

Dev Singh and anr. Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-09-1999

Reported in : 1999CriLJ3387

Judge : S.K. Phaujdar and ; J.C. Misra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201 and 302; Code of Criminal Procedure (CrPC) - Sections 164 and 313

Appeal No. : Capital Case Appeal No. 894 of 1998 with Reference No. 7 of 1998

Appellant : Dev Singh and anr.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Veer Singh and ;Apul Misra, Advs.

Disposition : Appeal allowed

Judgement :

ORDER

1. The present two appellants stood a trial in S.T. No. 383 of 1997 before the IIIrd Additional Sessions Judge, Bijnor, for offences under Sections 302/34, I. P. C. and 201, I. P. C. for having committed the murders of Surindra Kaur and Paramjit Kaur alias Koti and for throwing the dead bodies into a pond.

2. The trial Judge found them guilty for the aforesaid offences and convicted them for the same by his order dated 15-5-98. For their conviction under Sections 302/34 of the Indian Penal Code the two appellants were ordered to be hanged by neck till death. For the other conviction they were sentenced to rigorous imprisonment, for seven years. The Sessions Judge after recording the punishment made a reference to this Court which was registered as Reference No. 7 of 1998. The two accused persons also preferred an appeal which was registered as Capital Case Appeal No. 894 of 1998 and the, appeal and the reference were heard together.

3. The learned counsel for the appellants submitted that the alleged two eye-witnesses examined at the trial did not inspire confidence and their conduct made them unreliable. It was further submitted that the trial Judge had committed a grave error of law in his latent reliance on the confession of the accused persons allegedly made before police. It was also contended that the witnesses were examined under Section 164, Cr.P.C. at the stage of the investigation and learned counsel for the appellants proposed to conclude that this very fact was sufficient to suggest that the prosecution itself had doubts about their statements and the prosecution wanted to pin them down with statements in Court. The learned State Counsel submitted that implicit reliance was rightly placed on the two eye-witnesses read with the circumstances of the case including the circumstance that the son of one of the accused had scribed the F.I.R.

4. The F.I.R. in this case was lodged by one Surendra Singh a resident of village Kalluwala within police station Rehar, by a written report dated 6-6-97 scribed by one Randhir Singh. The F.I.R. disclosed that the sister of the informant was married to Ratan Singh. Ratan Singh and the present appellants, Dev Singh and Pyara Singh were three brothers, all living in joint ness. It was stated in the report made to the police at Rehar that on 5-6-97 at about 11 to 12 p.m. Dev Singh and Pyara Singh, residents of Khairabad had murdered Surindra Kaur wife of Ratan Singh and Koti alias Paramjit Kaur, daughter of Ratan Singh, and both the dead bodies were floating in the tank behind their joint house. As a motive for murder it was stated that the marriages of deceased Paramjit and her sister Kulvindra were fixed for 16-6-97 and Ratan Singh had gone out to distribute invitation cards

amongst the relations. The daughters of Dev Singh and Pyara Singh were married earlier and handsome dowries were given in these two marriages. Ratan Singh was insisting that the same amount of dowry should be given in the marriages of his daughters also to which the other two brothers were not agreeing. Ratan Singh even declared that if such dowry was not given he would rather prefer a formal marriage at the Gurduwara by exchange of garlands. The F.I.R. disclosed that Kuldeep Singh son of another Pyara Singh, his wife Smt. Jogendra Kaur, both residents of Kadhla and Mohan son of Ratan had been the witnesses to the incident and on the morning of the date of report to the police (Aaj Subah) Mohan had come to Kalluwala and informed Surendra Singh about the incident whereupon the report was made.

5. The deadbodies were taken out from the tank and postmortem examinations were done. The investigation was completed and a charge sheet was submitted. Thereafter the aforesaid charges were framed and conviction and sentence as mentioned above had followed after a trial.

6. At the trial the prosecution had examined seven witnesses, P.W. 1 was Kuldeep Singh and alleged eye-witness. P.W. 2 was Surendra Singh, the maker of the F.I.R. P.W. 3 was Mohan Singh son of Ratan Singh, another eye-witness. The other witnesses were P.W. 4 Dr. H. P. Agrawal who had held postmortem examination on the two deadbodies, P.W. 5 Constable Devendra Kumar, who had carried the deadbodies for postmortem examination after the inquest was done, P.W. 6 Head Moharrir Dharampal Singh, who had drawn up the chick report on the basis of the written F.I.R. and had proved certain other documents and P.W. 7 was the Investigation Officer, Ranjeet Singh, who had initiated the case, investigation into it and submitted chargesheet. His evidence spoke of recording of confession of the two accused persons as recorded by him. The trial Court, despite objections by the defence, marked the same as exhibits despite the fact that the same were made before police.

