SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Mohinder Singh Vs. State

Mohinder Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/684461

Court : Delhi

Decided On : Dec-20-1971

Reported in : ILR1972Delhi788

Judge : Hardayal Hardy, C.J. and; V.S. Deshpande, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164; Evidence Act, 1872 - Sections 24 and 27

Appeal No. : Murder Reference Appeal No. 1 of 1971

Appellant : Mohinder Singh

Respondent : State

Advocate for Pet/Ap. : R. Dayal and; Y. Dayal, Advs

Judgement :

Hardayal Hardy, C.J.

(1) The accused who will hereafter be referred to as the appellant, is a young man of about 22 years of age. He has been working as a carpenter and residing in Delhi for quite some time before the occurrence which has now led to his being charged with the murder of Santokh Singh, a timber merchant of Lakkar Mandi, Naraina, Delhi. He was tried by an Additional Sessions Judge and was convicted for an offence punishable under Section 302 I Pc and was sentenced to death.

The case has come up before us for confirmation of the death sentence. The appellant has also filed an appeal against his conviction and sentence. The Murder reference and the appeal have both been heard together.

(2) The appellant was not represented by a counsel and was assigned a counsel at the expense of the State. Shri Rameshwar Dial, a retired District and Sessions Judge was asked by us to accept the brief. This court is grateful for the industry bestowed by the learned counsel and for the conspicuous ability with which the case has been argued before us.

(3) The prosecution case against the appellant is that Gian Singh (PW12) and the appellant were partners in their work as carpenters. They worked together for more than two years with different timber merchants of Delhi. They also worked for Santokh Singh deceased for over four months before they went over to work for Narender Pal Singh (Public Witness 13), who found their work un-satisfactory and thereforee asked them to quit. A dispute arose between the two carpenters on the one side and Narender Pal Singh on the other over the payment of wages. The matter was referred to Santokh Singh deceased who made an oral award. According to the prosecution, the award left the appellant resentful against the deceased. On April 16. 1970. Narender Pal Singh made the payment at the shop of Santokh Singh deceased and obtained a receipt. Gian Singh accepted the payment and so did the appellant, but the latter felt that Santokh Singh had been un-just to them in denying them a substantial part of their claim.

(4) On April 17, 1970 at about 10 P.M. i.e. a day before the alleged murder of Santokh Singh the appellant went to the house of his partner Gian Singh and told him that he would go to Santokh Singh on the following day, demand payment of the remaining amount of his claim and if not paid, he would finish off Santokh Singh. Gian Singh met the deceased's brother Amolak Singh (Public Witness I) next morning and duly apprised him of the threat of the appellant against his brother. Amolak Singh in turn conveyed the threat to the deceased but the latter apparently did not take any serious notice of the threat.

(5) On April 18. 1970, Lachhman Dass (Public Witness 15), a timber merchant of Lakkar Mandi, Naraina, Delhi saw the appellant going towards the shop of the

deceased at about 3.45 P.M. A little later he heard that some one had been killed. Taking Amar Singh (Public Witness 14) along, with him, Lachhman Dass went to Santokh Singh's shop and found him severely injured. He was groaning in agony, but could not speak. Lachhman Dass phoned the Flying Squad of the police and on receipt of information, S. 1. Ram Mehar rushed to the scene of occurrence. He found that Santokh Singh was in precarious condition. Meanwhile, Amolak Singh. younger brother of Santokh Singh, also arrived there. S. 1. Ram Mehar rushed the injured to the Willingdon Hospital, New Delhi. Amolak Singh accompanied them to the hospital.

(6) Dr. S. N. Gupta, examined Santokh Singh in the Emergency Ward at 4.30 P.M. He prepared a report (Ex.PW22/A) and referred the case to the Surgical Ward for detailed examination, observation and treatment.

(7) Santokh Singh was declared dead by Dr. K. L. Takkar in the Surgical Ward at 4.45 P.M. on April 18 1970. He prepared a medico legal death summary (Ex.PW22/B) on the same evening.

(8) S. I, Ram Dass Pandey who was in charge of the police post, Dhaulan Kuan, New Delhi received a copy of the report (Ex.P24/A) at the new Delhi Courts. On receipt of this report, he rushed to the scene of occurrence at Lakkar Mandi, Naraina. Inspector Shiv Kumar, Station House Officer, Police Station, Delhi Cantonment, was already present there. On being told that the injured had already been removed to the Willingdon Hospital by the Flying Squad, S. 1. Ram Dass contacted Amolak Singh (Public Witness I) at the Willingdon Hospital. While he was busy recording the statement of Amolak Singh, S. 1. Ram Dass was informed that Santokh Singh had died. Amolak Singh's statement (EX.PWI/B) as recorded by S. 1. Ram Dass Pandey was forwarded to the police station for registration of a formal F.T.R. S. 1. Ram Dass Pandey and Amolak Singh then returned to the scene of occurrence.

