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Mohindersingh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-15-1961

Reported in : AIR1963Raj44; 1963CriLJ229

Judge : J.S. Ranawat, Ag. C.J. and; P.N. Shinghal, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 207A(4), 207A(6) and 207A(7)

Appeal No. : Criminal Appeal No. 293 of 1961

Appellant : Mohindersingh

Respondent : State of Rajasthan

Advocate for Def. : Rajnarain, Asst. Govt. Adv.

Advocate for Pet/Ap. : Chandmal, Adv.

Disposition : Appeal dismissed

Judgement :

Ranawat, Ag. C.J.

1. This is an appeal by Mohindersingh from the judgment of the Additional Sessions Judge of Ganganagar, dated the 19th of June, 1961 convicting the accused appellant Mohindersingh under section 302 of the Indian Penal Code and

sentencing him to imprisonment for life.

2. The prosecution case was that the accused Mohindersingh and Dalbarasingh lived in village Chohilawali, police Station Hanumangarh, and that the deceased Gurbaxsingn also lived in the same village. There was dispute of one 'kiila' of and between them. On the 21st of October, 1960, Gurbaxsingh was coming to his house from his field with a bundle of green fodder on his head, and the accused Mohindersingh and Dalbarasingh had also gone to their field to cut 'gawar' and they inflicted injuries with an axe and a 'kassi' respectively on Gurbaxsingh, killing him instantaneously, on the spot, in the field of Mohindersingh. Both of them then started for their village. Dalbarasingh threw away the blood-stained 'Kassi' in a bush of 'Kair' in the field of Lachhmansingh, and Mohindersingh carried his bloodstained axe with him to the village.

On the way they met Karnisingh and Shersingh coming from the village on a camel from the opposite direction, at a distance of about one mile from the village al about 10 a.m. Shersingh questioned them as to why they were returning so early and one of the accused, namely Mohindersingh, replied that they had cut 'gawar' crop and were going back. Shersingh expressed his surprise at the statement of Mohindersingh, for he could not believe that 20 bighas of 'gawar' could be cut by both of them in no time, and the other accused Dalbarasingh then told him that they had killed Gurbaxsingh and were returning to the village. Shersingh, on hearing this, got down from the camel, and accompanied Mohindersingh and Dalbarasingh to the village, and Karnisingh went to his field on the camel. Shersingh then went and informed Gyanaram (P.W, 2) that Mohindersingh and Dalbarasingh had killed Gurbaxsingn. Gyanaram (P.W. 2), Biru (P.W. 7), Mallu (P.W. 5), Nandram (P.W. 6) and Banna (P.W. 8) went to the house of Mohindersingh to ascertain as to whether he and Dalbarasingh had killed Gurbaxsingh as reported by Shersingh, and they founa Mofiindersingh and Dalbarasingh in Mohindersingh's house and Gyanaram and Biru questioned both the accused as to what they had done and both of them, one after the other, told them that they had cut Gurbaxsingh in the field. Gyanaram and others then asked Mohindersingh and Dalbarasingh to lead them to the place where they had committed the murder and all of them then went to the field of Mohinder singh led

by the accused persons who pointed out the dead body of Gurbaxsingh in the field of Mohindersingh. they then returned to the village along with the two accusedpersons and Nandram (P.W. 6) then wrote down Ex. P-1-the first information report, which was signed by Gyanaram, Banna, Biru, Nandram, Sardararam and Badriprasad.

The first information report (Ex, P-1) Was then sent with Mallu to Police Station Hanumangarh which is at a distance of 16 miles from Chohilwali. He reached the police station and lodged the first information report at 6 p.m. He also informed the Station House Officer that bom Mohindersingh and Dalbarasingh were detained by the Chowdris at the house of Lunaram Lambardar and that he had been to the spot of occurrence with the Chowdris and the accused and had seen Gurbaxsingh lying dead. S. H. O. Pusaram Sharma reached the village Chohilawali two gharis after sunset and he found both Mohindersingh and Dalbarasingh at the house of Lunaram as mentioned by Mallu. un interrogation, both the accused gave him information on the 21st of October, 1960 regarding their respective bloodstained weapons, and Mohindersingh got recovered the axe (Article 1) from a pit in the enclosure of his own house and Oalbarasingh got recovered the Kassi (Art. 2) from a 'Kair' bush in the field of Lachhman about one square away from the spot of occurrence where the dead body of Gurbaxsingh was found lying. Both the articles, the Kassi and axe, were sealed and subsequently sent to the Chemical examiner. The Station House Officer also noticed stains of blood on the shirts of Mohindersingh (Article 4) and of Dalbarasingh (Article 3) and he took both of them in his possession and sealed them on the 21st of October, 1960. He sent for Dr. Swadesh Mitra from Hanumangarh for performing the post-mortem examination at Chohilawali. Dr. Swadesn Mitra '(P. W. 4) performed the post mortem examination. He found the following injuries on the person of Gurubaxsingh:--

