

(2019) 05 RAJ CK 0063
In the Rajasthan High Court
Case No : Criminal Appeal No. 75 Of 2018

Lalu Ram And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 380, 457, 460
Code Of Criminal Procedure, 1973 — Section 313, 374(2), 386, 391, 437A
Evidence Act, 1872 — Section 27

Citation : (2019) 05 RAJ CK 0063

Hon'ble Judges : Sandeep Mehta, J; Vinit Kumar Mathur, J

Bench : Division Bench

Advocate : Mridul Jain, Bhagat Dadhich, Anil Joshi

Final Decision : Allowed

Judgement

The appellants herein and one Mohan Kalbeliya S/o Shri Ganesh Kalbeliya R/o Bhensda Kallan Kalbeliya Basti, P.S. Dabok District Udaipur have been convicted and sentenced as below vide the judgment dated 14.03.2018 passed by learned Addl. Sessions Judge (Women Atrocities Cases), Udaipur, in Sessions Case No.151/2017 (CIS No.172/2017):-

Under Section 302/34 IPC

Life Imprisonment and fine of Rs.25000/-, in default of payment of fine further to undergo two years' RI.

Under Section 460 IPC

Ten years' rigorous imprisonment and fine of Rs.10,000/-, in default of payment of fine further to undergo one year's RI.

(Both the sentences were ordered to run concurrently.)

Being aggrieved of the conviction and sentences awarded to them, the two appellants have preferred the instant appeal under Section 374 (2) Cr.P.C.

Brief facts relevant and essential for disposal of the instant appeal are narrated hereinbelow:-

The complainant Mohan Lal (PW.5) lodged a written report (Ex.P/3) at the place of occurrence Sakroda to the SHO PS Pratap Nagar District Udaipur on 04.05.2015 at 7:15 pm alleging inter alia that his father had contracted two marriages. First marriage was performed with Tulsi Bai who gave birth to two daughters Bhanwari Bai and Sunder Bai and three sons Mohanlal, Mangilal and Narayan Lal. The second wife Smt. Udi Bai gave birth to two daughters Dropadi Bai and Jasoda and two sons Prabhulal and Motilal. Smt. Tulsi Bai expired about 40-45 years ago whereas his father Gordhanlal expired about 29 years ago. All the five brothers including the complainant were living in the village Sakroda and the second wife of Shri Gordhan, Smt. Udi Bai used to live all alone in a kachha house constructed in their field. Smt. Udi Bai who cooked food for herself was raising three goats and was also doing farming jobs. The brothers and their wives regularly visited Smt. Udi Bai and provided her the essential articles. Smt. Udi Bai was last seen by the neighbours drawing water from the well on 02.05.2015 whereafter she did not make any attempt of drawing water on which Smt. Ramu Kanwar, wife of Devi Singh who used to reside in the neighbourhood of Smt. Udi approached Mohanlal and told him that the lady was nowhere to be seen. On receiving this information, the complainant's wife Smt. Mohani and his younger brother Mangilal went to the room where Smt. Udi Bai used to reside. Both checked the door of the room which was closed. They forced the door open and saw Smt. Udi Bai lying dead on a cot. Her limbs were chopped off by sharp weapons and numerous injuries were visible on the neck and face of Smt. Udi Bai and her silver Kadiyas had been removed. The complainant suspected that somebody had trespassed into the house of Smt. Udi for the purpose of committing theft and had looted her Kadiyas after chopping off her limbs and murdering her.

On the basis of this information, a formal FIR No.158/2015 (Ex.P/51) was chalked out at the Police Station Pratap Nagar for the offences under Sections 302, 457 and 380 IPC. Requisite Investigation was commenced. Site inspection was conducted. The blood stained clothes of deceased Smt. Udi Bai were seized. The dead body of Smt. Udi Bai was subjected to post-mortem by a medical board constituted at M.B.G. Hospital, Udaipur which issued a post-mortem report (Ex.P/44) opining that the cause of death of Smt. Udi Bai was sharp weapon injuries caused to the head, upper and lower limbs. The Investigating Officer Shri Manjit Singh (PW.23) claims that he received information regarding complicity of the accused appellants, (who were allegedly in custody in another case) in the murder of Smt. Udi Bai, and thus they were arrested in the following manner:-

Sr. No.

