

Jaswant Singh Vs. the State

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Court : Rajasthan

Decided On : Jul-15-1965

Reported in : 1966CriLJ451

Judge : I.N. Modi and; B.P. Beri, JJ.

Acts : [Evidence Act, 1872](#) - Sections 18 and 24; Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 164

Appeal No. : D.B. Criminal Appeal No. 152 and D.B. Criminal Murder Reference No. 2 of 1965

Appellant : Jaswant Singh

Respondent : The State

Advocate for Def. : Ranjarain, Dy. Govt. Adv.

Advocate for Pet/Ap. : O.C. Chatterji, Adv.

Disposition : Appeal allowed

Judgement :

Modi, J.

1. We have two connected matters before us arising out of the judgment of the Sessions Judge, Jhunjhunu, dated the 24th March 1965, by which he has

convicted the accused Jaswant Singh of the offence of murder under Section 302, I. P. C. and sentenced him to death. Appeal No. 152 of 1965 is by the accused Jaswant Singh against his conviction and sentence. We have also before us the usual murder reference for confirmation of the sentence of death. We propose to dispose of both these matters by a single judgment.

2. The prosecution story is briefly this. It is alleged that on the night between the 7th and 8th of June 1964, the accused Jaswant Singh killed his wife Mst. Siriya, his two minor sons Matadin and Balwant aged 12 and 10 years, respectively, and his infant daughter Mst. Phoosli aged about six months with an axe. The murders are alleged to have been committed in the house of the accused at village Khandwa sometime in the night between the 7th and 8th June. According to the prosecution, the first person to know about this crime was the mother of the accused Mst. Harbai P.W. 1 when, as usual, she was going to the temple of Mataji for the morning worship and was passing by the house of her son Jaswant Singh which according to one version was found chained from outside and according to the other wide open. It may be mentioned here that the accused had a brother named Prabhati, P.W. 2, and it is common ground that both these brothers having separated some ten years ago were living in different houses in this very village. Jaswant Singh lived in what is called the Haveli and Prabhati in the Nohra, and the distance between these two is said to be about a mile. Mst. Harbai, it is also common ground, slept in the house of Prabhati on the fateful night. As soon as Mst. Harbai came to know of this brutal crime, she hastened to inform her son Prabhati about it.

Prabhati is then alleged to have contacted P.W. 3 Sampatram, Sarpanch of Gram Panchayat Khandwa. He and certain other villagers immediately came to the house of Jaswant Singh and having seen what had happened, Samoat Ram filed the first information report Ex. P-1 at the police station Buhana which is at a distance of four miles from village Khandwa. In this first report, all that was stated was that two boys, one girl and a woman were lying murdered in the house of Jaswant Singh son of Mangla Ram Ahir and that this information had been brought to the Panchayat by one Mangla son of Bhana. The Sub-Inspector of Police Buhana immediately proceeded to the scene of offence and found that the dead

bodies of the murdered persons were lying on two cots, two on each one, in the Pol of Jaswant Singh's house. He further found that the ornaments worn by Mst. Siriya wife of the accused were intact and on having searched his house did not find anything incriminating such as a broken box or the like.

As, according to the prosecution, the accused was not found in his house or anywhere near the village, the investigating officer had deputed one Dansingh, P.W. 6 for searching and apprehending him. Dansingh's version is that the accused had come to the house of his brother Prabhati on the morning of the 10th June 1964, when he arrested him. A search memo of his clothes was prepared which is Ex. P-17 and it shows that the accused had a shirt, a dhoti and a baniyan on his body. The prosecution case is that all these were stained with blood. We might state here at once that these articles were sent to the Chemical Analyser and the Serologist in due course and it was the accused's baniyan Article 4 which alone was found to have borne a few stains of human blood. The post mortem examination of the dead bodies was performed by Dr. Dwarka Nath, P.W. 8 on the 8th June 1964. On the 10th June an axe was recovered at the instance of the accused from a manure heap in his own 'Bara' (Ex. P-18). Nothing, however, turns on this recovery as on chemical examination it was not found to have any stains of blood on it. The accused was under police custody from the 10th to the 18th June 1964. On the 19th June he was produced before the Sub-Divisional Magistrate, Khetri, for recording his confession Ex. P-20. We shall have occasion to refer to this confession hereafter, and it will be sufficient to state at this stage that this confession was almost wholly exculpatory. Even so, the accused contended at the trial that it had been extorted from him by the police under undue pressure. The accused was in due course challaned and committed to the Court of the Sessions Judge, Jhunjhunu, who, after the usual trial, has convicted him under Section 302, I. P. C. and sentenced him to death as already stated.

