

Munna Pandit Vs. State

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Court : Delhi

Decided On : May-13-2014

Judge : Sanjiv Khanna

Appellant : Munna Pandit

Respondent : State

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI CrI. Appeal No.100/2014
Reserved on:

15. h April, 2014 Date of Decision:

13. h May, 2014 % Munna Pandit ThroughAppellant Ms. Aishwarya Rao, Advocate. Versus State Through Respondent Ms. Rajdipa Behura, APP. CORAM: HONBLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G. P. MITTAL SANJIV KHANNA, J.

By the impugned judgment dated 1st October, 2013, Munna Pandit has been convicted under Section 302 Indian Penal Code (IPC for short) for the murder of his brother Megh Nath Pandit on 3rd May, 2011. By order of sentence dated 7th October, 2013, he has been sentenced to life imprisonment but no fine has been imposed.

2. The impugned judgment and the prosecution primarily rely upon the testimonies of Lal Babu Shah (PW6) and Mukesh (PW7) who were residing with the appellant Munna Pandit and the deceased Megh Nath Pandit at factory No.193, Sector 3, DSIDC Bawana, Delhi. Lal Babu Shah (PW6) and Mukesh (PW7) are not the eye witnesses and do not claim that they had seen the appellant inflicting injuries on the deceased but have deposed about purported motive and extra judicial confession made to them by the appellant. The prosecution also relies upon recovery of blood stained clothes of the appellant pursuant to his disclosure statement (Ex. PW17/A) and the FSL report (Ex. PW22D and PW22/E), as per which human blood of group O was found on the T-shirt (Ex. 9B) recovered pursuant to the disclosure statement.

3. We have examined the statements of Lal Babu Shah (PW6) and Mukesh (PW7) but observe that their court depositions on the question of motive and extra judicial confession are untrustworthy, if not dubious. Both Lal Babu Shah (PW6) and Mukesh (PW7) were working in factory No.H-167, Sector 3, Bawana and belonged to the same village as that of the appellant and the deceased. They have deposed that on 3rd May, 2011, both of them returned from duty at about 9.15 PM and found Megh Nath's dead body in a pool of blood. The appellant Munna was not present there. They came down and went back to their factory where they met with one Ashok (PW3). Mukesh (PW7) from his mobile phone with sim card of Megh Nath, made a telephone call to Munna but could not speak due to inadequate balance. Thereupon, appellant Munna called Mukesh (PW7). Munna was informed that Megh Nath had been killed. Within a few minutes, the appellant came to the factory H-193 Sector 3, DSIDC, Bawana and all of them went up to the room. They subsequently came down and appellant Munna asked Raj Kumar Jha to call the police at No.100. The said Raj Kumar Jha did not depose and appear as a witness. It is claimed that Raj Kumar Jha had a stall outside the factory/residence, where the appellant, deceased, PW6 and PW7 used to live.

4. Lal Babu Shah (PW6) and Mukesh (PW7) have stated A. The appellant had confessed to Lal Babu Shah (PW6) and Mukesh (PW7) that he had committed the murder and threatened/warned them not to tell this fact to the police or they would also suffer the same consequences. B. Appellant and deceased though brothers

used to quarrel with each other. On 13-14th April, 2011, Munna Pandit had learnt on telephone that his son had expired. He demanded money from Megh Nath to go to the village. Megh Nath had refused stating that it would serve no purpose and his child would not be reborn. Appellant had then retorted that Megh Nath would understand if he had a child. Megh Nath, responded by asking whether the appellant knew that the child was his?. On 3rd May, 2011, in the morning both of them had quarreled and appellant had threatened Megh Nath that he would kill him. They had then intervened and thereafter left for work. C. Munna had asked Raj Kumar Jha to tell the police that the deceased had been killed by 4-5 persons and accordingly the said information was conveyed by Raj Kumar Jha to the police on number 100.

