

**Logar Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Dec-09-1983

**Reported in :** 1983WLN(UC)459

**Judge :** K.S. Lodha and; S.S. Vyas, JJ.

**Appeal No. :** D.B. Criminal Jail Appeal No. 12/78

**Appellant :** Logar

**Respondent :** The State of Rajasthan

**Judgement :**

**K.S. Lodha, J.**

1. Logar has been convicted Under Section 302 IPC and sentenced to imprisonment for life by the learned Sessions Judge, Udaipur, by his judgment dated 2-12-77. He has come up in appeal. The prosecution story in brief is that on the evening of 30-4-77, Bhanwar Singh and Bheru Singh saw a dead body floating in the well of the village Kamli-ka-Guda. As then night was setting in, they did not inform the police nor took any steps to take out the dead body on that night but on the morning of 1-5 77, Bhanwar Singh lodged a report before the police station Delvada in this respect whereupon the police started proceedings Under Section 174 Cr. PC. The Head Constable Shri Prem Singh reached the spot and thereupon the dead body was taken out of the well in the presence of the father of

the accused. A Panchnama as prepared, which is Ex.P 1 on the record. The skin of the dead body was peeling off and, therefore, external injuries could not be observed. The post-mortem examination of the dead body was carried out by Dr. Mogh Kumar PW 2 on 1-5-77 itself. According to him, the death must have taken place about 48 to 96 hours before the post-mortem examination. He found that the eyes of the deceased were protuding out and the tongue was also protuding between the teeth. He also observed that the right cornea of the hyoid bone was fractured. According to him, the cause of death was asphyxiation resulting from strangulation of the throat. Thereafter the police registered the case Under Section 302 IPC. It is alleged that after the cremation of the body, after the post-mortem examination when people had collected in the pole of one Prithvi Singh in the village, the accused had made an extra-judicial confession in the presence of many persons. The accused Logar was arrested on 5-5-77. His father Jeta was also arrested. The accused Logar was committed to judicial custody on 6-5-77 and on 9-5-77, he made a confession before Shri M.C. Garg PW 9. After completing investigations, a challan was put up against both the accused persons and they were committed to the Court of Sessions, Udaipur. A charge Under Section 302 IPC was framed against the accused Logar and a charge Under Section 201 IPC was framed against Jeta. They pleaded not guilty and thereupon they were tried. The prosecution examined as many as 12 witnesses and proved a number of documents. The accused in their statements denied the prosecution story. Two witnesses were produced in their defence. After considering the evidence, the learned Sessions Judge acquitted the accused Jeta but convicted Logar as aforesaid and now Logar has filed this appeal.

2. We have heard the learned counsel for the appellant and the learned Public Prosecutor and have gone through the record.

3. It is contended by the learned counsel that the evidence against the accused Logar is wholly insufficient to establish a charge Under Section 302 IPC and even if the prosecution case based on the confession of the accused is believed, the case would not fall Under Section 302 IPC but it can only fall Under Section 304 Part II, IPC. On the other hand, the learned Public Prosecutor has supported the judgment of the court below.

4. There is no direct evidence in this case and the matter depends upon the extra-judicial confession and the confession made by the accused before the learned Magistrate as also the medical evidence. So far as the medical evidence is concerned, the statement of the doctor about the fracture of the hyoid bone and the cause of death does not appear to be open to doubt and as a matter of fact, the learned counsel could not assail the evidence of the doctor. Therefore, the conclusion of the learned Sessions Judge that Smt. Lehraki w/o the accused Logar had died on account of strangulation and thereafter her body had been thrown in the well is correct.

5. Now the question is whether it is proved beyond any reasonable doubt that it was the accused Logar who had strangled her. As already stated above, the evidence in this respect consists of the extrajudicial confession proved by PW 1 Bhanwar Singh, PW 5 Bhopal Singh and PW 6 Sohan Singh. They have all deposed that after the cremation of Smt. Laharki, the people of the village had collected in the Pole of Prithvi Singh where the accused Logar came and told them that he had killed his wife by strangulating her and had thrown her in the well and he prayed to the villagers to save him. A careful consideration of the evidence of these three witnesses convince us that their evidence is not at all reliable and deserves to be discarded. It is to be noted that this extra-judicial confession is said to have been made by the accused Logar just after the cremation of Smt. Laharki. The cremation took place on 1-5-77. Still these witnesses admit that they did not inform the police till the police came to record their evidence on the third May. It is pertinent to note that the police had already arrived in the village on 1-5-77 itself when the dead body had been taken out, the inquest report was prepared and the dead body was got examined by the doctor. If in fact, the accused Logar had made such an extrajudicial confession before these witnesses, they would have immediately informed of this to the police and would certainly have handed over the accused to the police but the silence of these witnesses for two days clearly goes to show that in fact no such confession was made before them. Further it also appears that even after the police had reached the village on the third, according to these witnesses, they do not appear to have told the police of this extra-judicial confession otherwise there was no reason why the accused could not have been arrested on that very day and the police could have waited for two

more days and arrested the accused only on 5-5-77. Again it also does stand to reason that the accused would have made such a confession before the villagers who had assembled in the Pole of Prithvi Singh in the manner in which it is alleged to have been made. The dead body had already been recovered and cremated, Till then no suspicion appears to have been cast upon the accused. The accused, therefore, would not have himself gone to these persons and confess the guilt before them. Not only this, a confession is generally made to persons in whom the accused may confide but in this case, the accused is alleged to have made the confession before all the villagers. We are, therefore, not prepared to place any reliance on this extra-judicial; confession.