3. The accused completely denied to have committed the offence with which he was charged. He further stated that on the night of the incident, he was not at all at his house and that he had left for village Khedki at about 2 P.M. on the 7th June 1964 as he had something to do in connection with his money dealing there. According to the accused, his relation with his wife were quite cordial and he

totally denied that there had been any trouble between him and his wife on the day of the murder of the day preceding it. As for his confessional statement Ex. P-20, the version of the accused was that it had been forced from him by the police by the application of third-degree methods, and, therefore, it was not his voluntary statement. Questioned as to why he had been absconding for two days after the alleged Crime the answer of the accused was that he had been to village Khedki on private business and from there he had gone to Jonawas and Manesar and returned to his village on his own on the 10th June 1964, at about 7 A.M. and that when he came to know of the murders of his wife and children, he immediately presented himself at the police station. The accused produced three witnesses in his defence but as they were not referred to us during the course of arguments before us, it is not necessary to deal with them.

4. Now, we may state at the very outset that there is no positive evidence against the accused for having murdered his wife and the children. The entire case depends on circumstantial evidence only. We should also like to mention in this connection that no motive worth-the-name, has been brought out against the accused as to why he should have thought of putting an end to the lives of his wife and children. At the best, it has been suggested by the prosecution that occasionally the husband and the wife did quarrel with each other. But that is by no means an unusual phenomenon in most households and we do not attach any importance to this evidence as disclosing a sufficient cause for a crime like the present. The utter lack of motive on the part of the accused to exterminate his entire family naturally demands that we should examine this case with added care and precaution.

5-10. The prosecution examined eight witnesses in all in support of its story. (His Lordship went through the evidence of these witnesses including the medical evidence, and proceeded)

11. This is the entire evidence produced by the prosecution in support of its case, and obviously taken by itself, it is utterly insufficient to connect the accused with the crime. But it is strenuously contended by the learned Deputy Government Advocate that although taken by itself it may not be sufficient for bringing home the

offence of murder to him, valuable support for the prosecution case is to be found in the confessional statement of the accused given before a Magistrate, and we now proceed to address ourselves to that piece of evidence.

12. As already stated, the accused made this statement to the Sub-Divisional Magistrate, Khetri on the 19th June 1964. It appears that the Magistrate had put all the necessary precautionary questions to the accused as regards the voluntariness of the statement by him and there seems to be nothing striking on this aspect of the case so far as we can see except that the accused complained that during the period he was under the custody of the police from the 10th to the 18th June 1964,

"the police threatened me a little and also belaboured me. I was beaten with shoes on the head. I did not receive any substantial injury on my head. I received slight injury from a fall while alighting from the aeroplane and felt some pain on account of shoe beating.'

The Magistrate seems to have examined the body of the accused and testified that there were no injury marks on him.

13. This brings us to the contents of the accused's statement which translated in English reads somewhat as follows;--

'The woman had committed the murder of the children and not I. Thereafter she herself committed suicide. I was sleeping on the roof. At about 11 P.M. I heard the sound of groaning. I came down. By that time all the children had been murdered and she had also struck herself with an axe on her own neck. The deed had been done. Thereafter when I enquired from her, she could not speak. She just uttered the words 'Le' 'Le' and she became quiet. Thereafter I got confused, wept and was extremely worried that my family had been ruined. I had been ruined. My service as Haveldar which had matured was bound to come to an end. What could I do I sat beside her and wept. Then I could not bear the whole sight and was greatly perplexed as to what I should do. If the deed had been done by an enemy, I would have tried to take revenge by killing him. But I could not dare to see that state of affairs and so left from there. After two days I returned and presented myself at the

police station thinking that the police methods are of such a nature that my parents and neighbours might be harassed thereby. Thereafter the police started the investigation.