7. The learned persons were examined under Section 313, Cr.P.C. and they denied the materials allegations leveled against them. They were even confronted with their alleged confession made to the police. They have denied to have made

any such confession. Dev Singh took up a plea that he was away for Kashipur on the fateful day. Pyara Singh took up a defence that he was away to Dharampur in his duty at Tube-well No. 523 where he was employed.

8. The trial Judge had taken up the statement of P.W. 1 Kuldeep Singh discussion in paragraph 8 of his judgment. Further discussions have been made in paragraph 17 of the trial Court judgment and he had also discussed the evidence of Mohan Singh in paragraphs 10 and 17. In paragraph 20 of the judgment the trial Judge had accepted the story that Kuldeep Singh was present at the spot and he has found corroboration of each other's statements in the versions of Mohan Singh and Kuldeep Singh and accordingly he held the statements to be wholly reliable and only thereupon the order of conviction was passed and the sentences as aforesaid were recorded.

9. It is unfortunate that despite objection an Additional Sessions Judge had admitted in evidence confessions made to police. It does not require any direction but still then it is reiterated that a confession before a police officer is inadmissible and only if any fact is discovered pursuant to a confession made to police only such portion of (he confession which is directly related to the facts discovered may be proved. The two deadbodies were already found floating in the pond as such the same would not be taken to have discovered as a result of any confession nor could the recovery of the drum with which Surendra Singh had stumbled and not injuries could be taken to be a discovery following confession as the drum was very much there lying open to the view of everybody. The learned trial Judge in paragraph 29 of his judgment met this objection taken by the defence counsel and he observed 'There is nothing on record to show that memos Exts. Ka-21 and Ka-22 are not admissible in evidence'. This was not correct approach by the trial Judge. However, no further discussion on this point is necessary as the learned trial Judge has not acted upon these confessions and relied on the alleged direct evidence only. There is, however, a suggestion through the above quoted view of the trial Judge that he had placed implicit reliance on the alleged confession although he had felt shy to object openly. This conclusion is re-enforced from the fact that he thought it proper to put these confessions to the accused persons in their examinations under Section 313, Cr.P.C. as circumstances against them.

10. On the question of the so-called direct evidence we have before us the statements of the first three witnesses as also the F.I.R. has certain undisputed facts in it.

(a) Information was given to police on 6-6-97 on the report by Mohan to Surendra that very morning.

(b) The manner of killing was not indicated. . (c) A motive was indicated.

(d) The deadbodies were floating in a tank was indicated but it was not stated that the same were thrown in the tank by the accused persons.

(e) Witnesses Kuldeep Singh his wife Smt. Jogendra Kaur and one Mohan Singh were named as eye-witnesses.

11. Surendra Singh was examined as P.W. 2 and his evidence also indicates the relationship between the parties, the hitch over payment of dowry at par with the daughters of the two accused and of report by Mohan to Surendra about the incident. He got the report written by Randhir son of the present appellant Pyara Singh. Every bit of the report was accepted as properly written. His cross-examination indicated that Mohan had gone to him at 7 p.m. on 5-6-97 itself and Surendra came to the village of occurrence that night and stayed there and kept on searching for his sister and niece in the jungle. This admission shakes the very credibility of the F.I.R. which spoke of report by Mohan in the morning on 6-6-97. Moreover, the F.I.R. clearly indicated that the deadbodies were floating in the tank. If this report was given to the informant even in the evening, on 5-6-97 there was no reason why the deadbodies would be searched in jungle. During such search Mohan and Gurcharan were there with Surendra. Mohan Singh could have and should have told Surendra not to search in vain in the jungle. A further very important admission has been made to the effect 'Rat me hatya ki bavat pata nahi chala' (we would not get any information regarding murder in the night). Had been so then Mohan must not have told about the murder in the previous evening suggesting that he had not seen the incident at all. This witness makes a further admission that the police officer was told about the murder of his sister and niece and then he came to the spot found the deadbodies floating in the pond and only

then a written report was demanded by him. If this be a fact then the report scribed by Randhir on the demand of police officer was made at a time when investigation has already commenced and the report would be hit by the provisions of S. 162, Cr.P.C.