6. The only other picee of evidence is the confession made by the accused before the learned Magistrate. No doubt, this confession is alleged to have been made after almost four days of the arrest of the accused and third day after his being committed to the judicial custody, all the same, the confession as it is, does not seem to us to be reliable. The accused Logar has stated 10] 12] 13 fnu dh ckr gS vkSjr tcjnLrh dqos es iM+us tk jgh Fkh A le>kbZ] ugh le>h rks eSus xyk ?kksV dj ekj ukdh A vkSj dqos es M+ky nh A mlds ckn esjs firkth vk;s rks esjs dks ,d jsiV ekjs A eSus mldks dvks ij gh ekjk Fkk A dqos es eSus o esjs cki us feydj fxjk nh A

Now in the first places, this confession appears to be an abrupt statement of a particular fact, namely, that the accused had killed his wife by stragulating her and had thrown her in the well. The reason put forward by the accused for this act is that his wife was going to commit suicide by jumping into the well. However, no reason why she was just going to kill herself manner has either been put forward by the accused in this confession nor is there any evidence whatever on behalf of the prosecusion in this respect. On the other hand, we have the evidence of PW 8 Khema, who is none else then the brother of the deceased Smt. Laharki and he clearly states that he had never seen any dispute between Logar and Smt. Laharki and that they had been living happily. Laharki had never complained to him against her husband Logar. When such were the relations between the husband and wife, there does not appear any reason why Smt. Laharki could have thought of committing suicide as alleged by the accused in the confession, Not only this, a reading of the confession itself would go to show that the accused was not sure of

what he was stating before the court. In the beginning he stated that after strangulating his wife, he threw her in the well and that his father came and slapped him but in the latter part he gives a different story and says that he and his father both had jointly thrown her into the well. Such a contradictory statement in a confession which runs only in almost eight lines only clearly brings about the unreliability of this confession. Again if in fact, Smt. Laharki was going to commit suicide by jumping into the well and the accused wanted to prevent her, he would not have strangulated her in such a manner that she could have died. He could have prevented her from committing suicide by other means also e.g. by dragging her away from the well.

7. As the record stands, it is quite clear that apart from the extrajudicial confession and the confession made by the accused before the learned Magistrate, there was no evidence available against him and in these circumstance, when the accused knew that there was no evidence against him, there was no reason for him to make the confession. He does not state why he wanted to make this confession nor the learned Magistrate appears to have put such a question to him. It is true that in the proforma of the confessions Under Section 164 Cr.PC prescribed by the State of Rajasthan, such a question is not printed but that does not absolve the Magistrate from the duty of finding out and in what circumstances and for what reason, the accused was going to make a confession because confessions are not generally readily made and even if they are made, they are looked with a little suspicion. Now in this case, as we have already found that the police did not have any other evidence except the confession of the accused and, therefore, in the first place, it tried to prove extra-judicial confession of the accused and in the same trend. it also probably prevailed upon the accused to make this confession before the Magistrate. In these circumstances, we do not propose to place any reliance upon this confession. To act upon a confession Under Section 24 of the Evidence Act, the confession must appear to the court to have been made voluntarily and that it had not been made or caused to be made by any inducement threat or promise having reference to the charge against the accused person.

8. Even if we were to rely on this retracted confession this by itself would not be a safe basis of convicting Logar Under Section 302 IPC unless it was corroborated

by independent evidence. Although such corroboration is not a necessity under the law the Courts as a matter of prudence have always insisted upon independent corroboration of a retracted confession. Reference may be made to Harwan Singh v. State of Punjab : 1957 CriLJ1014 and Subrammina Goundan v. State of Madras : 1958 CriLJ238 . No such corroboration in coming forth in this case. Extra-judicial confession has already been ruled out by us. The opinion of the doctor also does not amount to an independent corroboration. In as much as the possibility that after having already had the medical evidence in its possession the police may have made the accused to confess that he had strangled his wife.

9. If the extra-judicial confession and the confession made before the learned Magistrate Ex. P 7 cannot be relied upon there is absolutely no other evidence which can connect the accused with this crime. The mere fact that the death of Smt. Lahraki was homicidal and due to strangulation, that cannot necessarily lead to the conclusion that it was the accused and the accused alone, who had committed this crime. It is for the prosecution to establish by cogent and reliable evidence that it was the accused who had strangled Smt. Lahraki and in our opinion, the prosecution has failed to establish the same. Circumstances are not uncommon where some times a person in order to save his own near and dear one from some offence, may take the offence upon himself. In this case, we have in evidence that Logar was serving at Udaipur and he was not present at the time when the dead body was recovered. He was sent for from Udaipur. Therefore, the possibility that somebody else, may be some member of his family, on account of some dispute may have strangled Smt. Lahraki and in order to save that member of the family, the accused may have taken the guilt upon himself cannot be excluded. Be that as it may, the fact remains that the prosecution has failed to establish beyond reasonable doubt that it was the accused who had strangled Smt. Lahraki. The inevitable conclusion, therefore, is that the accused must get the benefit of doubt.

10. For the reasons stated above, we accept this appeal, set aside the conviction and sentence of the accused Under Section 302 passed by the learned Sessions Judge, Udaipur, and acquit him of the charge Under Section 302 IPC. He is in jail

and shall be released forth with if not required in any other case.

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