

Laxminarain Vs. the State

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Court : Rajasthan

Decided On : Aug-16-1955

Reported in : AIR1956Raj34; 1956CriLJ266

Judge : Sharma and; Bhandari, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164, 208 and 556;
[Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 90 of 1953

Appellant : Laxminarain

Respondent : The State

Advocate for Def. : R.A. Gupta, Adv.

Advocate for Pet/Ap. : P.C. Jain, Adv.

Disposition : Appeal dismissed

Judgement :

Sharma, J.

1. The appellant Laxminarain has been convicted by the learned Sessions Judge, Kotah under Section 302, I. P. C., and sentenced to transportation for life.

2. The prosecution case is that the appellant Laxminarain who is the nephew of Devlal, cut jokes with a fourteen years old girl named Mst. Badri who was related to Devlal's wife on her mother's side, a few days before the occurrence which took place in the night between 4 and 5-2-1953. This annoyed Mst. Badri and she complained to her husband, and the complaint was also brought to Devlal deceased. Devlal took the appellant Laxminarain to task.

A few days after, the appellant molested Mst. Ram Nathi, wife of Devlal. Mst. Ramnathi complained to Devlal and Devlal gave the appellant a beating, a day before the occurrence. On the date of occurrence in the night, the deceased and Mst. Ramnathi were sleeping in their house when the appellant entered therein and gave three axe blows on the head of Devlal.

Devlal fell down and soon after succumbed to his injuries. His wife Mst. Ramnathi raised an alarm which attracted Ghasi, the brother of Devlal, Ghasi asked Mst. Ramnathi not to disclose the name of the appellant Laxminarain, otherwise he would fly away. Ghasi got a report scribed by Shankarlal and sent it through Chanda Chowkidar to the Police Station Sanged.

The report was lodged there on 5-2-1953 and investigation began and Mohanlal a Lance Naik who was in charge of the said Police Station in the absence of the Sub Inspector and the Head Constable, started for the village Atralia where the occurrence had taken place. He prepared a plan of the locality Ex. P10 and an axe article 1 was also produced before him by Chanda Chowkidar.

The axe was seized and the seizure memo was prepared which is Ex. 6. Three injuries were found on the head of the deceased Devlal. The dead body was sent to Sanged dispensary where the post-mortem examination was carried out by Dr. Kalyan Singh. The clothes of the deceased were also seized and seizure memo Ex. P3 was prepared. On 14-2-1953, the appellant Laxminarain was produced before the court of Yasin Ali Khan Sub Divisional Magistrate, Chechat and his statement was recorded under Section 164, Cr. P. C.

The axe in question was also got identified before Shri Hiralal Tehsildar Magistrate, Sanged. The case was ultimately challenged in the court of the Sub

Divisional Magistrate, Chechat under Section 302, I. P. C., who committed the appellant to take his trial before the court of Sessions Judge Kotah under Section 302, I. P. C.

3. No direct evidence was produced in this case. The accused denied the charge in the Sessions Court, although upto the Committing Magistrate's court he had stuck to the statement which he had made under Section 164, Cr. P. C. The learned Sessions Judge on the circumstantial evidence produced in the case, was satisfied that the charge under Section 302 was brought home to the appellant and consequently, convicted and sentenced him as mentioned above.

4. Against his conviction and sentence, the appellant filed this jail appeal. Mr. P. C. Jain was engaged as amicus curiae. We have heard Mr. P. C. Jain on behalf of the appellant and Mr, R. A. Gupta on behalf of the State. The case hinges on circumstantial evidence only. The circumstantial evidence may be divided into the following parts :

1. The confession of the accused under Section 164, Cr. P. C.

2. Misbehaviour with Mst. Badri and Mst. Ram Nathi and in consequence, the beating of the accused by the deceased Devlal.

3. The axe Article 1 having been borrowed by the appellant from Prabhulal on Wednesday, preceding the date of occurrence.

4. The appellant having been seen inside the house of the deceased at the time of occurrence and his making escape therefrom immediately after.

5. Alarm raised by Mst. Ramnathi that the appellant had killed Devlal.

6. Medical Evidence.

7. The statement of the appellant under Section 208, Cr. P. C., before the Committing Magistrate.

5. So far as the statement under Section 164 is concerned it would be proper to read it along with the statement made under Section 206, Cr. P. C., before the

Committing Magistrate. Mr. P. C. Jain argued that it was neither voluntary nor true nor was it corroborated in material particulars by any independent evidence. The lower court was, therefore, not justified in drawing support for conviction from the said statement.

It was argued that the evidence showed that the appellant was in police custody when his confession was recorded. The appellant was kept in police custody without any order of remand much beyond the time which is allowed by law, and this shows that the police avoided bringing the appellant before a Magistrate so that any marks of injury which might have been caused to him by the beating alleged by him might not be discovered.

