

Mahendra Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-30-2010

Judge : Govind Mathur and; C.M. Totla, JJ.

Appellant : Mahendra Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Govind Mathur, J.

1. For the offence punishable under Section 302 Indian Penal Code the appellant is convicted and sentenced for life term with a fine of Rs. 1000/- and further to undergo one month's rigorous imprisonment in event of default in making payment of fine under the judgment dated 17.4.2003 passed by learned Additional Sessions Judge (Fast Track), Anupgarh.

2. As per prosecution, on 21.9.2002 at 10:45 AM a 'rojnamcha' entry was made at Police Station Ramsinghpur, according to that a telephonic information was given by Shri Momanram son of Lekhram that his grand son Mahendra Singh son of Devilal informed him on telephone that he has killed his wife Sunita and son Harbans near Canal at 59 G.B. Rohi on having some utterance on way while coming to Anupgarh from his in-laws house. The dead bodies were lying at Narma

fields near canal at 59 G.B. Rohi. On asking, Momanram also provided details relating to parents of Sunita including phone numbers. Momanram also accepted about telephonic talk with father of Sunita. The information being appearing genuine, the incident was also brought into knowledge of the Superintendent of Police, Sriganaganagar and Additional Superintendent of Police, Raisinghnagar. Shri Jamnalal, Assistant Sub Inspector alongwith constables Devpal Singh, Balvindra Singh and driver Subhash Chandra proceeded to the spot of occurrence by government jeep.

3. A telephonic information was also given by Shri Jamnalal to Shri Om Prakash Swami, father of deceased Smt. Sunita. Shri Om Prakash then reached at the spot of occurrence and at about 02:30 PM on the same he submitted a written report with assertion that about six years earlier his daughter Sunita got married with Mahendra son of Devilal resident of Anupgarh. After about a year from the marriage, pressure was mounted for giving more dowry, thus, a case was filed at the behest of Sunita but that culminated into an agreement. After some time, demand for dowry was again made and Sunita was ousted from her in-laws house. As per the report given, Sunita and her five years old son Harbans were living with Om Prakash (informant) from about last two years and a case was pending before a competent court. On 18.9.2002 when the matter was listed before the court, an insistence was made either to settle the dispute or to provide maintenance, thus, Mahendra Singh chose to settle the dispute. On 20.9.2002 as per instructions of Panchayat which was attended by responsible residents of village, Sunita and Harbans were sent with Mahendra Singh. At about 11:00 AM a telephonic information was received from Police Station Ramsinghpur about killing of Sunita and Harbans.

4. Informant Om Prakash suspected about murder of his daughter and grand son Harbans by Mahendra Singh son of Devi Lal, Devi Lal son of Momanram, Momanram son of Lekhram, Chawli wife of Momanram and Keshar wife of Devi Lal.

5. On basis of the information aforesaid (Ex.P/1) a case was registered, investigation was made, charge sheet was filed, case was committed to the court

of Sessions, charge was framed for commission of an offence punishable under Section 302 IPC against Mahendra Singh and on denial of that, accused was tried.

6. The prosecution supported its case with the aid of 24 witnesses , documents Ex.P/1 to Ex.P/48 and the articles Ex.A/1 to Ex.A/11. An opportunity was allowed to the accused as per provisions of Section 313 Cr.P.C. to explain the circumstances appearing in the evidence against him. In defence, the accused also exhibited documents Ex.D/2 to Ex.D/9.

7. PW-18 Dr. Archana Bansal and PW-19 Dr. Sanjeev Choudhary conducted autopsy being members of the medical team, thus, proved the postmortem reports Ex.P/27 and Ex.P/28. As per Ex.P/27, dead body of Sunita was having following antemortem injuries:

(1) Abrasion: 6 cm x 3 cm over right ear aspect of lower mandible.

(2) Abrasion: 3 cm x 2 cm over left lateral margin of forehead.

(3) Abrasion: multiple and different size over extensor aspect of left elbow and post aspect of lower part of left arm.

8. The cause of death of Harbans aged five years too given was 'asphyxia due to strangulation' and his body was having following antemortem injuries:

(1) Abrasion: 3 cm x 2.5 cm over submandibular region.

(2) Abrasion: 3 cm x 1 cm just lateral to left eye.

(3) Abrasion: 5 cm x 1/2 cm over ant limit of left axilla.

(4) Lacerated wound: 1/4 cm x 1/4 cm just below nail of right little finger.

9. PW-18 Dr. Archana Bansal and PW-19 Dr. Sanjeev Choudhary in response to the court's query also stated that from availability of injury marks on both the dead bodies, the death appears to be homicidal strangulation. The Forensic Science Laboratory, Jodhpur did serological examination and as per its report Ex.P/42 the salwar which was found around the neck of deceased Sunita and the pant of

accused were found stained with 'B' group of blood.