(9) On arrival there, a number of blood-stained articles including the leg of trousers (Ex.PI), the sword (Ex.P2) and the sheath (Ex.P3) were recovered from the spot. These were put into sealed parcels. S. 1. Ram Dass went back to the hospital on April 19. 1970 and prepared the inquest report. The investigation was then taken

over by Inspector Shiv Kumar himself,

(10) The appellant who had in the mean time, left Delhi and gone back to his village Alawalpur in the District of Juliundur, was arrested by S. 1. Sohan Singh of the Punjab Police on April 19, 1970. The blood stained clothes viz. p'ants (Ex.P7), bushirt (Ex.P8) were recovered from the attache-case of the appellant lying in his house. The appellant was brought back to Delhi and was interrogated by Inspector Shiv Kumar on April 22, 1970. The appellant made a statement (Ex.PWl/F) before Inspector Shiv Kumar on April 22, 1970, in consequence of which the appellant led the police to the shop of Kirpal Singh at Hardhyan Singh Road. Karol Bagh, New Delhi where it was learnt that the appellant had purchased the sword Ex.P2 and the sheath Ex.P3 from that shop on March 14, 1970. Kirpal Singh produced before the police the register of sale Ex.PWI/H containing the entry (Ex.PW5/A) signed by the appellant in token of the said purchase. He also produced the cash-memo book (Ex.PW I/I) containing the counter-foil (Ex.PWI/C) of the relevant cash-memo.

(11) On April 28, it was alleged the appellant led the police to the shop of Om Parkash tailor (Public Witness 16) pointing out that it was from the said A shop that he got the trousers stitched of which Ex.P1 was one leg which had been recovered from the spot.

(12) On April 29, 1970 the appellant made a confessional statement before Shri G. S. Kaira, Judicial Magistrate, 1st Class, Delhi wherein he confessed that he had killed Santokh Singh with a kirpan because he had refused to pay his dues and had instead spat on him and thus insulted him.

(13) On completion of investigation the appellant was committed for trial before a court of Session, after the committing magistrate recorded the statements of Amolak Singh, Dr. S. N. Gupta, Amar Singh, and Dr. A. K. Ghosh on the charge of murder of Santokh Singh, punishable under Section 302 Indian Penal Code .

(14) During the trial, the prosecution examined among others, Amolak Singh, Gian Singh, Narender Pal Singh, Lachhman Dass, Amar Singh, Garib Dass, Shakti Kumar, Kirpal Singh, Booti Shah and Om Parkash. The various police officers. Dr.

A. K. Ghosh, Shri Roop Lal and Shri G. S. Kaira, Magistrate 1st Class were also examined on behalf of the prosecution. By and large they fully supported the prosecution story as narrated above.

(15) In his statement under Section 342 Criminal Procedure Code, the appellant denied almost all the material .allegations against him and pleaded innocence. He denied that there was any dispute between him and Gian Singh on one side and Narinder Pal Singh on the other, over the payment of wages. He denied that any such dispute had been referred to Santokh Singh deceased and that the latter had made an award un-favorable to them. He however admitted that Narinder Pal Singh had made payment to him and Gian Singh at the shop of the deceased and that he had executed the receipt (Ex.PWI/A) in token of such payment. He denied his visit to the house of Gian Singh on April 17. 1970 but he admitted that he was arrested at his village by S. 1. Sohan Singh of the Punjab Police on April 19, 1970. He denied that any blood-stained clothes were recovered by S. 1. Sohan Singh from his attache-case or that he made any disclosure statement in the custody of Inspector Shiv Kumar on April 22, 1970 resulting in the discovery of documents as to the purchase of any kirpan from the shop of Kirp'al Singh. He pleaded that his signatures against entry Ex.PW5/A in the register of sale (Ex.PWI/H) produced by Kirpal Sinah had been obtained by the police during investigation of the case. He denied that he had ever been in possession of the trousers leg. (Ex.PI), kirpan (Ex.P2) and the sheath (Ex.P3). He complained that he had made the confessional statement (Ex.PW5/D) under threats and coercion by the police. He pleaded alibi stating that on the day of occurrence i.e. April 18. 1970 he was at his village Alawalpur in the District of Jullundur having left Delhi on the night of April 17, 1970 and reaching Alawalpur at about 11.00 A.M.

THE appellant did not produce any evidence in defense.

(16) In this state of evidence two questions arise for consideration. One is whether Santokh Singh deceased died of injuries inflicted on him on April 18, 1970 and secondly who was the person responsible for causing his death.

(17) There can be no doubt that Amolak Singh, Amar Singh, Lachhman Dass and S. 1. Ram Mehar who reached the shop of the deceased, shortly after the infliction

of injuries on him, saw for themselves how severely he had been injured by the assailant. The report Ex. Public Witness 22/A prepared by Dr. S. N. Gupta in the Emergency Ward of the Willingdon Hospital and the medico-legal death summary Ex.PW22/B prepared by Dr. K. D. Takkar of the same hospital the same evening at 4(.45 P.M. clearly go to show that Santokh Singh died at Willingdon Hospital New Delhi on April 18, 1970' at 4.45 P.M. Dr. S. N. Gupta and Dr. K. D. Takkar were not available at the trial. The documents prepared by them were proved by Roop Lal (Public Witness 22), an official of the Willingdon Hospital who was acquainted with the writing and signatures of both these doctors.

(18) Dr. A. K. Gosh (Public Witness 21) who conducted the autopsy on April 19, 1970 at about I P.M. found 16 injuries on the dead body of Santokh Singh deceased. The details of the injuries are :

1.One incised wound 4'*0.5' bone deep over the vertex of the skul.

