

**Ram Pal Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/477454](http://sooperkanoon.com/477454)

**Court :** Allahabad

**Decided On :** Jan-28-2004

**Reported in :** 2004CriLJ2972

**Judge :** Vishnu Sahai and ;Kamal Kishore, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 300

**Appeal No. :** Crl. A. No. 160 of 1998

**Appellant :** Ram Pal

**Respondent :** State

**Advocate for Def. :** Umesh Verma, APP

**Advocate for Pet/Ap. :** B.K. Nigam, Amicus Curiae

**Disposition :** Appeal dismissed

**Judgement :**

**Kamal Kishore, J.**

1. This is an appeal against the judgment and order dated 13-2-1998, passed by the then learned III additional Sessions Judge, Rae Bareli sentencing the convict appellant to undergo imprisonment for life for the offence punishable under Section 302, I.P.C. and three years R.I. for the offence punishable under Section

404, I.P.C, The sentences were directed to run concurrently.

2. The prosecution case in brief giving rise to this criminal appeal is that on 7-9-1995, the deceased Smt. Kusma was cutting fodder from the field at about 5.00 p.m. When she had not returned after it became dark, her Devar (brother-in-law) Shiv Sahai PW-2 went to search for her. Several other villagers also went for searching Smt, Kusma. When they reached towards south of the village, the villagers Gajaraj, Chandrika Prasad and others raised alarm that Smt. Kusma is lying dead here. The First Information Report (Ext. Ka-1) regarding the occurrence was lodged by the informant Sheetal Lodh at police station Khiro, district Rae Bareli.

The I.O., M. P. Singh PW-8 has deposed that he along with Shiv Sahai and others went behind the victim appellant when he had confessed that he has committed the crime since he wanted to have sexual intercourse with the deceased Smt. Kusma to whom he had told regarding his intention to commit sexual intercourse. Deceased Smt. Kusma had not agreed to it, rather she told that she will disclose regarding proposal of the appellant Ram Pal to every one of the village, at which the appellant Ram Pal became angry and has committed the murder by inflicting sickle blows on the neck of the deceased. The appellant has further confessed that he could take out the ornaments worn by victim which included the locket of 'Durga Maa' as well as the silver anklet-bell together with golden nose ring from her nose. The appellant had also told to the I.O. that he has kept the weapon of assault as well as ornaments at a concealed place in his house which he can handover to the I.O. The accused was leading them went inside the western room of his house and took out the recovered articles from the Tak towards the south of the door of said room. The appellant had further confessed that it was the sickle by which he has murdered the deceased Smt. Kusma and took out these ornaments which were worn by her. The sickle was sealed in a cloth and in the meantime Km. Usha Devi, the niece of the decease, reached there and had identified those ornaments. Thereafter those ornaments were separately sealed in a polythene bag.

3. The dead body of the deceased Smt. Kusma was sent for post-mortem and the post-mortem on her dead body was conducted by PW-4 Dr. R. K. Verma, Senior Medical Superintendent of District Hospital, Rae Bareilly, who has found the following ante-mortem injuries on the person of the corpse.

(1) Contusion 6 cm x 4 cm above right side cheek.

(2) Incised wound 12 cm x 3 cm x bone deep Trachea and left carotid vessels cut 1 cm below left lower jaw.

(3) Incised wound 4 cm x 1 cm x skin deep 5 cm below left jaw (lower).

(4) Contusion 5 cm x 4 cm over middle of sternal area sternum fractured at its middle.

(5) Ribs No. 2 to 6 right side fractured.

(6) Ribs No. 2 to 4 fractured left side. , The doctor has opined that haemorrhage and shock as a result of ante-mortem injuries are the cause of death.

4. The case was investigated by the S.O. M. P. Singh PW-8 who recorded the statements of the witnesses, took the bloodstained as well as simple earth from the spot, prepared the site-plan and lodged the charge-sheet (Ext. Ka-19) after completing the investigation.

5. The charge was framed by the learned trial Court for the offences punishable under Sections 302, 394 and 411, I.P.C. The accused-appellant pleaded not guilty to the charge framed against him.

6. We have heard the parties' counsel and have gone through the record.

7. The prosecution examined as many as eight witnesses namely informant Sheetal Lodh PW-1, Shiv Sahai PW-2, Jangali PW-3, Dr. R. K. Verma PW-4, Gaya Prasad PW-5, Usha Devi PW-6, Ram Bilas Singh PW-7 and I.O. M. P. Singh PW-8. None of these witnesses is an eye-witness of the occurrence and the prosecution has built its case on circumstantial evidence mainly confession made by the convict Ram Pal to Gaya Prasad PW-5, Shiv Sahai PW-2 and the I.O., M.

P. Singh PW-8 coupled with the recovery of the weapon of assault and ornaments etc. which were recovered at the instance of the appellant Ram Pal as recovery under Section 27 of Evidence Act.

It has been held by the Hon'ble Supreme Court in the ruling reported in 1976 SCC (Cri) 120 : (AIR 1976 SC 917 : 1976 Cri LJ 679), Chand Mal v. State of Rajasthan that when a case rests entirely on circumstantial evidence must satisfy three tests :--

Firstly, the circumstances from which an inference of guilt is sought to be drawn, must be firmly and cogently established.

