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Sher Singh Vs. the State

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Court : Delhi

Decided On : Dec-20-1968

Reported in : 5(1969)DLT302

Judge : I.D. Dua, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164

Appellant : Sher Singh

Respondent : The State

Advocate for Pet/Ap. : Daljit Singh and; V.D. Misra, Advs

Judgement :

I.D. Dua, C.J.

(1) This appeal has been presented from jail, but Shri Daijit Singh, Advocate, a distinguished member of the High Court Bar, has been very kind to agree to assist me as amices curiae. The Court is thankful to him for his valuable assistance. Sher Singh appellant has been convicted by the learned Additional Sessions Judge under Section 326. I. P. C. and sentenced to rigorous imprisonment for one year. He was charged under section 307, I. P. C., but on evidence, his case was found to be covered only by section 326, I. P. C. The prosecution case is that Smt. Suresha, an Aya in the employment of Shri Jagat Narain Khanna in Darya Ganj, Delhi, was .stabbed on her back with a knife on 22nd August, 1967 at about 7.30

p. m. The accused who is stated to have been employed with the

(2) The learned Additional Sessions Judge after summarizing the evidence in the case, dealt with the question of the guilt of the accused in the following words :-

'* * * when there was no eye witness in the case and the victim was also nto available, it would be very difficult to hold that the charge has been brought home to the accused. However, in the present case, there is the confessional statement of the accused dated 30th August, 1967 before Shri M. M. Oberoi, Magistrate, Delhi. In this the accused admitted having stabbed Suresha. This confession has now been retracted. However, there is ample corroboration of the same from the depositions of Public Witness Public Witness 3 Jagat Narain Khanna, Public Witness Pw 6 Vinod Kumar and Public Witness Public Witness 8 Parshtoam Lal, who have all deposed the Suresha stated before them that the accused had stabbed her. The former two witnesses also deposed that the accused had remained employed in the same house for some time earlier. In view of this corroboration, I am inclined to accept the confessinal statement dated 30th August, 1967 of the accused as correct to the effect that he actually stabbed Suresha on 22nd August, 1967.'

Shri Daljit Singh questions the soundness of this line of reasoning on the existing record and submits that the statements of the three witnesses mentioned by the learned Additional Sessions Judge do nto corroborate the confession in material particulars.

(3) Before considering the material on the record, I should like to state the legal position in regard to confessions. A confession, though retracted at a later stage, can certainly, as a matter of statutory law, be accepted by Court for sustaining the conviction of the confessor because there is no legal bar, but usually the Courts, by way of prudence and practice, require some independent corroboration of the confessional statement in material particulars before convicting the confessing accused thereon. The amount of corroboration necessary as a safeguard of truth and, thereforee, for sustaining the conviction is always a question of fact to be determined in the light of the circumstances of each case. Section 164, Cr. P. C., empowers certain Magistrates to record statements and confessions. Sub-section

(3) of this section lays down that a Magistrate shall, before recording any confession, explain to the person making it that he is nto bound to make a confession and that if he does so, it may be used as evidence against him. It also prohibits Magistrates from recording such concessions unless, upon questioning the person making it, the Magistrate has reason to believe that it was made voluntarily and while recording such confession, he is also obliged to make a memorandum at the foto of such record to the following effect :-

'I have explained to (name) that he is nto bound to make a confession and that, if he does so, any confession he may make, may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.'

Now, the object of making a provision like section 164 in the Code is to obtain an assurance of the fact that the confession is nto caused by any inducement, threat or promise, as is referred to in section 24 of the Indian Evidence Act. The recording of confession is thus a very solemn act and the Magistrate performing this duty, has to take particular care to see that the confessional statement made is in fact and in substance voluntary. These questions must nto become a matter of mere mechanical enquiry and as observed by the Supreme Court in Sarwan Singh v. State of Punjab, no element of casualness should be allowed to creep in. When an accused person is nto represented by a counsel, the responsibility of the Magistrate is all the greater, for he has to satisfy his conscience that the accused has nto been allured by inducement or forced by threat to make the confessional statement.

(4) In the case in hand, the accused was nto caught at the spto as deposed by Shri Badri Nath, A. S I. P. W. 14, but was arrested the same night at about 12 in Sundar Nagar He was produced before the learned Sub-Divisional Magistrate on 29th August, 1967, which means about seven days later. My attention has nto been drawn to any material on the record as to when remands for his custody were obtained and for how long periods. This would have thrown some helpful

light, on the possibility and extent of police influence on his mind. The learned Sub-Divisional Magistrate, as per Ex. Public Witness 5/A, recorded on the application for recording confession, inter alia, as follows :-

'I will like the accused to be detained in the judicial lock up till tomorrow before recording his statement He is sent to judicial lockup and shall appear on 30th August, 1967 for further action in this behalf.'