5. Learned counsel for the appellant has contested the testimony of Lal Babu Shah (PW-6) and Mukesh (PW-7) on A and B above for several reasons and grounds. We find merit in the said submissions for reasons set out below. (a) The FIR in question was registered on the basis of statement made by the appellant-Munna Pandit, which was converted into rukka and thereupon tehrir was written and First Information Report was recorded on 4th May, 2011 at 15 minutes past mid night (Exhibit PW-1/B). It is apparent that till then, PWs-6 and 7 had not uttered a word about the alleged extra judicial confession. (b) Till the FIR or rukka was prepared, PWs-6 and 7 had not raised suspicion or doubt before the police officers on the appellant. The police officers also did not doubt or suspect the appellants involvement. (c) It is difficult to perceive and believe that in normal course, the appellant would confess to PWs-6 and 7 that he had killed his brother. There was no cause, ground or reason for the appellant to make the said confession. In fact, his confession or admission would have surely implicated and ensured his arrest. (d) There is no evidence or material to show that the appellant had developed emotional bonding and relied upon PW-6 and PW-7 for support. (e) PWs 6 and 7 both were also suspects. (f) PWs-6 and 7 have deposed that the appellant had threatened them not to tell the police about the confession/motive otherwise they would be killed in the same manner. This again is rather abnormal and strange as it is apparent that PWs6 and 7 were friends and were two in number. In case any such threat was extended, PW-6 and PW-7 could/would have immediately spoken as they were the suspects and involvement of the appellant

was not contemplated or doubted till the FIR was recorded. (g) PWs-6 and 7 have deposed about the motive and the cause why appellant-Munna Pandit had killed his brother. On the said aspect/motive, we are constrained to make the following observations:(i) There is no evidence or material to show that the son/child of the appellant had expired in the village. No such material has been placed on record. (ii) PW-7 Mukeshs statement under Section 161 Cr.P.C. (Exhibit PW-7/D1) was recorded after the arrest of the appellant on 4th May, 2011 at 8 P.M. vide arrest memo (Exhibit PW-17/D). PW-7 in his statement (Exhibit PW7/D1) did not mention regarding death of the child of appellant, request for money, refusal of Megh Nath and the words purportedly exchanged between the deceased and the appellant. (iii) Similarly, we have examined the two statements of Lal Babu Shah (PW-6) under Section 161 Cr.P.C. Even in the second statement of PW-6, which was recorded after the arrest/disclosure statement of the appellant, there were no such averments. PW-6, however, was not confronted with his statement under Section 161 Cr.P.C. in the cross-examination. (iv) Both PWs-6 and 7, it appears, have exaggerated and have made up a story of death of the child of Munna Pandit in the village and the resultant conversation, which became the motive for the appellant-Munna to kill his brother. Thus, we have grave doubt and hesitation in believing the said story regarding death of the child of Munna Pandit and the resultant conversation between the appellant-Munna and Megh Nath as true and correct. No question was put to Munna Pandit in his statement under Section 313 Cr. P.C. relating to death of his son and consequent exchange of words between him and the appellant. It appears that the trial court felt that the aforesaid facts have not been proved or were beyond the charge-sheet as originally filed. (h) It is not necessary for the prosecution to prove motive in each case, yet motive may have relevance when it is alleged that the appellant; brother of the deceased, was responsible and was the killer. As per the prosecution version this was a cause and reason, which had propelled and moved the appellant-Munna to commit the said offence. However, the prosecution has not satisfactorily proved and established the cause or motive.

6. As per Police Control Room form (Exhibit PW-13/A) call was received at No.100 at about 2221 hours wherein the caller had informed that perhaps a boy has been murdered, 3-4 boys had come to commit the murder and the wall is smeared with

blood. As per the prosecution, the said call was made by one Raj Kumar Jha, who was running a small shop outside factory No.193, Sector 3, DSIDC Bawana, Delhi. The said Raj Kumar Jha could not be produced as a witness because he was untraceable (see order dated 16th October, 2012 of the trial court). Thus, as per Police Control Room form, one Raj Kumar Jha had informed that, 3-4 boys had probably committed the murder. PW6 and PW7s assertion that the said Raj Kumar Jha had stated wrong facts at the behest of the appellant is again unnatural and not acceptable. Raj Kumar Jha had made the call from his mobile phone, and there was no reason or cause for him to convey wrong information and be in difficulty.

