

The State of Rajasthan Vs Ganga Dangi

Court: Rajasthan High Court

Date of Decision: March 27, 1992

Acts Referred: Penal Code, 1860 (IPC) â€” Section 302, 376, 379

Citation: (1992) 1 WLN 570

Hon'ble Judges: Rajesh Balia, J; B.R. Arora, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

B.R. Arora, J.

This appeal is directed against the judgment dated November 15, 1976, passed by the Additional Sessions Judge,

Udaipur, by which the learned Additional Sessions Judge acquitted the accused-respondent.

2. Accused Ganga was tried by the learned Additional Sessions Judge, Udaipur, for the offences under Sections 302,376and 379 I.P.C. The case

of the prosecution is that on September 19,1974, the accused committed rape with Mst. Ganga (aged about 16 years in her field and after

committing the rape, put to death. The report of this incident was logged at police station, Saroda on September 19,1974, at about 5.45 p.m. by

one Nagji. The accused was tried by the learned Additional Sessions Judge for the offences under Sections 302,376and 379 I.P.C. The

prosecution, in support of its case, examined 19 witnesses. The accused, in support of his defence, produced two witnesses. The learned

Additional Sessions Judge, after trial, acquitted the accused of all the charges levelled against him. It is against this judgment dated November

15,1976, passed by the learned Additional Sessions Judge, Udaipur, that the State has preferred the present appeal.

3. There is no eye witness to the occurrence and the prosecution case rests upon the circumstantial evidence. The circumstances, on which the

reliance has been placed by the prosecution, comprise of:

(i) last seen of the accused in the company of the deceased;

(ii) recovery of the ornaments EX. 1 to EX.6 which the deceased was wearing at the time when she came to the field and which were not found on

her deadbody; and

(iii) the recovery of the hair of the accused from the fist of the deadbody of Mst. Ganga.

4. Taking first circumstance regarding the last seen of the accused in the company of the deceased, the prosecutions, in this regard, has produced

Mst. Kesu -a girl aged about twelve years -, who is the sister of the deceased Mst. Ganga. She stated that last year, in the rainy season, she, her

sister Mst. Ganga and her brother Nathu went to the field. They collected some beans. At that time the accused and his mother were in their field

and were cutting the grass. Thereafter she and her brother Nathu went to take water. When the came back, her sister Mst. Ganga was not found

in the field. Thereafter she and Nathu went to their house and enquired from their mother whether Mst. Ganga had come or not, but her mother

told that she had not dome. They, thereafter, called their father as Mst. Ganga had not returned from the field and, therefore, they made a search

for her and the deadbody of Mst. Ganga was found in the field of Baalu. At the time when they had gone to the field, Mst. Ganga was wearing

Hansli, Gole, Oganiya, Madaliya and Beentiyan, which are Articles EX. 1 to EX. 7. In the cross-examination, she has admitted that accused

Ganga and his mother both were together and were cutting the grass in their field. In cross-examination, she has tried to make certain amendment

from her statement given before the police and has, also, denied certain portions of her statement which was given by her before the police. In

cross-examination, she has, also, admitted that there were number of persons in the other neighbouring fields and crops of maize was ripe but was

not harvested. She has, also, admitted that the maize crops was standing in the field, which was about head-high and if a persons walks in the

maize crop then he could not have been seen by the other persons in the adjoining field. From a bare reading of-the statement of this witness, it

appears that she is not a witness to the occurrence and was not present and not seen the accused in his field. Even otherwise it was a crop season

and everybody, who has agricultural land and has sown the crop," must have been present in the field to harvest the crop and even as per the

prosecution case, the accused alongwith his mother, was present there and was cutting the grass and, therefore, his presence in the field cannot be

said to be, in any way, unnatural. Moreover, it has not been stated by this witness PW 6 Kesu that the accused seen in the company of the

deceased Mst. Ganga. In these circumstances, it cannot be said that the deceased was last seen in the company of the accused. It is not the case

of the prosecution that the accused and the deceased were seen together at a common place. In this view of the matter, we are of the opinion that

this circumstances, over which the reliance has been placed by the prosecution, dose not help the prosecution and his circumstance cannot be read

against the accused.

5. The next circumstance, over which the reliance has been placed by the learned Public Prosecutor relates to the recovery of the ornaments EX.1

to EX.7, which the deceased was wearing while she had gone to the field for collecting the beans. The prosecution, in support of this contention,

examined three witnesses. PW 9 Lakhmi Chand, PW10 Daulat Ram and PW 14 Narain Lal. Lala was, also, an alleged witness to the recovery

memo EX. P.9, but he has not been produced. So far as these three witnesses, viz., PW 9 Lakhmi Chand, PW 10 Daulat Ram and PW 14 Narain

Lal are concerned, they have not supported the prosecution case and have turned hostile. It is only evidence of the investigating officer, which

remains with respect to the, information EX.P.23 and the recovery vide EX.P.9. The recovery in the present case cannot be said to be made it the

instance of the accused because the ornaments were found in the shop of Dault Ram (PW 10) and they have denied that any ornaments was

recovery from the shop of the appellant. Moreover, the shop in question was not in the possession of the accused-respondent, what to say of

exclusive possession. When the recoveries were made from the possession of Daulat Ram then this circumstance, also, cannot be read against the

accused-respondent.

6. The third circumstance, over which the reliance has been placed by the prosecution, relates to the recovery of hair from the fist of the deceased

Mst. Ganga. The prosecution has failed to prove that the seals on the hair remained intact since the date of its recovery till the same was sent for

F.S.L examination to the State Forensic Science Laboratory, Jaipur. The link evidence is missing. Even otherwise, according to the F.S.L report

EX.P. 24, the sample hair, taken from the head of the accused, could be of the same origin as the hair which were found in the fist of the deceased.

There is no definite finding of the F.S.L. examination that both the sets of hair were of the same origin and even no reasons have been given by the

Expert how he has come to this conclusion. In the absence of any reason regarding the similarities or dissimilarities of the hair and the test on which

the finding of the Expert is based, the opinion regarding the possibility of the same origin of the hair cannot be upon. The Experts are expected,

while giving their opinion, to give reasons for their report so that the Courts may be in a position to consider the reasons and give their findings. In

absence of the reasons, the Court cannot apply its mind and has to act according to the opinion of the Expert which cannot be permitted.

7. The learned Additional Sessions Judge, while considering the evidence on record, has rightly opined that the prosecution has failed to prove the

case against the accused-respondent. The appreciation of the evidence made by the learned Additional Sessions Judge cannot be said to be, in any

way, illegal or improper.

8. In the result, we do not find any merit in appeal and the same is hereby dismissed.