Faddi

Vs

The State of Madhya Pradesh

Criminal Appeal No. 210 of 1963

(M. Hidayatullah, Raghuvar Dayal JJ)

24.01.1964

JUDGMENT

RAGHUBAR DAYAL J. –

Faddi appeals, by special leave, against the order of the High Court of Madhya Pradesh confirming his conviction and sentence of death under s. 302 I.P.C. by the Additional Sessions Judge, Morena.

Jaibai, widow of Buddhu, began to live with Faddi a few years after the death of her husband Buddhu. Faddi and Jaibai at first lived at Agra, but later on shifted to Morena. Jaibai had a son named Gulab, by Buddhu. Gulab was aged 11 years and lived in village Torkheda at the house of his phupa Ramle. He was living there from Sawan, 1961.

Gulab's corpse was recovered from a well of village Jarah on January 21, 1963. It reached the mortuary at Morena at 5-15 P.M. that day. It is noted on the post-mortem report that it had been despatched from the place of occurrence at 1 P.M. Dr. Nigam, on examination, found an injury on the skull and has expressed the opinion that the boy died on account of that injury within two or three days of the post-mortem examination. He stated in Court that no water was found inside either the lungs or the abdomen or the larynx or in the middle ear. This rules out the possibility of Gulab's dying due to drowning.

As a result of the investigation, the appellant and one Banwari were sent up for trial for the murder of Gulab. It is interesting to observe the course of the investigation. The police knew nothing of the offence till 9 P.M. on January 20, 1963, when the appellant himself went to the police station, Saroichhola, and lodged a first information report stating therein that on peeping into the well near the peepul tree of Hadpai on the morning of January 20, 1962, he found his son lying dead in the well. Earlier, he had narrated the events leading to his observing the corpse and that narration of facts accused Ramle, Bhanta and one cyclist of the offence of murdering the boy Gulab. It was this information which took the police to the well and to the recovery of the corpse.

The police arrested the persons indicated to be the culprits, viz., Ramle, Bhanta and the cyclist, who was found to be Shyama, by January 26. These persons remained in the lock-up for 8 to 11 days. In the meantime, on January 26, the investigation was taken over, under the orders of the Superintendent of Police, by the Circle Inspector, Nazal Mohd. Khan from Rajender Singh, who was the Station Officer of Police Station, Saraichhola. The Circle Inspector arrested Faddi on January 27. The other arrested persons were got released in due course. Faddi took the Circle Inspector to the house and, after taking out a pair of shorts of Gulab, delivered them to the Circle Inspector. Ramle, Bhatta alias Dhanta and Shyamlal have been examined as prosecution witnesses

Nos. 15, 4 and 5 respectively.

The conviction of the appellant is based on circumstantial evidence, there being no direct evidence about his actually murdering Gulab by throwing him into the well or by murdering him first and then throwing the dead body into the well. The circumstances which were accepted by the trial Court were these :

> 1. Faddi went to the house of Ramle at about noon on 19th January, 1962 and asked Ramle to send the boy with him. Gulab was at the time in the fields. After meals, Faddi left suddenly when Shyama arrived and gave a message to Ramle from Gulab's mother that the boy be not sent with any one. Faddi caught hold of Gulab from the fields forcibly and took him away. It may be mentioned here that one Banwari who has been acquitted is also said to have been with Faddi at this time.
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> 2. Gulab had not been seen alive subsequent to Faddi's taking him away on the afternoon of January, 19. His corpse was recovered on the forenoon of January, 21. Faddi had not been able to give any satisfactory explanation as to how he and Gulab parted company.
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> 3. Faddi knew the place where Gulab's corpse lay. It was his information to the Police which led them to recover the corpse. His statement that he had noted the corpse floating on the morning of January 20 was untrue, as according to the opinion of Dr. Nigam, the corpse could come up and float in the water approximately after two days. The witnesses of the recovery deposed that they could not see the corpse floating and that it had to be recovered by the use of angles.
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> 4. The accused's confession to Jaibai and two other witnesses for the prosecution viz., Jimipal and Sampatti about his killing Gulab.
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> 5. The pair of shorts recovered was the one which Gulab was wearing at the time he was taken away by Faddi.

The High Court did not rely on the confession and on the recovery of the pair of shorts from the appellant's possession, and we think, rightly. The evidence about the confession is discrepant and unconvincing. Bhagwan Singh and Ramle deposed that the deceased was wearing the pair of shorts recovered, at the time the appellant took him away. Bhagwan Singh did not go to the test identification. The accused was not questioned about the deceased wearing these pair of shorts at the time he was taken away from the village.

The High Court considered the other circumstances sufficient to establish that the appellant had committed the murder of Gulab. If therefore confirmed the conviction and sentence.

Learned counsel for the appellant has taken us through the entire evidence and commented on it. He has contended that the evidence is unreliable, and should not have been accepted by the Courts below. We have considered his criticism and are of opinion that the Courts below have correctly appreciated the evidence. It is not necessary for us to discuss it over again.

