

Prem Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-12-1990

Reported in : 1990(2)WLN555

Judge : K. Bhatnagar and; Y.K. Meena, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 409 of 1983

Appellant : Prem Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. J.S.Choudhary

Disposition : Appeal allowed

Judgement :

K. Bhatnagar, J.

1. This appeal is directed against the Judgment dated 28'th of October, 1983 passed by the learned Sessions Judge, Bhilwara, by which appellant Prem Singh was convicted Under Section 302 IPC and sentenced to imprisonment for life and a fine of Rs. 200/-, in default to undergo one month's simple imprisonment.

2. Briefly stated, the prosecution case is that appellant Prem Singh and his wife deceased Ganda were not on good terms. Prem Singh was not managing for the

livelihood of Ganga and her children as such Ganga was living separate from the appellante, with his son Kalu Singh (PW 1). That, on 1.5.83, Prem Singh, with an axe on the handle of a cycle, went to Sunaron ka kunwa] where his son Kalu Singh along with Sohan Lal Lohar and Shri Ram Gujar was sitting. The appellant told him that he would kill Ganga. Appellant then left the field and went to house of Ganga and killed her with axe while she was grinding salt. Roop Singh (PW 3) and pulley Singh (PW 2) are said to have seen the appellant going inside the house and coming out of it with an axe. He then rubbed the bloodstained axe on a bedding lying on a cart and put it on the fencing. After some time he took the axe and went away from there on cycle. Kalu Singh along with one Devilal went to his house and found His. Mother lying murdered in a pool of blood. He informed Devilal accordingly and went away from there. Devilal also went inside and saw Ganga lying murdered. He then went to Sarpanch and Patwari and informed about the incident and got the report Ex.P. I ascribed and sent it to Police Station with Laxman (PW 4) to Police Station, Kareda. On the basis of that report Laxman Singh (PW 11) of Police Station, Kareda registered the case and went to the site. He took the clothes of the deceased Ganga in possession and got the post-mortem examination conducted by Dr. A.K. Mathur (PW 14) on 2.5.83. The doctor noted following injuries on the dead body of Ganga.

1. Incised wound-5.5' x 1' x 1.5' extending from front of neck to right side of the neck.
2. Large vessels on right side were completely cut down.
3. Oesophagus and trachea were cut down.

The cause of death according to the doctor was massive haemorrhage and fracture of cervical vertebra and cutting of oesphagus and trachea leading to shock. Injury No. 1 was held to be sufficient in the ordinary course of nature to cause death. Ex.P.15 is the Post-mortem Examination Report. SHO, Laxman Singh then entrusted the investigation to the Deputy Superintendent of Police. The appellant is said to have gone to Bheem Police Station with an axe. Ghanshyam (PW 15) SHR, Police Station, Bheem on 2.5.83 arrested the appellant vide memo Ex.P.16 and recovered from his possession axe (Article 2) and sealed it. The SHO

entrusted the appellant to Sohan Singh, ASI of Police Station, Kareda. The axe, handle of the cycle and the clothes of the deceased were sent for chemical examination and were found stained with human blood, according to the report of the serologist Ex.P.18.

3. Upon completion of necessary investigation, charge sheet against the appellant was submitted in the Court of Munsif and Judicial Magistrate, Gangapur. On receiving the case on committal, the learned Sessions Judge, Bhilwara, charge sheeted the appellant and recorded his plea. On his denial of the charge, trial proceeded. Eighteen witnesses were examined by the prosecution to substantiate its case. In his statement Under Section 313, Cr. P. C the appellant denied the allegations levelled against him and stated that his wife was living separate from him. He wanted to bring her but she having illicit relations with Roop Singh, the latter was not permitting her to come to the appellant. No defence witness was examined. The learned Sessions Judge placed reliance on the statement of Kalu Singh and held the prosecution case established against the appellant and passed the judgment under appeal. As the appellant was not represented Mr, J.S,Chaudhary Advocate, offered his services and argued On his behalf.

4. We heard Mr. J.S.Choudhary learned Counsel for the appellant and Mr.K.L.Jasmatiya, learned Public Prosecutor for the State and carefully examined the record of the case.

