

Inder Dass Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-03-1984

Reported in : 1985CriLJ1416

Judge : D.L Mehta and; S.S. Byas, JJ.

Appellant : Inder Dass

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Niranjan Gaur

Judgement :

S.S. Byas, J.

1. By his judgment dated Mar. 7, 1979 the learned Sessions Judge, Churu convicted the accused Inder Das under Sections 302 and 201, I.P.C. and sentenced him to imprisonment for life on the first and three years rigorous imprisonment with a fine of Rs. 200/-, in default of the payment of fine to further undergo three months like imprisonment on the second count. Substantive sentences were directed to run concurrently. The accused has come up in appeal to challenge his conviction and sentence.

2. The charges against the accused are that of patricide and disposing of his corpse.

3. Briefly stated, the prosecution case is that the deceased-victim Ratan Das was the father of the appellant. Ratan Das had three sons viz. Prem Das, Chain Das and the appellant. They were living together in village Badsar tehsil Sujangarh district Churu. Ratan Das owned considerable agricultural land which stood in the name of Prem Das and the appellant. In 1977, Ratan Das got the agricultural land entered solely in the name of Prem Das, in the revenue records. That sowed the seeds of discordance between the appellant and his father Ratan Das. Ratan Das left his house on Sunday preceding Aug. 11, 1978 to go to Sujangarh to see his ailing maternal-uncle. When he did not return even after three days, his wife Smt. Chhoti (PW 2) and his father Ramdas (PW 1) sent the appellant to find out the whereabouts of Ratandas. The appellant also did not return for three days. Thereafter PW 1 Ramdas left the house and boarded a bus to go in search of Ratandas and the appellant. The appellant met him in the way and told him that his father Ratandas had gone in a truck. The appellant and Ramdas returned together to their Dhani. Since Ratandas was still missing and not traceable, many persons collected at the Dhani of Ratandas. They decided to go to take help from an occultist and then to go to the police station to lodge a report. The appellant was also present in that meeting. His mother Chhoti (PW 2) expressed her suspicion on him. Thereupon the appellant started weeping and told before all those persons who had assembled there that he had committed the murder of his father Ratandas and had buried his corpse in his field. PW1 Ramdas thereupon went to Police Station, Sandwa and verbally lodged report Ex. P.1 stating all these facts therein. The police registered a case under Sections 302 and 201, I.P.C. against the accused and took up the investigation. The Station House Officer Pritamsingh (PW 15) arrived on the spot on Aug. 12, 1978 and arrested the accused at about 10.00 A.M. After his arrest, the accused gave the information, in consequence of which the dead body of the victim was disinterred from a pit nearly 4 feet deep in a hut standing on the appellant's field. The inquest report was prepared. The autopsy of the victim's dead body was conducted at about 2.30 p.m. on the same day by PW 9 Dr. Y. S. Bhargava, then Medical Officer Incharge, Primary Health Centre, Sandwa. He noticed the following injuries on the victim's dead body : -.