Further, it was argued that the necessary questions which ought to have been put under Section 164, Cr. P. C., were not put to the appellant and therefore, the appellant was not in a position to know that he was not bound to make a statement against him. It was also argued that the appellant was not asked why he was prepared to make a statement against himself. From all these things, it was argued that the so-called confession, cannot be treated as evidence in this case.

6. We have considered the arguments of the learned counsel on this point. There is no doubt that the appellant was produced before Mr. Yasin Ali Khan Magistrate who recorded the confession, from police custody. There is also no doubt that the appellant was kept in police custody beyond the period prescribed by law, without any order of remand from a Magistrate. It is also true that no specific warning was given to the appellant that he was not bound to make a confession. He was also not asked, why he was prepared to make a confession before the court.

The question however, is whether under the circumstances of this case, from all these things, it can be gathered that the statement made by the appellant was not voluntary. The fact that the appellant was produced from police custody before the Magistrate who recorded the confession, no doubt would have cast some suspicion upon it, but in this case, we find that apart from the sufficient warning, which was given to the appellant by the Magistrate Mr. Yasin Ali Khan, the appellant stuck to his confession in the court of the Committing Magistrate.

It cannot be said that any influence of the police could be working on the mind of the appellant at the time he made his statement under Section 208, Cr. P. C. He had been for several days in judicial custody before he was examined in the court of the Committing Magistrate and if his confession under Section 164, Cr. P. C., had been the result of any improper influence of the police, it cannot be expected that the appellant would have stuck to it even when he was examined before the Committing Magistrate.

If the appellant had been maltreated or any pressure had been brought upon him by the police, it is unnatural that he should not have brought it to the notice of the Committing Magistrate even when he was examined by the Committing Magistrate. The learned Magistrate who recorded the confession of course did not put one or two questions to the appellant which he ought to have put, but reading all the questions which were put to the appellant and the warnings which were given to him by the learned Magistrate, it cannot be said that the appellant was not sufficiently warned that if he made any confession, it would be used against him at the trial.

It was held by a Division Bench of this Court in the case of -- 'Ram Singh v. State', 1952 Raj LW 209 (A), that

'where the Magistrate before recording the confession, told the accused that there was no police pressure and inducement on him to make the confession and also asked him whether he was making the confession voluntarily, telling him that he was free to say whatever he liked, the confession of the accused was quite in order. Telling the accused that he was free to depose voluntarily whatever he liked was the same thing as telling him that he was not bound to make a confession.'

In the present case, the Magistrate clearly warned the appellant that he was before a Magistrate and he replied that he knew full well that he was. He was also asked whether there was any police man present in the court room and he replied in the negative. He was also clearly asked whether he wanted to make a statement voluntarily and it was not due to any force, threat or marpit that he was going to make a statement and he replied clearly that he wanted to make free and voluntary statement and that nobody had beaten or threatened him.

The Magistrate had also warned the accused that any statement he might make would be read against him. It was after all the above questions were put by the Magistrate and answered by the appellant that the appellant narrated whatever he had to say and he gave a very natural and coherent statement clearly stating that it was he who had given three axe blows on the head of Deylal which resulted in his death.

This statement when read along with his statement under S. 208, Criminal Procedure Code, leaves no doubt that whatever, the appellant stated under S. 164, Cr. P. C., was quite voluntary and was not the result of any undue inducement, threat or undue influence. That the statement far from being retracted in the court of the Committing Magistrate was stuck to fully, also gives a sufficient guarantee that the statement which the appellant got recorded under Section 164, was true.

7. The only question that remains to be examined is whether there is any independent evidence to corroborate the confession of the appellant in material particulars. One corroboration is afforded by the medical examination of the deceased which showed that there were three cuts on his head and one near his left ear by some sharp edged weapon.

The appellant stated in his confession that he had given three cuts with an axe and he also stated that they were dealt on the head of the deceased. Thus the medical evidence affords a valuable corroboration of that part of the confession of the appellant where he had stated that he had given three cuts with an axe to the deceased. (8) Another corroboration of the confession of the appellant is forthcoming from the evidence of Prabhulal who stated that the axe article 1 was borrowed by the appellant on Wednesday preceding the date of occurrence. Prabhulal identified the axe Article 1 to be the axe which had been borrowed by the appellant from him.

Of course, we may here point out to one great omission on the part of the police that this axe or the scrapings from it were not sent for chemical examination and for an examination by a serologist. This omission would probably have mattered very much if fortunately for the prosecution, the appellant had not admitted in his

statement under Section 208, Cr. P. C., that the axe article 1 was the axe with which he had dealt three blows to the deceased.

There was evidence of Mst. Ramnathi to show that the axe Article 1 was the axe with which the appellant had committed the offence in question and the appellant far from being challenging that statement of Mst. Ramnathi, admitted in his examination before the Committing Magistrate that that was the axe with which he had committed the offence.