The day before the murder, my wife had said that I should take leave in the month of Kartik. I always used to come on leave in the month of Kartik. I had requested the platoon officer to grant me leave in the month of Kartik but he replied that nobody would be allowed to go or remain on leave at that time. I told my wife that I could not take her with me to the front. She got displeased with me during the day and threatened that she would fall into a well. I said, 'whatever you want to do, do it in my presence.' But she became angry and committed these murders while I was there. She had told me that she would accompany me and that I should, therefore, sell the cows. I showed my inability to take her with me. Nefa was far away and nobody was allowed to keep his family there. I told her that I had made all possible efforts to get myself discharged from the military but could not succeed. Being an important man in Parachute Brigade, the Government was not prepared to discharge me. I also told her that I would soon return after they spared me and after making my pension secure. She replied 'Let the country go to dogs. We are concerned with our own affairs.' I tried to calm her down and also explained to her what our country was and what we owe to her. But she became very angry. Thereafter a day prior to the occurrence I went to the 'Nohra'. When I returned in the evening I found that she had prepared 'Khatti' (raw) bread and 'Chatni' and did not cook any vegetables and continued the same quarrel. I told her how we could defend the country by taking such food and yet pull on with the work when the health would go down. Thereupon she said, 'arrange for such a wife who can give you good food. I would not remain with you nor would I allow these children to stay with you as I have brought them up whereas you have been simply wasting your time in the military.' I asked her not to talk in that manner lest we might be ruined. Then she replied that she was determined to ruin him. She often used to talk in that manner and say that she had to fall into a well and that too along with the children, I thought that she always talked loosely in such a manner. So it never struck me that she might commit such an incident on that day otherwise I would have watched her or would have sought the assistance of some one to do so. I had slept as I had worked the whole day long. She committed this

incident at the door downstairs. She has earned a bad name for herself as well as for me and has ruined our good name in the community.'

Even a casual perusal of the above statement would show that it was almost wholly exculpatory. According to the accused, he had not committed these murders at all and that while he was sleeping on the roof of his house, he heard some kind of groaning at about 11 P.M. when he came down. On so doing he found that all his children had been murdered and according to the accused it was his wife who had committed them and thereafter she had also struck herself with an axe on her own neck. Having seen this horrible state of affairs, he says that he could not bear the sight of them and so left his house and returned after two days and presented himself at the police station, apprehending that if he did not do so, his relations and neighbours might be harassed. The accused also refers in his statement to the extremely keen anxiety on the part of his wife to remain with him in Nefa where he was posted and he told her that having been employed in a parachute brigade, it was not possible for him to do so. She seems to have got very angry and threatened that she would fall in a well along with her children. The accused further stated that as he had worked the whole day long, he had fallen into sleep and while he so slept, the incident had happened.

14. It is strongly contended before us on behalf of the State that although the statement made by the accused being largely exculpatory would not amount to a confession as such, it contained certain admissions, the chief of which was that the accused was in his own house on the fateful night and that that being so, it lent an almost irresistible force to the case of the prosecution that it was the accused and no one else who had killed his wife and children, and, therefore, we should uphold his conviction under Section 302, I. P. C. and the sentence of death awarded to him by the Sessions Judge. On the other hand, it was equally vehemently argued by the learned counsel for the accused that inasmuch as the guilt of the accused was sought to be fastened on to him wholly on the basis of the confession made by him, it would not be open to this Court to accept a part of it which may be incriminatory and reject the other part which was exculpatory and that the proper course for the Court to adopt in a case like the present was either to accept the statement as a whole or reject it as a whole.