- 1) Incised wound 5' X 0.75' X 0.5' transverse oblique downwards extending from near the upper end of right pinna over mastoid region of skull.
 - 2) Incised wound 6' X 1.5' X 1.5' oblique downwards extending from angle of right mandible to 4th cervical vertebrae Carotid artery cut open.
 - 3) Incised wound 4' X 1.5' X 2' below the trachea exposing the oesophagus.
4. In the opinion of Dr. Bhargava, the cause of the death was circulatory failure due to severe haemorrhage and shock resulting from injury No. 2. He was also of the opinion that injury No. 2 was sufficient in the ordinary course of nature to cause the death. The postmortem report prepared by him is Ex, P.22. The site was inspected and the site plan was prepared. In consequence of the various disclosure statements made by the accused on Aug. 12, 1978 and Aug. 13, 1978 before the Investigating Officer, various articles such as the clothes of the deceased-victim, bloodstained soil, shoes of the victim, Gandasi (alleged to have been used in the commission of the crime) etc. were recovered. On the completion of investigation, the police submitted a challan against the accused in the Court of Chief Judicial Magistrate, Churu, who in his turn committed the case for trial to the Court of Sessions. The learned Sessions Judge framed charges under Sections 302, 201 and 404, I.P.C. against the accused, to which he pleaded not guilty and faced the trial. The defence of the appellant was that of complete denial and his false implication. In support of its case the prosecution examined 16 witnesses and filed some documents. In defence the accused adduced no evidence. On the conclusion of trial, the learned Sessions Judge found the charges under Sections 302 and 201, I.P.C. duly proved against the appellant. He was consequently convicted and sentenced as mentioned at the very outset. Aggrieved against his conviction and sentence the accused has taken this appeal. We have heard Shri Niranjana Gaur, learned Counsel for the appellant and the learned Public Prosecutor. We have also gone through the case file carefully.
5. Learned Counsel for the appellant did not assail the opinion of Dr. Bhargava relating to the cause of death of the victim. We have gone through the testimony of Dr. Bhargava (PW 9) and find no good grounds to disagree with him. The death of Ratandas was thus not natural but homicidal in nature.

6. Admittedly, there is no direct evidence against the accused and the prosecution case entirely hinges on the circumstantial evidence. The circumstantial evidence consists of:

1) the extra-judicial confession alleged to have been made by the appellant before his grand father, mother and many other persons.

2) the recovery of the victim's dead body in consequence of the information furnished by the accused;

3) the recovery of the blood-stained soil recovered in consequence of the information furnished by the accused;

4) the recovery of the victim's shoes in consequence of the information furnished by the accused;

5) the recovery of the shirt and turban of the deceased-victim in pursuance to the disclosure statement made by the accused;

6) the recovery of Gandasi in consequence of the information furnished by the accused and

7) the strong motive which prompted the accused to commit the murder of his father.

Learned Sessions Judge mainly relied upon the extra-judicial confession, the strong motive and the recovery of blood-stained soil, turban, shirt and shoes of the victim in consequence of the disclosure statement made by the accused-appellant, as human blood was found on some of them. According to him, the recovery of the dead body, Gandasi and some other articles do not furnish any incriminating evidence against the appellant.

7. In assailing the conviction of the appellant, the first contention raised by the learned Counsel is that there was no reliable evidence to prove the extra-judicial confession. It was vehemently contended that the evidence of the witnesses speaking about the extra-judicial confession is discrepant and wholly unreliable. There was no occasion for the appellant to make a confession. The witnesses

examined to prove the extra-judicial confession gave divergent and contradictory statements as to how the confession was made. It was also argued that there was no material corroboration from independent source to the extra-judicial confession. As such the conviction based on extra-judicial confession is not safe and sound. It was, on the other hand, strenuously contended by the learned Public Prosecutor that the extra-judicial confession was made by the appellant before a number of persons including his own mother and grandfather. It is difficult to imagine that they would falsely implicate the accused. It was also submitted that the other witnesses' speaking about the- extra-judicial confession are independent persons and have no reason of whatsoever nature to falsely implicate the appellant. We have taken the respective contentions into consideration.