(1) Cut-wound 6' x 11/2' on the neck anteriorly. Large vessels, pharyns and larynx, and oesopnagus were cut,

(2) Cut wound 4' x 1' on the neck anteriorly. Large vessels, larynx, oesophagus and trachea were cut,

(3) Cut wound on inferior surface of chin 3' x 1'.

(4) Cut wound 4'x 1/2' on head, vertex.

(5) Fracture of the lower jaw, loft side canines teem broken.

In the opinion of the doctor, death was caused by cutting of larynx, trachea, oesophagus and large vessels. These injuries were sufficient in the ordinary course of nature to cause death. He further expressed an opinion that the injuries could be caused by the axe (Article 1) and Kassi (Article 2). The Chemical Examiner and the Serologist, after examining the shirts and the two weapons, namely axe {Article 1) and Kassi (Article 2), returned an opinion of the shirt of Mohinder Singh (Article 4) and axe (Article 1) and Kassi {Article 2) being positive for human blood. He found no trace of blood on the shirt of Dalbarasingh. The investigating officer also noted that the extra-judicial confessions of Mohindersingh and Dalbarasingh were made by them in the presence of Kami Singh and Shersingh in the first instance, and in the presence of Gyanaram, Mallu, Nandram, Biru and Banna subsequently, and, after completing investigation, he challaned both the accused under Section 302 of the Indian Penal Code to the Court of sub-divisional Magistrate, Hanumangarh, who committed them to Sessions.

3. Both the accused Mohindersingh and Dalbarasingh denied having inflicted injuries to Gurbaxsingh and they pleaded that the witnesses had involved them on account of enmity in this case. They produced no evidence in the defence. The learned Additional Sessions Judge, Ganganagar, did not believe the testimony regarding the twoextra-judicial confessions of Mohindersingh and Dalbarasingh made by them firsty before Karnisingh and secondly be-fore the other witnesses mentioned above. The learned Judge, however, believed the evidence regarding there being stains of human-blood on the shirt of Mohindersingh and also the evidence regarding the recovery of shirt from the person of Mohindersingh accused. He also believed the evidence of the recovery of the blood-stained axe (Art. 1) from the house of Mohindersingh in consequence of information furnished by him to the investigating officer. He also believed the recovery of Kassi (Article 2) from the field of Lachhman on information given by Dalbarasingh. He assumed that the stains of blood on the shirt of Mohindersingh did not belong to the same group as that of the deceased and concluded from the presence of blood on the

shirt of Mohindersingh and the recovery of the blood-stained axe that these circumstances were sufficient to warrant an inference against the accused that he was responsible for committing the murder of Gurbaxsingh. He gave the benefit of the doubt to Dalbarasingh for the reason that no stains of blood were found on his shirt and acquitted him for that reason.

4. Mr. Chandmal, for the accused Mohinder singh, has urged that after the trial court had disbelieved the testimony Regarding the extra-judicial confessions of Mohinder singh, it could not be concluded merely from the presence of human-blood on the shirt of Mohindersingh and the recovery of the blood-stained axe that he was the author of the crime. It was also argued that when the learned Magistrate assumed that the stains of blood on the shirt of Mohindersingh were not of the same group as that of the deceased, he had no reason to connect this circumstance with the murder of Gurbaxsingh, The learned counsel has also referred to the explanation offered by Mohindersingh regarding the presence of blood on his shirt and has contended that the explanation being a reasonable one should have been accepted by the trial court and the stains of blood on the shirt of Mohindersingh could not, therefore, lead to an inference against him about his complicity in Gurbaxsingh's murder.

