

Chhagan Lal Vs. State

Chhagan Lal Vs. State

SooperKanoon Citation : sooperkanoon.com/758966

Court : Rajasthan

Decided On : Jan-30-2009

Reported in : RLW2009(2)Raj1490

Judge : Narendra Kumar Jain and; Guman Singh, JJ.

Appellant : Chhagan Lal

Respondent : State

Disposition : Appeal dismissed

Judgement :

Guman Singh, J.

1. Challenge in this appeal is to the judgment dated 19.2.2003 passed by learned Addl. District & Sessions Judge (Fast Track), Kama in sessions case No. 165/2002 whereby the accused-appellant Chhagan Lal was convicted and sentenced as under:

Under Section 302 IPC:

To suffer rigorous imprisonment for life and fine of Rs. 1000/-, in default of payment of fine to further undergo simple imprisonment for six months.

Under Section 376 IPC:

To suffer rigorous imprisonment for life and fine of Rs. 1000/-, in default of payment of fine to further undergo simple imprisonment for six months.

Under Section 377 IPC:

To suffer rigorous imprisonment for seven years and fine of Rs. 1000/-, in default of payment of fine to further undergo simple imprisonment for six months.

Under Section 201 IPC:

To suffer rigorous imprisonment for five years' and fine of Rs. 1000/-, in default of payment of fine to further undergo simple imprisonment for six months.

All the sentences were ordered to run concurrently.

2. Briefly stated, the prosecution case is that one Nazar Khan, resident of P.S. Pahadi submitted a written report on 12.9.98 at 11.00 AM to the Station House Officer, P.S. Pahadi, District-Bharatpur who had reached to the place of occurrence on receiving information about a dead body lying in a well at village Pahadi. In the report, it was reported by Nazar Khan that on 11.9.98, his niece Ruksina, aged 8 years, had gone to graze goats in nearby jungle as usual. When he was returning to his house at about 5.00 PM in the evening, her niece Ruksina was sighted grazing goats in the nearby jungle. At that time, one Chhaganlal son of Chota was also grazing his catties there. When deceased Ruksina did not return to home until 7.00 PM, he got worried and tried to search her in the village but he did not get any clue of her whereabouts. On 12.9.98 in the morning, Roojdar (PW-3) and Jeewan (PW-2) informed him that when they were returning from their field in the preceding night at about 2.00 AM, they heard a sound of something being thrown in the Well. There they met Chhagan and on seeing him, they thought that some stone could have been thrown by him in the Well. They asked Chhagan as to what he was doing there in the dead of night, he told that he was searching his lost goats. So Sami Khan (PW-9), Moobil Khan (PW-4) and Nazar Khan (PW-8) called Chhagan in the morning and inquired about Ruksina. Then Chhagan confessed before them that he first committed rape with Ruksina in the nearby 'Jawar' field and when she became unconscious, he had threw her in

the Well. On receipt of this report containing above' facts, the same was sent by Uttam Lal, SHO to the Police Station for registering the case.

3. On the basis of said report, a case under Sections 302, 376, 377 and 201 IPC was registered against the accused-appellant and the FIR was sent to the SHO, who had already proceeded with the investigation. During the course of investigation, Panchnama of dead body was prepared, site inspection was done. Dead-body was sent for post mortem examination. Kurti & Salwar from the dead body of deceased Ruksina were seized. Accused-appellant was arrested. He was medically examined for the purpose of injuries on his body as well for potency to confirm his capacity to perform sexual intercourse. After collecting the necessary evidence, accused-appellant was challaned in the court. In due course, case came up for trial before the trial court. The accused appellant was charge-sheeted for the offence under Sections 302, 376, 377 and 201 IPC. He pleaded not guilty and claimed trial. The prosecution examined as many as 11 witnesses in support of its case. Statement of accused-appellant under Section 313 Cr.P.C. was recorded. In his statement, accused did not furnish explanation and merely stated that he was falsely implicated on account of enmity. However, no witness in defence was examined. The learned trial Judge on hearing the final submissions, convicted and sentenced the accused-appellant in the manner indicated herein above.

4. It is contended on behalf of the accused-appellant that evidence pertaining to extra judicial confession adduced by the prosecution is a very weak type of evidence as the extra judicial confession has not been made voluntarily because the accused appellant was beaten by the villagers including witnesses to extract the confession. It has further been contended that rest of the evidence led by the prosecution is based on circumstantial evidence and the circumstance proved do not complete the chain so as to bring home the guilt of the accused-appellant beyond doubt.

5. Per contra, the learned Public Prosecutor supported the judgment of the trial court and contended that evidence on extra judicial confession is worth believing as the same has been made voluntarily and this evidence is further corroborated by the circumstantial evidence including that of medical evidence. According to the

medical evidence, deceased Ruksina was put to death after she was subjected to rape as well as carnal intercourse against the order of nature and then she was strangled to death before she was thrown in the Well and that a corresponding injury was found on male organ of the appellant.