8. The prosecution has examined PW 1 Ramdas, PW 2 Smt. Chhoti, PW 3 Dharma Ram, PW 4 Laxman Ram and PW 5 Bhanwar Das to prove that the appellant confessed to have committed the murder of his father Ratandas before these persons. Out of them PW 1 Ramdas is the father of the deceased-victim and the grandfather of the appellant and PW 2 Smt. Chhoti is the mother of the appellant and the widow of the deceased-victim. All these five witnesses deposed that when the whereabouts of Ratandas could not be traced and he could not be found out, they and some persons met at the Dhani of the victim in the afternoon of Aug. 10, 1978 to take steps as to what should be done. They ultimately decided to take the help of an occultist and then to lodge a report to the police. The accused thereupon started weeping and confessed before them with tears in his eyes that he had killed his father Ratandas and had buried the dead body in his field. PW 1 Ramdas thereafter went to police station and lodged report Ex. P.I mentioning the extra-judicial confession therein and also the names of the persons before whom it was made. All these five witnesses were cross-examined at length but their evidence remained unassailed and unshaken on the essential features of the extra-judicial confession. It is true that in F.I.R. Ex. P. 1 it has been mentioned that the extra-judicial confession was made when the appellant's mother PW 2 Smt. Chhoti expressed her doubt on him. But during trial none of these witnesses stated so. It was argued that this departure is fatal to the prosecution and the story of extra-judicial confession becomes highly doubtful. We are unable to accept the contention. The departure is insignificant and does not destroy the essential

features of the confession.

9. It was argued by Mr. Gaur that there was no occasion for the appellant to make a confession before these persons. We are again not impressed by the argument. The sense of guilt prevails over the culprit to make the confession especially when the victim is his close relative. The accused made the confession when these witnesses decided to take the help of an occultist and to report the matter to the police. The appellant was nearly 24 years of age at the time of the commission of the offence. It appears that when it was decided to report the matter to the police, he could not contain himself and the sense of guilt prevailed over him. He thought that since the matter was to be reported to the police, the game was up against him. In these circumstances he thought it fit to make a confession. As stated earlier, PW 1 Ramdas is the real grandfather of the appellant while PW 2 Smt. Chhoti is his real mother. We are unable to conceive that they would falsely implicate the accused and introduce a false extra-judicial confession to rope him in. Both these witnesses have no animus or enmity against the appellant. We fail to understand why they would falsely depose against him. So also, the testimony of the other witnesses PW 3 Dharma Ram, PW 4 Laxman Ram and PW 5 Bhanwar Das is above reproach and criticism. They do not belong to the caste of the victim. It also does not transpire that they have strained relations with the appellant so as to falsely implicate him and that too on a grave charge of murder.

10. Mr. Gaur also made an attempt to assail the extra-judicial confession on the ground that the actual words uttered by the appellant have not been put in the First Information Report Ex. PI and also during trial. It was argued that unless the actual words of the extra-judicial confession are put before the Court, no reliance should be placed on it. We are again unable to accept his contention. In First Information Report Ex. P.I it has been clearly mentioned that the accused confessed to have killed his father and to have buried his dead body in his field. The same words have been repeated by these five witnesses in their statements recorded during trial. There is no rule that the extra-judicial confession is not to be accepted if the witnesses give the substance of it and not the actual words. It is the substance of the extra-judicial confession which really matters. Similar view was taken by this Court in *Mangi Lal v. State of Rajasthan* 1970 Raj LW 1. In *Mulkraj v. State of*

Uttar Pradesh AIR 1959 SC 902 : 1959 Cri LJ 1219 it was observed by their Lordships of the Supreme Court (Para 11):

An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence in convicting the accused. The confession will have to be proved just like any other fact. The value of the evidence as to the confession just like any other evidence, depends upon the veracity of the witness to whom it is made. It is true that the Court requires the witness to give the actual words used by the accused as nearly as possible, but it is not an invariable rule that the Court should not accept the evidence, if not the actual words but the substance were given. It is for the Court having regard to the credibility of the witness, his capacity to understand the language in which the accused made the confession, to accept the evidence or not.

The learned Counsel relied upon *Heramba Brahma v. State of Assam* : 1983 CriLJ149 , in which it was observed that the exact words used by the accused in making his confession should be reproduced by the witness. We have gone through the said authority. The evidence as to the extra-judicial confession was disbelieved on numerous grounds one of which was that the extra-judicial confession was that the culprit had admitted to have assailed the victim. That was not taken as amounting to extra-judicial confession. This is not the situation here in the instant case.

