

(2001) 09 RAJ CK 0090

In the Rajasthan High Court

Case No : Criminal Appeal No. 227 of 1996 and 2 Ors. Appeals

Ramesh Chand

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 376(2)

Citation : (2002) 2 RLW 1211 : (2002) 5 WLC 193

Hon'ble Judges : Shiv Kumar Sharma, J; Harbans Lal, J

Bench : Division Bench

Advocate : Kamalakar Sharma and P.R. Rajawat, Rajendra Yadav, P.P, for the Appellant;

Final Decision : Allowed

Judgement

Sharma, J.—The appellants were indicted before the learned Sessions Judge, Bundi in Sessions case No. 124/93 for having committed murder of Foriya. They were found guilty, thus, convicted and sentenced as under:-

Ramesh Chand : u/s 302 I.P.C. Life Imprisonment with fine of Rs. 100/-, u/s 376(2) I.P.C. Life imprisonment with fine of Rs, 100/-.

Rajmal @ Raju & Bajrang Lal : u/s 302 read with Section 34 I.P.C. Life Imprisonment with fine of Rs. 100/-, u/s 376(2) I.P.C. Life Imprisonment with fine of Rs. 100/-.

2. All the sentences were directed to run concurrently.

3. The prosecution story is woven like this. Hajari Lal P.W. 2 Administrator of Gram Panchayat Baswada forwarded a written report to Police Station Lakheri on 30.1.1993 through one Shri Ram Niwas for taking into custody a dead body that was lying on the road between Bada Kheda and Baswada. Upon the said written report, Police Station Lakheri initiated proceedings u/s 174 Cr.P.C. and after looking the injuries on the body, a criminal case bearing F.I.R. No. 18/93 u/s 302

I.P.C. was registered. During the course of investigation, the deceased was identified as Foriya by one Rukma P.W. 4, who deposed that deceased was her husband by "Nata". She also stated that the appellants: Ramesh Chand, Rajmal and Bajrang Lal after committing murder of her husband also ravished her and forcibly took her ornaments; "Pajeb" and "loong", In view of this, offences under Sections 376, 334 I.P.C. alongwith Section 3 of SC/ST Prevention of Atrocities Act, 1989 were also added and investigation commenced. Site Plan was drawn. Statements of witnesses u/s 161 Cr.P.C. were recorded. Necessary memos were drawn and on completion of investigation charge sheet under Sections 302, 374 and 394 I.P.C. was filed. In due course, the case came up for trial before the learned Sessions Judge, Bundi. Charges under Sections 302, 302 read with 34, 376 and 392 were framed against the appellants. The appellants denied the charges and claimed trial. The prosecution examined as many as 36 witnesses. In the statements u/s 313 Cr.P.C. the appellants pleaded innocence. No evidence in defence was adduced. On hearing the final submissions, the learned trial court convicted and sentenced the accused appellants as indicated hereinabove. However, the appellants were acquitted from the charge u/s 392 I.P.C.

4. Mr. Kamlakar Sharma and Mr. P.R. Rajawat, learned counsel for the appellants canvassed that the case of prosecution rests on the sole testimony of Rukma P.W. 4. She is not a truthful witness. She deposed in the court that when they proceeded from Bada Kheda it became too dark to see anything, but she gave graphic narration of the incident, it is further contended that her statement has not been corroborated by any independent witness. She remained with the appellant Ramesh Chand continuously for two days and two nights but she did not disclose anything about the incident to any witness. Chhotu Nath P.W. 1 stated that Rukma was introduced by the appellant Ramesh Chand to him as his sister-in-law, but suspecting foul play he did not allow them to reside in his house. It is borne out from his statement that Rukma did not utter a single word about the incident to him and her behaviour was quite normal. It is further urged that from the entire evidence adduced by the prosecution, Rukma appears to be accomplice. She was party to the murder of Foriya but in order to save her skin, she developed a false story of rape with her by the appellants and became the eye witness, therefore, it is not safe to place reliance on her testimony in absence of any independent corroboration. In support of the arguments, learned counsel cited the case law that shall be referred at the appropriate juncture.

5. Per contra, Mr. Rajendra Yadav, learned Public Prosecutor supported the impugned judgment and urged that Rukma is wholly reliable witness and the accused appellants have rightly been convicted.

6. We have considered the rival submissions and carefully scanned the material on record. A close look at the statement of Rukma P.W. 4 demonstrates that after the alleged incident she and appellant Ramesh Chand had been together for two days and two nights. During this period, she had occasion to meet with the villagers but she did not disclose the incident to them. It also appears that she

remained in the police station for about 15 days and she did not go to her in-laws house to attend the last ceremonies of her deceased husband. From the statement of the prosecution witnesses it is evident that as and when she met with the relatives of appellant Ramesh, she behaved like his concubine. A woman whose husband was brutally murdered by the appellants and who too was ravished by them, if does not disclose the incident to the people she meets and behaves like concubine of one of the accused, would be in our considered opinion, an accomplice of the accused in the commission of crime.

