

Sakal Deep Vs. U.P. State

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SooperKanoon Citation : sooperkanoon.com/467830

Court : Allahabad

Decided On : Jul-14-1992

Reported in : 1993CriLJ551

Judge : B.L. Yadav and ;I.S. Mathur, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313; [Evidence Act, 1872](#) - Sections 24 to 26 and 27

Appeal No. : Criminal Appeal No. 559 of 1983

Appellant : Sakal Deep

Respondent : U.P. State

Advocate for Def. : Lal Chand Pandey, Adv.

Advocate for Pet/Ap. : Dy. G.A.

Disposition : Appeal allowed

Judgement :

B.L. Yadav, J.

1. This jail appeal has been preferred by Appellant Sakal Deep against the judgment and order dated 12-11-1982 rendered by the Sessions Judge, Jaunpur in Sessions Trial No. 50 of 1981 convicting the appellant under Section 302, I.P.C.

and sentencing him to the Life Imprisonment.

2. Prosecution story as contained in the First Information Report (Ex.Ka. 1) is that Smt. Inri the deceased, was cousin sister of appellant Sakaldeep. She was married to Sidhari, resident of Rupipur, Police Station, Dostpur, District Sultanpur. On 30th of January, 1981, the deceased had come from her father-in-law's house and she stayed in the house of her step-brother, Sakaldeep, appellant. Informant Laldeo (since deceased) and his wife Smt. Sita heard the noise of his sister Inri deceased 'Bachao-bachao, Jan se martey hai' from the house of appellant. He and his wife woke up and ran to the house of the appellant and saw that Sakaldeep was giving Kulhari blows to the deceased. In the mean while Sangram P.W. 2, Bansi P.W. 3 and Jiya Lal also reached there. The appellant gave several blows to the deceased and he ran with axe towards the informant and his wife, they receded. Thereafter he ran away with the axe. The informant and other persons saw the deceased lying dead on the ground. Information of the occurrence could not be furnished in the night but it was furnished on 31st January, 1981, in the morning.

3. The prosecution has examined Smt. Sita P.W. 1, the wife of informant Baldeo (since deceased), Sangram P.W. 2 and Bansi P.W. 3. These are eye-witnesses. P.W. 5 Dr. H. K. Varma, Medical Officer, District Hospital, Jaunpur, conducted the post-mortem examination and prepared the report on February, 1, 1981. He found following ante-mortem injuries:-

1. Multiple bruises and nail marks on the left lower jaw, and both sides of faces crescentic 1/2 cm x 0.3 cm on the left lower jaw and four nail marks in an area of 1/2 cm x 2 cm on left side efface. One linear mark 1/2 cm on the right side face. The face was cynosed and smeared with blood. The hairs were suffused with blood and interwoven.

2. Incised deep wound, 7 cm x 1 cm x muscle (1 1/2 cm) deep on the outer angle of right side mouth, including the upper lip portion.

3. Incised wound, 5 cm x 2 cm x bone out, on the outer and upper part of the left arm and shoulder with tailing inside to a distance of 2 1/2 cm.

4. Incised wound 2 1/2 cm x 1 cm x 1 3/4 cm with tailing to a distance of 3 cm, clean cut, 11/2 cm below the left fore-arm.
5. Linear abrasion, 4 1/2 cm, on the outer part of the left arm.
6. Deep incised wound, 2 1/2 cm x 0.7 cm x 1.5 cm with tailing to a distance of 3 cm x 3 cm, above the posterior fold of the left axilla.
7. Incised deep wound, 3 cm x 0.7 cm. x bone deep, on back of left shoulder.
8. Incised deep wound, 6 cm x 2 cm x incised and bone cut of posterior anterior aspect of left fore-arm, 3 1/2 cm below the elbow joint.
9. Incised deep wound, 4 cm x 1 cm x muscle deep, 3 cm from injury No. 3.

The cause of death was shown by the doctor was shock and haemorrhage as a result of ante-mortem injuries and the throttling.

4. P.W. 10 Lalta Prasad is the witness who stated that the appellant was arrested in his presence and he (appellant) told the Investigating Officer to have over the axe'

^^mlus dqygkMh fudky dj nsusdks dgk mlus vius ?kj ds nfD[ku rjQ okys eM+gs ds Nktu ds chp ls dqYgkM+h fudkydj fn;kA**A

5. P.W. 11 Raj Deo Pandey is the Investigating Officer who, inter alia, stated that the appellant told him to hand over the axe and he took him to his house and took out the axe from the thatch and handed it over to him (Investigating Officer). The other witnesses are formal in nature.