It may be mentioned now that the appellant denies having gone to Ramle's house in village Torkheda and to have taken away Gulab from that village forcibly on the afternoon of January 19, but admits his lodging the report, and the recovery of the dead body from the well with the help of

the angle. He however states that he had lodged the report on the tutoring of one Lalla Ram of Utampur. He has neither stated why he was so tutored nor led any evidence in support of his allegation. In his report the appellant admitted the prosecution allegations up to the stage of his forcibly taking away Gulab from village Torkheda. He then stated that Ramle, Bhanta and the third person, viz., Shyamlal threatened him with life, took out the pyjama and half-pant from the body of Gulab and taking the boy with them remained sitting on the well near the peepul tree of Hadpai. The appellant kept himself concealed from their view, nearby. He heard the sound of something being thrown into the well. Those three persons then ran away, but he himself remained sitting there throughout the night and then, on peeping into the well next morning, observed the corpse of his son in the well. He then went to Morena, consulted one Jabar Singh, Vakil, and one Chhotey Singh and was advised to lodge the report. He definitely accused Ramle, Bhatta and the cycle-rider with killing his son Gulab by throwing him into the well.

This report is not a confessional statement of the appellant. He states nothing which would go to show that he was the murderer of the boy. It is the usual first information report an aggrieved person or someone on his behalf lodges against the alleged murderers. The learned Sessions Judge and the High Court considered the appellant's statements in this report which went to explain his separation from Gulab on account of the conduct of Ramle and others and came to the conclusion that those statements were false. This was in a way justified as the burden lay on the appellant to account for the disappearance of Gulab when the prosecution evidence showed that the appellant had taken Gulab with him. Besides, what the appellant had stated in the report, he had given no explanation for the disappearance. Of course, he had denied that he took Gulab with him. The evidence about that aspect of the case consists of the statement of Ramle, Shyamlal and Bhagwan Singh which have been accepted by the Courts below.

The High Court also took into consideration the fact that the appellant knew where the deceased's body was as it was on what he had stated in the report that the police went to the well of village Jarah and recovered the dead body. The accused gave no explanation in Court as to haw he came to know about it. What he had stated in the report had been considered and found to be untrue and specially in view of the appellant's own conduct. It has been rightly stressed that if Gulab had been forcibly taken away from him by Ramle and others, the appellant ordinarily would have gone and taken some action about it, without wasting his time in just following those people. Even if he felt interested in following them and had heard the sound of something being thrown inside the well and had also seen those persons running away, he had no reason to remain hidden at that spot the whole night. He should have informed people of what he had observed as he must have suspected that these persons had played mischief with Gulab.

The High Court also took into consideration the incorrectness of the appellant's statement that he observed the dead body floating in the well on the morning of January 20. It is contended for the appellant that the first information report was inadmissible in evidence and should not have been therefore taken on the record. In support, reliance is placed on the case reported as Nisar Ali v. State of U.P. ((1957) S.C.R. 657). We have considered this contention and do not see any force in it.

The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and s. 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court, viz., how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements of the prosecution witnesses is correct of not. Admissions are

admissible in evidence under s. 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to s. 21 are of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in s. 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.

The Privy Council in very similar circumstances, held long ago in Dal Singh v. King Emperor (L.R. 44 I.A. 137) such first information reports to be admissible in evidence. It was said in that case at p. 142 :

> "It is important to compare the story told by Dal Singh when making his statement at the trial with what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information of charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on Dal Singh on his way from Hardua to Jubbulpore. As such the statement is proper evidence against him........
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> It will be observed that this statement is at several points at complete variance with what Dal Singh afterwards stated in Court. The Sessions Judge regarded the document as discrediting his defence. He had to decide between the story for the prosecution and that told for Dal Singh."

Learned counsel for the appellant submits that the facts of that case were distinguishable in some respects from the facts of this case. Such a distinction, if any, has no bearing on the question of the admissibility of the report. The report was held admissible because it was not a confession and it was helpful in determining the matter before the Court.

In Nisar Ali's case ((1957) S.C.R. 657) Kapur J. who spoke for the Court said, after narrating the facts :

> "An objection has been taken to the admissibility of this report as it was made by a person who was a co-accused. A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under s. 157, Evidence Act, or to contradict it under s. 145 of that Act. It can not be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence."

It is on these observations that it has been contended for the appellant that his report was inadmissible in evidence. Ostensibly, the expression 'it cannot be used as evidence against the maker at the trial if he himself becomes an accused supports the appellant's contention. But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record or that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course, a

confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused. Further, the last sentence of the above-quoted observation is significant and indicates what the Court meant was that the first information report lodged by Qudratullah, the co-accused, was not evidence against Nisar Ali. This Court did not mean - as it had not to determine in that case - that a first information report which is not a confession cannot be used as an admission under s. 21 of the Evidence Act or as a relevant statement under any other provision of that Act. We fine also that this observation has been understood in this way by the Rajasthan High Court in State v. Balchand (A.I.R. 1960 Raj. 101) and in State of Rajasthan v. Shiv Singh (A.I.R. 1962 Raj. 3) and by the Allahabad High Court in Allahdia v. State (1959 All. L.J. 340).

We therefore hold that the objection to the admissibility of the first information report lodged by the appellant is not sound and that the Courts below have rightly admitted it in evidence and have made proper use of it.

The circumstances held established by the high Court are sufficient, in our opinion, to reach the conclusion that Gulab was murdered by the appellant who was the last person in whose company the deceased was seen alive and who knew where the dead body lay and who gave untrue explanation about his knowing it in the report lodged by him and gave no explanation in Court as to how he separated from the deceased.

We therefore dismiss the appeal.

Appeal Dismissed.

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