5. At the very outset it may be observed that there is no direct evidence for the commission of the crime. Prosecution has, however. Brought on record a number of circumstances to connect the appellant with the commissions of the crime. The circumstances are;(1), the appellant uttering before Kalu Singh, Sohanlal Lohar and Shri Ram Gujar that he would kill Ganga and then proceeding from there with an axe hanging on the handle of the cycle; (2) Kalu Singh, Roop Singh and Duleh Singh seeing the appellant entering the house with an axe and coming out of it; (3) Kalu Singh entering the house and seeing his mother lying murdered; (4) recovery of axe (Article 2) from the possession of the appellant by Ghanshyam, SHO of Police Station,Bheem where the appellant is said to have gone; (5) recovery of cycle with handle and the register from the shop of Yakub Ali (PW 5); (6) strained

relations between the appellant and his wife Ganga.

6. Kalu Singh has stated that as his father was not giving his earnings to his mother, he and his mother were living separate from him. The appellant has also not denied it and rather has asserted that Roop Singh was not allowing his wife to come too him.

7. The learned Counsel for the appellant strenuously contended that prosecution has not examined important witnesses before whom the accused is said to have stated that he would kill his wife. The first information report, according to the learned Counsel is ante dated and was presented before the police on the next day of the occurrence after deliberation. The recovery of the axe according to the learned Counsel is not believable because there is no witness to support Ghanshyam, SHO in that regard. The handle of the cycle, according to the learned Counsel not being blood stained, cannot be said to be a correcting link in the chain of the prosecution against the appellant because there was tampering with the record and police had directed Yakub Ali to write something, which was not already there in the register. Two witnesses according to the learned Counsel could not have seen the appellant going inside the house nor had they seen him so by Kalu Singh when they came out of his house after seeing Ganga lying in a pool of blood.

8. The learned Public Prosecutor submitted that the recovery of axe is an important circumstance to connect the appellant with the commission of the crime because the group of the blood on the clothes of the deceased. The learned Public Prosecutor submitted that Duleh Singh is an independent witness and upon his testimony alone conviction can be sustained.

9. It may be observed that prosecution has withheld important witnesses in the case regarding the appellant going to his field on a cycle and in the way telling Kalu Singh that he would murder Ganga. There is the solitary testimony of Kalu Singh. He has stated that at that time Sohanlal and Shri Ram Gujar were sitting with him. For the reason best known to the prosecution these two important witnesses have not been examined by the prosecution and therefore on the statement of Kalu Singh alone, who was unhappy with his father, and whose

testimony as we will discuss presently, is not worthy of credence it cannot be said that the appellant had gone with an axe and in the way told to Kalu Singh before two others that he would kill Ganga so as to create evidence against him. Another important person who should have been examined in the case is Devilal. Kalu Singh has stated that he had gone to the house of Devilal and along with him came to his house. Devilal remained outside and he went inside and found his mother murdered. Devilal would have substantiated the contention of Kalu Singh that he had taken Devilal because he apprehended his father committing the murder but as stated earlier, Devilal has not been examined. Though Kalu Singh has stated that on his raising the cry, Duleh Singh and Roop Singh present nearly asked him as to what had happened and he told them that his mother had been murdered, Duleh Singh and Roop Singh have not supported this version and stated that Kalu Singh came out of his house weeping and despite their asking as to what had happened, he did not tell anything and went away from there. In the natural course of events, a person seeing his mother murdered inside the house on coming out will tell the bystanders that his mother has been murdered. Not only that, if he had seen Prem Singh going inside the house with an axe, the immediate reaction would be that his father must have murdered his mother. In the present case Kalu Singh has stated that he had seen his father going inside the house and coming out. This is a false version because the place where he is said to be sitting and his father met him and threatened to kill Ganga was not very far from the house. Kalu Singh has stated that it took him 5 or 7 minutes in going to the house of Devilal. That it took him another 5 or 7 minutes in asking Devilal to accompany him. That, in all it took 15 minutes in reaching home. That falsifies his statement that he has seen his father going inside and coming out of the house. Duleh Singh has stated that 15 minutes after the accused leaving the Guwara Devilal and Kalu went to the well of the witness and then both of them went inside and Kalu Singh raised a cry and came out and went towards Kidimal. That, the witness asked Devilal as to why Kalu Singh was weeping and was told that he may go and see inside where Kalu's mother was lying murdered. The witness stated that he had no talk with Kalu Singh and went away with Kalu Singh. Similar is the statement of Roop Singh. Thus the version of Kalu Singh that he had himself seen Prem Singh entering the house and coming out after murdering his mother is not believable.

