

State (Delhi Administration) Vs. Frithl Singh

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Court : Delhi

Decided On : Aug-14-1991

Reported in : 1991(3)Crimes468; 45(1991)DLT172; 1991(21)DRJ245

Judge : Malik Sharief-ud-Din and; V.S. Bansal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 364

Appeal No. : Criminal Appeal No. 25 of 1981

Appellant : State (Delhi Administration)

Respondent : Frithl Singh

Advocate for Pet/Ap. : S.K. Agarwal and; Anil Soni, Advs

Judgement :

Malik Sharief-ud-Din, J.

(1) The respondent was prosecuted for an offence under Section 364 of the Indian Penal Code (I. P. C.) for having abducted Bimla Devi, his wife from village Kadipur Delhi with the intention to murder her. The learned Additional Sessions Judge, Delhi, by his order dated 4th October, 1980 acquitted him. as according to him there was no satisfactory evidence to connect the accused with the crime.

(2) It is against this order of acquittal that this appeal has been preferred by the State (Delhi Administration)

(3) Now briefly stated the facts are that Bimla was married to accused on 22nd June, 1973. The accused was working in Indian Army as sepoy. Bimla was not pulling on well with her in-laws though there is no indication in the prosecution case that her relations with the respondent were also strained. On the other band it is clear that she had no grievance against the respondent On 15th March, 1976, Bimla had run away from her in-laws house and lodged a report with Police Station Bahadurgarh in which she complaint that she was beaten by her in-laws and here life was in danger. On 30th June, 1976, the respondent who was on leave from the Army came to the village Kadipur Delhi, to take his wife Bimla along with him. It is stated that the respondent had taken leave from the Army and during those days Bimla was living with her parents. On 30th June, 1976, when he come to the parents house of Bimla he rook away Bimla with him. Thereafter, the brother of Bimla received letter Ex. Public Witness -2/A to P. W.-2/D written on various dates from the respondent. These letters are admitted to be in the hand-writing of the respondent. Two months thereafter the parents af Bimla received information from Village Chara where the respondent was residing to the effect that Bimla was dead. The parents went to village Chara where they were hand over a letter Ex. P. W. 2/F written by the accused regarding the death of Bimla. Thereafter, on 6th September, 1976, Prempal Singh went to Pathankot where the respondent was posted and there the respondent is said to have made an extrajudicial confession before P. W. 5, Major B- S. Bajwa which is marked as Ex P. W.-5/A in which he is stated to have confessed that while he was traveling with Bimla in a train, be made her drunk and give her some sleeping pills and when she became almost unconscious he pushed her out of the running, train in between Ludhiana and Jalandhar. We may note that the report in this case was lodged on 3-4-1977, that is almost after seven months of the alleged incident.

(4) The entire prosecution case rests on the extra judicial confession alleged to have been made by the respondent before P. W. 5, Mjr, Bajwa and also letters Ex. P. W. -2/A to Public Witness -2/F admittedly written by the accused. The Trial Court after carefully considering the evidence dismissed the case and acquitted

the accused on the ground that there was delay in the lodging of F.I R. It was also felt that no case under Section 3641P.C. is made out as the evidence does not indicate that Bimla was abducted with intent to murder The Trial Court further felt that extra judicial confession alleged to have been made before P. W.-5 Mjr. Bajwa is not trust worthy and reliable. This was so particularly in view of the statement of Public Witness -2 Prempal Singh brother of Bimla, who had stated that in his presence the respondent when asked by Mjr. Balwa, had made an exculpatory statement in which he had stated that Bimla had escaped from railway station Jalandhar after taking away Rs. 500.00 from his pocket. The trial Court also felt that the letters Ex-P.W. -2/A to Public Witness -2/P which were admittedly in the hand-writing of the respondent could not be acted upon in view of the satisfactory Explanationn of the respondent that he had only written these letters with a view to ensure that his parents are not harassed. The Trial Court also felt that since the relations between the respondent and his wife were quite cordial there was no reason from him to abduct her with her intention to kill her.