Under those circumstances the omission to send the axe or scrapings from it for chemical examination or examination by a serologist has no effect upon the prosecution. There is another portion of the confession of the appellant which also receives corroboration from independent evidence. The appellant said that immediately after, he had dealt the axe blows to the deceased he left the place of occurrence. This portion is corroborated by the evidence of Mst. Ramnathi and also to some extent by the evidence of Ghasi who deposed that he had seen the appellant near about the place of occurrence immediately after Mst. Ramnathi had raised the alarm that her husband had been done to death. It was argued by Mr. Jain that in the first information report which was made under the signature of Ghasi, the name of the appellant was not mentioned and, therefore, it was an afterthought, that the name of the appellant was brought in.

There is no doubt that the name of the offender was not mentioned in the first information report. But Mst. Ramnathi has given an explanation that when she began to cry that the appellant Laxminarain had killed her husband, Ghasi who is the brother of the deceased and the uncle of the appellant told her that she should not mention the name of the appellant, otherwise he would fly away. In this she is corroborated by the evidence of Ghasi P.W. 4 and Chatarbhuji P.W. 5. There is no reason why Ghasi and Chatarbhuji who are both related to the deceased as well as to the appellant should corroborate Mst. Ramnathi if she was really not asked by Ghasi not to disclose the name of the appellant. It appears that Ghasi having thought that Devlal could not be brought back to life, if Laxminarain is involved in the case, tried to save his relation. Laxminarain at the initial stages.

However, when it could no longer be concealed that it was the appellant who had committed the offence, Chatarbhuj and Ghasi both came out with the truth. It is not unnatural that persons who are related to the offender as well as to the victim of the offence should try to shield a relation of theirs who has committed the crime seeing that the victim of the offence cannot be brought back to life, whatever punishment may be imposed on the offender,

Mst. Ramnathi's explanation therefore, appears to us to be quite natural and it is corroborated by the evidence of Ghasi and Chatarbhuj and we do not lay much importance to the omission of the offender's name in the first information report in this case.

9. As has been said above, the greatest guarantee of the truth of the prosecution is afforded by the statement of the appellant before the Committing Magistrate under Section 208, Cr. P. C., because at that stage no improper influence could work on the mind of the appellant. Mr. Jain realising this, argued that the said statement should not be taken into consideration because it was recorded by the same Magistrate who had recorded the confession under Section 164, Cr. P. C

He argued that under Section 556, Cr. P. C., a Magistrate or a Judge who is a party to the case or personally interested, should not try or commit for trial such a case. In this case Mr. Yasin Ali Khan who recorded both the confession and the statement under Section 208, Cr. P. C., was neither a party to the case nor was he personally interested therein. Of course in his official, capacity he had recorded the confession under Section 164 but that did not make him personally interested in the case.

It would have been much better if Mr. Yasin Ali Khan had reported that having recorded the confessions under Section 164, Cr. P. C., he did not want to carry on the commitment proceedings. But his omission to do so, does not vitiate the proceedings before him. The appellant has not suggested at any stage that the statement under Section 208 which was recorded by Mr. Yasin Ali Khan was not actually made by him before the said Magistrate.

On the contrary, he has admitted that he had made that statement before the said Magistrate. There appears to be no reason why the appellant should have made an incorrect and untrue statement before Mr. Yasin Ali Khan under Section 208. We are perfectly satisfied from the evidence on the record that it was the appellant who dealt three blows with an axe to the deceased and in consequence of those blows, the deceased Devlal met his death.

10. As regards the offence, there can be no two opinions that whosoever was guilty of dealing those blows to Devlal was guilty of murder because the weapon of offence, the force with which it was dealt, the part of the body where these blows were dealt, clearly lead to the conclusion that death was deliberately brought about, or at any rate anybody who dealt those blows ought to have known that his act was so imminently dangerous that it must in all probabilities, cause the death or such bodily injury as was likely to cause death.

The appellant was therefore, rightly convicted under Section 302, I. P. C. He has been given the lesser of the two punishments and so there can be no question of reduction of his sentence.

11. The appeal has no force and is dismissed.

12. Before parting with this judgment, we may remark that it was an act of great neglect on the part of the Investigating Officer in this case that neither the axe nor scrapings from it were sent for chemical examination and for the examination by a serologist. As has been said above, in this case the appellant himself admitted that the axe Article 1 was the weapon with which he had caused the three injuries to the deceased.

In cases where the accused seriously challenges that the alleged weapon of offence had nothing to do with him or the crime in question, the omission to send the suspected blood stained article for 'examination by a chemical examiner and by a serologist may lead to acquittal of a guilty person simply on account of such omission.

We may also remark that although we have found that the proceedings before the learned Committing Magistrate Mr. Yasin Ali Khan, cannot be vitiated simply on the ground that he had recorded the confession under Section 164, Cr. P. C., but it is advisable for a Magistrate who has recorded the confession or before whom identification proceedings have taken place to leave it for some other court to carry on committal proceedings. We may also remark that we do not approve of the action of the police officer concerned who kept the appellant in this case in police custody without obtaining remand after the expiration of the period which is allowed by law.

13. A copy of this judgment may be sent to the I.G.P., Rajasthan.

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