
(2009) 07 RAJ CK 0017
In the Rajasthan High Court
Case No : Criminal Appeal No. 171 of 1985

State of Rajasthan

APPELLANT

Vs

Sattu @ Satyendra and Others

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313, 378(1), 378(3)
Penal Code, 1860 (IPC) — Section 201, 302, 34, 376

Citation : (2009) 07 RAJ CK 0017

Hon'ble Judges : D.N. Thanvi, J;Arvind Mohanlal Kapadia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deo Narayan Thanvi, J.—This appeal against acquittal u/s 378 (1) and (3) of the Criminal Procedure Code has been filed against the judgment dt. 01.02.1985 of learned Sessions Judge, Jodhpur passed in Sessions Case No. 41/1983.

2. Facts leading to this appeal are that on 26.04.1983, Kalu Singh PW 5 lodged a written report Ex.D/2 at Police Station Sardarpura, Jodhpur, Stating therein that he had gone for duty as Chowkidar at M.G. Hospital, Jodhpur in the night of 25.04.1983 leaving his wife, daughter and his sons wife Santosh and when he came back next day morning, he found his wife Bishni and daughter Chanda were sleeping outside the quarter and inside his son's wife Santosh was lying dead in a burnt condition. On this report, inquest u/s 174 of the Code of Criminal Procedure was made and during inquiry, suspecting the case being of murder, postmortem of the dead body was got conducted by the Medical Board which was of the opinion that it was a case of strangulation. Accordingly, FIR Ex.P/18 was lodged by Sub-inspector Banney Singh PW 11 and after registering a case, investigation commenced. During investigation, it was found that there were no elements of burning of any articles on the spot but a kerosene container was found lying and nearby a match box was also there. During investigation, police came to the conclusion that on the fateful night, accused Bishan Devi mother-in-

law, Chanda sister-in-law of deceased and Sattu son of mother's sister of Chanda, were present and Kalu Singh father-in-law of Santosh was on duty, who lodged the FIR. On account of presence of other incriminating evidence, it was found that these three accused-Respondents killed Santosh by strangulation and burning. After investigation, these three accused-Respondents were charge-sheeted under Sections 302 and 201 read with Section 34 of the Indian Penal Code before judicial Magistrate No. 3, Jodhpur, who committed the case to the Court of Sessions for trial. The learned trial Court framed charges against all the accused-Respondents accordingly, to which they pleaded not guilty.

3. The prosecution examined 12 witnesses and produced 21 documents. Statements of the accused were recorded u/s 313 of the Code of Criminal Procedure. In defence, one Rameshwar Vyas DW 1 Office Assistant was produced. After hearing the arguments on charge, learned trial Judge acquitted all the accused-Respondents by giving them benefit of doubt, against which this appeal has been preferred.

4. We have heard learned Public Prosecutor and the learned Counsel for the Respondents.

5. Learned Public Prosecutor, while assailing the judgment of the learned trial Court, has submitted that it is amply from the evidence of Dr. P. Dayal, PW 9 that death of Mst. Santosh was due to strangulation and her body was found burnt. According to the learned Public Prosecutor, though material witnesses have turned hostile, but testimony of Indra Bai PW 1 and Madan Singh PW 10 is sufficient to connect the accused with the commission of crime and both of them have seen the accused persons at the place of occurrence. He further submitted that when the accused are unable to explain the cause of death and it is proved from the medical evidence that after strangulation the body was burnt and signs disappear, the only irresistible conclusion is that except the accused, there was none else to commit this homicidal death of deceased Santosh, because accused Sattu was having illicit relations with accused Chanda. According to the learned Public Prosecutor, from the facts as disclosed in the prosecution evidence, the trial Court should not have given the benefit of doubt by scrutinizing the evidence in an analytical manner.

6. Per contra, learned Counsel for the accused-Respondents has urged that all the material witnesses of the case have turned hostile and the trial Court has rightly disbelieved the testimony of Indra Bai PW 1 and Madan Singh PW 10 because both are concocted witnesses so as to implicate the accused. According to the learned Counsel, even the husband and father in law of the deceased have turned hostile and Indra Bai PW 1 is neighbourer of the place of Santosh's parental house. According to the learned Counsel for the accused Respondents, the trial Court has given the cogent reasons for acquitting the accused-Respondents on benefit of doubt.

7. We have re-appreciated the evidence on record and perused the judgment of

the trial Court. There is no doubt in the testimony of Dr. P. Dayal PW 9, who was a member of the medical Board, on the basis of report of Ex.P/14 that the cause of death was throattling.... According to him there was superficial burns over the shole body except a small area of 8 cm. x 6 cm. upon the medial aspect of right thigh in the inguinal region and bents of 7 cm. x 2.5 cm. on the anterior, medial and lateral aspect of right ankle at the level of mallelous and 6.5 cm. x 2 cm. on the interior, medial and lateral aspect of left ankle at the level mallelous were present. There was no line of reaction and there were no carbon particles in tracia pharynx and laryn. There was fracture of the left corner of the hyoid bone and there was extra vasation of blood which was partially clotted into the soft tissues. The cause of death was throttling and that the burns were post mortem in nature." From this medical evidence, it appears that body was first strangulated and then burnt which shows that the death is homicidal.

