

**Jetha Ram Vs. State of Rajasthan**

**Jetha Ram Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/759812](http://sooperkanoon.com/759812)

**Court :** Rajasthan

**Decided On :** Aug-09-1996

**Reported in :** 1997CriLJ464

**Judge :** B.R. Arora and; J.C. Verma, JJ.

**Acts :** Evidence Act - Sections 24; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 164

**Appeal No. :** Criminal Appeal No. 331 of 1990

**Appellant :** Jetha Ram

**Respondent :** State of Rajasthan

**Advocate for Def. :** S.M. Singhvi, Public Prosecutor

**Advocate for Pet/Ap. :** Suresh Kumbhat, Amicus Curiae

**Disposition :** Appeal allowed

**Judgement :**

**B.R. Arora, J.**

1. This appeal is directed against the judgment dated October 23.1990 passed by the District and Sessions Judge, Jodhpur, by which the learned Sessions Judge convicted the appellant for the offence under Section 302, I.P.C. and sentenced

him to undergo imprisonment for life and a fine of Rs. 507- and in default of payment of fine further to undergo one month's rigorous imprisonment.

2. Appellant Jetha Ram was tried by the learned Sessions Judge, Jodhpur, for committing the murder of his father Isha Ram in the night intervening between 20/21st November, 1989 at his house situated in village Khimasriyia (district Jodhpur). The case of the prosecution, as unfolded in the F.I.R., was that Chandna Ram (PW 1), in the intervening night of 20/21st November, 1989, at 9.00/10.00 p.m., when he was in his Dhani and tying the she-goats in the cote (Bara), he heard the cries from the Dhani of Isha Ram, He, along with Ghewar Ram, went to the Dhani of Isha Ram and saw Smt, Kasumbi W/o Isha Ram, her son and daughter Nojki in the house. On enquiry being made they informed that some evil-spirits were possessed and the condition of Isha Ram was not perfect and, therefore, they were crying. They thereafter attended Isha Ram and found him dead. Thereafter Ghewar Ram was sent to call Dewa Ram and Deepa Ram. In the morning they saw the signs of injuries on the temple region of Isha Ram. Certain other villagers of the community, also, came there and all were of the opinion that Isha Ram did not die of natural death. There was a dispute between Isha Ram and his family members including his son accused Jetha Ram regarding the engagement of Nojki - the sister of the accused. On enquiry, Jetha Ram informed that the boy with whom Nojki was engaged earlier, died and his father wanted to get her engagement done at some other place, which was not acceptable to him and some altercations took place and he, in the anger, inflicted injuries to his father by a Lathi. The accused also, informed them that he, also, strangled his father.

3. The prosecution, in support of its case, examined twelve witnesses. The accused did not examine any witness in his defence.

4. The nature of evidence produced by the prosecution consists of the evidence of the two eyewitnesses, viz., PW 3 Smt. Kasumbi and PW 4 Ku. Nojki; the extra-judicial confession allegedly made by the accused-appellant before PW 1 Chandna Ram, PW 2 Gordhan Ram, PW 5 Ghewar Ram and PW 6 Bisna Ram. PW 7 Heera Ram and PW 8 Har Lal are the two Motbir witnesses of the

Panchnama while PW 9 Dhanna Ram is a Motbir witness to the recovery of the Lathi. PW 12 Virendra Singh was the Police Constable posted in the Office of the Superintendent of Police, Jodhpur, who got the forwarding letter prepared and handed-over the sealed articles to Kama Ram to hand-over the same at the State Forensic Science Laboratory, Jaipur. PW 11 Dr. Arvind Solanki was the Medical Officer posted at the Primary Health Centre, Setrawa, who medically examined Isha Ram on 26-11-89 and found four injuries on his person. PW 13 Dr. Sudhir Kashyap is the Medical Officer, Primary Health Centre, Dechu, who, on 23-11 -89 conducted the autopsy on the deadbody of Isha Ram. PW 12 Panney Singh is the Station House Officer, Police Station, Dechu, who conducted the investigation, arrested the accused on 24-11 -89, made the recoveries and after completion of the investigation, presented the challan.