2.One incised wound 4'*0.5' bone deep, I' in front of injury No. 1

3.One incised wound 2'*0.5', bone deep over the right frontal parietal region.

4.One incised wound 7'*1' bone deep over the upper lip. nose and both sides of the face. Portion of the upper lip and the nose were seen hanging loose. The distal portion of the nose was completely severed.

5.One incised wound 2'*'' muscle deep over the left face and angle of mouth.

6.One incised wound 1''*'', muscle deep over the right half of lower lip which was hanging as a loose fragment.

7.One incised wound 5'*1'', bone deep with parietal bi-section of right wrist, over the front, inner border and back of right wrist.

8.Incised wound 4''*'' muscle deep over the front and inner aspect of right fore-arm 3' above the wrist.

9.Incised wound 5'*1' bone deep over the middle of the front and inner aspect of right fore-arm.

10.Incised wound 4"*1" muscle deep over the back of right fore-arm 1' below the elbow. Both bones of the right forearm were out at two places i.e. at injuries No. 8 and 9.

11.Incised wound 3'*l/6th of an inch X skin deep over the left back, by the side of spinal column 9' below the root of neck.

12.Incised wound 3'*1' bone deep over the palm and inner aspect of left hand one inch below the wrist. The matacarpals of left ring and middle fingers had been cut.

13.Incised wound 3'*1' bone deep over the middle of palmer aspect and inner aspect of left hand. The matacarpals have been cut corresponding to the inner three fingers.

14.One incised wound I 1"*'* muscle deep over the front of left palm I' below the left little and middle fingers.

15.Incised wound 2' '*"* muscle deep just below the inner three fingers of left hand.

16.Complete bi-section of the root of left middle and left margins of the wound were clean cut and covered with blood.'

these injuries in the opinion of doctor A. K. Ghosh, are antemortem in nature. Death of Santokh Singh had occurred due to shock and haemorrhage, as a result of these injuries. Dr. Ghosh opined that injuries I to 3 could have singly and all the other injuries collectively could have caused death in the ordinary course of nature.

(19) In thus stands proved that Santokh Singh died on April 18, 1970 as a result of the injuries suffered by him earlier that after-noon.

(20) This takes us to the other question as to who inflicted those injuries on the deceased. In order to connect the appellant with the crime the prosecution produced evidence which has been classified and discussed by the Additional Sessions Judge as under:-

(1)Confession recorded under Section 164 Criminal Procedure Code .

(2)motive.

(3)Conduct and words of the accused.

(4)Purchase and possession of the kirpan i.e. the weapon of offence by the accused.

WE would change the order in which the learned trial Judge has discussed the various pieces of evidence and would start with the oral evidence first.

(21) We have already said that the scene of the tragedy is Lakkar Mandi, Naraina, Delhi. This Mandi is situated on a 40 feet wide road that branches off from the Ring Road. On both sides of this road there are various timber shops though some of the plots are still lying vacant. The shop of Santokh Singh deceased was divided into two portions, a smaller portion of which was being used by him as an office. Outside that office there was a bench and it is the case of the prosecution that at the relevant time Santokh Singh was reclining on that bench.

(22) Lachhman Dass (Public Witness 15) whose shop was in the same line of rows but separated from the shop of Santokh Singh by one other shop, deposed that he knew Santokh Singh. Gian Singh (Public Witness 12) and the appellant had been working with Santokh Singh. They left work with him nearly a month and a half before the occurrence. Even after they left, the appellant was seen visiting Santokh Singh's shop on and off.

(23) On April 18, 1970 at 10 or 10.30 A.M. when he opened the shop he saw the appellant present at the shop of Santokh Singh. At about 3.30 or 3.45 P.M. the appellant peeped into the shop of the witness and then went away. A little later, Lachhman Dass heard a boy 10 or Ii years of age shouting murder! murder!; Lachhman Dass went to the shop of Amar Singh (Public Witness 14) and told him about it and took him along to see what had happened. He stated that Amar Singh and he did not know as to who had murdered whom. When they went to the shop of Santokh Singh they found him sitting in a bench, very badly injured. His condition was indescribable. He was groaning but could not speak. He phoned the

Flying Squad from the telephone of the deceased. The police arrived there after some time. Amolak Singh (Public Witness I) also arrived there.

(24) Amolak Singh (Public Witness I) is the younger brother of the deceased. He stated that Gian Singh and the appellant who were previously working as carpenters with Santokh Singh were introduced to Narinder Pal Singh by Santokh Singh. In due course, disputes arose between Narinder Pal Singh and the appellant and his companion over payment. Both the parties appointed Santokh Singh as arbitrator to settle the dispute. Santokh Singh made an oral award in which he decided to deduct an amount of Rs. 150.00 or so from out of the claim of the appellant. He saw the receipt (Ex.PWI/A) which both Gian Singh and the appellant had signed on account of payment made to them by Narinder Pal Singh and stated that the receipt was executed by the appellant and Gian Singh in his presence.