Name of accused appellant

Arrest memo

1.

Mohan Kalbeliya

Ex.P/34 dated 30.08.15

2.

Bhura @ Bhuriya

Ex.P/35 dated 30.08.15

3.

Laluram

Ex.P/36 dated 30.08.15

The three accused allegedly gave informations under Section 27 of the Indian Evidence Act for verification of the place of occurrence and it is alleged that in furtherance of such informations, the IO Manjit Singh (PW.23) got the place of occurrence re-verified through the accused appellants. The Investigating Officer Shri Manjeet Singh also claims that the accused Laluram gave him an information that he, Mohan and Bhura had murdered an old lady and after chopping off her limbs, they had removed Kadiyas from her legs and that he had pledged the same with Shankarlal Soni, resident of Dabok. He allegedly also gave information that he could get the motorcycle recovered which he had taken from Nathu Gameti for facilitating the commission of the crime. This information was recorded in memorandum Ex.P/41 dated 31.08.2015. Likewise, the investigating Officer claims that the accused Bhura @ Bhuriya gave him an information under Section 27 of the Indian Evidence Act regarding concealment of the Kunt with which Smt. Udi Bai had been murdered. This information was recorded in memorandum Ex.P/42 dated 31.08.2015. The Investigating Officer made incriminating recoveries in the following manner:-

1. Blood stained kunt allegedly concealed in the house of accused Bhura @ Bhuriya was recovered vide recovery memo Ex.P/13 dated 31.08.2015.
2. The silver Kadiyas allegedly pledged by Lalu Ram with Shankarlal Soni (PW.1) were recovered from his shop vide seizure memo (Ex.P/1).
3. The pledge receipt of the Kadiyas was recovered and seized from the house of accused Laluram in furtherance of the information provided by him to the Investigating Officer under Section 27 of the Evidence Act (Ex.P/41) vide seizure memo Ex.P/14 dated 31.08.2015.
4. An iron kunt was pointed by the accused Mohan Kalbeliya in furtherance of the information memo Ex.P/40 and was seized from the house of his brother Narayan S/o Ganesh Kalbeliya vide seizure memo (Ex.P/15) dated 31.08.20015.
5. The motorcycle No. RJ 27 SL 6837 allegedly used by the accused while

committing offence was recovered and seized from the house of Nathu Gameti vide seizure memo Ex.P/16 dated 31.08.2015.

The blood stained clothes seized from the body of deceased, the blood stained soil, the bedding blanket (kambal) etc. lying at the place of occurrence and two iron kunts and the silver Kadiyas recovered at the instance of the accused were forwarded to the FSL from where a report Ex.P/45 was received indicating the presence of 'A' group blood on the control as well as the suspected articles including the kadiyas. A charge sheet came to be filed against the accused appellants and Mohan Kalbeliya in the court of magistrate concerned for the offences under Sections 302 & 460 IPC. Since the offences were sessions triable, the case was committed and transferred to the court of Sessions Judge, Woman Atrocities Cases, Udaipur. The learned trial court framed charges against the accused appellants and the co-accused Mohan Kalbeliya for the above offences. The accused pleaded not guilty and claimed trial. The prosecution examined as many as 23 witnesses and exhibited 51 documents in support of its case.

Upon being questioned under Section 313 Cr.P.C. and when confronted with the material appearing against them in the prosecution evidence, the accused denied the same and claimed that they had been falsely implicated.

After hearing the arguments of the prosecution and defence and upon appreciating the evidence available on record; holding the recoveries to be incriminating the accused with the murder and robbery, the learned trial court proceeded to convict the appellants and the co-accused in the manner stated above. Hence the appellants have preferred the instance appeal under Section 374(2) Cr.P.C. for challenging the impugned judgment. It appears that the co-accused Mohan Kalbeliya was not having the means to challenge the impugned judgment and hence, he has not preferred any appeal thereagainst. However, keeping in view the following observations of Hon'ble Supreme Court in the case of *Atmaram and Others vs State of Rajasthan*, [Criminal Appeal Nos.656-657 of 2019 arising out of Special Leave Petition (Criminal) No.809-810 of 2019], we propose to consider his case as well while deciding the represented appeal:-