7. Extra judicial confession when clearly proved by unimpeachable testimony and without slightest doubts, is given high evidentiary value but when confession is propounded and spoken by paid informers, treacherous associates, angry victims or over-jealous officers of the law etc., suspicion is aroused and one must proceed with caution. In such cases prudence and caution is required before acting upon extra judicial confession and some sort of corroboration by credible evidence should be insisted upon. Thus, when witnesses claims that extra judicial confession was made to them, the Court has to examine and decide whether the same should be relied upon. For this confession must be proved like any other fact and its reliability depends upon the veracity of the witness to whom it has been made. The confession should be voluntary and true and should not suffer from inherent improbabilities. Thus, when extra judicial confession inspires confidence and passes the test of reliability, it can be relied upon but when there are if and buts and suspicious circumstances which create doubt, conviction should not be based solely upon extra judicial confession and courts insist upon corroboration in form of cogent circumstances to support the prosecution version. Such caution may be justified and prudent when there is reason to suspect that the witnesses who have deposed on the extra judicial confession were biased or inimical to the accused and may have motive for attributing unstated self incriminating assertions to the accused. Recently Supreme Court in Sahadevan vs. State of Tamil Nadu (2012) 6 SCC403 held as under:

14. 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 an 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. 15.1. In *Balwinder Singh v. State of Punjab* [1995 Supp (4) SCC259:

1996. SCC (Cri) 59]. this Court stated the principle that: (SCC p. 265, para 10)

10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.

15.2. In *Pakkirisamy v. State of T.N.* [(1997) 8 SCC158:

1997. SCC (Cri) 1249]. the Court held that: (SCC p. 162, para 8)

8. It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.

15.3. Again in *Kavita v. State of T.N.* [(1998) 6 SCC108:

1998. SCC (Cri) 1421]. the Court stated the dictum that: (SCC p. 109, para 4)

4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the [witnesses]. to whom it is made.

15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of*

Rajasthan v. Raja Ram [(2003) 8 SCC180:

2003. SCC (Cri) 1965]. stated the principle that: (SCC p. 192, para 19)

19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.

The Court further expressed the view that: (SCC p. 192, para 19)

19. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused. 15.5. In Alok Nath Dutta v. State of W.B. [(2007) 12 SCC230: (2008) 2 SCC (Cri) 264]. the Court, while holding the placing of reliance on extra-judicial confession by the lower courts in absence of other corroborating material as unjustified, observed: (SCC pp. 265-66, paras 87 & 89)

87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; and (iii) corroboration. *** 89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.

15.6. Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan [(2010) 10 SCC604: (2011) 1 SCC (Cri) 79]. held that: (SCC p. 611, paras 29-30)

29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide *Thimma and ThimmaRaju v. State of Mysore* [(1970) 2 SCC105:

1970. SCC (Cri) 320]. , *MulkRajv. State of U.P.* [AIR 1959 SC902:

1959. Cri LJ1219 , *Sivakumar v. State* [(2006) 1 SCC714: (2006) 1 SCC (Cri) 470]. (SCC paras 40 and 41 : AIR paras 41 and 42), *Shiva KaramPayaswamiTewari v. State of Maharashtra* [(2009) 11 SCC262: (2009) 3 SCC (Cri) 1320]. and *Mohd. Azad v.State of W.B.* [(2008) 15 SCC449: (2009) 3 SCC (Cri) 1082].].

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.

15.7. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in *RameshbhaiChandubhaiRathod v. State of Gujarat* [(2009) 5 SCC740: (2009) 2 SCC (Cri) 881]. held as under: (SCC pp. 772-73, para 53)

53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the retracted confession, unless the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.

15.8. 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: (2011) 3 SCC (Cri) 620]. and Pancho v. State of Haryana [(2011) 10 SCC165: (2012) 1 SCC (Cri) 223]. .) The principles 16. Upon a proper analysis of the aboveresferred 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: (i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution. (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.