(25) On April 18, 1970 Gian Singh went to the house of the witness at 7 or 7.30 A.M. and told him that the appellant was much agitated over the award and if the amount that had been deducted from his pay, was not paid he was threatening that he would finish off Santokh Singh. Amolak Singh informed his brother about it, but his brother did not attach much importance to it and stated that he would talk over the matter with the appellant if and when he came to him. At about 3.30 or 4 P.M. he was on his way to his brother's shop to deliver the scooter to him. But when he got down from the scooter he saw his brother lying in a pool of blood. The Flying Squad of the police, Amar Singh, Lachhman Dass and others were already present there. He deposed to the recovery of the blood-stained kirpan, a piece of trousers and the sheath and some other articles. He was also a witness to the disclosure statement (Ex.PWI/F) and the recovery of some documents from the shop of Kirpal Singh.

(26) In cross-examination he admitted that he had no idea as to what the amount of work done by the appellant for Narinder Pal Singh nor did he remember what was the amount awarded by the deceased in his award to the appellant and his companion. He also stated that the appellant received payment and left the shop quietly.

(27) Amar Singh (Public Witness 14) has a saw mill in Lakkar Mandi Naraaina. His shop is situated at a distance of 70 or 80 feet from the shop of the deceased. He stated that on April 18. 1970 at about 3 P.M. he saw the appellant going towards Santokh Singh's shop. About 20 minutes later. Lachhman Dass came to him and told him that Santokh Singh had been murdered. He rushed to the spot and found Santokh Singh lying in a pool of blood. His condition was very bad. He had many injuries. Lachhman Dass then telephoned the Flying Squad and they arrived within a short while.

(28) These are then the only witnesses from the place where the occurrence took place. None of them has any direct evidence to give except that they knew the appellant and that they had been seeing him going shortly before the occurrence towards the shop of the deceasd.

(29) The evidence as such is purely circumstantial. No body has seen the appellant inflicting any injuries on the deceased. The argument of the appellant's counsel is that at least some one from the locality would have heard the cries of the deceased or would have been attracted to the scene. The argument fails to take note of the situation of Lakkar Mandi. Out of nine shops on that side of the road on which the shop of the deceased was situated, four shops were lying vacant. The shop of Amar Singh was at a distance of nearly 100 feet from the place where the bench of Santokh Singh was lying. The shop of Lachhman Dass was nearly 72 feet away from the shop of the deceased. On the right side of the shop, three shops were lying vacant and only two shops were occupied. The shop adjacent to the deceased's shop was lying vacant. Opposite to that shop two plots of land are lying vacant and then there is a road and an open plot of land.

(30) The nature of the injuries inflected on the deceased also showed that three of the injuries were on the vertex of the skull and over the right frontal parietal region. If the deceased was thereforee struck by an assailant with any of these three injuries he would hardly be able to raise a cry. He could groan but he could not raise an alarm which might attract the neighbours. On the other hand the evidence of Lachhman Dass shows that he having come to learn from a rustic boy about murder, rushed in the direction of the deceased's shop and saw him badly injured.

(31) The evidence of these witnesses alone would not however be sufficient to fasten guilt on the appellant. In any event, it leaves room for sufficient doubt as to whether the appellant was the person who inflicted those injuries. His presence in the locality before the occurrence may lead to suspicion but suspicion howsoever grave, cannot take the place of proof. We have thereforee to turn to the other pieces of evidence dealt with by the learned Addl. Sessions Judge.

(32) The confession recorded under Section 164 Criminal Procedure Code . is the next piece of evidence against the appellant. Shri G. S. Kaira, Judicial Magistrate 1st Class (Public Witness 25) deposed that the appellant was produced before him on April 28, 1970 for recording his confession. He was remanded to judicial lock-up uptil April 29, 1970 to give him time to think over his contemplated action. He was brought from the Judicial lock-up to the court of the learned Magistrate on April 29, at 11 A.M. His hand-cuffs were removed and he was instructed to sit in a corner of the court-room and think over for himself if he was prepared to make a confessional statement. The magistrate recorded the confession in the manner provided by law. The record of the entire confession (Ex.PW25/D) was proved in evidence. The magistrate took all the necessary precautions to ensure that the appellant was making a voluntary confession and appended the necessary certificate (Ex.PW25/A) to the statement. The confession was in these words :

'GIAN Singh and I had been working as carpenters with Santokh Singh deceased at Nanakpura, R. K. Puram and Noroji Nagar, New Delhi. On taking accounts of wages, Santokh Singh obtained receipts from me but with-held payment of Rs. 425.00 from the amount he was owing to me. I went to his house a month before the occurrence and demanded payment of that amount. He did not make the payment. Instead, he abused me and spat on me. I had to make three or four different trips to his shop to demand payment of this amount. He still did not pay. On April 18, 1970, at about 3.45 or 4.00 P.M. I went to his shop and demanded payment. His shop is situate at the timber market, near the Naraina bridge. Again, he did not make the payment. Instead, he began to abuse me. He even spat on me. I could not tolerate it. I was over-powered by anger. I was armed with a sword. While he was reclining in a bench. I struck him on his face with my sword. I threw the sword at. his shop and ran away. I went to my village, Alawalpur in Punjab,

from where I was arrested.'

COUNSEL for the appellant argue that the proceedings recorded by the Magistrate did not indicate that the appellant would not be sent back to police custody after the confession was recorded. He also argued that even though the confession was made voluntarily it was not true. That circumstance coupled with the view that the confession had been retracted rendered the confession inadmissible in evidence.

