

Mishri Vs State of Rajasthan

Court: Rajasthan High Court

Date of Decision: Nov. 12, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313

Evidence Act, 1872 â€” Section 27

Penal Code, 1860 (IPC) â€” Section 201, 302, 34

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

Bench: Division Bench

Final Decision: Allowed

Judgement

Deo Narayan Thanvi, J.

This appeal is directed against the judgment of learned Additional Sessions Judge, Barmer dated 06.01.1986 in

Sessions Case No. 4/1985, whereby he convicted the accused appellant Mishri u/s 302 IPC and sentenced him to undergo life imprisonment and

to pay a fine of Rs. 500/- and in default, to further undergo one year's R.I. Accused appellant was also convicted under-Section 201 IPC and

sentenced to undergo one year's R.I. Both the substantive sentences were ordered to run concurrently.

2. Facts leading to this appeal are that Umed Singh son of Kishan Singh by caste Rajput r/o Adhrim Ka Tala, Distt. Barmer lodged FIR Ex.P.3

before the SHO, Police Station, Chohtan, Distt. Barmer on 23.03.1985 at 3 PM alleging therein that on 01.03.1985, his nephew deceased Ran

Singh was with accused Mishri and in the evening at 5 PM, they returned and went to their respective "dhanis". Deceased Ran Singh was having

Rs. 1820/- with him which he took as a loan from Mishri Meghwal. Deceased Ran Singh went to sleep at 9 PM and the next day morning, he was

not found. His family members apprehended that he might have gone somewhere. The complainant Umed Singh and his nephew Bhanwar Singh

were not at the house. On 05.03.1985, when he and his nephew Bhanwar Singh came to the house, they came to know about the fact that

deceased Ran Singh was missing for the last five days. Then they started searching. After 6-7 days, they came to know that accused Mishri and

deceased Ran Singh had gone to Gujarat. Both were having illicit relations with Asiyat, d/o Safi. They went to the residence of Asiyat, who is also

resident of the locality. Though, initially Asiyat denied but later told in the presence of Ishwar Singh and Mool Singh that deceased Ran Singh was

sleeping with her and accused Mishri killed him with axe and buried him in the compound of her house. Upon this report, the police registered a

case under-Section 302 & 201 IPC and commenced investigation. During investigation, the recoveries of "juti" (shoes), "kulhari" and "ban" (part

of cot) were made from the accused appellant on the information furnished by him under-Section 27 of the Evidence Act. After investigation,

accused appellant Mishri and Asiyat, who made extra judicial confession before Ishwar Singh and Mool Singh, were chargesheeted in the Court of

learned CJM, Barmer under-Sections 302/34 & 201 IPC. The case was committed to the Court of learned Addl. Sessions Judge, Barmer, who

after hearing the arguments on charge, framed charges under-Sections 302 & 201 IPC against accused Mishri and for the offences under-Sections

302/34 & 201 IPC against accused Asiyat, daughter of Safi. Both the accused pleaded not guilty and claimed trial. The prosecution examined 13

witnesses. The statements of the accused were recorded under-Section 313 Cr.P.C. They produced Tharu, DW 1 in their defence. After hearing

the final arguments, the learned trial Judge acquitted accused Asiyat for the charges leveled against her but convicted & sentenced the accused

appellant Mishri as above.

3. We have heard learned Counsel for the appellant as well as the learned Public Prosecutor and re-appreciated the evidence brought on record.

4. It is contended by the learned Counsel for the appellant that there is no dispute with regard to homicidal death of deceased Ran Singh but his

conviction under-Sections 302 & 201 IPC is based on no evidence, which is liable to be set aside. He submits that there is no eye witness in the

case and the matter has been reported to the police after 23 days of the incident solely on the basis of extra judicial confession furnished by co

accused Asiyat, who has been acquitted by the learned trial Court. According to the learned Counsel, the finding of the learned trial Judge with

regard to the guilt of the accused is against the settled principles of appreciation of evidence with regard to the circumstances. As in the present

case, the recovery has been made from the open hut of the accused and the prosecution has not been able to prove as how the "juti" were

belonging to the deceased and as to how the parts of Cot reached from the house of co-accused Asiyat to the hut of accused Mishri. This major

suspicion which de-links the circumstantial evidence, leads to the conclusion that accused appellant has been falsely implicated in the case for

which the prosecution has not been able to give satisfactory explanation.