6. The evaluation of evidence pertaining to extra judicial confession is required to be made on the touch stone whether it is true and voluntary, as observed by Hon'ble Supreme Court while delineating the law on the point in the case of Gura Singh v. State of Rajasthan reported in : 2001 CriLJ487 , as under:

His settled position of law that extra judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra judicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. Relying upon an earlier judgment in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh : 1954 CriLJ910 , this Court again in Maghar Singh v. State of Punjab : AIR 1975 SC1320 , held that the evidence in the form of extra judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. In Narayan Singh v. State of M.P. : 1985 CriLJ1862 , this Court cautioned that it is not open to the court trying the criminal case to start with a presumption that extra judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra Judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession. In Kishore Chand v. State of H.P. : 1990 CriLJ2289 , this Court held that an unambiguous extra judicial confession possesses high probative value force as It emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity.

However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 & 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggesting that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinized. To the same effect is the judgment in Baldev Raj v. State of Haryana : 1990 CriLJ2643 . After referring to the judgment in Piara Sinah v. State of Punjab : 1977 CriLJ1941 , this Court in Madan Gopal Kakkad v. Naval Dubey : [1992]2SCR921 , held that the extra judicial confession which is not obtained by coercion, promise or favour of false hope and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.

7. In the instant case, extra judicial confession made by the accused-appellant is sought to be proved by the testimony of PW-1 Mst. Sahbi, PW-2 Jeewan, PW-3 Roojdar, PW-4 Moobil Khan, PW-8 Nazir Khan and PW-9 Sami Khan. From the evidence adduced by the prosecution, it is revealed that deceased Ruksina, aged 8 years, had gone to graze the goats as usual and she did not return home in the night. She was sighted by Nazir Khan (PW-8) in the evening when she was grazing the goats in the jungle and the appellant Chhagan was also seen grazing goats there. However, on search being made by PW-1 MstSahbi, mother of the deceased and Nazir Khan (PW-8), Ruksina could not be traced out in the evening. PW-1 Sahbi also went to the house of accused-appellant to enquire about the girl but he was not available there. Next morning Nazir Khan (Pw-8) told about the incident to Sami Khan (PW-9) and then they were informed by PW-2 Jeewan and Pw-3 Roojdar that on the preceding night at about 2.00 AM in the night, a sound of something falling in the Well was heard by them when they were coming from their field. They also found appellant Chhagan nearby the Well and on being asked, he replied that he was in search of his goats. So Chhagan-appellant was called from his house and was inquired about deceased Ruksina in the presence of PW-2 Jeewan, PW-3 Roojdar, Pw-4 Moobil Khan, PW-8 Nazir Khan, PW-9 Sami Khan

and PW-1 Mst. Sahbi outside the house of Sami Khan in open chowk at about 5.00 AM. The accused-appellant confessed his guilt and stated that deceased Ruksina was grazing goats with him, she was raped in 'Jawar' field by him and when she became unconscious, he strangled her and threw her in the Well. Thereafter, the villagers went to the Well to take out the dead body of deceased Ruksina.

8. On being cross-examined, all these witnesses to extra judicial confession have categorically denied that the appellant was tied or subjected to beating to extort confession. It is worth notice that the explanation furnished under Section 313 Cr.P.C., the accused-appellant did not implicate or state that he was subjected to any beating or was put to threat to confess the guilt. He has simply stated that witnesses were stating against him because of enmity. But he has failed to explain the cause of enmity with the witnesses. Though the learned Counsel for the appellant has tried to impress upon that the accused-appellant was falsely implicated for> the reason that the witnesses belonged to 'Mev' caste while he is 'Lohar' by caste and majority of the villagers are of 'Mev' caste. But this proposition is neither put forth in the cross examination of they witnesses nor it has been disclosed in the statement under Section 313 Cr.P.C. Thus from the facts & circumstances of the case, it is revealed that the accused-appellant was found grazing goats along with deceased Ruksina in the day and that he was seen near the Well in the dead of night of preceding day of making extra judicial confession and a sound of something being thrown In the Well was heard by Jeewan (PW-2) and Roojdar (PW-3) and the accused-appellant was enquired about the cause of being there nearby the Well. This background of tale telling circumstances appears to have left with no escape with the appellant but to confess the guilt voluntarily. It has been further argued on behalf of the appellant that the injuries found on the body of appellant could be caused due to beating so as to extort the confession. In this regard, according to Pw-5-Dr.Ramvillas, the appellant was found with some injuries on his body vide Ex.P-7 but the injuries on nose, wrist and right side of the neck were found to have been inflicted due to struggle with the victim. The possibility of causing of other injuries of abrasions and swelling on chest, elbow and left & right hands due to the struggle of the victim, cannot be ruled out especially when the offence allegedly pertains to forcible penetration in

vaginal and anal canal followed by strangulation. That too on a surface of a 'Jawar' field where 'Jawar' straw were found broken and blood smeared soil was also recovered.