(33) It will be seen that in the confessional statement the appellant had stated that it was the deceased himself who owed Rs. 425.00 out of his wages for the work done by him for the deceased and that it was the non-payment of that amount by the deceased which created the trouble. The appellant also stated that instead of making the payment, the deceased would, abuse him and spat on him every time he made the demand. He further stated that even on April 18, at about 3.45 P.M. when he went to the shop of the deceased and demanded payment, the deceased abused him and spat on him. It was on this. according to the appellant, that he attacked the deceased and struck him on his face with a sword. The prosecution allegation on the other hand was that the dispute related to the payment of wages by Narinder Pal Singh and that the deceased figured in it not as a party but as an arbitrator. The prosecution also alleged that the award made by the deceased was considered by the appellant to be partial to Narinder Pal Singh. The appellant's version as to motive in his confessional statement is thereforee not correct.

(34) The confession also lacks in details as to the number of blows given by the appellant to the deceased at his shop. The appellant merely stated : 'I struck him on his face with my sword' suggesting s if he had given him only one blow,

(35) None of these statements can detract from the truthful nature of the confession. It is no doubt true that the prosecution had alleged that it was over the payment of wages by Narinder Pal Singh that the appellant was enraged with the deceased and that there was no question of any money being due to the appellant from the deceased. But the fact remains that the dispute between the deceased and the appellant was on account of wages. Gian Singh who was a partner of the appellant had no animus against him. He and the appellant had been working

together for nearly 3 years. His evidence was that

NARINDER Pal Singh was dis-satisfied with the work done by Gian Singh and the appellant and they were asked to quit. He did not render full account and thereforee the two carpenters did not accept the payment. At their request Santokh Singh had intervened and ultimately after three or four days Narinder Pal Singh paid Rs. 634.00 to each of them.

(36) It was urged by the counsel for the appellant that if Gian Singh and the appellant had worked with Narinder Pal Singh for about 20' days and each of them had been paid Rs. 634.00 the amount worked out to more than Rs. 30 per day which could by no means be desannycribed as in-adequate payment. According to the learned counsel, a carpenter hardly gets more than Rs. 12.00 to Rs. 15/ per day. In this state of evidence he stated that the appellant could not be dis-satisfied with the award made by the deceased. No evidence has been led by either side to explain what could the daily wages of a carpenter be. Moreover the question of daily wages may not arise at all as Gian Singh and the appellant had probably taken the entire work on a lumpsum basis, and could thereforee expect a much larger sum of money than would be represented by the daily wages of a carpenter. Apart from the statement made in the confession no witness came forward to depose that any money was due to the appellant from the deceased. Had that been the case, Gian Singh at least would have said so. It thereforee seems more probable that the dispute relate to work. done by Gian Singh and the appellant for Narinder Pal Singh.

(37) The other circumstance that the appellant did not give any details of the injuries inflicted by him on the deceased also does not affect the truthful nature of the confession. On the other hand, the absence of those details eliminated the possibility of police being concerned with the making, of the statement. The appellant clearly stated that he struck the deceased with his sword on his face and whether he did it several times or just once would not make any difference. He was not being asked the number of blows that he gave to the deceased and thereforee the statement does not take away from the truthful nature of the confession.

(38) Counsel for the appellant invited our attention to a Bench decision of Bombay High Court in Queen-Empress v. Narayan (2nd 25 Bombay 453)(l) and submitted that when an accused person has been kept in custody of the police and has made a confession, it is important that the magistrate before recording such confession under Section 164 Criminal Procedure Code should ascertain how long the accused has been in custody. If there is no record of that fact, it is the duty of the Sessions Judge before holding confession relevant under Section 24 of the Evidence Act to send for the magistrate and satisfy himself on the point. The questions put to the appellant by the magistrate established how long. he had been in police custody. Learned counsel then contended that in the questions put to the appellant by the learned magistrate there is no mention of the fact that the appellant was informed that after he had made his confession he would not be sent back to the custody of the police. Para 7 of Chapter 13 of the Rules and Orders of the Punjab High Court, Vol. Ill as in force in any doubt that in the present case the magistrate did carry out the instructions given in the Rules and Orders of the Punjab High Court for on 28-4-1970 the appellant was sent to judicial lock-up and was produced in Court on the next day from there.

(39) Learned counsel next referred to a decision of the Supreme Court in Nathu v. State of Uttar Pradesh : 1956 CriLJ152 and submitted that in that case the appellant was kept separately in the custody of the C.I.D. Inspector from 7th August to 20th August 1952 and his confession was recorded on 21st August. It was held that the prolonged custody immediately preceding the making of the confession is sufficient unless it is properly explained to stamp the confession as involuntary. It was urged that in the present case the appellant was admittedly in the custody of the police from 19th April to 28th April 1970 for which no satisfactory Explanationn was forth coming. The confession as such must be held to be involuntary. An examination of the Supreme Court decision however shows that the appellant in that case was first arrested on the night between 20th and 21st May but was released by the police immediately and it was not till 8th June 1952 that he was re-arrested. From that time down to 7th August he was in jail. On that day he was sent for interrogation to the C.I.D. Inspector who had been deputed to make the investigation and was held in custody till 20th August. On 20th August he was sent back to judicial custody and on 21st he made the

confessional statement. It was in these circumstances that the prolonged custody of the appellant was held to stamp the confession as involuntary. That is not the case here.