7. Their Lordships of the Supreme Court in *Bhiva Doulu Patil v. State of Maharashtra* (1), had occasion to examine the legal question as to whether the statement of accomplice which is not corroborated may be relied upon or not. It was indicated in para 7 of the judgment, thus:-

"The combined effect of Sections 133 and 114, illustration (b) may be stated as follows: According to the former, which is a rule of law, an accomplice is competent to give evidence and according to the latter which is a rule of practice it is almost always unsafe to convict upon his testimony alone. Therefore, though the conviction of an accused on the testimony of an accomplice cannot be said to be illegal yet the Courts will, as a matter of practice, not accept the evidence of such a witness without corroboration in material particulars."

8. In *M.O. Shamsudhin v. State of Kerala* (2), it was indicated by their Lordships of the Hon"ble Supreme Court that:-

"The word "accomplice" is not defined in the Indian Evidence Act, 1872. It is used in its ordinary sense which means and signifies a guilty partner or associate in a crime. Illustration (b) to Section 114 in a way cautions the Court to bear in mind the presumption that an accomplice is not worthy of credit unless he is corroborated in material particulars."

It was further held that:-

"The reasons for requiring corroboration of the testimony of an accomplice are that an accomplice is likely to swear falsely in order to shift the guilt from himself and that he is an immoral persons being a participator in the crime who may not have any regard to any sanction of the Oath"

9. In *Panda Nana Kare v. State of Maharashtra* (3), their Lordships observed that the testimony of sole witness who does not narrate the incident to the persons to whom he meets cannot be relied upon.

10. In the instant case, though the prosecution has examined as many as 36 witnesses, yet no independent witness to corroborate the testimony of Rukma has been produced. There is no material on record which could suggest that the deceased before his death was seen in the company of the appellants. In so far as the recovery of knife on the basis of information supplied by appellant Ramesh u/s 27 of the Evidence Act vide Ex. P/36 is concerned, it may be noticed that it was effected on Feb. 7, 1993 vide Ex.P/14 from the house of appellant Ramesh

Chand. Motbir of recovery of knife is Moti Lal P.W. 23. In his cross-examination he has stated that at the time of recovery he was not allowed to go inside the house. This witness does not say that the knife was sealed by the Investigating Officer on the spot. Even Bhanwar Lal-Irvestigating Officer (P.W. 36) in his statement does not say that he sealed the knife on the spot. From the perusal of the F.S.L. report, which has been produced by the learned Public Prosecutor at the appellate stage, it appears that the knife so recovered was smeared with human blood. The question that arises at this juncture is whether the F.S.L. report has any evidentiary value?

11. The Division Bench of this Court in *Kakku @ Kalu v. State of Rajasthan* (4), indicated that where the seized article was not sealed on the spot, the report of F.S.L. has no value.

12. There is yet another unexplained fact that creates doubt in the recovery of knife at the instance of appellant Ramesh. There is no evidence on record to show that from the date of incident till his arrest, the appellant Ramesh had any opportunity to visit his house for the purpose of concealing the knife. Thus, the recovery of knife from the house of appellant Ramesh become doubtful. So far as charge u/s 376(2) I.P.C. is concerned, we have scanned the medical report as well ocular testimony of Dr. Sunita Dua P.W. 25. Dr. Sunita Dua stated in Ex.P/15 that opinion in regard to rape can only be given after examination of vaginal swab by the F.S.L., but the F.S.L. report is silent about examination of vaginal swab. To adjudge the charge u/s 376(2) I.P.C, we have before us the statement of Rukma (P.W. 4). We have examined her testimony from the point of view of trustworthiness and we find her as most unreliable witness. It appears that to save her skin she had implicated the appellants in yet another offence of rape but her conduct entangled her in the "accomplice web". Section 114 illustration (b) Evidence Act enables the Court to presume that an accomplice is unworthy of credit unless corroborated in material particulars while Section 133 enacts that a conviction based upon an uncorroborated testimony of an accomplice is not illegal, leaving the question of its propriety and expediency to judicial discretion. In other words, Section 114 illustration (b) enacts the rule whileon 133 states the exception. The Courts observe the rule, and only apply the exception to extreme cases. In view of the fact that Rukma, who did not narrate the incident of murder of her husband to the persons to whom she met and who did not even attend the last rites of her husband and behaved like a concubine of appellant Ramesh is not worthy of any credit. The prosecution has failed to place before us the true genesis of the incident and on the basis of distorted version the conviction cannot be upheld.

13. In view of this, we have no option but to allow the appeals of appellants.

14. Resultantly, all the three appeals are allowed and the judgment of learned Sessions Judge, Bundi is set aside. Accordingly, convictions and sentences of appellant Ramesh Chand for the offences under Sections 302 and 376(2) I.P.C. of appellants Bajrang Lal and Raju for the offences u/s 302 read with Section 34

and Section 376(2) I.P.C. are quashed. They are acquitted. They are in jail. They shall be released forthwith, unless wanted in connection with any other case.