15. We have carefully weighed these rival contentions with all the care and earnestness at our disposal, and, on the whole, we are inclined to the conclusion that the contention raised on behalf of the accused is not without force under the circumstances. As already stated, and this is the position which seems to have been accepted by the learned Sessions Judge himself there is no other evidence available to us in this case to prove that the accused was in his own house on the night of the incident except his own admission. The only other evidence on which reliance could possibly have been placed namely that of Mst. Harbai, the accused's mother, in order to come to this conclusion has been disbelieved by the trial Judge and we entirely concur with him in this finding.

16. The principal question which emerges for determination in this state of circumstances is whether it would be open to this Court in law to believe a part of the statement which is incriminating against the accused and reject the other part which obviously exculpates him.

17. Now there is no doubt that the statement which we are considering does not amount to a confession as such. For a statement of the accused to amount to a confession must clearly and unequivocally implicate him in the crime with which he is charged and this cannot be obviously predicated of a statement like the one which we are called upon to consider, which is almost wholly exculpatory. Even so, it was submitted by the learned Deputy Government Advocate that if such a statement contains any admissions emanating from the accused which may be of an incriminating nature, then there is nothing in law which would stand in the way of our admitting them in evidence under the provisions of Sections 18 to 21 of the Evidence Act. Strong reliance is placed in support of this submission on *Ghulam Hussain v. The King*, 52 Bom LR 508. The question in this case was whether the statement made by a co-accused could be accepted as evidence of his complicity in the crime even when the statement made by him was exculpatory. This is how their Lordships dealt with this question:--

'When awaiting trial Fatehsingh intimated that he wished to make a confession. Consequently he was taken before a Magistrate and after the formalities required by Section 164 of the Code of Criminal Procedure had been carried out, he made

a statement, but it was not a confession. Although incriminating, it was intended to be exculpatory of himself. Its importance was that it constituted an admission by Fatehsing that on the day of the rape Jasoda came to the house and while she was upstairs with the appellant he acted as watchman at the gate. The statement could not be used in evidence against the appellant, but if admissible, it could be used against Fatehsing. It was admitted as against him, but on no less than three occasions in the course of his summing up the learned Judge warned the jury that the statement was not to be taken as being evidence against the appellant. Even if the statement were inadmissible against Fatehsing, it would not in the circumstances be reasonable to accept the argument that the reading of the statement to the jury had deprived the appellant of a fair trial. But no more need be said on this point because their Lordships consider that the statement was rightly admitted as against Fatehsing, and being rightly admitted, it was the duty of the learned Judge to read it to the jury in connection with the charges against Fatehsing.'

The only other thing which we should like to mention in connection with this case is that it appears to us that there was lot of other evidence against the accused of his complicity in the crime of rape with which he was charged, and this becomes crystal clear from a reference to that part of their Lordships' judgment where they observed that

'it only remains for them to add that there is more than sufficient corroboration of Jasoda's account of the outrage committed upon her by the appellant in the testimony of Ladho, the fact that children's toys were kept in the room pointed out by Jasoda, the stains on the mattress and the injuries which the appellant himself bore.'

and it was in this state of facts and circumstances that it was held by their Lordships that the statement of Fatehsing even if it was exculpatory, so far as he was concerned, was rightly read against him and placed before the jury in connection with the charges against him.

18. The question which precisely arises before us for determination is somewhat of a different character, and that is, whether, where the evidence against the

accused almost wholly rest on his statement under Section 164, Cr. P. C. it will be legally competent for us to accept a part of the statement which is inculpatory of him and reject the remaining part which is exculpatory and found the conviction of the accused on the inculpatory portion thereof. The point to be noted is that there is no other acceptable evidence which would necessarily connect the accused with the crime. In such a case we are inclined to the view that we must accept the statement as a whole or reject it as a whole, and that we cannot split it and base the conviction of the accused on the part which may be found incriminatory. The principal reason which induces us to come to this conclusion is that in a case of this character, there is hardly any other evidence which can be made the basis of conviction and the Court is called upon to take the statement as it is. If the Court accepts it as a whole, then obviously the conviction of the accused cannot be founded on it because such a statement is exculpatory. If on the other hand, the Court does not so accept it, then there is no other evidence upon which the conviction can be founded. The conclusion to which we are inclined to come is amply supported by several decisions of our Supreme Court besides some decisions of our own Court.