12. P.W. 1 is Kuldeep Singh, who according to the F.I.R., was a witness to the incident. According to him, he had seen the dead body of Paramjit being dragged out of the house by the two accused persons and being thrown into the pond. Thereafter Surindra Kaur was attacked and pushed inside a room and the room was chained from outside. Wife of this witness had the courage to go to the spot and to unchain the door. But this witness, although he came on the screams of Surendra Kaur and Paramjit Kaur, preferred to stay behind some cover and remained an onlooker. He saw Surinder Kaur running out of the house being chased by Dev Singh. He saw Surindra Kaur stumbling with a drum kept outside and then Dev Singh caught hold of her. She was strangled to death and her deadbody was dragged to the pond and dropped there. His cross-examination indicates that a place of worship known as Marhibir was near the place of occurrence and there was some dispute over it for which three Constables of the Provincial Armed Constabulary were posted there. There was also a police out-post about one and half kilometer from the place of occurrence. The police station at Rehar was three kilometers away but this witness never made any attempt to save Surindra Kaur or to give any information to the P.A.C. people or to the police out-post or even to the police station. Admittedly there was no arms in the hands of the two alleged assailants and there was no reason why no resistance was offered by Kuldeep to the killing of Surindra Kaur. He gave an explanation that it was the domestic affair of another family but had it been a simple oral quarrel his explanation would have been sufficient. When he thought it proper to come to the spot on hearing hue and cry, it was at least expected to him that he would offer resistance to the ghastly acts, committed to the two ladies. His further cross-examination indicates that Mohan did not meet him although he had seen Mohan weeping. Mohan had met him in the night. At that point of time he was weeping and was stating that his mother and sister had gone away to some unknown place. This witness did not tell Mohan about the incident rather he advised him to go to his mama. If this part of the story be believed then Mohan Singh must be removed

from the category as an eye-witness as he had simply told about missing of his mother and sister and not about their killing. This witness also faces a serious criticism about his conduct as he should have told Mohan what he had seen. Police came to the village the next morning at 8.00 a.m. This witness did not offer any statement to police on that date. He was examined only on 7-6-97.

13. The only other witness is P.W. 3 Mohan Singh. He spoke of the incident no doubt, but he is absolutely silent about how death was caused. He simply told about murder (Jan se mar diya) but not the manner in which was committed. According to him he did not dare to proceed to save his mother and sister and remained an onlooker only. He went to the jungle, slept there for night and then went to his mama's place. Although Kuldeep Singh had stated that he met Mohan in night of the occurrence. Mohan has given a clear go-by to this story. The village of his mama was eight to ten kilometers away and he reached the next day. He is contradicted on this point by the statement of Surendra Singh as indicated above. He came to the village with his uncle.

14. The discrepancy between the F.I.R. and the statements of the witnesses, the discrepancy in terse between their statements lead us to an irresistible conclusion that the version given by P.Ws. 1 and 3 cannot be true at the same time. If we discard the statement of P.W. 1 then we are left with the statement of Mohan Singh alone but even that statement is not free from suspicion as his uncle went out for a search of the deadbodies in the jungle when he had fully known that the deadbodies were seen in the tank. Moreover, the statement of Mohan Singh as reported in the F.I.R. and as deposed in Court are absolutely silent on the manner of incident as to how killing was done. It is true that his father was away and the two uncles were allegedly involved in the incident, but he should have shouted and run to the villagers for help. Instead he simply wept and kept mum for that night. This conduct is not above board.

15. If we take the statement of Kuldeep Singh alone, we find that when he had gone to the spot on the scene of the women, he should have offered resistance to the assailants and when his wife could dare to go to the house there was no reason why he should remain an onlooker under the coverage of safety and more

so when the assailants had no arms with them.

16. In this respect, on the question of appreciation of evidence, reference could be made to the decision of the Supreme Court in the case of Harbans Lal v. State of Punjab as reported in (1996) 2 SCC 350 : (AIR 1996 SC 1186): (1996 Cri LJ 1871). It was a case of murder and they were alleged eye-witnesses of the incident. One of them had deposed that while passing through the house of Harbans Lal he peeped through a window of the house and saw the incident. Similar was the statement of the other witnesses also who had also claimed to have peeped through the window to see the incident. They had seen a gruesome murder but they did not raise any alarm and went their way and did not disclose about the incident to any one till the third day of the occurrence. This conduct of the witnesses was held to be most unnatural which created a serious doubt about their creditworthiness. In the instant case, at our hand, the only two witnesses had also conducted themselves most unnaturally. Kuldeep Singh as discussed above, had not interfered although his wife did. This lady was not examined as a witness. Mohan Singh had conducted himself in such manner in searching the deadbodies in the jungle that his alleged statement to his mama becomes doubtful. Moreover, there were discrepancies in between the statements of the witnesses.

17. No doubt the evidence of doctor establishes that the two women were murdered and the evidence on record clearly indicated that the deadbodies were lying in the pond, this would establish only the factum of murder but not the identity of the assailants. It is further true that there was some motive regarding the dispute over the amount of dowry but this motive alone would not justify the conclusion of guilt of any one of the accused which was to be proved by the prosecution beyond any shadow of doubt. We have no hesitation to hold that the prosecution had failed to discharge this onus by cogent and credible evidence and we must hold that the charges have not been proved against the two appellants. Accordingly the appeal stands allowed. The conviction and sentences of the two appellants are hereby set aside and they are acquitted. This are to be set at liberty forth-with unless required to be detained in any other case. The reference is also answered accordingly.