As regards the delay in offering this explanation, the learned counsel has mentioned that the only opportunity which the accused got of giving the explanation was at the time of his statement at the trial and that as no question was put to him in the committing court, he had no opportunity to explain the circumstance of here being blood on Ms shirt at that time. He has referred to the decisions in State of U. P. v. Satyavir, AIR 1959 All 408, Chimpiraian v. State of Andhra Pradesh, AIR 1959 Andh-Pra 589, ana the State v. Anadt Betankar, AIR 1958 Orissa 241 and has urged that no such question could have been put to the accused in his statement at the committal stage for the reason that no evidence had been recorded by the committing magistrate regarding the recovery of the blood-stained shirt and the opinion expressed by the Chemical Examiner and the Serologist about the articles being positive for human-blood. The learned counsel has also read out the statements of the witnesses on the point of extra-judicial confession and he has argued that the evidence of those witnesses is not reliable

for the reason that there are material discrepancies in them and also because there is no corroborative evidence on the record in support or the said confession.

5. Mr. Rajnarain for the State has replied that the appreciation of the evidence regarding the extra-judicial confession, by the lower court, is not proper, and that this Court should appreciate the evidence on the point in a proper manner. He has urged that the evidence of thepresence of human-blood on the shirt of Mohindersingh and the recovery of the blood stained axe at his instance afford sufficient corroboration of the extra-judicial confession made by him and that the evidence on the whole is sufficient to warrant the conviction.

6-11. (After discussion of evidence His Lordship proceeded): The Station House Officer took into his possession the shirt of the accused Mohindersingh from his person and sealed it. The report of the Chemical examiner and that of the Serologist is positive for stains of human blood on it. The accused has no doubt tried to explain the presence of blood on his shirt by saying that he got a cut on his finger a day previous to the occurrence white cutting fodder and a few drops of blood, therefore, trickled down and fell on his shirt. This explanation is reasonable and may have been considered good enough, if it had come earlier from him. At the time of the examination of Gyanaram and Biru, questions were put to them by the defence counsel about the presence of cut wound on the finger of the accused Mohindersingh, end the witnesses stated that they noticed a cut on the middle finger of Mohindersingh from which blood was coming out and there was a bandage on the finger. The explanation thus has appeared at the time of the examination of the aforesaid two witnesses. In the course of the committal enquiry, however, no such questions were put to the witnesses; nor did the accused Mohindersingh venture to make a statement in the course of his examination, giving an idea of the explanation that was developed later on. The argument of the counsel of the appellant is that the accused got an opportunity to give the explanation for the first time in the course of the trial and it should, therefore, be assumed that the explanation was not offered with any amount of delay. Had the position been as suggested by the learned counsel, we would have expected the accused to offer this explanation to the investigating officer at the time his shirt was taken possession of on account of stains of blood having been noticed

thereon. No question was put to the investigating officer or the Motbirs suggesting the explanation which has been offered for the presence or blood later, at the trial. The committing magistrate did not put any question to the accused regarding the circumstance of the presence of stains of blood on his shirt and in his statement the accused, therefore, it is urged, failed to come our with the explanation which he offered at the time of his examination in course of the trial.

It is also argued by the learned counsel that the only questions which a committing Magistrate is competent to put the accused at that stage of enquiry are those limited to the evidence recorded under Sub-section (4) of Section 207A of the Criminal Procedure Code and that there was thus no occasion for the accused to give any information in his statement. The learned trial Judge, while discussing this point, has referred to1 the omnibus question put by the Magistrate to the accused and has mentioned that the accused should, while replying to that question, have tried to explain the circumstance of the presence of blood on his shirt. A question has thus arisen as to what questions can be put to an accused person in the course of his examination by the committing Magistrate; whether such examination should be limited only, to the statements of the witnesses recorded under Sub-section (4) of Section 207A of the Criminal Procedure Code or it should also relate to the material contained in the documents including the statements of the witnesses recorded by the police. We have been referred to three Single Bench decisions of Allahabad, Andhra and Orissa High Courts in this connection. In AIR 1959 All 408 the question was whether the commitment was illegal on account of failure to examine the accused in the committing court, and in that context it was observed as follows:

'These two Sub-sections (6) and (7) of section 20-A make a clear distinction between the evidence to be recorded under Sub-section (4) and the documents to be considered; the documents that are to be considered are not treated as evidence. The accused has to be examined only for the purpose of enabling him to explain adverse circumstances appearing in the evidence against him; he is not required to be examined for the purpose of enabling him to explain adverse circumstances appearing in the documents that have to be considered.

If no evidence has been recorded under Sub-section (4), the accused is not required to be examined at all because there is nothing that he can explain. As no evidence has been recorded there are no adverse circumstances appearing against him. If there are adverse circumstances appearing in the documents, the accused is not required to be examined to explain them; all that he is entitled to in every case is that he should be heard before the Magistrate frames a charge against him.'

