

Radha Kishan vs State Of M.P. on 13 August, 2002

Equivalent citations: JT2002(6)SC305, AIRONLINE 2002 SC 574

Bench: R.C. Lahoti, Brijesh Kumar

ORDER

1. The accused-appellant has been held guilty of offences punishable under Section 302 read with Section 34 of the IPC and sentenced to imprisonment for life by the sessions court, Seondha, district Datia. The conviction and sentence have been maintained in appeal. There were three accused persons, namely Govind @ Bachudi, Sobaran and Radhakrishan, who is appellant before us. Govind and Sobaran have died in police encounter during the pendency of trial. The trial then proceeded against Radhakrishan, the accused-appellant only.

2. The deceased Rajaram was resident of village Indergarh. He was related as son-in-law to Ram Kali. PW-4. Kilol Singh, PW-1 is the son of Ram Kali. According to the prosecution, there was another brother of the three accused persons, who is said to have been killed in a police encounter and the accused persons suspected that Rajaram was instrumental in the death of their brother. On 29.10.1996 at about 10.00 a.m., Kilol Singh, PW-1 and Ram Kali, PW-4 were on their field, which is situated on the way which leads from Indergarh to Pachokhara. Kilol Singh was making channels for irrigating the crop standing in his field. Ram Kali was collecting small branches of trees for use as fire wood. At this point of time they saw the three accused persons forcibly dragging Rajaram on the way. They were coming from the side of Indergarh and moving towards Pachokhara. A towel was tied around the neck of Rajaram and held by the accused persons. The three accused were armed with country made pistols. When these persons reached near the field of Ram Kali and Kilol Singh, Rajaram asked for water. The accused persons prevented Ram Kali from giving water to Rajaram. The accused persons sarcastically told Rajaram that one-time-water would be available to him a little afterwards. Thereafter the accused persons took away Rajaram. Having seen Rajaram being so taken away Kilol Singh, PW-1 rushed to the village and contacted Munni Patel, who accompanied him to the police station where FIR of the incident was lodged at 10.30 a.m. The police swung into action and set out in the search of Rajaram. However, it was at about 10.00 p.m. when dead body of Rajaram was found in the outskirts of village Indergarh at the place which is known as Pachokhara. The dead body had multiple injuries on its person. It was removed to the hospital. Post mortem was conducted by Dr. N.R. Jatav, PW-8. The following injuries were found on the dead body of Rajaram:

1. Ligature mark 2.5 cm in width well defined and slightly depressed situated low down on his neck below the thyroid cartilage, Little lacerated of muscle on adjacent to the mark of lecture was present.
2. Bruise 5 cm x 2 cm on the exterior surface at the lower 1/2 of the right forearm of radius ulna region present.
3. Contusion 4 cm x 2 cm on the right zeugmatic region.

4. One stab 1/2 cm x 1/2 cm x 3 cm on the left side of upper side of the right arm.
5. One stab 1/2 cm x 1/2 cm x 4 cm on the upper part of the lateral side of left arm.
6. One stab wound 1/2 cm x 1/2 cm x 3 cm lower part of lateral side of left arm.
7. One stab wound 1/2 cm x 1/2 cm x 4 cm on the posterior side of the upper part of right thigh.
8. One abrasion 3 cm x 1/2 cm on the middle of the forehead.

3. All these injuries were ante-mortem in nature. In the opinion of Dr. Jatav, the cause of death was asphyxia due to strangulation. The post mortem was performed by Dr. Jatav in the presence of Dr. A.K. Upadhyay.

4. The case hinges on the testimony of Kilol Singh, PW1 and Ram Kali, PW-4. The trial court and the High Court have believed the testimony of both these witnesses to held proved the incriminating circumstance of the accused and the deceased having been last seen together. There is yet another witness Bihari Lal. PW2, who also according to the prosecution, had seen the accused persons dragging the deceased in the same manner as was seen by Ram Kali and Kilol Singh. Bihari Lal turned hostile and did not support the prosecution. He admitted that although his field is situated near the field of Kilol Singh, but he had not seen the deceased being dragged or carried away by the accused persons.

5. Kilol Singh, PW-1 and Ram Kali, PW-4 both had stated that when they saw the three accused persons carrying the deceased a towel was tightened around the neck of Rajaram. Rajaram had asked for water, but the accused persons did not allow him to take water and dragged him away. However, thereafter the story narrated by Kilol Singh, PW-1 differs from the one narrated by Ram Kali, PW-4. According to Kilol Singh, PW-1, he left his field soon after having seen Rajaram and reached the village. He met Patel Munni and narrated to him what he had seen. The two went to the police station to lodged FIR of the incident. The dead body could be traced out at about 10.00 p.m. at a distance of 3-4 kilometres from the field of Kilol Singh, PW-1.