11. The extra-judicial confession has to be proved like any other fact. The value of the evidence as to the extra-judicial confession like in other evidence depends on the veracity, reliability and truthfulness of the witnesses before whom it had been made. In order that the extra-judicial confession can be used to, base the conviction, it must withstand the following tests:

(i) Whether it was really made. This depends upon the credibility of the witness to whom it is made. If the witnesses examined to prove it have no animus or oblique motive to implicate the accused falsely, it should be taken to have been made and
(ii) is it voluntary and true?

If these two tests are satisfied that the extra-judicial confession was really made and it was voluntary, a conviction can be safely made on its basis. A free and voluntary confession, whether judicial or extra-judicial, whether retracted or not deserves highest credit and should not be lightly dealt with because it is presumed to flow from the sense of guilt. A man labouring under emotion may confess. When time is passed and feelings are cooled, discretion may cause him to retract it. But that is no reason for rejecting the conviction based on such confession. It would be proper here to refer to the observations of their Lordships made on the point. In *Hardayal v. State of Uttar Pradesh* : 1976 CriLJ1578 their Lordships observed that an extrajudicial confession, if cogently proved to have been made truly and voluntarily, is an efficacious proof of guilt. In *Megharsingh v. State of Punjab* (1975) 1 SCWR 624 : 1975 Cri LJ 1102, their Lordships observed that (at P. 1104):

the evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone. Both the witnesses before whom the accused made confession of their guilt are independent witnesses and their evidence forms a very important link in the chain of circumstantial evidence.

12. In *Abdul Gani v. State of Uttar Pradesh* : 1973 CriLJ280 , their Lordships observed that a retracted extra-judicial confession can also legally form the basis of a conviction though as a matter of prudence the Courts try to look for corroboration from some independent source .so as to satisfy their conscience that the confession is true. In *Wakil Nayak v. State of Bihar* (1972) 1 SCWR 155 : 1972 Cri LJ 566, their Lordships observed that before the Court will act on extra-judicial confession, the circumstances under which the confession is made, the manner in which it is made, the persons to whom it is made will be considered along with two rules of caution - firstly, whether the evidence of confession is reliable and secondly, whether it finds corroboration. We may add that the rule of corroboration is a rule of prudence and not a rule of evidence. If the evidence relating to the

extra-judicial confession inspires confidence, no corroboration is required and if the corroboration is there it serves as an additional fact in assessing the guilt of the culprit. There are cases in which corroboration may be required when the evidence relating to the extra-judicial confession is shaky. In *Rahim Beg v. State of Uttar Pradesh* 1972 SCC (Cri) 827 : 1972 Cri LJ 1260 relied upon by the learned Counsel, it was, of course, observed that extra-judicial confession is always a weak evidence but it was in the peculiar circumstances of that case that these observations were made. There the evidence relating to the extra-judicial confession was not found reliable and dependable.

13. Reverting to the case in hand, we have already mentioned that the five witnesses before whom the confession was made, have no oblique motive to falsely implicate the accused. One of them is his real grandfather and the other is his real mother. The remaining three are absolutely independent persons having no ill-will or animus against the appellant. In these circumstances we are unable to accept the contention of the learned Counsel that the extra-judicial confession does not stand proved or that it should not be acted upon in convicting the appellant. In our opinion the evidence of the five witnesses relating to the extra-judicial confession is above the board and free from suspicion. No risk is involved in maintaining the conviction of the appellant on its basis.