19. But before we refer to these decisions, we should like to invite attention to the decision of the Allahabad High Court in *Balmakund v. Emperor*, AIR 1931 All 1 (FB). The question which was referred to the Full Bench in this case was as follows:--

'Can the Court, if it is of opinion that the inculpatory part commands belief and the exculpatory part is inherently incredible, act upon the former and refuse to act upon the latter ?' The confession in this case comprised two elements: (a) an account of how the accused killed the woman; and (b) an account of his reasons for doing so; the former element being inculpatory and the latter exculpatory. In answering this question, their Lordships observed that they had a large number of authorities quoted to them an examination whereof revealed that (a) where there is other evidence, a portion of the confession may, in the light of that evidence, be rejected while acting upon the remainder with the other evidence and (b) where there is no other evidence and the exculpatory element is not inherently incredible, the court cannot accept the inculpatory element and reject the exculpatory

element, and held that while in all the cases which had been examined by them, the exculpatory part of the confession had in fact in no single case been inherently incredible, the possibility of any distinction based upon whether the exculpatory element in the confession was or was not in itself inherently incredible did not seem to have been present to the mind of the Court and further that in view of the extreme caution with which a confession must be weighed in every case and particularly in a case where there is no other evidence to bring home guilt to the accused, it would not be expedient to introduce that exception. Against this background, the answer to the reference was returned to this effect that

'Where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible.'

This rule was approved by their Lordships of the Supreme Court in *Hanumant v. State of Madhya Pradesh*, AIR 1952 SC 343 and *Palvinder Kaur v. State of Punjab*, AIR 1952 SC 354. The conviction of Mst. Palvinder Kaur in the last mentioned case was sought to be founded on a statement made by her under Section 164 Cr. P. C. This statement was exculpatory. It seems to us that there was no other acceptable evidence on which the conviction of Mst. Palvinder Kaur could be founded, if the confession was not taken into consideration. In these circumstances, their Lordships, apart from holding that the High Court was in error in treating the alleged confession of Palvinder Kaur as evidence in the case, went on to hold that it was further in error in accepting a part of it after finding that the rest of it was false, and laid down that in doing so it contravened the well-established rule regarding the use of confessions and admissions that these must either be accepted as a whole or rejected as a whole and that the Court was not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible.

20. We may in this connection refer to & decision of our own Court in *Shiv Ram v. Shiv Charan Singh*, ILR (1964) 14 Raj 26: (AIR 1964 Raj 126), to which one of us was a party. The question there was whether an admission could be believed

partly and rejected partly or it should be taken as a whole. This is how the Bench pronounced its opinion on this point:--

'Now if we may say so, with all respect we should like to point out that all that these cases rightly understood lay down is that an admission must be taken into consideration as a whole and not piecemeal. For, there is high authority for holding that where an admission consists of distinct and separate matters, there-is no reason why an admission relating to one matter should not be relied on without reference to the admission relating to other matters. See the decision of the Supreme Court in Karnail Singh v. State of Punjab, AIR 1954 SC 204. There is also ample authority for the view that though the entire statement containing the admission must be put in and considered, the Court is not bound to believe or disbelieve the statement as a whole, and, where there is other evidence in the case, it may in the light of that evidence believe one part of the statement and disbelieve the other, though it must be added that where there is no other evidence in the case, or the other evidence is untrustworthy, and the only material for decision is the admission, then such admission must be accepted or rejected as a whole. See Rajah Nilmoney Singh Deo v. Ramanoograh Roy, 7 Suth WR 29. Mg. Shwe Myin v. Ma Naing, AIR 1923 Rang 24' and AIR 1931 All 1 (FB) (Supra).'

21. The vital question thus is whether in this state of the law, it would be right for us to believe the inculpatory part of the accused's--statement to the effect that he was in his house-at the time of the commission of the murders-in this case and reject the remaining part to the effect that it was his wife who had committed these murders, as the prosecution would have-us do.