(40) Counsel for the appellant further argued that even if the confession were to be treated as voluntary it is not sufficient to rely on the same for the court must go further and see whether the facts stated therein can be accepted as true. In this connection reliance was placed on a decision of the Supreme Court in Sarwan Singh Rattan Singh v. State of Punjab : 1957 CriLJ1014 where it was said by Gajendragadkar J. (as he then was) that even if the confession is held to be voluntary it must also be established that the confession is true and for the purpose of that question would be necessary to examine the confession and compare it with the rest of the prosecution evidence and the probabilities in the case.

(41) Counsel also relied on a Bench decision of this Court in Jai Singh and another v. The State AIR 1957 Delhi 14 where the same principle was laid down. It may be mentioned here that it was further stated in that case that the mere fact that the accused was in the custody of the police for a period of nine days before he was produced before the Magistrate for recording his confession, would not be enough by itself to make the confession in-voluntary.

(42) In the present case we are of the view that the confessional statement was voluntarily made by the appellant and there is nothing in the confession which in any way detracts from its being a truthful statement. The minor discrepancies between the evidence on record with regard to the nature of the dispute which led to the murder of the deceased and the number of injuries infected by the appellant do not lead to the conclusion that the confession is not substantially true.

(43) The question as to the extent of corroboration required to act on a retracted confession has been the subject of observation by the Supreme court in the case of sarwan singh rattan singh

(44) We may now turn to the other pieces of evidence against the appellant. While dealing, with the confession we have already cursorily dealt with the evidence of

motive. Amolak Singh, Gian Singh and Narender Pal Singh have given evidence on that point. It is no doubt l rue that Amolak Singh (Public Witness l) had stated in his evidence-in-chief that the receipt Ex.PWI/A was executed in his presence. The statement of Narinder Pal Singh on the other hand was that the appellant, Gian Singh, Santokh Singh and the witness alone were present and there was none else besides them. Amolak Singh admitted in cross-examination that he had no idea as to what was the amount of work done by the appellant for Narinder Pal Singh. He also did not remember what was (he amount awarded by the deceased in his award to the appellant and his companion nor did he know what was the amount that was being paid to the appellant. Amolak Singh also added that the settlement was effected nearly a month before the murder of his brother. Learned trial Judge has believed Amolak Singh, but we on our part, are not prepared to place any reliance on Amolak Singh on this point.

(45) The evidence of Gian Singh however stands on a different footing. He was closely associated with the appellant as a co-worker and a neighbour for nearly three years. Gian Singh deposed that since Narinder Pal Singh did not render full account of their wages, the matter was referred to the deceased for arbitration. He further stated that the deceased brought about a settlement under which Narinder Pal Singh was required to pay them a sum of Rs. 634.00 each and that the payment was in fact made by Narinder Pal Singh to both of them at the shop of the deceased on April 16, 1970. He also stated that the receipt Ex.PWI/A was executed by him and the appellant in token of the said payment but he added that the appellant kept grumbling with the decision given by the deceased saying that it was not a just decision. The statement of Gian Singh is fully borne out by the evidence of Narinder Pal Singh. We thereforee place implicit reliance on the testimony of Gian Singh and Narinder Pal Singh and are prepared to believe the evidence of motive furnished by the prosecution. The appellant on the other hand was obviously trying to give in his confession a garbled version in an attempt to show that the deceased who had with-held payment of his wages had added insult to injury by abusing and spitting on him when he demanded payment of his wages. It may be that he was trying to explain away his crime on the plea that he acted under grave and sudden provocation.

(46) This takes us to the disclosure statements and discoveries made by the police in consequence of the statements made by the appellant. It was alleged by the prosecution that during the course of interrogation by the police the appellant made a statement on 22-2-1970 (Ex.PWI/F). It is signed by the appellant and is also witnessed by Amolak Singh younger brother of the deceased. The relevant portions of the statement read:-The deceased made a disclosure during the course of interrogation 'that he had purchased the kirpan 2i feet in length which is now in police possession from Karol Bagh Delhi and that he could point out that shop.'

(47) In consequence of that statement the appellant while in police custody walked ahead and pointed out stall No. 19, i.e. the shop of Ladha Singh Kirpal Singh Booksellers, Stationery and Kirpan Dealers situated at Hardhyan Singh Road, Karol Bagh. The discovery memo is Exhibit Public Witness 1/G. it is signed by the appellant and is witnessed by Amolak Singh and Booti Shah as two attesting witnesses.

(48) The disclosure statement is admissible under Section 27 of the Evidence Act, but it is not the whole of the statement that appears to us to be relevant. The portion 'that he had purchased the kirpan 21/2 feet in length which is now in police possession from Karol Bagh Delhi' is apparently not admissible and the only portion of the information which is immediate and proximate cause of discovery of facts is the portion 'that he could point out that shop.' The rest of the statement is clearly irrelevant and should not have been placed on record.