"Pertinently, the power to acquit the person can be exercised by the High Court even without there being any substantive appeal on the part of the accused challenging his conviction. To that extent the proceedings under Chapter XXVIII which deals with "submission of death sentences for confirmation" is a proceeding in continuation of the trial. These provisions thus entitle the High Court to direct further enquiry or to take additional evidence and the High Court may, in a given case, even acquit the accused person. The scope of the chapter is wider. Chapter XXIX of the Code deals with "Appeals". Section 391 also entitles the Appellate Court to take further evidence or direct such further evidence to be taken. Section 386 then enumerates powers of the Appellate Court which inter alia includes the power to "reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial". The

powers of Appellate Court are equally wide.

(Emphasis supplied)

Learned Counsel Shri Mridul Jain, assisted by Shri Bhagat Dadhich, Advocate representing the appellants vehemently and fervently urged that the conviction of the appellants, as recorded by the trial court is absolutely illegal and unjustified. The impugned judgment is patchy, laconic and is based on misreading and mis-appreciation of the evidence available on record. As per him, the following sequence of events creates a great deal of doubt in the instant case:-

1. That all the three accused were arrested on 30.08.2015.
2. That all the three accused gave information to the Investigating Officer Shri Manjit Singh (PW.23) under Section 27 of the Evidence Act on 31.08.2015.
3. That all the so-called incriminating recoveries were made on 31.08.2015 i.e., after nearly three months of the incident.

He urged that it is impossible to believe that the accused would keep the blood stained Kunt hidden and secured for a period of nearly three months so as to create evidence against themselves. He further urged that the recovery of Kadiyas made at the instance of accused Mohan is absolutely bogus for the reason that identification was got done by the first informant Mohanlal at the shop of goldsmith and no proper test identification proceedings were held for ascertaining that the Kadiyas were the very same which were worn by the deceased at the time of incident. He further urged that production and identification of Kadiyas in the court by way of substantive evidence was imperative and indispensable, if at all, the prosecution was desirous of establishing the fact that the Kadiyas recovered were the same which were allegedly owned by Smt. Udi Bai and were stolen after chopping off her limbs. He urged that if the circumstances of recoveries is eschewed from consideration, there remains no evidence whatsoever against the appellants on record because the circumstance of the accused pointing out the place of incident/occurrence to the Investigating Officer is inadmissible in evidence as the location was well within the knowledge of the IO from before. He thus, implored the Court to accept the appeal and acquit the accused appellants.

Per contra, learned Public Prosecutor vehemently and fervently opposed the submissions advanced by learned defence counsel. He contended that the accused were in custody in another case and their involvement in the present case was strongly suspected and thus, the IO Shri Manjit Singh (PW.23) proceeded to take custody of the accused from the Mawli Sub-jail. Immediately after being arrested, the accused persons gave voluntary informations to IO Shri Manjit Singh under Section 27 of the Evidence Act and got recovered the incriminating articles viz. the stolen kadiyas and kunts (sharp weapons) used in the offence. He urged that the kadiyas were pledged with Shankarlal Soni (PW.1)

and this fact was within the exclusive knowledge of the accused Mohan. The IO could not have had any means of knowing that the accused had pledged the ornaments with the goldsmith Shankarlal Soni (PW.1) and thus, as per him, the recoveries of the stolen kadiyas provides clinching and strong proof against the accused appellant Lalu Ram leading to the only inference that he was undoubtedly responsible for the crime. He vehemently controverted the submission of Shri Jain that the accused had opportunity to dispose of the incriminating weapons. He contended that soon after committing the murder of Smt. Udi Bai associated with the robbery, the accused were taken into custody in another case and thus, manifestly, they did not get a reasonable chance to dispose of the weapons. He thus, urged that as the prosecution has tendered clinching and convincing evidence to establish the complete chain of circumstances, pointing invariably towards the guilt of the accused and as per him, the learned trial court was perfectly justified in recording the conviction of the appellants by the impugned judgment. On these grounds, the learned Public Prosecutor sought dismissal of the instant appeal.