10. The first information report was not written and sent in the manner Kalu Singh has stated. According to Mm he got the report ascribed and sent it through Laxman Singh (PW 4) Though Laxman Singh (PWii) SHO, has stated about Laxman Singh (PW 4) giving the report, Laxman Singh (PW 4) has clearly stated that he was asked by Kalu Singh to go to Police Station Kareda and he went there and informed the SHO that his maternal aunt Gunga has been murdered. He being the nephew of the deceased, there was no reason for him not to support was given by him to the, SHO that very day. The witness has categorically stated that he had orally informed the SHO that somebody has murdered his maternal aunt. This clearly shows that till Laxman (PW 4) was sent to the police station, the assailant was not known. Kalu Singh has admitted that he had sent Laxman (PW 4) to the Police and on the next day he got the information ascribed and gave it to the SHO. The information reached the concerned Magistrate on 3.5.83. This delay in furnishing information to the police and the ante dated Ex.PI which, as discussed above, given to the police on the next day, strengthens the argument of the learned Counsel for the appellant that the assailant was not known to Kalu Singh or anybody else till Laxman (PW 4) was sent to the police station and thereafter on the next day in view of the strained relations between the appellant and his wife, the deceased, he was taken to be the culprit. Kalu Singh has been cross-examined at length. His attention was drawn to his police statement Ex.D.1 and statement Under Section 164 Ex.D.2, regarding the commission of the fact that he had seen his father going inside the house and coming out of it. The witness admitted that he had not stated so and explained that because he was not feeling perturbed he committed the mistake. The omission in Ex.D.I of course cannot be taken into consideration because it is not known who recorded, it and could not be proved. However the omission in statement Under Section 164 and the witness admitting the same cannot be ignored. It is also important to note that in Ex.D.2, the statement Under Section 164, the witness has not stated about his sitting in the field of Sunar and the accused telling about his intention to kill his wife. The witness could not explain the omission and simply stated that Magistrate with not have written it. No credence can be placed on a witness like Kalu Singh.

11. Duleh Singh and Roop Singh have been examined by the prosecution to state that they had seen Prem Singh going inside the house with an axe and coming out

and rubbing the axe on a bedding lying in a cart. Roop Singh has stated that he had gone to the village of Duleh Singh and had ascended the Babool tree to take babool shell as his she buffalo was not well. That Duleh Singh called him and he went to the well of Duleh Singh. That, when he was at a little distance from Duleh Singh, he saw Prem Singh coming with an axe from the new house constructed by Kalu Singh. He then saw Prem Singh placing the axe in the fencing. That, after fifteen minutes Kalu Singh and Devilal came from towards the well of Duleh Singh. Kalu Singh raised a cry while coming out of his house. Roop Singh called Kalu Singh but he did not come and went away from there weeping.

12. House of Ganga where the incident is said to have taken place, according to the witness was at a distance of two 'dories' from the place where the witness is was. One 'dory' is of 100 hands i.e. 200 ft. This shows that the witness was at a distance of about 400 ft. from the house of Ganga. His attention was drawn to Ex.D.3. His statement Under Section 164 Cr.P.C. where he is seeing Prem Singh coming out with an axe and rubbing the axe with the bedding, putting the axe on the fencing and taking it after some time and going away do not find place. The witness could not explain the reason. Similar is the statement of Duleh Singh. According to him 15 minutes after he is seeing Prem Singh coming out of the house, Kalu Singh and Devi Lal reached there. Kalu Singh raised a cry and he and Roop Singh asked Devilal as to what had happened and were told that Kalu Singh's mother is lying murdered inside. He and Roop Singh went inside and found it to be true. That he had no talk with Kalu Singh and then went away to his house. The conduct of Roop Singh and Duleh Singh is most unnatural. If these persons had seen Kalu Singh raising a cry and not telling what happened, in the natural course of events they could have informed him that they had seen Prem Singh going inside the house and coming out with an axe. Had they informed Kalu Singh, there was a reason for his not telling Laxman (PW 4) about Prem Singh being the assailant and Laxman in turn simply informing the police that his maternal aunt has been murdered? The spontaneous reaction of these two witnesses on seeing Kalu Singh raising a cry must have been to tell that Prem Singh had gone with an axe inside the house and he might have committed the murder. The unnatural conduct of the witnesses and the omission of material facts in their statements Under Section 14, Cr. P.C. are sufficient to discard their testimony.