6. The learned Sessions Judge has relied on the aforesaid eye-witnesses, statement of the doctor and the Investigating Officer and has accorded conviction.

7. The appellant in his statement under Section 313, Cr. P.C. has, however, denied that he has committed murder rather when the question was put up to him, why he was implicated? He gave the answer that Laldeo, the husband of P.W. 1 Smt. Sita, his real brother, wanted to usurp his house and land hence he was

falsely implicated. The other question was that Smt. Inri, the deceased, was a lady of bad character.

8. Sri Lal Chand Pandey, the learned counsel (Amicus Curiae) appeared for the appellant and argued that the statements of the witnesses of fact, P.W. 1 Smt. Sita, P.W. 2 Sangram and P.W. 3 Banshi were unreliable. The First Information Report (Ex.Ka-4) is silent about the throttling as the case of the death of the deceased Smt. Inri by asphyxia, rather in the First Information Report, the blows by axe are the only injuries given to the deceased. Dr. H. K. Varma, P.W. 5 has stated that the death was caused by throttling and also by ante-mortem injuries (and by shock and haemorrhage). In his statement, Dr. Varma stated that

^vUnjuh ijh{k.k ls ik;k x;k fdukd ds vUnj tek gqvk [kqu Fkk vkSj thHk nkarksa ds chp FkhA ck;s tcM+s ds uhpsHkh gM~Mh dVh FkhA xqlrkxksa esa dksbZ pksV ugha FkhA flj ds vUnj [kwu dks tek,okseksfll Fkk ftlesa ls ,d 7 ls- eh- xquk 4 ls- eh- Fkk] lkeus dh rjQ o ,d2 eh- xquk 1 @ 4 ls- eh- tks Hkh lkeus dh rjQ FkkA czsu dh >fYy;ka dUtsLVsMFkhA czsu ds ij Hkh tek gqvk [kwu FkkA lkal dh uyh esa gsejst FkkA nk;kisQMk IUosu o dtLVsM Fkk ck;kW isQMk--- vkSj dkVus ij mlds ls Qqu fudykA isV dsvUnj 10 vkSl ds djhc v/kdpk pkoy vkSj nky FkhA**

On page 30 of the paper book, he further stated that the deceased has no injury on her head and neck. He states that without throttling the deceased could not die so soon. He has also stated that the cause of death was also throttling and the deceased died due to asphyxia.

9. The learned counsel for the appellant Sri Lal Chandra Pandey (as amicus curiae) urged that in the first information report and the statements of the witnesses of fact, there was no suggestive statement that she died of the throttling also whereas the Doctor stated that when he recorded injuries in the post mortem report (on page 8 to that effect) he found asphyxia. It is thus, obvious that ocular ltestimony was in contradiction to the medical evidence.

10. The learned counsel for the appellant further urged that it is very unusual that Section 27 of the Evidence Act (for short the Act) opens with the word 'Provided'. Section 27 is proviso to Sections 24, 25 and 26. In order that an information

furnished by the accused may be admissible it is imperative that some more facts other than pointing out the weapon, must be stated and such information must be given to the police while in police custody. The major part of that information may not be admissible in view of Sections 24 to 26, but only that portion by which he points out the weapon by which injuries or murder was caused, would be admissible (vide Section 27 of the Act). P.W. 11 Raj Deo Pandey, the Investigating Officer, did not state that any information was furnished to him by the appellant rather.'

^^mlus vkyk dky dqYgkMhfudkydj nsus dks dgk] cl eq>s vius ?kj ys x;kA ykyrk o ijost Hkh lkFk x,Amlus vius ?kj ds nfD[ku fLFkr QwWl ds eMgs ds nfD[ku if'pe dksus ik QqWl ds uhpsnhoky ij ls ,d dwYgkMh fudkydj fn;k] ml dqYgkMh esa [kwu yxk FkkA**

The appellant told him to hand over the axe. P.W. 10 Lalta and Parvej accompanied the Investigating Officer and the accused who took out the axe from the wall of the thatched roof and handed over to him. In the absence of an information furnished by the accused to the police while under custody, the recovery of axe alone, or the statement to that effect only, would not be admissible under Section 27 of the Act. Consequently the prosecution has not come with the clean hands. A number of other infirmities in the statements of witnesses were also pointed out, and it was urged that the conviction and sentence of the appellant cannot be sustained on the basis of evidence on record.

