
(1986) 04 RAJ CK 0022
In the Rajasthan High Court
Case No : Criminal Appeal No. 257 of 1978

State of Rajasthan

APPELLANT

Vs

Derawar

RESPONDENT

Date of Decision : 21-04-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 380, 457, 511

Citation : (1986) WLN 277

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jas Raj Chopra, J.—This is an appeal against the judgment of the learned Munsif and Judicial Magistrate, Phalodi dated June 30, 1977 whereby the learned lower court has acquitted accused Derawar of the offence under Sections 457 and 380/511 IPC.

2. The facts necessary to be noticed for the disposal of this appeal briefly stated are that; on 28-8-1971; Tejaram lodged a report at Police Station, Sangad in District Jaisalmer to the effect that in the night intervening between 26th and 27th of August, 1971 at about 1 a.m., one thief entered his house. His wife was sleeping in the Chowk of the house along with her kids and her niece Mst. Shanti. She took of her golden Timaniya weighing about 4 tolas and hanged it on the leg of the cot. The accused tried to take away that Timaniya, whereupon, she woke up and enquired from the accused as to who he is? His wife than cried for help and called Girdhari for help. It is alleged that at that time, complainant Tejaram was serving in the Munsif Court Jaisalmer and he was informed by his wife to come home immediately as she was ill. As soon as he came to his home, he was informed that the man, who entered her house, was to the best of her knowledge Derawar Meghwal, who was working as peon in Ayurvedik Aushdhalaya. This man was not traceable in the village after the occurrence and,

therefore, the complainant has submitted that this accused alone has committed this offence. On his report, a case under Sections 457 and 380 IPC was registered.

3. After investigation, the case against the accused was challaned under Sections 457 and 380/511 IPC. The charges were framed against the accused. He did not plead guilty to the charges and claimed trial where upon the prosecution examined in all 8 witnesses in support of its case. The statement of the accused was recorded u/s 313 Cr.PC. He examined 4 witnesses in his defence. After hearing the parties, the learned lower court acquitted the accused of the above said offence. Hence, the State has preferred this appeal against his acquittal.

4. I have heard Mr. S.K. Mathur, learned Public Prosecutor for the State and Mr. H.C. Mathur, learned Amicus Curiae for the accused-respondent. I have carefully gone through the record of the case.

5. PW 1 Rukma is the main witness in this case. She is the wife of the complainant. She has stated that she was sleeping in the chowk of her house along with her kids and Mst. Shanti, who is the daughter of his brother. The main gate of the house was bolted from inside. She has further stated that she kept all her ornaments inside lock and key the golden Timaniya which she was wearing, she always used to hang it on the leg of the cot in the night. On the date of the occurrence, when somebody tried to touch that Timaniya, she woke up. It was almost midnight and she enquired from the person as to who he was? On this, accused retreated 4-5 paces and admitted his guilt in the following words:

HkkHkh esjh xyrrh gks xbZ vkSj ekQ djks A mlus ;g Hkh dgk fd ekQ djks eS pksjh djus vk;k Fkk] gkdk er djks A

On this, she cried for help and called Girdhari. She cried that there is a thief in the house and so, he should come. She even tried to catch hold of him but she could not do so. After some-time, Girdhari came there and he too saw the accused scaling away the wall of the chowk of her house.

6. PW 2 Shanti has stated that she too saw the accused standing in the chowk of the house. He only ran away when his father came there. She used to sleep at the house of her father's sister because her husband was serving at Jaisalmer. Her aunt cried for help and called his father Girdhari and when Girdhari came there, the accused ran away.

7. PW 3 Girdhari has stated that he heard the cries of his sister. He ran away from his house and saw the accused scaling away the wall of the Chowk of her sister's bouse. He has identified the accused as Derawar. PW 4 Achaldass has stated that Girdhari came to his house and told him that a thief came to his sister's house at the mid-night. He named the accused as Derawar. When he went to the house of Tejaram, his wife also informed him about this incident. PW 5 Mohd. is the witness of foot-prints. He too has stated that Girdhari told him that some foot-prints have been protected in the house of Tejaram and they

should have been examined. He as stated that only the prints of heels were available and, therefore, footprints could not be identified.

8. PW 7 Tejaram who is the first informant in this case has stated that he got a post-card from his wife that she is ill and so, he should come immediately. When he came to his house, his wife told him that accused Derawar has entered into their house and when he tried to remove the Golden Timaniya from the leg of the cot, she woke up and the accused admitted his guilt to her. She told him that accused stood there for some time and when Girdhari came, he scaled away the wall of the chowk of their house. He has proved the FIR Ex. P. 3, which bears his signatures at place A to B. Rest of the witnesses are formal witnesses.

