

**Vijia Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/756226](http://sooperkanoon.com/756226)

**Court :** Rajasthan

**Decided On :** Sep-19-1968

**Reported in :** 1968WLN171

**Judge :** L.S. Mehta and; C.M. Lodha, JJ.

**Appeal No. :** D.B. Criminal (Jail) Appeal No. 226 of 1966

**Appellant :** Vijia

**Respondent :** The State

**Disposition :** Appeal allowed

**Judgement :**

**C.M. Lodha, J.**

1. The convict Vajia has filed this appeal through jail from his conviction and sentence by the learned Sessions Judge, Balotra, under Section 302, I.P.C. for committing murder of one Navia. We have heard Shri B.L. Kachhawa, amicus curiae, on behalf of the appellant and Shri A.R. Mehta, learned Deputy Government Advocate, and for the reasons, which we shall presently state, we are of the opinion that this appeal must be allowed.

2. The prosecution case is that the accused had illicit connections with one Mst. Ganga aunt of the deceased Navia who used to complain to his parents about the

visits of the accused to Mst. Ganga. It is alleged that on 13th February, 1965, the accused took Navia with him to his house and killed him with an axe. It is further alleged that in order to make the evidence of murder disappear, he took the dead body of Navia from his house and threw it into a well situate at a distance of about 4 miles from his village Dudsi. The parents of the deceased Navia, aged about ten years made inquiries about the boy when he did not turn up for 2 days. Kartia uncle of Navia, was, however, informed by some people of the village that Navia had been seen last in the company of the accused at a hotel in the village and thereafter no trace of Navia had been found. The prosecution case is that Vija admitted his guilt to one Amar Singh, Patwari, and narrated the whole incident to him as to how he took Navia from the hotel and how he then killed him in his house and ultimately threw his dead body into a well. The first information report of this occurrence was lodged by Kartia, uncle of the deceased Navia, on February 15, 1965, at Police Station, Jalore, as a result of which the accused was arrested the same day at about 8 p.m. After his arrest, the accused got the dead body of Navia recovered from the well. A few other articles, viz., a blood-stained gunny bag, two blood-stained towels two blood-stained jackets and one blood-stained basket connected with the crime, are also alleged to have been recovered at the instance of the accused. The accused also made a confession before the Munsif-Magistrate, Jalore, on February 24, 1965. He was then challenged in the court of Munsif-Magistrate First Class, Jalore, who recorded the statement of one prosecution witness Amar Singh and after examine the accused committed him for trial under Section 302, T.P.C. to the court of learned Additional Sessions Judge, Jalore. The accused pleaded not guilty and claimed to be tried and the learned Additional Sessions Judge, Jalore, recorded the statement of 5 prosecution witnesses. Thereafter the case was transferred to the court of sion Judge, Balotra.

3. On February 14, 1966 the learned Session Judge, Balotra, read out the charge to the accused and asked him whether he was guilty of the offence charged or claimed to be tried. The accused pleaded guilty to the charge in the following terms;

I have heard the charge and understood it. I admit to have committed the offence. I have intentionally murdered Navia. I want to give my statement on oath and for

that purpose I have made an application separately. I do not want a trial.

He also submitted an application on that very day praying that his statement on oath may be recorded. The learned Sessions Judge allowed the accused to give his statement and recorded the same. This statement has been marked as D.W.I. In view of this statement given by the accused, the Public Prosecutor stated that he did not wish to examine any prosecution witness and, therefore, the witnesses Jeewa, Padamiya, Karatia, Mania and Amar Singh, who had been summoned to give evidence on behalf of the prosecution and who were present in the court on that day, were discharged and the learned Sessions Judge after hearing arguments convicted the accused under Section 302 I.P.C. and sentenced him to life imprisonment.

4. We have carefully perused the judgment of the learned Sessions Judge and find that he has placed reliance on the statement of the accused for the purpose of holding him guilty of the offence charged with. He has observed that there are some minor points of variance between the prosecution case and the statement given by the accused but these, according to him, are of no substance. He has based his findings on the statement given by the accused on oath coupled with his confession made before the Munsif-Magistrate, and the plea of guilty made by the accused before him on February 14, 1966. He has also referred to the extra-judicial confession alleged to have been made by the accused to Patwari Amar Singh.