13. The recovery of cycle with handle suspected to have blood is not worth consideration. From the statement of Yakub Ali (PW 5) it is evident that there was interpellation and tampering with the record e.g. on some previous day the name Prem was written in the register with ball pen and 'Singh' and 'Kidimal were added thereafter with a pencil. Similarly, the word 5 p.m. being the time of return of cycle according to Yakub Ali was written at the instance of the police. The police told him that three hours' period comes to 5 p.m. and asked him to write the same. Apart from it, there being no blood on the handle of the cycle as alleged the prosecution it cannot be a connecting-link to the chain of prosecution.

14. Now we are left with the only circumstance of recovery of axe said to have been made by Ghanshyam SHO of police station, Bheem It is pertinent to note that there is no corroboration to it Sohan Singh does not state of any axe being entrusted to him. According to Laxman Singh (PW 11), SHO, Police Station, Kareda, he accompanied Dy.S.P. to Bheem Police Station, and informant Laxman (PW 4) had not accompanied then to Bheem whereas Laxman.(PW 4) has claimed to have gone there and the axe being recovered in his presence. SHO Laxmsn Singh (PW 11) has categorically stated that nothing was recovered in his presence at Bheem and no incriminating article relating to this case was taken from Police Station, Bheem. Dy.S.P. who is said to have conducted the investigation was not been examined by the prosecution. Laxman Singh (PW 11), SHO has stated that he had recorded the statement of Laxman (PW 4) only and of none else and then entrusted the case to the Dy.S.P. The investigating officer Dy.S.P. might have recorded the statement of the witnesses but he haying not been examined, it is not clear as to when which witness was examined. Yet another fact raising suspicion on the recovery of the axe and its remaining in intact sealed condition is that there is no evidence as to who entrusted the axe to be taken to the Serologist. Hari Singh and Joseph, Constable, have only stated about the axe being sent to Forensic Science Laboratory, Jaipur on 27.7.83 where the axe remained in what conuition and under whose charge from 2.5.83 up to 27.5.83, is not known. A very significant circumstance damaging the prosecution case regarding the recovery of axe is that on 28.5.83 this axe was sent for identification parade. The parade was conducted by Magistrate Sukhdeo Prasad (PW 13). The axe was opened and mixed with other axes. If the axe was opened,

it cannot be said that it remained under that seal which was fixed at the time of recovery till it reached the chemical examiner. If the axe to be identified was stained with blood till that time there being no evidence that blood was also applied to the axes to be mixed with, the identification parade was a farce.

15. The learned Public Prosecutor fairly agreed that this type of identification parade and the chemical examination of the axe after it being opened at the identification parade would be damaging to the prosecution. The learned Public Prosecutor also could not meet the argument that non-examination of Dy.S.P. in order to prove the circumstances appearing during the course of investigation against the appellant is a serious infirmity in the case.

16. So far as the strained relations between appellate and the deceased are concerned, there is not only the evidence of Kalu Singh but also the admission of the appellant that he was living separate from his wife. However, this fact alone would not be sufficient to establish the guilt against the appellant in the absence of other evidence against him. On the other hand this might be the case of suspicion against the appellant and suspicion however strong cannot take the place of proof.

17. As discussed above, prosecution could not establish the guilt against the appellant and we, therefore, find ourselves unable to agree with the findings of the learned District Judge.

18. Consequently, the appeal of Prem Singh is allowed. His conviction and sentence are set aside and he is acquitted of the charge. He is in jail. He shall be set at liberty forthwith if not required in any other case.