8. Now, the next question which is to be seen is as to the complicity of the accused-Respondents in committing this homicidal death.

9. Out of the 12 witnesses examined by the prosecution, PW 2 Ramesh Chandra, who is a clerk of District Court, Jodhpur has stated that a case u/s 376 Indian Penal Code was pending against accused Satyanarain. On 23.04.1983, he went to meet his father, who was Munsif Magistrate, Makrana and returned back to Jodhpur in the evening of 25.04.1983 in Marudhar Express. He saw accused Sattu at Merta Road Railway Station , who is son of Raghu Nath Singh, Guard. He stated that upon asking for accompanying him to Jodhpur, Sattu denied and thereafter he did not see him even at Jodhpur Railway Station. Upon this, he was declared hostile. Dhan Singh PW 3 is the neighbourer of Kalu Singh and residing at servant quarter No. 39 of M.G. Hospital, Jodhpur. According to him, nobody came at the house of Anand Singh prior to incident of burning of Anand Singh's wife Santosh. Upon this, this witness was also declared hostile. Anand Singh PW 4 is the husband of deceased Santosh, he too has turned hostile upon saying that his wife did not tell anything to him about his sister. Kalu Singh PW 5 father-in-law of the deceased is the author of the FIR but he has also turned hostile. According to him, when he returned from duty, his wife and daughter were sleeping outside the quarter.

Sohan Singh PW 6 is a peon in M.G. School, Jodhpur. He said that on the night of 25.04.1983, Indra met him and told that she saw fire coming from quarter, who was coming after watching movie. He further stated that when he was going for his duty, he saw police personnel at the quarter of Kalu Singh but he did not talk to anyone there. He too has been declared hostile. Mohd. Haneef, PW 7 is the photographer of Exs.P/6 to P/10 and Doongar Singh PW 8 is the witness of sight inspection Note Exs.P/11 to P/13. Banney Singh PW 11 and Sugna Ram PW 12 are the inspecting officers.

10. Now remains the testimony of Indra Bai PW 1 and Madan Singh PW 10, which has also not been relied upon by the learned trial Court. The evidence of Indra Bai PW 1 is based on the fact that on the day of incident, she came after

watching movie in Olympic Cinema where she met Sohan Singh for hiring a taxi who told her smoke is coming from house and then she along with Sohan Singh went at the quarter of Kalu Singh where all three accused and one unknown person were standing. Sohan Singh whereupon hired a taxi for her and she left. On the next day morning, she heard from Sohan Singh that last night Kalu Singh's daughter-in-law was burnt. The testimony of this witness is based on the testimony of Sohan Singh PW 6 but Sohan Singh has denied the fact that Indra went at the house of Kalu Singh or told her about the fire. Of course, he arranged a taxi for Indra and she left thereafter.

11. We are in agreement with the finding of the learned trial Court that the statement of Indra Bai PW 1 is not natural and is self contradictory because this witness firstly has not stated anything about the situation of the quarter and secondly, how these three persons were standing outside the quarter after the incident of murder. In her police statement Ex.D/1, she has not stated about the presence of these three accused persons. The fact that Sohan Singh was told by Indra about fire and he never went in the quarter but the statement of Indra Bai is that Sohan Singh went towards the quarter. These are the major contradictions about the presence of the accused which can be termed as natural contradictions with regard to not believing the testimony of Indra Bai PW 1.

12. Next is the evidence of Madan Singh PW 10 who has stated that he went at the Railway Station and dropped accused Sattu @ Satyanarain at the residence of Kalu Singh where he saw Santosh, her mother-in-law Bishni and sister-in-law Chandra. According to him, on seeing Sattu, Santosh told him that Sattu has illicit relation with Chandra. The trial Court has disbelieved the evidence of this witness on the ground that his presence at the Railway Station on 25.04.1983 itself is doubtful because no letter of his brother has been produced with regard to his arrival in Marudhar Express as told by the witness. Secondly, had there been illicit relation between Sattu and Chandra, he could have told it to Kalu Singh, who is father-in-law of deceased Santosh. According to him, he also went to the hospital where postmortem of Santosh was conducted but his evidence was not recorded there. Accused Chanda was medically examined but no sexual intercourse was found and she was unmarried as per the report Ex.D/4.

13. Of course, the trial Court has found that cause of death of deceased Santosh is homicidal but in absence of strong motive and other incriminating evidence, it is doubtful that accused-Respondents had committed murder of deceased Santosh and caused disappearance of evidence. We are, therefore, in complete agreement with the finding of acquittal based on benefit of doubt arrived at by the learned trial Court and we accordingly confirm the same.

14. Consequently, this State appeal is dismissed and the judgment of the learned Sessions Judge, Jodhpur dt. 01.02.1985 acquitting the accused-Respondents for the offence under Sections 302 and 201 read with Section 34 of the Indian Penal Code is confirmed. Accused-Respondents are on bail, their bail bonds stand cancelled.