11. The learned counsel for the State on the other hand urged that the prosecution witnesses are reliable and it might be possible that the witnesses of fact arrived there, after injury No. 1, was caused to the deceased by the appellant.

12. Having heard the learned counsel for the parties the principal questions inter alia for our determination are, as to whether without furnishing an information as required by Section 27 of the Act, can the statement about pointing out of weapon alone be admissible in evidence, and the effect of failure of the prosecution to explain injury No. 1 and cause of death by throttling or by asphyxia. The difficulty is that word 'Information' is neither statutorily defined nor judicially explained.

13. In the State of Orissa v. Titaghur Paper Mills Co. Ltd., AIR 1985 SC 1293 : (1985 Tax LR 2948), it was observed by their Lordships of the Apex Court (at page 1350):

'It is now well settled that the Dictionary meaning of a word cannot be looked into in case that word has been defined statutorily or has been judicially defined. But where there is no such definition or interpretation of a word in common parlance. In doing so the Court must feel in mind that a word is used in different senses according to its context and a dictionary gives all the meaning of a word. The Court would, therefore, have to select the particular meaning which could be relevant to the context in which it has to interpret the word.'

14. In Words and Phrases legally Defined (Volume 2), there is a mention about 'information'.

15. The term 'information' is of well-defined meaning and, whether it be in writing or oral tenor is understood to be the initiatory step in proceedings of a Criminal nature, which are to be disposed of summarily 'Re Dillon (1859) 11 ICLR 232 at 238, per Hayes, J.'

16. In New Lexicon Webster's Dictionary of the English language. Information means :-

'Communication of news, knowledge etc. A fact or facts told or communicated.

In Shorter Oxford English Dictionary, word information connotes :-

The communication of news, knowledge etc. a fact or facts told or communicated.'

17. Taking into consideration the meaning word 'information', in the present context means all the facts including secret knowledge about the occurrence or murder. In case the accused himself has committed the murder or actively participated in the offence, he must tell and communicate it to the police or to other person while in police custody, out of all these bundle of facts or knowledge, indulging even confession, conveyed to the police by accused, only that little part as relates distinctly to the discovery of instrument used in the commission of

murder etc. would be admissible under Section 27 of the Act.

18. We may refer a few words about the nature and scope of Section 27. This Section 27 qualifies Sections 24 to 26. This section is not very happily worded. It is very rare that legislature enacts a section to be effective just like a proviso. In fact proviso qualifies the main provisions. There are no main provisions under Section 27. The object of Section 27 however is to provide for relevancy of that part of evidence or confession, which could not have been admissible in view of the preceding Sections 24 to 26. The information to be furnished to the Investigating Officer or some other person must be such as to contain the part of it pertaining to discovery of instrument. In other words information is 'genus' while discovery of fact or instrument is species. To put it differently information, is cause and discovery of fact', is its effect. The information, must relate distinctly to the fact discovered. Both these conditions must be satisfied. It would be incongruous if only fact or instrument is discovered and no information is conveyed by accused to the Investigating Officer or any other person while in police custody.

19. In Law of Evidence, By Chief Justice M. Monir Volume I 1986 page 359, there is a statement as follows :-

In absence of statement of accused, Section 27 is not attracted when the prosecution does not want to prove the statement made by the accused, which led to the discovery of any fact, and only says' that some property was recovered at his instance or as a result of information given by him, See Ramkishna Mithanlal Sharma v. State of Bombay, 1950 Cri LJ 156, 1955 SCJ 129.

20. In State of Tamil Nadu v. Karuppusamy, 1992 (2) JT 451 their Lordships of the Supreme Court observed -

Pursuant to the confessional statement of the first accused, the recovery of the severed head and M.O. 2 would be an admissible piece of evidence. After the arrest the first accused took P.W. 11 and P.W. 6 to a bush in a place one mile north of Thappai village and produced the head. At that place an inquest was held in which the inspector examined P. Ws. 1, 2, 4 and 5. Then, the first accused took them to another bush in the burial ground of S.P.C Mission Church, from where

M.O. 2 had been recovered concealed in the underweal (M.O. 7). This aruval, according to the analyst's report, contained human blood. The dhoti worn by the accused M.O. 8 which was seized from him also contained human blood. This part of the confession which led to the recovery of the severed head and M.O. 2, is clearly admissible under Section 27 of the Indian Evidence Act. This goes a long way to corroborate the case of the prosecution.'