(5) Now, it is a well settled now that powers of this Court in an Appeal against acquittal are as Wide and comprehensive as in an Appeal against the conviction. This Court has full power to re-appraise the entire evidence upon which the order of acquittal is based and to derive its own conclusions. But before reversing an order of acquittal, the Court bag to endeavor to displace the primary reasoning of the Trial Court upon which the acquittal is founded. This Court will not interfere with the order of acquittal even if two views of evidence are reasonably possible and in that event the view of evidence supporting the acquittal can not be displaced merely for the reason that this Court feels that sitting as a Trial Court it would have taken the other view

(6) With this legal position in mind let us examine the evidence tendered in support of the prosecution case, P. W. -2 Prempal Singh as well as P. W. -3 Satish Kumar both brothers of Bimla have no-where stated that any deceit was perpetrated or inducement was offered by the respondent when he took Bimla along with him from her parent's house. All that is stated is that the respondent had told her that if she cannot pull on with his parents he will take her to Pathankot where he is posted and live separately. One has to bear in mind that she was no history of any

strained relationship with the respondent. She has gone with the respondent of her own free will and she was seen off at the bus station by her brothers. Trial Court's view as such that no offence under Section 364 Indian Penal Code is made out is perfectly justified. Mr. S.K, Aggarwal, learned counsel for the appellant, however, sought to derive support that she was abducted from the extra judicial confession allegedly made by the respondent before Public Witness -5 Mir Bajwa. On the strength of this extra judicial confession it is urged before us that it is clear from this confession that right from the beginning the respondent was to take Bimla with him by deceitful means with intent to kill her. We are not at all satisfied with the contention, for the reason that the extra judicial confession made before Mjr. Bajwa, p. W.-5 in our view also is neither reliable nor trustworthy. We may note that the respondent in his statement under Section 313 has retracted it as incorrect. That apart the primary reason for us not to rely upon this extra judicial confession made before Mjr. Public Witness -5 is that this extra judicial confession seems to have been recorded secretly. Our reason for saying so is that Public Witness -2, Prempal Singh, brother of Bimla has deposed that in his presence the only confession made by the accused before P- W. -5 Mjr. Bajwa was that Bimla escaped from railway station Jalandhar after taking away Rs. 500.00 from the pocket of the respondent and that he did not report the matter because he felt that it would humiliate him. According to him he came back to his father who lodged a report. There is no indication in the testimony of P. W. -2, brother of Bimla, that any other statement was made before P. W. -5, Mjr Bajwa by the accused. According to P W.-5 he made Prempal Singh to sit in another room and then talked to the accused in privacy. It is in this state of evidence that the extra judicial confession alleged to have been recorded by Mjr. Bajwa has become suspect. One does not know which one of the two confessions is being relied upon by the prosecution, it is understandable that the extra judicial confession recorded by Public Witness -5, Mjr. Bajwa suits the prosecution and that is why it has tried to use it to the maximum possible extent. In our view therefore, it cannot be said that the view of evidence taken by the trial Court is in any way not warranted and unreasonable. As far as the letters Ex. P W. -2/A to P.W.-2/F are concerned, the Explanation of the accused that he wrote these with a view to ensure that his parents are his parents are not harassed seems to be quite normal and satisfactory, particularly in

view of the fact that Bimla was not carrying on well her mother in-law, brother-in-law and sister law and it was quite normal for the respondent to entertain an apprehension that once Bimla was untraceable his parents, brother and sister would be subjected to harassments.

(7) The learned Trial Court, therefore, justified in seeking further corroboration to the extra judicial confession recorded by Mjr Bajwa, Public Witness, -5 We accept the legal proposition put forth by Mr. Aggarwal that there is no rule of law or propriety that extrajudicial confession, if found reliable and trust worthy cannot be acted upon without further corroboration. This, in fact, is settled law but the condition precedent is that the extra judicial confession which is essentially a weak type of evidence must be found to be reliable and trust worthy. It is only in that event that a conviction can be based even if there is no corroboration to such extra judicial confession.

(8) In this state of evidence taken by the Trial Court is quite reasonable and there is no reason turn us to reason for us to displace the same. We find no merit in this Appeal Dismissed.

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