10. PW-21 Jamnalal Meena, the Assistant Sub Inspector at Police Station Ramsinghpur, stated about the entries made in 'rojnamcha' Ex.P/30 and also the factual condition of the spot of occurrence where he reached alongwith two other constables and driver Subhash Chandra. thus, he stated about the steps taken during the course of investigation. This witness proved the document Ex.P/3, as per which the dead body of deceased Sunita was lying in a Narma field at 59 G.B. and a blue tinted salwar was tidened surrounding her neck and bleeding was there from her mouth. The body of Harbans as per Ex.P/5 was also lying in Narma field at 59 G.B. having chunni (scarf) tidened around his neck. Both the dead bodies were identified by PW-1 Om Prakash. From the spot of incidence four broken pieces of bangles, two pieces of eaten apples, a cork of beer bottle, a blank foil of Diclowin tablet, a piece of smoked cigarette and little quantity of other food articles were recovered as per memo Ex.P/9. PW-24 also stated that accused Mahendra Singh was arrested as per arrest memo Ex.P/19 and on his personal search certain recoveries were made as per Ex.P/20.

11. Learned trial court also examined PW-1 Om Prakash; PW-2 Smt. Rukmani, mother of deceased Sunita; PW-3 Sarjeet Ram; PW-5 Lal Chand Sindhi; PW-14 Balbeer Ram; PW-15 Dhanna Ram; PW-20 Bhagat Singh; PW-22 Khinvdan; PW-23 Subhash Chandra and by considering all the evidence available on record, convicted the accused appellant.

12. In appeal, it is contended by counsel for the appellant that the entire case of the prosecution is based on circumstantial evidence with an effort to connect the links by placing reliance upon the evidence relating to extra judicial confession, last seen and recoveries made during the course of investigation, but such linkage is thoroughly misdirected and untrustworthy.

13. It is urged that as per prosecution accused Mahendra Singh made extra judicial confession before PW-4 Momanram and PW-9 Maniram, but both these witnesses were declared hostile and in no manner they supported the prosecution case. PW-4 in specific terms denied that his grand son Mahendra made any telephone to him and informed about killing of Sunita and Harbans. PW-9 Maniram

also stated that no phone call was made to him by Mahendra giving information about killing of Sunita and Harbans.

14. With regard to evidence relating to last seen, It is urged by counsel for the appellant that PW-6 Naveen Arora was declared hostile as he denied purchase of fruits by Mahendra Singh from him. PW-7 Sandeep Kumar son of Om Prakash Arora also denied that Mahendra Singh with his wife and son came to his stall at Ramsinghpur for purchasing apples. PW-8 Sukhraj, a petty shopkeeper, also denied that Mahendra Singh purchased Namkeen packet etc. from him. It is also pointed out by counsel for the appellant that PW-12 Manpreet Singh, an operator of STD PCO Booth, denied the factum of making telephone by accused Mahendra on 21.9.2002 at about 08:30 AM. PW-16 Banwari Lal, an incharge at contract wine shop, stated that no beer bottle was purchased by Mahendra from his shop through the salesman Rajkumar. PW-17 Rajkumar, a salesman at contract wine shop, also stated that no beer bottle was purchased from him by Mahendra Singh. While referring all the witnesses mentioned above, it is also urged by learned Counsel that as a matter of fact only to manipulate link evidence the prosecution introduced these persons to the prosecution story and for that reason only their statements as per Section 161 Cr.P.C. too were recorded at quite a belated stage.

15. Learned Counsel for the appellant also pointed out that PW-11 Dedaram and PW-13 Fakeer Das were also declared hostile and they too did not support the prosecution case that any Panchayat took place on 20.9.2002 wherein decision was taken to send Sunita with Mahendra Singh. As per counsel for the appellant the entire story was concocted by the investigating agency and as a matter of fact the accused was not at all present at his in-laws house either on 19.9.2002 or on 20.9.2002, he never participated in any Panchayat and he never decided to take deceased Sunita and Harbans with him.

16. In alternative, it is also urged by counsel for the appellant that even if it is assumed that the accused appellant taken his wife Sunita and son Harbans with him on 20.9.2002, then too no cogent and positive evidence is available on record to draw inference for only one conclusion regarding his guilty, thus, benefit of doubt deserves to be extended in his favour.

17. Learned Public Prosecutor defended the conviction recorded and sentence awarded in general on basis of the evidence available.

18. We have considered the arguments advanced and also scrutinised the entire record.

19. True it is, a big number of witnesses as pointed out by counsel for the appellant have not supported the prosecution story, however, despite that the case kneated by the prosecution is supported by adequate evidence to establish conviction as recorded by the trial court.