6. Munni Patel has not been examined by the prosecution to support the statement of Kilol Singh, PW1.

7. According to Ram Kali, PW-4 after she had seen Rajaram being carried away by the accused persons, Kilol Singh, PW-1 did not go anywhere and continued to make the water channel in the field. According to her only she had seen Rajaram and the accused persons; her son, Kilol Singh, PW-1 did not even see Rajaram and did not know about what had happened. She went on to say that even she did not tell her son about what she had seen. After this incident the police had come to her field when she told the police about what had happened and pointed out the direction in which the deceased was taken by the accused persons. She further states that in about two hours after the time of the incident, it was found out that Rajaram had been killed, In cross-examination, she reaffirmed

what she had stated in examination-in-chief by stating that it was not correct to say that she saw the police and the dead body was traced out when the darkness had already set in. According to her the police had found out the dead body when it was still the day time.

8. There is a material contradiction in the testimony of Ram Kali, PW-4 over her police statement. When examined by police under Section 161 Cr.P.C., she had stated that the accused persons and Rajaram had sat down below the babool tree near her field and then she had talked to Rajaram. When confronted she denied having made such a statement. Contradiction in her police statement has been proved by the investigating officer. It appears to be highly unnatural so far as Ram Kali is concerned that having seen her son-in-law being taken away by three culprits in such circumstances in which a serious harm to Rajaram could be clearly apprehended she did not speak even to her son, who was present there itself and did not tell him what she had seen.

9. Thus, we are left with the sole testimony of Kilol Singh, PW-1 who is related with the deceased and whose relationship with the accused persons was certainly strained since before the incident in as much as the accused persons were suspecting Rajaram to have been instrumental in causing the death of their brother at the hands of the police. A perusal of the site plan shows that the deceased was forcibly carried away by the accused persons for a distance of few kilometres on the village path, which is surrounded by fields of different villagers. The fields are all cultivated and at the time of the incident crops were standing thereon. Ordinarily the villagers would be on their fields watching and guarding their crops. No effort appears to have been made by the investigation to find out and record the statements of such other witnesses, who might have seen Rajaram being taken or dragged away on the village path situated amongst the fields of the villagers. No person from Indergarh, where Rajaram used to live and wherefrom he was kidnapped by the accused persons, has been interrogated during investigation or examined in court. On such evidence it is difficult to draw an inference that the deceased was last seen with the accused persons.

10. The accused persons are said to have been armed with country-made pistols. It sounds unnatural that the deceased was dragged from the village and taken to some secluded area for being killed though the accused persons were dare devils and absconding offenders. The deceased has not suffered any injury caused by fire arms. The deceased has sustained seven injuries by sharp weapon. No effort appears to have been made during investigation to trace out or recover the weapon by which the injuries were caused to the deceased.

11. The judgment of the High Court at one place mentions that the accused appellant was absconding and that too is a piece of incriminating circumstantial evidence. This observation is based solely on the fact that accused-appellant was arrested after about a month from the date of the incident. But there is no evidence adduced to draw an inference of absconding against the accused. Nobody has deposed to any attempt having been made to arrest or find out the whereabouts of the accused-appellant after the incident. No evidence has been adduced to show that between the date of incident and the date of arrest the accused appellant was not available at his ordinary residence. In the absence of such evidence an inference of absconding against the accused-appellant cannot be drawn.

12. As we have already noticed, we are left with the sole testimony of Kilol Singh, PW-1, Munni Patel, who could have corroborated his testimony has not been examined. The only other witness we have already seen has turned hostile. Ram Kali, PW-4 too does not fully support Kilol Singh and rather contradicts him on a material part of the story. The conduct of Ram Kali, PW-4 as deposed to by herself does not inspire confidence. The singular testimony of Kilol Singh, PW-1 cannot be treated to be of such sterling character as to form safe basis for convicting the accused-appellant. From such evidence available on record, an inference as to the deceased having been last seen in the company of the accused persons cannot be drawn and, therefore, the conviction of the accused appellant cannot be sustained.

13. The appeal is allowed. The conviction of the accused-appellant under Section 302 of the IPC and sentence of life imprisonment passed thereon are set aside. The accused-appellant is acquitted. He shall be set at liberty forthwith if not required to be detained in connection with any other case.