

Narain Singh Vs. State

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Court : Rajasthan Jodhpur

Decided On : Apr-24-2014

Appellant : Narain Singh

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Narayan Singh versus State of Rajasthan D.B.Criminal Jail Appeal No.1105/2004 against the judgment dated 26.10.2004 passed by Additional Sessions Judge (Fast Track).Jalore, in Sessions Case No.[33/2004].68/2004.

Date of Judgment :: 24th April, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE ATUL KUMAR JAIN Mr.M.K.Garg, for the appellant.

Mr.Vishnu Kachhawaha, Public Prosecutor, for the State...BY THE COURT : (PER HON'BLE MATHUR,J.) This appeal is directed to challenge the judgment dated 26.10.2004 passed by learned Additional Sessions Judge (Fast Track).Jalore recording conviction of accused Narayan Singh for the offence punishable under Section 302 Indian Penal Code and awarding sentence to undergo life term imprisonment with a fine of Rs.1000/- with default stipulation.

The factual matrix necessary to be noticed is that Shri Kapuraram, real brother of accused Narayan Singh, submitted a written report (Ex.P/2) at Police Station NoSr.-2- on 12.6.2004 with assertion that at about 02:00 PM of the same day Shri Narayan son of Udaji came to him and conveyed that at about 01:00 PM while plowing his agriculture field he heard a loud scream, thus, rushed towards the hamlet of the informant where he found accused Narayan Singh coming out.

Narayan Singh stated that he has killed his wife Smt.

Poorra being a lady of easy virtues.

As per the informant, accused Narayan Singh was a person of lethargic tendencies and was in habit to remain under intoxication.

On basis of this information a case was lodged and after usual investigation a police report was filed before the court competent.

The case being sessions triable was committed to the court of Sessions.

The court after affording an opportunity of hearing to the accused charged him for an offence punishable under Section 302 Indian Penal Code.

On denial of the same trial commenced as desired.

The prosecution supported its case by getting testimony of 16 witnesses examined and exhibiting 31 documents.

The accused while availing opportunity to explain adverse and incriminating circumstances in prosecution evidence termed the entire evidence false and pleaded his innocence.

No evidence in defence was adduced.

The trial court after examining the entire material available on record and considering the rival submissions recorded conviction and awarded sentence.

-3- In appeal, the only argument advanced by learned counsel for the appellant is that conviction of the accused is founded on the evidence relating to extra judicial

confession and that being a very weak piece of evidence is not sufficient to record conviction.

According to the learned counsel the extra judicial confession said to be made by the accused is also not supported by any other corroborating evidence, therefore, the trial court erred while resting conviction upon it.

On the other hand, learned Public Prosecutor submits that extra judicial confession made by accused before Shri Narayan Singh (PW-5) does not suffer from any discrepancy and also bear requisite confidence to rely upon, hence the finding arrived by the trial court warrants no interference.

Heard learned counsel for the appellant, learned Public Prosecutor and also examined the record in lucid.

In view of the medical evidence adduced by Dr.

M.R.Parmar (PW-6).there is no doubt about homicidal death of Smt.

Pooru wife of the accused.

The important issue for consideration before this Court is about recording conviction of the accused for a serious offence of murder by relying upon the sole evidence pertaining to extra judicial confession.

-4- Before discussing the facts relevant in present case, it shall be appropriate to mention that though the extra judicial confession is a weak piece of evidence, but on being adequately proved like any other fact, it can very well be relied upon to settle a conviction.

Hon'ble Supreme Court in Gura Singh v.

State of Rajasthan, (2001).SCC205 while examining evidentiary value and strength of an extra judicial confession, held as under:- 6.

It is settled position of law that extra- judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the

crime alleged.

Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement.

Relying upon an earlier judgment in Rao Shiv Bahadur Singh v.

State of Vindhya Pradesh, this Court again in Maghar Singh v.

State of Punjab, held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence.

Corroboration of such evidence is required only by way of abundant caution.

If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence -5- alone.

In Narayan Singh v.

State of M.P., this Court cautioned that it is not open to the court trying the criminal case to start with presumption that extra judicial confession is always a weak type of evidence.

It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession.

The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession.

In Kishore Chand v.

State of H.P., this Court held that an unambiguous extra judicial confession possesses high probative value force as it emanates from the person who

committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity.

However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26.

The Court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true.

All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised.

To the same effect is the -6- judgment in Baldev Raj v.

State of Haryana.

After referring to the judgment in Piara Singh v.

State of Punjab, this Court in Madan Gopal Kakkad v.

Naval Dubey, held that the extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.

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Hon'ble Apex Court while considering the same issue in Sahadevan & Anr.v.State of Tamil Nadu, AIR 2012 SC2435 concluded that it is a settled principle of criminal jurisprudence that extra- judicial confession is a weak piece of evidence.

Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on a extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence.

If, however, the extra-judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession.

In such circumstances, the court would be fully justified in ruling such evidence out of consideration.

The ratio decidendi of the judgment aforesaid as abstracted in paras 21 and 22, is as under:-

Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind.

The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime.

The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility.

The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it.

[Ref.

Sk.

Yusuf v.