5. So far as reference to the evidence of the extra-judicial confession and the confession made by the accused are concerned, we may state, at once, that no evidence was given by the prosecution in respect of them. As already stated above, the prosecution had not examined any evidence after the commencement of the trial before the learned Sessions Judge, Balotra, and, therefore, he was not justified in placing any reliance on the alleged extra-judicial confession and the confession which had not been proved at all.

6. Coming to the statement of the accused as D.W.I, the only provision under which such a statement can be recorded is Section 342-A. Cr. P.C. The stage for recording the statement of the accused on oath is reached only after the

prosecution has given evidence in proof of the charge and there after the accused has been called upon to explain any circumstances appearing in the evidence against him under Section 342 Cr. P.C. Section 342-A. Cr. P.C, gives the accused the option of examining him self as a witness and to tender his own evidence on his own behalf. It enables him to be a competent witness for the defence to testify in disproving of the charges made against him. In these circumstances, we are of the opinion that the learned Sessions Judge committed an error in recording the statement of the accused as a defence witness under Section 342-A. Cr. P.C., and in convicting him on the basis of the same.

7. It is true that it was open to the learned Sessions Judge to act on the 'plea of guilty' made by the accused before him on 14th February, 1966, but, it appears, that he did not do so and proceeded to record the statement of the accused on oath and ultimately convicted the accused on the basis of his statement on oath and the alleged extra-judicial confession and the confessional statement. It would be clear from the narration of the case which we have set out about, that the accused had previously pleaded not guilty before the Additional Sessions Judge, Jalore, and had claimed a trial. In his statement before the committing court he stated that he had not committed any offence and that he had made confession on account of inducement or promise given by the Police. When the case was transferred to the court of the learned Sessions Judge, Balotra, it appears, for reasons unknown, that he at once, pleaded guilty, and not only that, he expressed a desire to examine himself on oath and to make a clean breast of the whole thing. We have read the statement made by the accused on oath and find it some what unnatural. Translated into English a portion of his statement reads thus:

In my confessional statement (Ex. P.8) only this much portion is incorrect 'that I did not wish to kill Navia but that I only wanted to frighten him and by mistake severe wounds were caused to him.' In fact I wanted to kill Navia and with that intention alone, I inflicted injuries on him. But after all, I am also man and on occasions I too have love for life and on that account I made this false statement in Ex. P.8 so that I may not be hanged. But now I have no love for life. I myself have begun to think that there is only one punishment for the sin I have committed and that is that my life should be put an end to as early as possible It is my earnest

desire that Chompla (father of deceased) and Bhalia should remove this suspicion from their minds that I had any illicit connections with Mst. Ganga wife of Bhalia.

8. On reading this statement as a whole, we are left with an impression that the accused had not given this statement of his free will but was under some sort of influence.

9. Even otherwise, the accused has been charged of a very serious offence. In cases where the natural consequence of accepting the plea of guilty can be a sentence of death, it is not in accordance with usual practice to accept the plea of guilty and courts are, more often than not, anxious to try the accused even though he has pleaded guilty. Murder is a mixed question of law and fact and unless the court is satisfied that the accused knew exactly what was implied by his plea of guilty, the plea should not be accepted but the case should be tried, especially where the accused is an ignorant person. The accused in the present case is an illiterate and ignorant person and belongs to a backward Meena community. He has made one statement on one occasion and a different statement on another. In these circumstances, we are firmly of the view, that the accused should have been tried even though he has pleaded guilty before the learned Sessions Judge, Balotra. In our opinion, the conviction and sentence passed against the accused cannot be sustained and must be set aside.

10. Accordingly, we allow this appeal, set aside the conviction and the sentence and send the case back to the learned Additional Sessions Judge, Jalore, for retrial according to law. Since the case has become very old, the learned Additional Sessions Judge will see that the trial of the case is expedited.