5. Per contra, learned Public Prosecutor has supported the judgment of the learned trial Court.

6. When the homicidal death is unquestionable, then the question which comes up for consideration before this Court is as to who is the author of

causing homicidal death. There is of course no direct evidence connecting the accused appellant with culmination of the crime but the case is based

on circumstantial evidence. When the case is based on circumstantial evidence, then it is settled principle of Criminal Law that every chain of

circumstances should be established without any iota of suspicion resulting in guilt of the accused.

7. Whatever evidence has been brought on record, firstly the prosecution has not been able to prove the explanation of lodging the FIR after 23

days of incident. Normally, the delay is not fatal in criminal trial but if that delay is not explained properly then the evidence brought on record has

to be measured in the light of the statements resulting in how much trustworthy they are. If there is no direct evidence with regard to the scene of

the crime, then the circumstances must be so established that they leave no doubt for de-linking the evidence of circumstances with each chain.

From the perusal of the FIR and the statements of the witnesses, it is revealed that on 01.03.1985, deceased Ran Singh and accused Mishri went

to their respective "dhanis" and on the next day morning, deceased Ran Singh was not found in the house but his family members did not enquire

as to where he had gone for five days, till his real brother Bhanwar Singh and the complainant Umed Singh, uncle of deceased, reached at the

"dhani". That apart, the informant Umed Singh, PW 3 has also stated in his examination in chief that he searched for deceased Ran Singh for about

20-22 days in Gujarat, if these days are counted with earlier five days, then it comes to more than 25 days and after these 20 to 22 days, it is

stated by this witness that one day thereafter, he alongwith Moola, Ishra and Bhanwara went to the "dhani" of Asiyat and enquired about Ram

Singh. Then Asiyat made the extra judicial confession. In our opinion, this delay is not properly explained by the prosecution. The FIR could have

been lodged of missing, when Umed Singh and Bhanwar Singh came to know on reaching at the house of deceased Ran Singh that he has been

missing for the last 4 to 5 days. This unexplained delay is fatal to the prosecution.

8. Next is the evidence of recovery of "juti", "kulhari", parts of Cot and clothes of deceased Ran Singh, found on the dead body, which of course

were found stained with human blood but their blood group has not been determined in the FSL Report. In addition to it, the recovered "juti" have

not been sent for chemical examination and Incharge Malkhana Kishore Singh Head Constable, PW 6 has stated that when he received "juti" vide

Ex.P.12, they were not in the sealed condition. Though the test identification parade has been conducted by Tehsildar Amar Singh, PW 2, but he

has not been able to answer as to what was the shape of "juti" and also whether it was made of leather or of some other material. Likewise, panch

witness Khet Singh, PW 7 has not been able to answer as to from where, the "juti" was purchased. In addition to this recovery of "juti", the

recovery of "kulhari" has been made, which every farmer keeps in the house and moreover, this recovery is from the open place as appears from

the site plan Ex.P.21, wherein the site of "dhani" of accused Mishri has been given and at point "2", wherein hut has been shown as without door.

Same is with regard to the "ban" i.e. part of the Cot, which was recovered vide Ex.P.8 on the information of accused Mishri Ex.P.22. According

to this recovery memo and the statement of the Investigating Officer, "ban" i.e. part of the Cot was recovered from the open "dhani" of accused

Mishri but Bhanwar Singh, PW 5, who is panch witness of this article vide Ex.P.8 has stated in the examination in chief that this cot was recovered

from the house of co-accused Asiyat. This is a major contradiction with regard to the recovery of "ban". Such type of contradictions and infirmities

cannot form the basis of conviction, when the case is solely based on circumstantial evidence.

9. As discussed above, the present case is not only fatal to the prosecution on account of delay in lodging the FIR but also un-trustworthy,

especially the evidence of recovery for which the learned trial Judge has not given cogent reasons to arrive-at the conclusion of guilt. Merely

because the human blood was found on the recovered articles, is not sufficient to link the accused appellant with the commission of the crime,

especially when the blood group has not been determined. In view of the above discussion, we are unable to agree with the finding of the learned

trial Judge with regard to the guilt of accused appellant.

10. Consequently, we allow this appeal, set aside the judgment dated 06.01.1986 passed by learned Addl. Sessions Judge, Barmer convicting

appellant Mishri of the offence under-Section 302 IPC & sentencing him to undergo life imprisonment alongwith a fine of Rs. 500/- & in default, to

further undergo one year's R.I. & also of the offence under-Section 201 IPC with one year's R.I. and acquit him of the said charges. He is on

bail, his bail bonds stand cancelled.