5. The prosecution, to prove its case, placed reliance over three types of evidence, namely, (i) the evidence of the eye-witnesses, (ii) the evidence relating to the extra-judicial confession made by the accused; and (iii) the recovery of the Lathi - the weapon of offence - on the information and at the instance of the accused. The learned Sessions Judge did not believe the evidence of the eye-witnesses as they have not supported the prosecution case and were declared hostile. The learned Sessions Judge, while convicting and sentencing the accused-appellant, placed reliance over the extra-judicial confession and the recovery of the Lathi on the information and at the instance of the accused. We would like to consider all the three types of evidence produced by the prosecution.

6. The first type of evidence produced by the prosecution to prove its case against the accused-appellant is the evidence of the two eye-witnesses, viz., PW 3 Smt. Kasumbi (widow of the deceased) and PW 4 Ku. Nojki (the daughter of the deceased). Both these witnesses have not supported the prosecution case during the trial and, therefore, they were declared hostile. The evidence of the hostile witnesses is not completely wiped-off from the record merely because they have been declared hostile but it requires a close scrutiny and it can be considered and relied-upon if the statements made by the witnesses throw some light on the case and inspire confidence. We have gone-through the statement of both these witnesses. They have completely denied the prosecution case. They have even

denied whatever they stated during the investigation or even in their statement recorded under Section 164, Cr.P.C. The evidence of these two witnesses is, therefore, of no consequence and no reliance can be placed on their statement as nothing can be gathered from the evidence of these two witnesses.

7. The next evidence produced by the prosecution and relied upon by the learned trial Court consists of the evidence of extra-judicial confession. The prosecution examined four witnesses, viz., PW 1 Chandna Ram, PW 2 Gordhan Ram, PW 5 Ghewar Ram and PW 6 Bishna Ram, to prove the extra-judicial confession. Out of these four witnesses, PW 2 Gordhan Ram and PW 6 Bishna Ram have not supported the prosecution case and they have been declared hostile. PW 2 Gordhan Ram has stated that when the alleged extra-judicial confession was made by accused Jetha Ram, he was not present there while PW 5 Bishna Ram has denied the making of extra judicial confession by the accused. Therefore, there remains the evidence of PW 1 Chandna Ram and PW 5 Ghewar Ram to prove the extra-judicial confession.

8. The evidence of extra-judicial confession is an efficacious proof of guilt provided it is voluntary, true and trustworthy. If the confession is made before a witness who is unbiased and not inimical to the accused or have any motive to implicate the accused then the same can be accepted and the conviction can be based even without its corroboration. The true test for acceptance of the extra-judicial confession, therefore, is that it is voluntary, true and trustworthy and made before an unbiased person having no motive against the accused. In the present case, the extra-judicial confession has been made before PW 1 Chandna Ram and PW 5 Ghewar Ram. We have to see whether the extra-judicial confession made by the accused-appellant before these witnesses is voluntary, true and trustworthy, or it is a result of any inducement, threat or promise which could attract the prohibition of Section 24 of the Indian Evidence Act ?

9. PW 1 Chandna Ram has stated that in the night when after hearing the cries they went to the Dhani of Isha Ram, the accused did not tell him anything and only said that the stomach of his father was paining; but in the morning the accused said that he has killed his father by inflicting injuries and when his father did not die

of the Lathi injuries then he strangulated him. In the cross-examination this witness has, however, admitted that accused Jetha Ram did not voluntarily disclose the commission of the crime but it was only when he was threatened by the Panchayat persons that he should speak the truth otherwise he would be excommunicated and thereupon the accused disclosed the commission of the murder of his father by him. He has, however, admitted that neither, he has any, close contact with accused Jetha Ram nor is he related to him.

10. PW 5 Ghewar Ram - the real brother of PW 1 Chandna Ram - is the other witness to the extra-judicial confession. He has, also, stated that on the next day, in the presence of Chatur Singh, Bishna Ram and himself, the accused confessed before them that he has killed his father Isha Ram with the Lathi by inflicting injuries on the temple region as well as on the neck.

