhaira any how wanted to get rid of the appellant. There are circumstances in the case which create a reasonable doubt regarding the presence of Sameera (PW 5) and Rawata (PW 7) near the place of the incident. According to the site plan Ex. P 11 prepared by Chain Singh, the distance between the place where Sameera and Rawata were stated to be sitting on a 'Tekri of Kalwad Pahari' and was 300 foot steps. Firstly it is difficult to comprehend that the appellant would have murdered her mother-in-law in the presence of son-in-law of the deceased. Secondly, if Sameera and Rawata would have seen the incident they could very well reach the spot in order to rescue the deceased from the assailant that was being made by the appellant, They even did not make any efforts to catch hold the appellant after she had run inside the

nursery after assaulting. This inactive conduct of Sameera and Rawata was highly unnatural and more so when mother-in-law of Sameera was being fatally injured by the appellant.

8. It may next be mentioned that there is not a word in the statement of Bhaira (PW 4) that there was any quarrel between the appellant and deceased Roopi. The only thing stated by Bhaira is that he did not want to keep the appellant with him because she used to beat Paboo, daughter of Bhaira from his first wife Devli. Bhaira has not stated that his mother Roopi also used to quarrel with the appellant on this matter and wanted that the appellant should not be allowed to live in the house. Thus there is no evidence regarding motive which actuated the appellant in murdering Roopi.

9. It is also interesting to note that although Chain Singh had arrived on the spot in the morning of October 31, 1980, but he did not take any step to arrest the appellant despite the fact that the appellant was available in or near about village Telpi-Kheda or near the nursery where the incident took place. The arrest of the appellant was made after Ram Ballabh Mukul (PW 11) had taken over investigation on November 3, 1980. There is no explanation from the side of the prosecution as to why a delay of four days was made in arresting the appellant.

10. Equally there are strong circumstances in the case which go to show that FIR on the basis of which crime No. 46 was registered at Police Station Andra Ex. P 13 incorporating therein the contents of the written report Ex. P 6 lodged by Bhaira at Krihnaganj does not correctly mention the time of the lodging of the FIR. In Ex. P 13, SHO Chain Singh has mentioned the date and time of the lodging of the FIR as October 31, 1989 at 12.30 A.M. This means that the FIR was lodged during the night intervening October 30, 1980 to October 31, 1980 at 12.30 a.m. As against this, in the written report Ex. P 6, the time of presentation of the written report by Bhaira is mentioned as 8 a.m. of October 31, 1980 that is 7-1/2 hours after the time mentioned in Ex. P 13. In this connection, it may be mentioned that the police had got recorded statements of Sameera and Rawata before the Chief Judicial Magistrate, Sirohi, under Section 164 Cr. PC. Both of them in their statements under Section 164 Cr. PC clearly stated that the police had arrived at the place of

the incident at about mid-night of the night intervening October 30, 1980 and October 31, 1980. Sameera and Rawata have disowned that part of the statement made by them before the Chief Judicial Magistrate. Sirohi, that the police had arrived during the mid-night intervening the aforesaid dates. On the other hand, they have deposed before the Sessions Judge that they did not make such a statement before the Chief Judicial Magistrate and as a matter of fact the police had arrived at the spot on the morning of 31st October, 1980 at about 10 a.m. These facts and circumstances are indicative of the fact that both the the police had arrived at the place of the incident during the mid night, on being informed of the incident but the written First Information Report Ex. P.6 from Bhaira was taken later on October 31, 1980 at 8 a.m. There is an endorsement of Chain Singh SHO at the end of Ex. P 6 that he reached the PS at 7.30 p.m. on October 31, 1980 and them registered a case No. 46 at the Police Station. Despite that it is pertinent to note, the site plan and the inquest report and in other site documents crime case had been mentioned by the SHO although till then he had neither reached the police station Anadra nor registered a case. Clearly, therefore, Ex. 6 is a document which came into being after the police had been informed of the incident and had arrived at the spot and made the necessary investigation. Surprising it is, that the Station House Officer of the Police Station consciously and deliberately spoils the investigation of a serious crime like murder by creating discrepancy in the timings of the lodging of the First Information Report & thus helps the culprit. If Chain Singh, SHO, had already been informed of the incident before the mid-night of the night intervening October 30, 1980 and October 31, 1980, it was his duty to take the First Information Report from the informant before reaching the place of the incident during the mid-night and it was nothing but a dereliction in the performance of his duty by taking a First Information Report in writing 7-1/2 hours later before which he had already reached the spot and started investigation. It was further mischievous on his part to write the timing in Ex. P 13 contrary to Ex. P. 6. Due to such faulty and irresponsible investigation a reasonable doubt arises in the correctness of the prosecution case.

11. During the course of investigation, the police also did not try to find out as to where the appellant remained between the evening of October 30, 1980 till she was arrested or November 3, 1980. Bhaira does not state a word that the

appellant did not return to his house in the night of October 30, 1980 and was not at his house on lot and 2st November, 1980. In the absence of such an evidence, it cannot be inferred that appellant remained out side the house of Bhaira after the incident till she was arrested on November 3, 1980. The arrest of the appellant was delayed and the recovery of the axe and the 'chhuri' was also delayed.

12. We are, therefore, not satisfied that Sameera and Rawata were eye-witnesses to the incident and there are no other circumstance conclusively proved in the case which can connect the appellant without any reasonable doubt with the crime. The appellant is, therefore, entitled to benefit of doubt.

13. We, there, allow this appeal, set aside the conviction and the sentence awarded to the appellant by Additional Sessions Judge, Sirohi and acquit her of the offence under Section 302 IPC. She will forth with be released from jail if not wanted in any other case.