21. In the present case considering the facts and circumstances, we are of the opinion that strictly in accordance with Section 27 of the Act, the information was not furnished to the Investigating Officer or any other person while the appellant was under custody. Sakaldeep appellant did not furnish the information to the Investigating Officer rather just pointed out the weapon namely, the axe or Kulhari with which the alleged murder was committed and on that pointing out the axe was taken out we have grave doubts that it can be admissible under Section 27 of the Act. There is another aspect of the matter that injury No. 1 has not been explained by the prosecution. That injury coupled with the statement of P.W. 5, Dr. H. K. Varma to the effect that there is congestion of blood in the brain and also in the nose and the blood was also found in the upper part of the brain. There was haemorrhage in the respiratory system. There was already nail marks on the left lower jaw and also left side of the face. It appears that Smt. Inri died to asphyxia which means pulselessness. In fact the word asphyxia has been described from apnopa. The practical effect of asphyxia is on account of some mechanical interference with the process of breathing. If interference is caused the body lacks oxygen. This may also be stated the function of breathing to continue oxygen from the atmosphere into the lungs, and at the| same time to remove carbondioxide from the lungs to the atmosphere. If some interference is caused to this process, there comes the stage suffocation, unconsciousness and consequently death. Nail marks were found oil injury No. 2. The marks of interference to the breathing may be noticed particularly with the presence of marks on the face or neck. As the process of breathing was positively interfered with, the return of blood to the heart was diminished.

22. There are certain changes noticed as a result of asphyxia caused by violence. The medical report containing the statement of P.W. 5 Dr. H. K. Varma as a result

of injury No. 1 indicates the congestion and blood clotting there and similar congestion in the brain and haemorrhage in the respiratory system etc. as a result of the interference with the process of breathing. The result of the interference with the process of breathing has been stated at page 287 of Taylor's principles and practice of Medical Jurisprudence as follows -

'The head and face may show intense congestion and cyanosis with numerous petechiae. Blood exudes from the mouth and nose. Blood tinged frothy fluid is present in air passages. Mucus may be found at the back of the mouth and throat and is usually found in considerable quantity when associated with a gag. Sometimes an area of pallor in an otherwise suffused face delineates a mark which may indicate the agent which caused the respiratory obstruction. Even in those cases where phosmic changes are slight a careful search will usually reveal the presence of petechiae.

Microscopically the presence of intense congestion in the major organs will be confirmed with sometimes the presence of tiny areas of haemorrhage.

The lungs, which are of particular interest, usually show in addition to congestion of interalveolar capillaries, the presence of oedema fluid in the alveoli, areas of haemorrhage and collapse with intervening emphysema.

The air passages often contain eosinophilic fluid with red blood cells and varying amounts of desquamated respiratory type epithelium.'

23. In Dr. R. M. Jhala's Medical Jurisprudence (Fifth Edition) there is following statement about the marks of violence etc. On the neck and face of the deceased :-

'The marks of violence are very important in a post-mortem of strangulation. Presence of these marks even in form of nail marks are presumptive of homicide. Neither accident nor suicide can offer a satisfactory justification in such cases.'

24. We are of the opinion that the presence of nail marks on the face and left lower jaw and the congestion in the brain and lungs etc. and haemorrhage in the respiratory system would indicate that the deceased died of asphyxia as a result of

throttling. The presence of nail marks and internal damages to the brain respiratory system and liver would indicate that it was the case of murder by throttling which is another mode of death from asphyxia. We have perused the entire evidence on record. No explanation has been offered by the prosecution witnesses about the injury No. 1. The statement of the prosecution witnesses does not find support from the medical evidence particularly with reference to injury No. 1 as indicated above. We have also paid attention to the statement of the appellant under Section 313, Cr. P.C. that his brother wanted to usurp his property and his house, and he has falsely implicated the appellant. It appears that the deceased died of throttling and thereafter incised wounds were caused to the deceased and appellant was falsely implicated. The murder was not caused in the way suggested by the prosecution. Under these circumstances the appellant is entitled to the benefit of doubt. The appeal succeeds and is allowed. The conviction and sentence of the appellant under the judgment and order dated 12-11-1982 is set aside. The appellant is acquitted. He shall be set at liberty forthwith. A copy of this order be given to the learned Counsel for the appellant within a week from the date of this judgment. The learned Counsel for appellant would be paid the fee according to Rules within two months.