

Narayan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-27-2001

Reported in : 2001CriLJ3725

Judge : Jagat Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 304B; Code of Criminal Procedure (CrPC) - Sections 374(2)

Appeal No. : Crl. Appeal No. 635 of 2000

Appellant : Narayan Singh

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Appeal allowed

Judgement :

Jagat Singh, J.

1. Narayan Singh accused-appellant has challenged judgment and order dated 10-10-2000 delivered by Sessions Judge, Pratapgarh by filing this appeal under Sub-section (2) of Section 374, Cr. P.C. By the impugned judgment learned Court

below has convicted accused-appellant under Part I of Section 201, I.P.C. and sentenced him to seven years' rigorous imprisonment along with fine of Rs. 100/-. In default of payment of fine 15 days rigorous imprisonment was also awarded.

2. Mr. Garg, learned counsel for the accused-appellant contended before us that the charges under Sections. 304-B and 201 of I.P.C. were framed not only against the accused-appellant but also against his father Laluram, mother Jamni Bai and brother Onkar Lal but the Court below has acquitted all the accused persons in the above charges except the present appellant only on the basis of conjecturs and surmises. When the charge of murder was not proved how can accused-appellant be convicted under Part I of Section 201, I.P.C. Learned counsel relied upon *Ramsharan Mehto v. State of Bihar*, AIR 1999 SC 3435 : 1999 Cri LJ 4311.

3. On the contrary, learned Public Pros-ecutor has supported the impugned conviction and sentence.

4. I have given my anxious consideration to the rival contentions of the parties and have perused not only the impugned judgment but also the evidence ocular and documentary available on the file.

5. Para 22 of the impugned judgment is relevant as far as this appeal is concerned. The trial Court was of the view that the dead body of deceased-Sugna was found in the well situated in front of the house of her in-laws. At the dead of night when small girl of Sugna started weeping, accused-appellant came to know that Sugna was missing. Though the accused-appellant has immediately informed father of deceased that Sugna is missing yet that by itself will not exonerate him totally from the crime. According to the learned Sessions Judge on the date of occurrence at about 5.00 p.m. accused-appellant reached to his house and remained there till the occurrence, therefore, he must have thrown the dead body in the well.

6. I am not convinced with the analogy adopted by learned Sessions Judge because unless and until the prosecution proves its case beyond a shadow of reasonable doubt no one can be convicted merely on the basis of conjectures and surmises. Simply because the accused-appellant was husband of the deceased-

Sugna and was with the deceased on that night, that by itself will not lead to any presumption that after the murder of Sugna her body was thrown in the well by the accused-appellant. There should have been cogent and convincing evidence to prove that it was the accused-appellant and none else who caused disappearance of the evidence of the offence of murder by throwing the dead body in the well. Needless to mention that a Judge does not preside over a criminal trial merely to see that a guilty does not escape but. he also presides to see that no innocent person is punished. Suspicion however, strong it may be cannot take the place to proof and conviction cannot be based when there are inherent improbabilities in story put forward by the prosecution. There was not an iota of evidence connecting the accused to the offence he was convicted and the learned Sessions Judge was misled simply taking into account that the accused-appellant being husband of the deceased must have thrown the dead body in the well.

7. In Ramsharan Mehto's case (supra) in similar situation the Apex Court was also of the view that all that the prosecution could establish was that the dead body was recovered from the well situated in the compound of her marital home and that the cremation was hurried through after basically Keeping her kith and kin away from the scene. No doubt such a culpable hurry enkindles fumes of suspicion which could be regarded as an Incriminating circumstance against those who showed such haste. But that circumstance in Its isolation and unconnected with any other circumstance cannot prove the offence under Section 201, I.P.C. As soon as the accused-appellant came to know that Sugna was missing he immediately Informed her parents and both the parties searched for Sugna and ultimately found her body in the well. When the accused-appellant along with other members of the family was acquitted from the charge Of Section 304-B, I.P.C. how can he be convicted under Part I of Section 201, I.P.C. for the murder of Sugna. In Ramsharan Mehto's case 1999 Cri LJ 4311 (SC) (supra) it was held that for conviction under Section 201, I.P.C. two indispensable ingredients shall be proved : (1) the accused should have the knowledge that an offence has been committed or at least that he should have had reasons to believe it; and (2) he should then have caused disappearance of the evidence of commission of that offence. The prosecution cannot escape from establishing the aforesaid two basic ingredients for conviction of the accused-appellant under Section 201 of Indian Penal Code.

8. Keeping in view the aforestated factual and legal aspects in mind I cannot subscribe to the view taken by the learned Sessions Judge and, therefore, set aside the impugned judgment and order, accept this appeal and acquit the accused-appellant. If he had deposited any money in compliance of the impugned order, the same shall be refunded back to him. The accused-appellant is in custody, he be released forthwith, if not required in any other case.

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