20. As per the medical evidence the culpable homicide of deceased Sunita and Harbans stands established. PW-18 Dr. Archana Bansal and PW-19 Sanjeev Choudhary in quite unambiguous terms established the postmortem report including the cause of death i.e. asphyxia due to strangulation. It is also not in dispute that Sunita and accused were at strained relationship and 18.9.2002 the matter relating to maintenance was listed before the court of Additional Chief Judicial Magistrate, Raisinghnagar.

21. PW-1 Om Prakash and PW-2 Smt. Rukmani also fortified the fact relating to strained relationship between Mahendra Singh and their daughter Sunita. As per PW-1 Om Prakash, accused Mahendra Singh came to his house on 19.9.2002 and on 20.9.2002 in presence of Dhanna Ram, Prakash Singh, Lal Chand and certain other responsible persons of the village deliberations took place, wherein Mahendra Singh stated that he will settle the dispute and desired to keep Sunita with him. This witness further stated that as per instructions of the Panchayat he sent his daughter Sunita and Harbans with Mahendra Singh on 20.9.2002. He further stated that Mahendra Singh boarded in a bus of Rajasthan State Road Transport Corporation with Sunita and Harbans at 01:30 PM. At that time Dhanna Ram was also there.

22. PW-2 Rukmani, mother of deceased Sunita, also stated that on 20.9.2002 Mahendra came to her place with a request to take Sunita with him.

23. PW-5 Lal Chand also stated that Mahendra Singh and Sunita with their son Harbans left the village for living together on 20.9.2002 at 02:00 PM. He also stated that on 20.9.2002 a Panchayat was convened where he himself, Prakash Singh, Om Prakash, Mahendra and number of other responsible persons of village were present. This witness further stated that Mahendra Singh apologised for his earlier conduct and assured to settle disputes with Sunita. He also stated that on 21.9.2002 he received a phone from Jamnalal, ASI, informing about killing of Sunita and Harbans by Mahendra Singh. As per this witness, he accompanied Om Prakash while going to Ramsinghpur after receiving information aforesaid.

24. PW-15 Dhanna Ram supported the prosecution case and stated that he and Om Prakash went to see off Mahendra , Sunita and Harbans at bus stop on 20.9.2002. He also fortified the factum of convening Panchayat in presence of Lal Chand,, Prakash Singh etc. on 20.9.2002 for settlement of dispute between Mahendra Singh and Sunita.

25. PW-3 Sarjeet Ram stated that at about 06:00 PM he saw Harbans at 72 G.B. Bus Stop alongwith Sunita and Mahendra. As per this witness, Harbans came to him and conveyed about their going to their village. This fact is also supported by PW-14 Balbeer Ram, as such reaching of Mahendra Singh, Sunita and Harbans at 72 G.B., is established by the statements of Sarjeet Ram and Balbeer.

26. In view of the statements given by the prosecution witnesses Om Prakash, Rukmani, Lal Chand and Dhanna Ram, we are having no doubt that Mahendra Singh came to the place of Om Prakash and a Panchayat was convened to settle the dispute between the families. It is also established that on the same day under the instructions of the Panchayat Om Prakash accepted moving of Sunita and Harbans with Mahendra Singh and Mahendra Singh took them with him and proceeded for Ramsinghpur by a bus. All the three persons also reached to 72 G.B. as said by PW-3 Sarjeet Ram and PW-14 Balbeer.

27. It is significant to note that accused Mahendra Singh was arrested on 22.9.2002 at 02:00 PM in presence of Maniram and Jamnalal ASI. At the time of arrest of Mahendra Singh, the pant wore by him was seized and that was having blood stains. The factum of arrest of accused and seizure of pant is proved by

PW21, though Maniram did not support that and as such he was declared hostile. A telephone receipt dated 21.9.2002 making telephone at phone No. 22712, Anupgarh at 08:44 AM was also recovered from the accused. Three bus tickets were also recovered from him in presence of Maniram and PW-21 Jamnalal. The recovery of telephone receipt and bus tickets was proved by PW-21 Jamnalal. As already stated earlier, the pant of the accused was having blood stains and those found matched with blood stains available on salwar which was tidened on the neck of deceased Sunita.

28. The prosecution case that accused Mahendra Singh came to his in-laws house and participated in Panchayat proceedings on 20.9.2002, Panchayat decided to send Sunita and Harbans with Mahendra Singh and they proceeded for Anupgarh by bus on 20.9.2002 itself, is adequately established. The fact regarding reaching of all the three persons concerned at 72 G.B. is also established on basis of the statements of Sarjeet Ram and Balbeer. The recovery of bus tickets and telephone receipt also support the prosecution story. The availability of 'B' group of blood stains on the pant of Mahendra Singh leaves no doubt about commission of crime by the accused. Thus, the circumstances narrated above clearly leads towards only to one inference that accused Mahendra Singh murdered Sunita and Harbans.

29. We do not find any scope of doubt to deviate from the finding arrived by the trial court, therefore, the conviction recorded and sentence awarded suffers from no wrong.

30. The appeal is rejected.