It is unfortunate that the learned Magistrate did nto put any question to the accused person at that time to satisfy himself about his voluntary offer to confess and the learned Magistrate does nto seem even to have applied his mind to the fact that the accused had been in police custody for nearly seven days. Of course, he did order that the accused be sent to the judicial lockup, but that seems to have been done almost automatically or as a matter of course. The next day, the following ntoe appears in English :-

'ACCUSED Sher Singh son of Bachha appeared today. He is coming from the judicial lock up. He was allowed to compose himself for some time. He was allowed to sit in the retiring room of the court for some time No police official is present in the room. The accused is nto in handcuffs, and since he has been allowed sufficient time to compose himself and since the infuence of the police is no more on his mind I proceed to record his statement.'

And then appear questions and answers recorded in Urdu. The manner in which questions and answers and the statement appear from the record to have been recorded has nto impressed me. It does nto reflect any anxiety on the part of the learned Magistrate to satisfy himself that the accused was voluntarily confessing to make. a confession as a free agent. Now, in regard to the corroborative statements, it is ntoeworthy that Shri Atma Ram A.S.I. who appeared as Public Witness 7, has deposed that at about 7.15p M, on 22nd August 1967, he received the information about the occurrence in question and went to the spto where he found Smt. Suresha with a stab wound in her back. He took her to the hospital. He has, however, admitted that in his presence, she did nto make any statement. He had reached the spto at about 7.30 p.m. Public Witness 3, Jagat Narain Khanna, has deposed that at about 8 0' clock at night on 22nd August 1967, when he

returned from the railway station, he saw some people gathered in front of his house and there he saw Smt. Suresha, his Aya, bleeding. A police van was also there. He accompanied Smt. Suresha to the hospital in the police van. According to him, Smt. Suresha had stated that the witness old employee Sher Singh had stabbed her. When considered in the light of the testimony of Public Witness 7 Atma Ram, it is obvious that this version cannto safely be relied upon. Vinod Kumar Public Witness 6, has also stated that on the fateful day, at about 7.45 or 8 pm., he saw Smt. Sure-ha outside his house in Darya Ganj. A police van was there and the injured woman was taken to the hospital in that van. He ar.dhi-father Jagat Narain btoh accompanied the injured person to the hospital. According to him also, Smt. Suresha had stated that she had been stabbed by Sher Singh. Public Witness 8 Parshtoam Lal has deposed that at about 7.30 p.m., about 7/8 months prior to the date of his statement, he saw Smt. Suresha with a knife fixed in her back which was taken out by the witness. Smt. Suresha is alleged to have stated to this witness that Sher Singh had given her the Stab wound. In order to admit evidence of what Smt. Suresha may have said to these witnesses, the Court below had to pay particular attention to the law of evidence. I have extreme doubts whether statements of this kind can be admitted in evidence when all that we have on this record is that on 6th August 1968 Shri R.I. Bhagat P.P. had given up Madan Lal as an unnecessary witness, and his prayer for adjournment for producing Smt. Suresha on the ground of her nto being traceable was declined by the Court and the prosecuting counsel closed the prosecution case. Whatever be the moral conviction about the guilt of the accused, in my opinion, the retracted confession on the present record can by itself hardly be considered to be safe material on which to convict the accused. Common experience and prudence render it unsafe to do so. The toher evidence which is held by the trial Court to be corroborative is also of an extremely weak character, if at all it can be held to be legal evidence. I am nto unmindful of the fact that the accused has in his statement completely denied everything and even his acquaintance with the injured person, but the fact remains that the prosecution has also nto cared to keep proper trace of Smt. Suresha who was the most material witness in in the case. Even before the committing Magistrate (Miss K. Roy, I. A.S.), as is discernible from her order, Smt. Suresha does nto seem to have been

produced. That order is dated 16th January 1968. The recording of evidence before the learned Additional Sessions Judge started in may, 1968, though proceedings actually started in April, 1968. It is somewhat surprising that in a case of this type, no effective steps should have been taken to ensure the production of Smt. Suresha, for it is primarily because of her absence from the witness-box that this case is going to fail. This Court hopes that the investigating and the prosecuting agency would in future take greater care in the matter of production of material prosecution witnesses in cases like the present.

(5) For all the foregoing reasons, I am constrained to allow this appeal, though with a feeling of regret that a case of stabbing at about 7.30 p.m. in the month of August, 1967 in a locality like Darya Ganj should go unpunished. The accused is acquitted and should be released forthwith.

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