Secondly, these circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probabilities, the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of accused's guilt.

Thirdly, the circumstances should be of a definite tendency unerringly pointing towards the guilt of accused.

The same view has been followed by Hon'ble Supreme Court in recent ruling also as reported in 2003 AIR SCW 3491 : (AIR 2003 SC 3915 : 2003 Cri LJ 3697), Dayanidhi Bisoi v. State of Orissa and 2000 SCC (Cri) 845 : (2000 All LJ 1439 : 2000 Cri LJ 2457), State of U.P. v. Babu Ram. In the instant case, the prosecution has established its case against the accused cogently and firmly. The circumstantial evidence, adduced by the prosecution are of definite tendency unerringly pointing towards the guilt of the accused and the circumstances, if taken cumulatively, do form a complete chain to prove that it is probable that the crime was committed by the accused and none else.

8. The prosecution has proved the chain of extra-judicial confession by examining Gaya Prasad P.W. 5, Shiv Sahai P.W. 2 as well as I.O.M.P. Singh P.W. 8 before whom the extra-judicial confession was made by the appellant-Ram Pal. It has been held by the Hon'ble Supreme Court in the ruling, reported in 1977 ACC 374 :

(AIR 1977 SC 2274) Piaru Singh v. State of Punjab, that law does not require that the evidence of an extra-judicial confession should in all cases be corroborated. In the instant case, the extra-judicial confession was proved by an independent witness and a responsible officer, who borne no animus against the accused and there was hardly any justification for the Sessions Judge to disbelieve the evidence. We find that the extra-judicial confessions were true and voluntary and accordingly, the conviction and sentences, based on confession were unassailable as per the ruling, reported in 1982 Cri LJ 2346, Dhuleshwar Babern v. State. Accordingly, in view of the aforesaid ruling of Hon'ble Supreme Court, we find that the extra-judicial confession, made by the accused-Ram Pal inspires confidence and the prosecution has been able to prove this chain of extra-judicial confession.

9. The prosecution has examined Gaya Prasad P.W. 5, Shiv Sahai P.W. 2 and I.O. M. P. Singh P.W. 8 on the point of recovery of the weapon of assault on ornaments etc. at the instance of the convict appellant-Ram Pal. The recovery and seizure of the articles recovered under Section 27, Evidence Act is a most incriminating circumstance. In a case of like nature where victim's muffler and radio were recovered from the possession of the accused, the seizure of the articles was held to be the most incriminating fact in the case, based on circumstantial evidence, as per the ruling reported in 1986 Cri LJ 2077, Krishna Chandra Santra v. State. Under these circumstances, we find that the prosecution has connected the accused with the present crime.

10. On 26-10-1995, the Superintendent of Police, Rae Bareli had sent a letter to the Senior Superintendent of Police, Chandigarh through Constable Suman Singh from where the information was obtained that a rape case against the appellant was filed at the Police Station Chandigarh and the case was registered on 10-2-1989 under Section 376, 1.P.C. which was decided on 12-12-1989 by Smt. Harbinder Kaur, Sessions Judge, Chandigarh, in which the accused-Ram Pal was sentenced to undergo ten years R.I. and was imposed the fine amounting to Rs. 200/-. The aforesaid rape was committed on a minor child Km. Babli aged about 8 years only. After receiving the result from the chemical examiner, the charge-sheet (Ext. Ka-19) was submitted. This fact supports the case of the prosecution regarding the motive of the accused to the effect that when the de-ceased-Smt.

Kusma had not agreed to the demand of the appellant for having sexual intercourse, the present crime was committed by the appellant due to aforesaid motive.

11. We find that the prosecution has firmly and cogently established the circumstances of extra-judicial confession, recovery made under Section 27 of the Evidence Act and the motive of the convict appellant to commit the present crime and these circumstances taken cumulative form a complete chain to the effect that there is no escape from the conclusion that within all human probability, the crime was committed by the appellant-Ram Pal and none else. The circumstances are of definite tendency unerringly pointing towards the guilt of the appellant.

12. We would be failing in our fairness if before proceeding to the operative part of the judgment, we do not refer to the principal submission canvassed by Mr. B. K. Nigam, learned Amicus Curiae namely that the failure of chemical analyst to find human blood on the sickle and the absence of blood on the ornaments of the deceased, which were recovered on the pointing out of appellant which included the ornaments of neck of deceased shows the falsity of the prosecution case. Mr. Nigam urged that the autopsy shows that one of the injuries sustained was an incised wound, bone deep on the neck, trachea and left carotid vessels being cut and hence the absence of blood on the neck is queer. We have bestowed our anxious consideration to the submission of Mr. Nigam and we find no merit in it. It is pertinent to mention that although the chemical analyst found blood on the sickle but he found the blood-stains to be disintegrated. In such a situation understandably he could not opine that it was human. So far the absence of blood on the ornaments of the deceased is concerned, the probability is that the appellant may have washed before concealing them. Hence, this submission of the learned Amicus Curiae fails.

13. In the result, we find that the appeal is devoid of merit. The appeal is hereby dismissed. The judgment and order passed by the learned trial Court is maintained. The convict appellant-Ram Pal is in jail. He shall serve the sentence awarded to him by the learned trial Court.