22. On a careful consideration of the whole matter, our answer to this question is in the negative, for the simple reason that there is no other trustworthy or acceptable evidence to believe that the accused was in his own house on the fateful night apart from his own statement under Section 164 Cr. P. C. It seems to us, therefore, that if we accept this part of the accused's statement, we should also accept the remaining part thereof which is to the effect that according to the accused it was his wife? who had committed these murders. And if we do so, then the entire prosecution case must collapse to the ground. It is our considered view

that in a case like this, we cannot split the confession or admission, call it by whatever name you like. You must accept it as a whole or discard it as a whole, and it would not be legally correct to believe a portion of it and reject another portion which may be false.

23. Now according to the prosecution in this case, the entire exculpatory portion of the statement is false, and it is only the inculpatory portion to the effect that the accused was present in his house at the relevant time must be true. In support of its position that the exculpatory portion of the statement is false, reliance was placed before us on medical testimony to the effect that although according to the accused Mst. Siriya, his wife, had given a blow on her neck with the axe by her own hand, this was not possible having regard to the nature and the size of the injury which she had sustained. Accepting, therefore, that the bulk of the statement made by the accused is false in this case, as the prosecution would have us accept, it should be extremely hazardous, if not impossible, for the Court to believe a part of the statement to the effect that the accused was present at his house on the night of the murders, and, therefore, he could not but have participated in it. While we are on this aspect of the case, we should also like to point out that what the accused has said in his statement was that he was sleeping on the roof of his house and that he had come down only on the hearing of some groaning and that when he did so he found that his children had been murdered and his wife had also committed suicide. As we read the statement, we are unable to hold that the accused had seen the actual murders being committed. What he seems to have stated was what he had thought had happened. This further goes to show that even the so-called inculpatory statement falls far short of what the prosecution intends to have conveyed by it.

24. From the discussion we have made above, it is abundantly clear that no reliance can be placed on the accused's so-called confessional statement in this case, and if that is disbelieved, there is hardly any other evidence on which his conviction can be founded.

25. At this stage, we may refer briefly to two other factors to which our attention was called in this connection. The first is that the accused was found to have

absconded soon after the murders had been committed. The version of the accused is that he had put in appearance before the police on the 10th June, 1964, of his own accord and that he had gone to certain villages on the 7th before evening on private business. In any case, the bald circumstance that the accused had absconded as suggested by the police after the murders had been committed would not, in our opinion, necessarily connect him with the crime.

26. The second factor is about the existence of some blood stains on his baniyan (Article 4) which he was found to wear when he was arrested by Dansingh on the 10th June, 1964. It is true that this baniyan was found positive for human blood according to the Serologist's report Ex. P-27. The explanation of the accused for this at the trial was that he had been beaten by the police as a result of which blood had fallen on his baniyan. This explanation may or may not be correct but this factor by itself would also be hardly sufficient, in our opinion, to indubitably convict (connect ?) the accused with the murder in the circumstances of this case.

27. Furthermore, we are definitely of the opinion that the last-mentioned two circumstances even if they are assumed to be established beyond doubt taken by themselves, would not be enough to sustain the conviction of the accused of the crime with which he has been charged. Any conviction of the accused which is sought to be founded on mere circumstantial evidence must necessarily satisfy the test that the circumstances upon which such conviction is sought to be based are of a conclusive character in the sense that they would be incapable of explanation upon any other hypothesis than that of his guilt and would be entirely incompatible with his innocence. Obviously this could hardly be postulated of the circumstances under consideration that they necessarily point to the guilt of the accused and are inexplicable on any other hypothesis.

28. For the reasons mentioned above, we are constrained to come to the conclusion that the conviction of the accused under Section 302, I. P. C. on the material which has been placed before us in this case cannot be sustained. We are very sorry that the murderer of the wife and the three innocent children of the accused Jaswant Singh should go unpunished in this case. But this result is principally due to the fact that the case was not investigated with that care which

we should expect in a case like this and the prosecution has failed to adduce proof of the requisite standard.

29. The result is that we allow the appeal, quash the conviction and sentence of the accused Jaswant Singh and hereby order that he shall be set at liberty forthwith if not required in any other connection. The reference in this view of the matter must stand rejected.

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