We have given our thoughtful consideration to the submissions advanced at bar and have carefully appreciated the evidence available on record. The undisputed facts as available on record have already been narrated above. Manifestly, the entire case is based on circumstantial evidence primarily in the form of recoveries made from the accused. At the outset, the Court has to remain conscious of the fact that the incident took place, in the night intervening 2nd & 3rd May, 2015 whereas the accused were arrested in this case as late as on 30.08.2015 from the Sub-Jail Mawli. No material whatsoever is available on record, nor anything to this effect was stated by the Investigating Officer as to the the evidence collected by him which persuaded him to arrest the accused in this case. A pertinent question was put to the IO Manjit Singh (PW.23) in this regard in his cross examination and he replied that the accused were already in custody in another case registered at PS Dabok and in the said case, they confessed to their complicity in the present incident. However, no corresponding document of the investigation conducted in the case registered at PS Dabok was produced on record so as to ascertain the truthfulness of this version of the Investigating Officer.

Considering in light of the facts narrated above, the date of arrest of the accused in connection with the case registered at PS Dabok would be very relevant. However, no such detail was placed on record of the case. The prosecution failed to place on record any order of the court at Mawli regarding custody of the accused being given to the Investigating Officer of the instant case. Therefore, this Court is convinced that the accused appellants were arrested in the case at hand without there being any material so as to suspect their involvement in the case at hand. Thus, we are in consonance with the submission advanced by Shri Jain that the accused would not act in such a naive manner and keep the weapons of offence concealed in their own house for a period of nearly four months from the date of offence. It is normal human behaviour that the offender

would either try to destroy the weapon of offence soon after the commission of offence or at least he would try to wash off the blood stains. It would be foolhardy to believe that the accused would safely keep the weapons in a soiled blood stained condition for a period of nearly four months and would not try to destroy the same or to remove the blood stains. The prosecution could have controverted the plea of defence by placing on record the relevant documents of the other case in which the accused were in custody including the order authorizing their custody in the present case but in all likelihood, this exercise was avoided as it did not suit/favour the prosecution case. In view of the fact that the accused were in custody in another case, for taking their custody in the case at hand, the IO would be required to seek permission in writing from the concerned court and only thereafter, he could take the accused in custody in the present case. However, no evidence of this procedure was given by the IO either orally or by way of documentary proof. In any event, the failure of the prosecution to place the relevant documents of the other case in which the accused persons were arrested including the interrogation notes etc. creates a strong doubt in the mind of the Court, which goes to the root of the matter and completely destroys the veracity of the evidence of recoveries of weapons made from the accused Bhura @ Bhuriya and Mohan. Thus, we discard the circumstance of recovery of weapons as claimed to have been made from the accused by the IO Shri Manjit Singh. Once the circumstance of recoveries of weapons is taken out from consideration, there remains no evidence whatsoever against the accused Bhura @ Bhuriya and the accused Mohan.

Now we propose to consider the case of accused Laluram. The prosecution case as against him is based solely on the circumstance that the pledge slips and Kadiyas (removed by the accused from the body of deceased Smt. Udi Bai) were allegedly recovered by the IO Manjeet Singh from shop of goldsmith Shankarlal (PW.1) in furtherance of the information supplied by the accused Laluram to the IO under Section 27 of the Indian Evidence Act. It may be stated here that the Investigating Officer Shri Manjit Singh as well as PW.1 Shankarlal proved the seizure memo of Kadiyas which were recovered from the shop of PW.1 Shankarlal and alongwith the pledge slips (Ex.P/1). However, on a perusal of the statement of PW.1 Shankarlal Soni, it becomes abundantly clear that as his signatures were supposedly appended on these slips, he was required to prove the same. A specific question was put to him by the defence in reply where to he admitted that the slips allegedly prepared by him were not available in the articles (packet of Kadiya) which was opened in the Court. The following part of the statement of the witness is very material and is verbatim reproduced hereinbelow for the sake of ready reference:-