9. Thus the background factual matrix leading to the extra judicial confession made by the accused-appellant soon after the incident is not found to be tainted by undue influence, coercion or pressure and the same is found to be true and voluntary.

10. The evidence of extra judicial confession made by the accused is further corroborated by the medical evidence so as to confirm that the deceased Ruksina was subjected vaginal and anal Intercourse with corresponding injury at male organ of the appellant. The post mortem of deceased Ruksina was conducted by Dr. Ramvillas (PW-5) who examined deceased Ruksina on 12.9.98 at 3.45 PM and he found the probable time of death to be within 24 hours and as per post mortem report Ex.P-8, following injuries were found on the body:

External Injury

(1) Vagina: On abduction of both legs, vaginal canal was visible dilated Normally child's vaginal canal is not visible, on examination vaginal orifice: lateral side having abrasion. On posterior vaginal wall (forchette), there was rupture of 1/2x1/4' size due to forceful dilation of vaginal canal. Injury was Ante mortem in nature.

(2) Anus: On abduction of both legs, anal canal visible dilated, faecal matter coming out of Anus. On wipe of faecal matter, there was rupture of Anus canal posteriorly, which was due to forceful dilation of Anus, ante mortem in nature. Size of Tear was 1/2 x 1/4' inch size On posterior aspect of Anus.

(3) Bruises 1 x 2' inch size, irregular in shape. - Anteriors on neck (Throat) with two crescentic mark on little right side to the injury and crescentic finger nail mark of Bruise on back of neck towards right side finger nail mark concavity towards mid line of back-Ante mortem.

(4) Abrasion 1/4 x 1/4' inch size on Bridge of Nose - Antemortem in nature.

(5) Abrasion postero lateral side of left ankle -Ante mortem innature.

(6) peeling of skin at darksum of right hand fore arm which was postmortem in nature (after death injury due to handling of body)

On Examination of neckdeep extra vassession of blood in soft tissue of neck under eying injury of throat injury No. 3. On examination of hyoid bone there was fracture of greater corner of hyoid bone with extra vassession of blood in surrounding connective tissue with indication of throttling of chick which was ante mortem in nature.

In the opinion of Dr. Ramvillas (PW-5), the cause of death was found to be throttling leading to asphyxia. There was evidence of forceful penetration of vaginal canal and anus which was ante mortem in nature indicating sexual assault by means of vaginal and anal route.

11. The other corroborative link pertains to the evidence adduced by the prosecution on the point of recovery of Kurti & Salwar from the body of deceased vide Ex.P-4 on 12.9.98 at about 2.40 PM and on being examined by the FSL, same were found to be stained with human semen. This further corroborate the fact that the deceased was-subjected to rape. However, no semen was found in the swabs and smears from anus and vagina on chemical examination. But this has been explained by PW-5 Dr. Ramviliias, according to him it was not essential that semen could be found in the vagina and anul passage as the same could have been washed by the water as the same were lying wide open. A underwear of the accused-appellant was also recovered vide Ex.P-12 on 15.9.98 and on being examined by FSL vide Ex.P-9, it was found to be stained with human semen but that is not of much significance as it failed to connect the accused-appellant who was arrested on 12.9.98 vide Ex.P-6 while recovery was made on 15.9.98. Thus from the medical evidence, it is proved that deceased Ruksina was subjected to rape and carnal intercourse against the order of nature in all human probability by the appellant before she was strangulated and was thrown in the Well.

12. The next link to connect the accused-appellant with the crime pertains to testimony of Jeewan (PW-2) and Roojdar (PW3). They have categorically deposed that on the fateful night of the incident, when they were coming from their field at about 2.00 AM, they heard a sound of something falling in the Well and also that they found the accused-appellant standing near the Well and on being asked as to what he was doing there, he replied that he was in search of his goats. That provides an important link to associate the accused-appellant with the crime scene 'Jawar' field near the Well which was situated at a distance of 100 meters only and blood stained soil was also recovered from there vide Ex.P-3. This link significant credence to the extra judicial confession made by the appellant.

13. On evaluating tip evidence of prosecution on the touch stone of law quoted herein above relating to use of evidence of extra judicial confession coupled with the circumstantial evidence of conclusive nature to corroborate the same, there is no escape from the conclusion that the crime was committed by the accused-appellant and none else. Thus, we see no infirmity in the impugned judgment of the trial Court. In our opinion, the guilt/offence under Sections 302, 376, 377 and 201 IPC is proved against the accused-appellant beyond reasonable doubt.

14. For these reasons, the appeal being devoid of merit, stands dismissed.