9. Mr. S. K. Mathur, learned Public Prosecutor has submitted that in this case, the presence of the accused in the house of Mst. Rukma has not only been proved by PW 2 Mst. Rukma and PW 2 Shanti but his presence also stands corroborated from the testimony of PW 3 Girdhari, who too has seen him present in the house of Tejaram and when he reached the placed of the occurrence, the accused was scaling the wall of Tejaram"s house and, therefore, the learned lower court has grossly erred in acquitting the accused of the two offences with which he was charged. It has come in the evidence of Mst. Rukma and Mst. Shanti that before they slept, they bolted the doors of the house from inside and, therefore, the accused has entered into her house by scaling over the wall. This fact stands proved from the testimony of PW 1 Rukma and PW .2 Shanti that when Girdhari came, Rukma unbolted the doors and then Girdhari came inside the house and so, this is certain that the accused has not entered into the house from the main gate but he has effected his entry by scaling over the wall and therefore, he should be held guilty of the offence u/s 457 IPC. He has also tried to take away the golden Timaniya and so, he should have been convicted of the offence u/s 380/511 IPC.

10. Mr. Harish Mathur, learned Amicus Curiae has submitted that in this case, the evidence is most unnatural and it cannot carry conviction with any court of law. It is an appeal against acquittal and, therefore, the finding of the learned lower court should be interfered only in very rare or exceptional cases where the appreciation of the evidence is either perverse or there is mis-appreciation of the evidence.

11. I have given my most earnest consideration to the rival submissions made at the bar. The story put forth by the prosecution appears to be unnatural. The occurrence took place in the night intervening between 26th and 27th of August 1971. PW 3 Girdhari has stated that in the absence of his brother-in-law PW 7 Tejaram, he was looking after the entire affairs of his brother-in-law. The Police Station, Sangod is situated at a distance of about 5 miles from the village Fatehgarh. When the accused was identified, there was no reason why a report of the incident was not lodged at Police Station Sangod by Girdhari immediately. There was no occasion for him to wait for the arrival of Tejaram, who was serving as a camel-sowar in the Court of Munsif Magistrate, Jaisalmer. PW 7 Tejaram has

stated that he received the post-card of his wife that she was ill and so, he should immediately come. It was not written in the post-card that some event of attempt to commit theft or house-breaking has occurred and, therefore, he should come to his house. Be that as it may, even when he came, the report was lodged not on 27th but it was lodged on 28th at 6.30 p.m. i.e. almost 4 i hours after the incident and at least on the next day evening i.e on 28th evening whereas Tejaram arrived in his village on 27th. There is no reason why this report was so late. In the FIR Ex. P. 3 Tejaram has mentioned that as soon as the accused tried to take away the golden Timaniya, his wife woke up and enquired from him as to who he was and after saying this, she called Girdhari by name to seek his help. As soon as the called out she name of Girdhari, the accused run away. He has further stated that so far as his wife could identify, it was accused Derawar, who was working as peon in the Ayurvedik Aushdhalaya who has entered his house at mid-night. From this FIR, it is clear that no talks took place between Mst. Kukma and the accused. There is no mention of any confession or admission of guilt made by the accused to Rukma in this FIR. This FIR has been lodged by the complainant after talking to his wife and his brother-in-law and Mst. Shanti. The absence of this confessional statement made by the accused in the FIR clearly shows that this particular story of confession made by the accused to Mst. Rukma has been developed at the trial. Even this story that the accused talked with Mst. Rukma has also been developed at the trial. In the FIR it has been written that as soon as Mst. Rukma observed the presence of a man in her house, she enquired from him as to who he was and then she immediately called out Girdhari by name and as soon as she cried out Girdhari"s by name, the accused ran away by scaling over the wall of the chowk of her house. Thus, this is an after thought story that the accused talked with Mst. Rukma and waited in the chowk till such time Girdhari could come to the complainant house and Mst. Rukma could unbolt the doors of the house and Girdhari could enter her house so as to observe him making protest from Rukma"s house. This story put forth at the trial is most unnatural. If a person has come to steal something and the inmates of the house woke up, the first thing which he will normally do would be to run away or make good his escape. This all these facts now stated at the trial are against the human conduct and are against the contents of the FIR and, therefore, they cannot be believed. It appears to be a case where the accused probably has gone to the house of Rukma with on object to enjoy her but it appears that this fact came to the knowledge of others and so, two days were spent for making a story of theft and, therefore, the report of the incident was made so late at Police Station, Sangod which was situated only at a distance of 5 miles from village Fatehgarh. Even in the FIR which was lodged so late, it has been mentioned that so far as Mst. Rukma could identify the accused, it was Derawar, clearly shoes that even upto the stage of lodging the report, the prosecution was not sure regarding identity of the accused. In the FIR it has been stated that the accused was not traceable in the village after the occurrence further shows that the complainant party has not seen the accused and it only suspected the accused of entening into the house of Mst. Rukma. On account of

his absence from the village and, therefore, the effort of the prosecution witnesses that this very accused entered the house of Tejaram and had talked with his wife and further that he admitted his guilt are all after thought improvements and on the basis of such an evidence, the finding of acquittal recorded by the learned lower court cannot be reversed. It may be stated here that the judgment of the learned lower court is ver perfunctory. The evidence has not been properly dealt with and scrutinised but that is hardly a ground to interfere with the judgment of acquittal when it is otherwise sustainable on the basis of the evidence on record.

12. In the result, I find no force in this appeal and it is hereby dismissed.