"मुझे पुलिस वाले बुलाने आये थे और 30 तारीख को मैं डबोक थाने में गया था। उस वक्त डबोक थाने के सीआई, मंजीत सिंह और इनके साथ अन्य पुलिस वाले सिविल में थे। यह कहना गलत है कि वहां पर मंजीत सिंह ने मुझे कहा हो कि लिखापढ़ी करके देने पड़ेगी। तारीख 30.08.2015 थी। 30 तारीख को उन्होंने मुझे हथकड़ी लगा एक व्यक्ति बताया था और पूछा था कि आप उसको जानते हो तो मैंने बताया था कि यह पारस जोगी का लड़का भुरा है। पुलिस वालों ने मेरे से

पूछा था कि पारस जोगी से कितने समय से लेनदेन करते हो तो मैंने बताया था कि कभी कभार हजार दो हजार रूपये उधार चाहिये होते है तो दे देता हूं। पुलिस वालों ने मेरे से पुछा था कि आपने इससे कुछ खरीदा है क्या तो मैंने पुलिस वालों को बताया था कि मैंने पारस जोगी के लड़के हरलाल को चांदी की कडिया बेची थी। 30.08.2015 को इसके अलावा और कुछ नहीं पुछा था। उस दिन मेरे से पांच सात कागजात पर हस्ताक्षर करवाये थे।"

It may be stated here that the IO claimed that the recovery was made on 31.08.2015. The categorical assertion of the witness that the accused Bhura was shown to him at PS Dabok on 30.08.2015 and that witness was made to sign certain documents at PS Dabok on the very same day creates a strong doubt in the mind of the Court that the Investigating Officer got the slips Ex.P/1 prepared on that day and the entire procedure of recoveries of Kadiyas and the slips is nothing but a sheer fabrication.

Even if it is assumed for a moment, that the IO got recovered the Kadiyas at the instance of the accused Laluram, then also, there is another aspect of the matter which makes the recovery redundant. The kadiyas were allegedly identified to be that of the deceased by PW.5 Mohanlal at the time of seizure. This procedure is totally faulty and unsatisfactory as the Kadiyas should have been subjected to test identification for attaching sanctity to the recoveries. That apart, no such procedure was adopted by the prosecution or court while recording sworn testimony of Mohanlal and the Kadiyas were not exhibited and got identified during his evidence so as to give substantive proof of identity. Thus, the recovery of Kadiyas apart from being totally concocted, same is also rendered irrelevant because there is no satisfactory proof to convince the Court that Kadiyas recovered were the very same which were worn by the deceased at the time of incident. The circumstance of kadiya being blood stained at the time of recoveries on 31.08.2015 also creates a great doubt on the bonafides of the Investigating Officer's action. It is impossible to believe that the accused would be naive/dumb enough so as not to wash/clean the Kadiyas before keeping the same pledged with PW.1 Shankarlal Soni. Manifestly, the blood stained ornament, if produced before a goldsmith would create strong suspicion in his mind and he would not pledge the same.

In the wake of these facts, we are convinced that apart from the procedure of recovery of kadiyas being tainted, it has not been satisfactorily proved by the prosecution that the Kadiyas so recovered were owned by the deceased Smt. Udi Bai or that they were the same which had been removed from the dead body. As the entire case of the prosecution is based on the alleged recoveries of the blood stained Kunts and the blood stained kadiyas and since we are persuaded to discard these recoveries, there remains no evidence whatsoever on the entire case so as to uphold the conviction of the appellants as well as the co-convict Mohan Kalbeliya.

As an upshot of the above discussion, the appeal deserves to be and is hereby allowed. The impugned judgment dated judgment dated 14.03.2018 passed by learned Addl. Sessions Judge (Women Atrocities Cases), Udaipur, in Sessions

Case No.151/2017 (CIS No.172/2017) is grossly illegal and is thus, hereby quashed and set aside. The accused appellants (1) Lalu Ram S/o Paras Nath & (2) Bhura @ Bhuriya S/o Paras Nath and co-accused Mohan Kalbeliya S/o Shri Ganesh Kalbeliya (who could not file an appeal) are acquitted of all the charges. They are in custody. They shall be released forthwith, if not wanted in any other case.

However, keeping in view the provisions of Section 437A Cr.P.C. all the three accused persons are directed to furnish personal bond in the sum of Rs.15,000/- each and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of a special leave petition against the present judgment on receipt of notice thereof, the appellant shall appear before the Supreme Court.