8. In the facts of the present case, we notice that the appellant, Lal Babu Shah (PW6) and Mukesh (PW7), it appears were suspects. Therefore, their interest conflicted and to that extent, it cannot be said that the witnesses PW6 and PW7 were unbiased and not inimical to the appellant. There was a conflict and the depositions by PW6 and PW7 implicating the appellant would have the effect of exonerating and protecting the said witnesses. In this context, the initial silence of PW6 and PW7 assumes importance. In addition there was no cause and it was rather unnatural for the appellant to confess and admit before PW6 and PW7 that he was the perpetrator and had killed his own brother. The so-called confession as per PW6 and PW7 was made without much hesitation and within a short period of time. The trustworthiness of the deposition made by PW6 and PW7 to this extent is rather dubious and not merely questionable. It is in this context, that the prosecution probably felt the necessity to refer and rely upon the motive which had propelled the appellant to commit the said offence. On motive, Lal Babu Shah (PW6) and Mukesh (PW7) in their statements under Section 161 Cr. P.C. were

silent but, before the court they asserted that the appellant had grievance against his brother Megh Nath Pandit as the latter had refused to give money or fund the appellants return trip to his village upon the death of his son. The said assertion/motive as stated has not been proved and rather the allegation made is specious. Further as noticed above, the recording in the Police Control Room (Ex. PW13/A) made at 22.21 Hrs. on phone call by Raj Kumar Jha does not support the assertions made in the confession. As per the said statement Megh Nath Pandit was murdered by 3-4 boys. Deposition of PW6 and PW7 that the appellant had asked the said Raj Kumar Jha to make a false complaint/story, appears to be implausible and unusual. The said Raj Kumar Jha did not appear as a witness, as it was stated that he was untraceable. Hence, the aforesaid assertion by PW6 and PW7 remains uncertain. It would not be correct to per se accept the aforesaid statement of PW6 and PW7.

9. The last piece of corroborative evidence in the present case relied upon by the prosecution is the recovery of blood stained clothes which as per the FSL report were stained with blood of group O as that of the deceased. As per the prosecution case and as deposed by Const. Satbir (PW17), the clothes were recovered from an empty plot behind H-194, Sector 3, DSIDC, Bawana. Deposition by Insp. Kapil Dev (PW22) is on similar lines. However, as per the police version there was a lot of blood in the room where the body of the deceased was found. Blood had spilled all over the wall, clothes etc. The appellant had visited the room along with Lal Babu Shah (PW6) and Mukesh (PW7). Blood stains normally should have come on the clothes worn by the appellant if he had gone to the room or on the clothes of the appellant which were lying in the room. In the photographs, blood on the clothes lying in the room is visible. No independent witnesses were present at the time of recovery of the said clothes. In these circumstances, presence of the blood etc. on the clothes, do not inspire confidence and grave doubt persists/remains.

10. The Trial Court in the impugned judgment has referred to the last seen theory and failure of the appellant to offer any explanation for an additional or missing link evidence. We do not think that in the facts of the present case last seen or missing link evidence theory relying upon Section 106 of the Evidence Act is applicable.

The deceased Megh Nath used to reside in the property where he was found murdered. The appellant had gone to work and was working when this information was received. The appellants working hours were from 9 PM to 9 AM every day. Lal Babu Shah (PW6) and Mukesh (PW7) had gone to the said room and as per their testimony Megh Nath Pandit was found lying in a pool of blood. FIR in question was lodged on the statement of the appellant. The appellant in his statement under Section 313 Cr.P.C. had stated that he had very cordial relations with his brother and they were staying together. They did not have any argument or quarrel. He came to know about the murder of his brother through his roommates Lal Babu Shah (PW6) and Mukesh (PW7) and they might have killed him. He fully cooperated and remained in the house. We do not think that in the facts of the present case, the onus by any stretch can be put on to the appellant to explain and state how the deceased was murdered. This would be contrary to law. In addition, Police Control Room form (Ex. PW13/A) recorded at 22.21 hours records a different set of facts as stated/informed by Raj Kumar Jha.

11. In view of the aforesaid reasons, we accept the present appeal and conviction of the appellant Munna Pandit for murder of his brother Megh Nath Pandit on 3rd May, 2011, is set aside. Appellant will be set at liberty forthwith unless required to be detained in any other case in accordance with law. (SANJIV KHANNA) JUDGE (G. P. MITTAL) JUDGE May 13, 2014 Kkb/VKR

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