In AIR 1959 Andh Pra 589 the learned Judge has observed;

'In my view, Sub-section (6) does not enjoin upon the Magistrate the duty of examining the accused in regard to documents considered by him but only in regard to evidence referred to in Sub-section (4).'

In AIR 1958 Orissa 241 the commitment was quashed tor the reason that the Magistrate, without examining any witnesses during the commitment inquiry, examined the accused persons under Section 342 of the Criminal Procedure Code, and in the opinion of the learned Judge the accused were prejudiced by such examination inasmuch as those statements were to be used in the court of Session as evidence against them.

12. We have carefully studied the three decisions mentioned above. The reasoning which weighed with the learned Judge of the Allahabad High Court is that for purposes of Section 207A(6), evidence means the statements recorded by the Magistrate under Sub-section (4) of Section 207A of the Criminal Procedure Code, and it does not Include the documents including the statements recorded by the police which have also to be considered by the Magistrate in ordering commitment or discharge of the accused. We find ourselves in respectful disagreement with the view expressed by the learned Judge in this behalf. Sub-section (6) of Section 207A provides:--

'(6) When the evidence referred to in Sub-section (4) has been taken and the Magistrate has considered all the documents referred to in Section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution

and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him. .....'

Sub-section (7) provides:--

'When, upon such evidence being taken, such documents being considered, such examination (if any), being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what ot-fence the accused Is charged.'

It would be noticed that the word 'evidence' has appeared in Sub-section (6) three times and in Sub-section (1) once. In the beginning of Sub-section (6), the word 'evidence' has been qualified with reference to the statements recorded by the Magistrate under Sub-section (4) and there is no ambiguity as to the meaning of the word at that point. The second time the word has been used without any reference to Sub-section (4) and it is difficult to accept the view that the legislature intended to use the word 'evidence' at this point in the same context in which the word has been used for the first time in the Sub-section. We think that if the legislature had intended to use the word in a limited sense, it could not have used ft without qualifying it by the word 'such' as has been done while using this word at subsequent places in tne same sub-section and also in Sub-section (7). The fact that the word 'evidence' has been qualified by the terms 'such' at all subsequent places; goes to show that when the word was used a second time in Sub-section (6), it was not intended to be used in a limited sense, out was used in its ordinary dictionary meaning. It also stands to reason that when the Magistrate is to take into account the evidence recorded by him under Sub-section (4) together with the other documents on the record of the case, the legislature, having regard to the rules of natural justice, could not have the intention to deprive the accused of an opportunity to explain not only the evidence under Sub-section (4), but also the other materials that are required to be considered against him by the Magistrate in committing him or in discharging him. We do not trink the accused can be deemed to be prejudiced by allowing him an opportunity of explaining the circumstances

appearing against him in the evidence recorded by the Magistrate, or in the documents on the record of the case, merely because his statement at a later stage may, if occasion arises, be used against him in course of the trial. On the other hand, we think it would prejudice the accused if he is not allowed a fair opportunity to meet the case against him at the preliminary stage of the enquiry for, if deprived of that opportunity, he may suffer commitment even though he may have a good explanation to offer which may avoid the further proceedings against him In our opinion, the explanation of the accused, if used as evidence at the trial, cannot be considered to be prejudicial to him in any manner, even though it may form part; of the evidence at the trial. We are in respectful disagreement on this point with the opinion expressed by the learned Chief Justice of Orissa. We think It would be proper for a Magistrate, in the course of commitment inquiry, after recording statements if any, under Sub-section (4), to examine the accused and to afford him an opportunity to explain not only the circumstances appearing against him in the evidence recorded by the Magistrate, but also in the documents that are required to be considered under Sub-sections (6) and (7). In this view of the positron of law, we think it was necessary for the committing Magistrate in the instant case, to put questions to the accused regarding the report of the Chemical Examiner and that of the Serologist for the presence of human-blood on the shirt and the axe of the accused Mohindersmgh, the accused was deprived of an opportunity of explaining these circumstances In his statement in the committing court for the simple reason that the Magistrate did not care to put questions to him on the point.