14. The next set of evidence against the accused-appellant is that the dead body of the victim was recovered in consequence of the information furnished by him whilst under police custody. The disclosure statement made by the appellant is Ex. P.3. The accused after making the disclosure statement took the Investigating Officer and the Notbirs to a hut standing in his field. There he dug a pit nearly 4 feet deep and took out the victim's dead body wrapped in a quilt. The learned Sessions Judge did not accept this discovery for the reason that the fact of the dead body lying buried in the hut was already mentioned in the F.I.R. Ex. P.1. Section 27 of the Evidence Act, of course, cannot be pressed into service against the appellant to prove the discovery of : the victim's dead body because the fact was already mentioned in the F.I.R. Ex. 1. But the fact remains that in Ex.P.1 information was mentioned as it was disclosed by the accused before his grandfather, mother and other witnesses. While making the extra-judicial

confession, the accused also disclosed before them that he had buried the victim's dead body in his field. This information would not have been mentioned in Ex. P.1 until and unless it was disclosed by the appellant. The dead body was recovered at his instance. Though the disclosure statement Ex. P.3 may not be admissible in evidence against him, nevertheless the fact remains that the dead body was recovered at his instance and in consequence of the information furnished by him before his mother, grandfather and other persons. The manner in which the dead body was found, leaves no room to doubt that somebody must have dug the pit and placed the dead body of the victim in it. This recovery of the dead body at the instance of the accused, thus, furnishes a very valuable link in the chain of the circumstantial evidence against the appellant.

15. There is then the evidence of motive. It also speaks heavily against the appellant. The revenue records Exs. P.23, P. 24 and P. 25 show that the deceased-victim had given nearly 40 Bighas of land to his sons Chaindas and Premdas and 45 Bighas of the land to the appellant and Premdas. He retained nearly 301 Bighas of land for himself. On 21-11-78, as disclosed by Ex. P.23, the deceased got the land standing in the name of appellant mutated only in the name of his other son Premdas. This must have annoyed the appellant and since then he started harbouring the ill-will against his father. The motive is strong and constitutes a very formidable piece of evidence against the appellant.

16. Yet another set of evidence relied upon by the learned Sessions Judge is that the clothes of the victim were recovered in consequence of the information furnished by the appellant. These clothes are turban, shirt, dhoti and shoes. It was argued by the learned Counsel that there is no material on record to prove that these articles were of the deceased-victim and he was wearing them when he left the house. The contention has considerable force. We have gone through the record and find that there is not an iota of evidence to show or suggest that these articles, namely shoes, turban and shirt were that of the deceased-victim and that he was wearing them when he left his house. As such the recovery of these articles in consequence of the information furnished by the accused does not disclose any incriminating material against the appellant.

17. The recoveries of Gandasi, spade, gold ear-rings and gunny bag have also been held by the learned Sessions Judge as insufficient to connect the accused with the crime. We need not, therefore, detain ourselves on this point.

18. It is also alleged that the accused got the blood-stained soil recovered. The learned Sessions Judge took it as a linking circumstance in assessing the guilt of the accused. Even if this recovery is taken as true, it does not constitute a very valuable piece of evidence against the appellant.

19. We have, thus three sets of circumstantial evidence against the appellant, namely (1) extra-judicial confession, (2) the recovery of the dead body at his instance and (3) the strong motive. We have observed above that the extra-judicial confession constitutes a formidable piece of evidence against the appellant and it is in itself sufficient to seek his conviction without any corroboration. Even if corroboration is sought for, it comes from the other two sets, namely the recovery of the-victim's dead body at the instance of the appellant and the motive which prompted him to commit the crime.

20. We are quite conscious that the instant case hinges entirely on circumstantial evidence. The circumstantial evidence can be reasonably made the basis of conviction if it is of such a character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt. In other words there must be a chain of evidence so far as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show within all human probability that the act must have been done by the accused and none else. In the instant case, the three sets of circumstantial evidence, as discussed above, leave no room to doubt that Ratandas was done to death by the accused-appellant and none-else. After committing his murder, he buried his dead body in order to save himself from the penal consequences. The charges under Sections 302 and 201, I.P.C. have been rightly taken as brought at his door. He was rightly convicted and sentenced under these sections. No interference is called for.

21. For the reasons discussed above, we find no force in this appeal of accused Inderdas and dismiss the same.

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