(49) Counsel for the appellant nevertheless referred to a Full Bench decision of Lahore High Court in Sukhan v. Emperor AIR 1929 Lah 344 and submitted that 'the expression 'fact' as defined by 'Section 3 of the Evidence Act includes, not only the physical fact which can be perceived by the senses but also the psychological, fact or mental condition of which any person is conscious. It is in the former sense that the word is used in Section 27. The phrase 'fact discovered' used by the legislature refers to a material and not to a mental fact.' We fail to understand the object of citing that authority for it was said by Sir John Beaumont in Pnlnkuri Koflaya v. Rex. (74 Indian Appeals 65) that it is fallacious to treat the

'fact of discovery' within the section as equivalent to the object produced: as the fact discovered embraces the places from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact.' These observations were relied upon by the Supreme Court in Prabhoo v. State of Uttar Pradesh : [1963]2SCR881 . The material fact of pointing out the shop is thereforee a statement admissible under Section 27 of the Evidence Act. The disclosure and discovery memos (Exs. Public Witness I/F and E.xs. Public Witness I./G) have been duly proved by the evidence of Amolak Singh and Booti Shah and are admissible in evidence.

(50) Learned counsel then argued that in any event, the discovery of the shop may be admissible under Section 27 of the Evidence Act but the discovery of the cash memo and the sale register produced by Kirpal Singh (Public Witness 5) is not admissible as the appellant did not point out those documents nor did he make any disclosure regarding the same. The recovery of those documents is mentioned in Ex.PW1/J. and is signed by Kirpal Singh and also by Amolak Singh and Booti Shah. 'The document Exhibit Public Witness I/J is not a substantive piece of evidence. It merely corroborates the statements made by Amolak Singh. Kirpal Singh and Booti Shah. The cash memo book and the sale register may not be covered by the disclosure statements (Ex.PWI/F) or by the discovery memo (.Ex.PW.1/D) but once the shop of Kirpal Singh was pointed out by the appellant it was up to the police to examine the owner of the shop and also to carry out the search in case such search was necessary or to take into possession certain documents which are relevant lor the purpose of establishing that it was the appellant who had earlier visited the shop and had purchased the kirpan from there. These documents were thereforee recovered during the course of police investigation. Kirpal Singh (Public Witness 5) slated that the appellant had visited his shop on or about March 12, 1970 to buy a kirpan. Kirpal Singh needed necessary particulars including the address of the appellant and asked him to sign the entry in the register. The appellant refused to sign and the witness refused to sell the kirpan to him. The appellant went away and again visited the shop on March 14 when he gave a new address and a new entry was got made in the register. Kirpan (Ex.P2) along with the sheath (Ex.P3) was sold to the appellant for Rs. 18/. Ex.PW5/A is the relevant entry and it was signed by the appellant in the

presence of the witness at the point marked A. The previous entry which had to be cancelled is Ex. Public Witness 5 B. Ex. Public Witness 5/C is a counter-foil of the cash memo issued by the witness, and it is in the cash memo hook (Ex. Public Witness I I). He also deposed that on or about April 19. 1970 the police brought the appellant to his shop and the Sho look into possession the register (Ex.PW1/H) containing entries Exs.PW5 A and Public Witness 5/B and the cash memo book (Ex.PWI .1). containing the voucher (Ex.PW5/ C). These were taken into possession vide memo Ex.PW1/J winch was signed by the witness and was admitted by him to be correct. The date April 19, 1970 is an obvious mistake because all this was done on April 22. 1970.

(51) In this view of evidence the criticism made by the counsel for the appellant that the register and the cash memo hook could not he taken possession of hy the police as they did not fall within Section 27 of the Evidence Act cannot be sustained.

(52) Counsel lor the appellant then urged that kirpan is in an article of daily use. There is no distinctive point about it. 'Ihe kirpan was also purchased by the appellant on March 14. 1970 while the murder was committed on 18th April. 1970. It is not lhc prosecution case that the appellant had decided to murder Santokh Singh on March 14. 1970 Tile mere possession of a Kirpan thereforee did not carry any weight. In any event, it was argued that Kirpal Singh cannot be trusted with having recognised that the kirpan discovered from the scene of offence by tile police was the same kirpan that had been sold to the appellant. Reliance was placed on a decision of Krishnan .1.C. in Kartar Singh and others v. State of Vindhya Prashad Ir 1952 v.P.42 where it was said that at best of the identification of articles involves uncertainty. If it is one article and that is not very distinctive in applliant. it would he very un-safe to convict the appellant on the basis of that article.

(53) There can be no doubt that there is nothing distinctive about the kirpan (Ex.P2) but the connection between Ihe appellant and the kirpan is established hv the entires made in the register hy Kirpal Singh and the counter-foil of the cash-memo book produced by the. The appellant has actually signed the entry in that

register which clearly goes to show that he had purchased a kirpan on March14. 1970. The appellant's Explanationn in his examination under Sec. 342 Cr.P.C. was that the entry had been signed by him. His only defense was that his signatures were obtained by the police at the police station. In cross-examination of Inspector Shiv Kumar (Public Witness 26) who was investigating the case no such question was put to him. Kirpal Singh had definitely stated that it was the appellant who had purchased the kirpan and had signed the register in his presence. Gian Singh (Public Witness 12) also said that he had been seeing the kirpan and the sheath (E'xs.P2 and P3) hanging in the house of the appellant concealed in a piece of trousers (Ex.PI). Amolak Singh also said : 'I had seen the accused along with the sheath Ex.P3 and the sword covered by it outside the Gurdwara at Majnoo Tila. There were so many other Sikhs present there. Many were carrying swords at that time. .It is only from the sheath and its colour, that I am saying that this is the same sheath. Such sheaths arc commonly found everywhere.' The discovery of the kirpan thereforee connects the appellant with the crime.