13. However, as observed earlier, we should nave expected the accused to come out with an explanation even at the time when his shirt was taken possession of by the Station House Officer for the presence of stains ofblood thereon. Though Gyanaram and Biru have both stated that the accused had an injury on his middle finger at the time the shirt was taken possession of by the police, the Station House Officer, Pusaram, has denied this circumstance. Pusaram has further stated that if he had seen the injury, he would certainly have got the accused medically examined. It has also to be remembered that in addition to the presence of blood on the shirt of the accused, there is the further evidence against him of the recovery of a blood-stained axe from the enclosure of his house in pursuance

of information given by him to the investigating officer. The recovery of the axe was made on the 21st of October, 1960, in the night, after the investigating officer had arrived there. Pusaram's statement is that he received the axe and sent it to the Chemical Examiner. The report of the Chemical Examiner and that of the Serologist are positive for human-blood on the axe. Karnisingh, who met the accused persons coming from the scene of occurrence, has not mentioned if mohinder-singh carried the axe (Article 1) at that time. He has mentioned that he saw one sheet of cloth (Chadar) in the hand of the accused. The witness did not notice the axe in the hand of Mohindersingh at that time; but as the accused could not have brought the axe to his house later on, we think, he must 'have been in possession of it at the time when he met Karnisingh. Karnisingh saw the accused from a distance of about 20 paces and it may be that the accused may be carrying the axe under the sheet' of cloth noticed by the witness as it has a very small handle. The fact, however, remains that the axe (Article 1) was recovered on information given by Mohinder-singh to the investigating officer from inside the enclosure of his own house shortly after the investigating officer reached the village. The doctor, who performed the post-mortem examination, has stated that the wounds on 'the person of the dead body could have been caused by the axe (Article 1).

14. The learned Judge in the Court below has noted in the judgment that no mention was made in the first information report about the extra-judicial confession and that the fact of such confession having been made is, therefore, doubtful. Gyanaram (P. W. 2) has stated that he got information about the names of the accused for the murder of Gurbaxsingh, firstly from Shersingh and then he got the same information in the 'Gawad' from the accused persons and the names of the accused were mentioned in the first information report on that information. Nandram has also similarly supported the version contained in the first information report which is in his hand-writing and bears the signatures of Gyanaram and others. Thus, although the fact of the extra-judicial confession has not been mentioned in the first information report, yet the mention of the names of the accused therein emanates from the extra-judicial confession and from no other source and the circumstance of there being no mention of the extra-judicial confession in the first information report is, therefore, not of much consequence

and cannot be taken to be detrimental to the prosecution case. Moreover, this is a mere omission in the first information report, and it cannot, by necessary implication, lead to the inference that no extra-judicial confession had been made by that time by the accused.

15. The recovery of the blood-stained shirt from the person of the accused Mohindersingh and also of a Bloodstained axe from the enclosure of his house at his instance are circumstances which go to support the extra- Judicial confession made by him, even though no particular mention of these articles appeared in that confession.The confession was simply as regards the fact of murder of Gurbaxsingh by the accused and these circumstances are no doubt connected with the murder and they corroborate the fact of the murder, mentioned by the accused, in material particulars. It is also significant that the accused Mohinder Singh and Dalbarasingh were seen returning from the scene of occurrence at 10 a.m. by Karnisingh, as mentioned by him. The dead body was also recovered in the field of Mohindersingh at the instance of the accused Mohindersingh and Dalbarasingh before the arrival of the police. There were cut injuries on the neck of the deceased and this circumstance further supports the extra-judicial confession. It is also noteworthy that the villagers Gyanaram and other apprehended the accused persons Mohindersingh and Dalbarasingh before the arrival of the police and detained them at the house of Lunaram, where they were found by the Station House Officer when he reached the village. Besides, the learned Judge disbelieved the witnesses of the extra-judicial confession for flimsy reasons as discussed above.

16. The nature of the injuries on the person of the deceased leave no doubt that they were inflicted by a sharp-edged weapon like the axe (Article 1} and the accused, in inflicting those injuries, must have intended to cause such injuries as were positively known by him to he likely to cause death. The conviction of accused Mohinder Singh under Section 302 of the Indian Penal Code is, therefore, well founded, though not merely on the circumstance of the recovery of the blood-stained shirt and the blood-stained axe, but also on the basis of the extra-judicial confession and the circumstances discussed above. He has been sentenced to the lesser of the two sentences. The appeal fails and is dismissed.

17. Mr. Chandmal has prayed for leave to appeal to the Supreme Court; but we do not think this is a fit case within the meaning of Article 134(1)(c) of the Constitution. The prayer for leave to appeal is therefore rejected.

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