State of W.B. [(2011) 11 SCC754 and Pancho v.

State of Haryana [(2011) 10 SCC165.

22.

Upon a proper analysis of the above- referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession

an admissible piece of evidence capable of forming the basis of conviction of an accused.

These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

The Principles (i) The extra-judicial confession is a weak evidence by itself.

It has to be examined by the court with greater care and caution.

-8- (ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

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In Munna Kumar Upadhyaya alias Munna Upadhyaya v.

State of Andhra Pradesh, AIR 2012 SC2470 the Hon'ble Supreme Court reiterated that the extra judicial confession must be established to be true and made voluntarily and in a fit state of mind.

The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime.

The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility.

The extra-judicial confession should inspire confidence and the Court should find out whether there are other cogent circumstances on record to support it.

While relying upon the cases of Gura Singh (supra) and Sahadevan (supra).the Apex Court in -9- Jagroop Singh v.

State of Punjab, AIR 2012 SC2600 found an extra judicial confession made after the lapse of 18 days reliable while holding that the court on examination of the evidence adduced, if, is satisfied that extra judicial confession was true and voluntary, then conviction can be founded on such evidence alone.

To sum up, it can be said that the extra judicial confession though is a weak piece of evidence, but if, that inspires confidence being made voluntarily, truthfully, confidently and that does not suffer from any discrepancy, then the Court on being satisfied about credibility of such evidence may base its finding of conviction on it.

It shall be desirable to have chain of cogent circumstances and other corroborating evidence to make an extra judicial confession more strengthening, however, that is an additional factor.

We are required to examine the case of the present accused appellant in light of the law discussed above.

As per Shri Narayan Singh (PW-5).on fateful day, while plowing at his agriculture field with tractor, he heard loud scream from the hamlet of Punamaji.

He stopped the tractor and rushed to the -10- hamlet, where he found accused Narayan Singh coming out.

He stated to this witness that he has killed his wife Poora being a lady of easy virtues.

Accused Narayan Singh further told him to tell this fact to other family members.Accused then fled from the spot.

This witness then saw dead body of Smt.

Poora from little distance and then he came to Kapuraram and narrated him the entire incident.

As per this witness accused Narayan Singh was in habit of consuming 'ganja' and of quarrelling with his wife.

The statement of this witness does not suffer from any discrepancy or weakness that may be sufficient to ignore it.

As a matter of fact the statement given by this witness is quite natural, truthful and unambiguous.

He was not having any grudge, vengeance, rivalarity or enmity with accused, thus, he is also not having any reason to make a false statement.

Smt.

Pepi Devi (PW-2) is mother of accused Narayan Singh.

Smt.

Pepi Devi while deposing before the court stated that her son accused Narayan Singh was in habit of remaining under intoxication of 'ganja'.

He was also in habit of beating his wife Poora.

On the fateful day, Narayan Singh son of Udaji informed Kapuraram, her other son, that accused Narayan Singh has killed Smt.

Poora.

Kapuraram then conveyed this incident to her.

-11- Kapuraram (PW-4) is a real brother of accused Narayan Singh.

According to this witness, his brother Narayan Singh was unemployed.

He was in habit of consuming 'ganja' and 'charas' and to remain in company of 'babas' and 'sadhus'.

On the fateful day Narayan Singh came to him and conveyed the fact about killing of Smt.

Poorra by accused Narayan Singh.

As per this witness Narayan Singh (PW-5) narrated the entire incident in detail and after knowing that, this witness rushed to his hamlet where dead body of Smt.

Poorra was lying.

The police also recovered broken pieces of bangles and stick from the spot.

Wearings of deceased Smt.

Poorra and a blood stained shirt were also seized by the investigating agency.

The evidence noticed above indicates that a neighbour who is otherwise not having any enmity, grudge, vengeance or rivalarity with the accused, immediately after seeing dead body of Poorra and hearing the confession made by the accused, came to a family member of the accused and narrated all the facts of the incident.

The other witnesses are kith of the accused.

These witnesses narrated all the facts with all truthfulness, honesty and without any bias of relation.

Smt.

Pepi Devi (PW-2) is mother of accused but she chose to state true facts.

In quite -12- unambiguous terms she has narrated all the facts which were told to her by Kapuraram.

This witness quite frankly stated that her son was usually consuming 'ganja' and was beating his wife often.

Kapuraram (PW-4) is real brother of accused.

This witness with all honesty stated the facts which were conveyed to him by Narayan Singh (PW-5). This witness also stated that his brother Narayan Singh was in habit of consuming 'ganja' and was of lethargic tendencies.

He was in habit of remaining in company of 'sadhus' and 'babas'.

He was also in habit of beating his wife quite often.

We do not find any reason to disbelieve testimony of any of the three witnesses discussed above.

The evidence adduced by these witnesses is cogent, reliable, unambiguous, confident and without any discrepancy.

No reason also exists for them to say any wrong or to make false statement.

The extra judicial confession made by the accused before Narayan Singh in the set of existing facts is reliable and is sufficient enough to record the conviction.

In light of the discussions made above, we do not find any wrong with the findings arrived by the trial court.

The appeal, thus, is having no merit, hence dismissed.

(ATUL KUMAR JAIN),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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