(54) It is true that Om Parkash the of and kirpan on blood human stains found India Government to examiner Chemical serologist The crime. with appellant connect sufficient quite is sheath kirpal discovery Singh Kirpal evidence discarded be statement that if even But accord. own their it recorded police his not was yet shop in witness) (which A Ex.PW16 although saying length went He him. by stitched were pants admit did Tailors Om name tailors business carrying been has who

(55) Jagdish Chander (Public Witness 20) and S. 1. Sohan Singh (Public Witness 23) deposed that the shirt and the pants (Exs. P7 and P8) were recovered from the attache-case of the appellant at his residence in village Alawalpur on April 19, 1970'. Those clothes were taken into possession by S. L Sohan Singh because lie noticed blood stains on them. On Chemical analysis these clothes were found to be stained with human blood. The only criticism of the counsel for the appellant was that the appellant had sufficient opportunity to get rid of these clothes as lie had managed, to escape to his village. He would not have allowed these clothes which were stained with human blood to be lying in an attachecase. To accept this argument would mean that we must reject the evidence of Jagdish Chander and

S. I, Sohan Singh who had obviously no interest in giving false evidence against the appellant. Many a time an accused person is found in possession of clothes which bear stains of human blood even though he has had an opportunity to discard them and if two witnesses against whom nothing has been alleged have deposed that the shirts and pants Exs.P7 and P8 were recovered from the attache-case of the appellant, we see no reason to reject their evidence. This circumstance also tends to implicate the appellant in the commission of the crime.

(56) The next piece of evidence against the appellant is his conduct and the words used by him on the previous day. Gian Singh who, as we have said had no motive to give false evidence to implicate the appellant, stated that after their settlement as per receipt Ex.PW1/A arrived at on April 16. 1970, the appellant went to Gian Singh's house on April 17 at about 10 P.M. and told him that he was not 1970, The appellant's Explanationn in his examination under Sec. 342 Cr.P.C. was that the entry had not been signed by him. His only defense was that his signatures were obtained by the police at the police station. In cross-examination of Inspector Shiv Kumar (Public Witness 26) who was investigating the case no such question was put to him. Kirpal Singh had definitely stated that it was the appellant who had purchased the kirpan and had signed the register in his presence. Gian Singh (Public Witness 12) also said that he had been seeing the kirpan and the sheath (Exs.P2 and P3) hanging in the house of the appellant concealed in a piece of trousers (Ex.PI). Amolak Singh also said : 'I had seen the accused along with the sheath Ex.P3 and the sword covered by it outside the Gurdwara at Majnoo Tila. There were so many other Sikhs present there. Many were carrying swords at that time. It is only from the sheath and its colour, that I am saying that this is the same sheath. Such sheaths are commonly found everywhere.' The discovery of the kirpan thereforee connects the appellant with the crime. satisfied with the decision of the deceased. He also told Gian Singh that he would go to the deceased on the following day and if he did not make the payment of the remaining amount he would finish him off. It seems that the appellant thought that the deceased was liable to make the payment for after all it was he who had put him on work with the partner of his younger brother. Such threatening words as uttered by the appellant in the presence of Gian Singh less than 24 hours before the occurrence not only proved the motive but also the fact that the appellant had enmity with the

deceased. Learned trial Judge referred to the observations of Lord Atkinson in Rex v. William Henry Bull etc. (1911 Appeal Cases 47 at page 68). We may not be prepared to go to the length to which Lord Atkinson is reported to have, gone in that case. The observations in any case do not form part of the judgment and were made in the course of counsel's argument. But we arc certainly prepared to say that it is open to the prosecution to give evidence of enmity of the appellant towards the deceased to prove that the ultimate act of killing: had its origin in that enmity. This circumstance can also be pressed into service in coming to the conclusion that it was the appellant who took the life of the deceased.

(57) For all these reasons we arc fully convinced that the appellant is guilty of a pre-meditated and could blooded murder. He inflicted as many as 16 injuries on the head. face, hands and arms of the deceased. The injuries on the arms, hands and palms of the deceased would clearly show that the deceased was desperately trying to save his life but the appellant was bound upon taking his life. He inflicted blow after blow and seems to have stopped only after he was convinced that the victim could not escape death.

(58) Under these circumstances, we have no doubt that the appellant indicted these injuries on the deceased with the intention of causing death. There are no extenuating circumstances at all. The deceased had not done any harm to the appellant. He had been made to intervene between the appellant and Narinder Pal Singh' and was responsible for getting the appellant a considerable sum of money. His murder at the hands of the appellant was gruesome and was committed after full deliberation and pre-meditation. The gravity of the offence calls for the extreme penalty and we have thereforee no hesitation in con- firming the sentence of death passed on the appellant. The appeal filed by the appellant is also dismissed. The Registrar of this Court shall without delay, send a copy of the order under seal of this Court duly attested with his official signatures to the Court of Session.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com