11. Though the alleged extra-judicial confession has been made by the accused, as per the prosecution case, in the presence of PW 1 Chandna Ram, PW 5 Ghewar Ram, PW 6 Bishan Ram and PW 2 Chatur Singh, but PW 5 Ghewar Ram does not show the presence of PW 1 Chandna Ram at the time of making extra-judicial confession by the accused. Even otherwise, there is a material difference between the statements made by these witnesses regarding the extra-judicial confession allegedly made by the accused-appellant. According to PW 5 Ghewar Ram, the accused did not state that he committed the murder by throttling deceased Isha Ram while PW 1 Chandna Ram stated that such confession was made by the accused. PW 5 Ghewar Ram does not show the presence of PW 1 Chandna Ram at the time of making of extra-judicial confession by the accused while Bishna Ram, whose presence has been admitted by both these witnesses, denies making of extra-judicial confession by the accused. Both these witnesses are the real brothers. They are neither related to the deceased nor have they any close relations with the family of the deceased. They are, also not the men of any status like Sarpanch etc. nor they are in such a position who could be helpful to the accused to save him. In the facts and circumstances of the case, the difference in the version of the extra-judicial confession made by the accused before these two real brothers and denial of making any such confession by the other witnesses and these two witnesses being not the men of status who could

have helped the accused, the making of extra-judicial confession by the accused before these two witnesses, does not inspire confidence. We are unable to accept the testimony of these two witnesses regarding making of extra-judicial confession by the accused before them. In this view of the matter, we are of the opinion that the learned trial Court was not justified in accepting the testimony of these two witnesses regarding extra-judicial confession allegedly made by the accused-appellant before them.

12. The next evidence relied-upon by the prosecution and believed by the learned trial Court in convicting and sentencing the accused-appellant is the recovery of the Lathi on the information and at the instance of the accused-appellant. The recovery of the Lathi was made by PW 12 Banney Singh, the investigating officer, on 24-11 -§ from the house of the accused. Dhanna Ram (PW 9) and Chhatar Singh are the two Motbir witnesses to this recovery. The Lathi has neither been exhibited nor produced in the evidence. PW 9 Dhanna Ram is a Motbir witness to the recovery of the Lathi. He has stated that the hut, from where the Lathi was recovered, was open and was not locked and in that hut the accused along with other members of the family used to reside. PW 12 Banney Singh, in the cross-examination, has admitted that when he first Visited the place of the incident, he prepared the site plan and inspected the hut where the deadbody of the deceased was lying. He, hap, also, admitted that no guard was deputed near the hut. The Lathi was there in the hut when the site, was inspected, the deadbody of Isha Ram was recovered and the other meitios were prepared by the Investigating Officer; but the Lathi was not seized and sealed by the Investigating Officer at that time. Though the Investigating Officer has tried to say that he did not search the hut and, therefore, the recovery of the Lathi could not be made; but if the Lathi was lying there in the hut; whether the hut was searched or not, it could have been recovered at that time. The delayed recovery of the Lathi and that too from the place which was already visited by the Investigating Officer and was inspected by him, creates a doubt in the recovery of the Lathi. The other inmates of the hut were, also, living there and the Lathi was not found concealed. The Lathi has not been exhibited and proved. In this view of the matter, the evidence regarding the recovery of the Lathi cannot be read against the appellant. This circumstance of recovery of the Lathi, thus, does not stand established from the evidence

produced by the prosecution and it cannot be read against the accused-appellant to connect him with the crime. The learned Sessions Judge was not justified in relying upon this evidence against the appellant.

13. There is no other evidence connecting the accused-appellant with the crime. The appellant, therefore, deserves to be acquitted.

14. In the result, the appeal filed by accused-appellant Jetha Ram is allowed. The judgment dated 23-10-90, passed by the learned Sessions Judge, Jodhpur, convicting and sentencing the accused-appellant for the offence under Section 302, I.P.C., is set-aside and the accused- appellant is acquitted of all the charges levelled against him. He is in jail. He may be released forthwith if he is not required in any other case.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**