

Laxman Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-06-1997

Reported in : 1997CriLJ2718; 1997(2)WLC20; 1997(1)WLN4

Judge : B.R. Arora and; A.K. Singh, JJ.

Acts : Indian Penal Code, 1860 - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 162, 164 and 364

Appeal No. : Criminal (Jail) Appeal No. 333 and 346 of 1996

Appellant : Laxman

Respondent : State of Rajasthan

Advocate for Def. : Chandralekha, Public Prosecutor

Advocate for Pet/Ap. : B.N. Kalla, Adv.

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. These two appeals arise out of the judgment dated 30-5-96 passed by the District & Sessions Judge, Rajsamand, 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. 5000/- and in default of payment of fine further to undergo six months' rigorous imprisonment. Since both these appeals arise out of the same judgment-one preferred by the appellant through jail and the other is a represented one and relate to the same incident, therefore, they are being disposed of by this common judgment.

2. Appellant Laxman, along with one Megha, was tried by the learned Sessions Judge, Rajsamand for committing the murder of his brother Bhima near the holy-place of Dana Baba situated in village Khekhadiya (district Rajsamand). The case of the prosecution was that in the morning of 26-11-95, PW 1 Dewa saw the deadbody of Bhima Bhil lying near Dana Baba holy place of worship. One Kulhari smeared with blood, one Agarbati packet and a match-box were, also, lying by the side of the deadbody of Bhima. He returned to his house and informed Panna Meghwal and Kalu Meghwal. All of these three persons thereafter came near the deadbody of Bhima. The other villagers Narain Singh and others, also, came there. They made an enquiry from Bhima's brother Laxman (the present accused-appellant) and on enquiry Laxman informed them that on the previous night, at 10.00/11.00 p.m., his brother deceased Bhima had gone for worship to Dana Baba holy place; he and Megha Rawal both followed him; Megha handed-over his Kulhari to, the accused and thereafter Megha caught-hold of both the legs of deceased Bhima and accused Laxman inflicted 5-7 injuries by the Kulhari on the face of Bhima and committed his murder. Thereafter, after leaving the Kulhari at the place of the incident, he and Megha went to their house. Prior to this incident, Megha asked him that his (appellant's) brother always used to pick-up quarrel and he should be done to death. Thereafter he offered drink to him which he took and then both of them committed the murder of Bhima.

3. The prosecution, in support of its case, examined nine witnesses. The learned Sessions Judge, after trial, acquitted accused Megha of the offence Under Section 302 or 302/34, I.P.C. but convicted and sentenced accused-appellant Laxman for the offence Under Section 302, I.P.C., as stated above. It is against this judgment that the appellant has preferred these two appeals.

4. It is contended by the learned counsel for the appellant that the FIR lodged by PW 2 Narain Singh has not been placed on record and the FIR (Ex.P1) is a post-investigation document and is the result of fabrication and embellishment and is hit by Section 162, Cr.P.C. The FIR was despatched to the Court after the delay of 24 hours while the Court is situated in the same town and not at a much distance. It is further submitted by the learned counsel for the appellant that the recovery of the clothes and the extra-judicial confession allegedly made by the appellant, on which reliance has been placed by the learned trial Court, do not inspire confidence and the whole of the prosecution case has been concocted and fabricated. The appellant had neither any motive nor any occasion to commit the murder of his real brother and he, therefore, deserves to be acquitted.

The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned trial Court.

5. We have considered the submissions made by the learned counsel for the parties.

6. Before dealing with the contentions raised by the learned counsel for the parties, we would first like to see the nature of the evidence produced by the prosecution. The prosecution has produced nine witnesses. PW 1 Dewa is a Motbir witness and a witness to the extra-judicial confession. He, also, lodged the First Information Report at Police Station, Bhim. PW 2 Narain Singh is a Motbir witness to the recoveries as well as to the extra-judicial confession. He is, also, a witness who had last seen the deceased in the company of the accused-appellant. PW 5 Khangar Singh, PW 7 Jawahar Singh and PW 8 Panna Ram are, also, the witnesses to the extra-judicial confession. PW 7 Jawahar Singh is, also, a Motbir witness to certain recoveries. PW 8 Panna Ram has not supported the prosecution case during the trial and was declared hostile. PW 3 Dr. Ashok Kumar Gupta was the Medical Officer, Government Referral Hospital, Bhim, who conducted the autopsy on the deadbody of Bhima. PW 4 Rajendra Singh was the Police Constable posted at Police Station, Bhim, who took the incriminating articles in the case for F.S.L. examination. He first took the articles on 8-2-95 from the Police Station to the Office of the Superintendent of Police, Rajsamand but as the seals

were not found intact, they were, therefore, not accepted by the Office of the Superintendent of Police and were returned to the Police Station. He again took the articles on 9-2-95 and thereafter the forwarding letter was given to him and he took the articles alongwith the forwarding letter to the State Forensic Science Laboratory, Jaipur for F.S.L. examination and deposited the same there on 10-2-95. PW 6 Shyam Sunder is a Photographer who took the photographs of the deadbody of Bhima. PW 9 Gordhan Lal was the Station House Officer and the Investigating Officer, who conducted the investigation, prepared the site plan etc., made the recoveries, arrested the accused and after completion of the investigation presented the challan.

The accused did not produce any evidence in defence.

7. There is no eye-witness to the occurrence. The case of the prosecution mainly rests upon the circumstantial evidence. The learned trial Court believed three circumstances for convicting and sentencing the accused-appellant, namely; (i) recovery of the clothes of the accused which were found stained with human blood; (ii) recovery of the Kulhari from the place of the incident, which was found stained with human blood and according to the doctor, the murder of Bhima was committed with this Kulhari; and (iii) the extra-judicial confession made by the accused-appellant before PW 1 Dewa, PW 2 Narain Singh, PW 5 Khangar Singh and PW 7 Jawahar Singh.

7A. There is no eye-witness to the occurrence and the prosecution case rests upon the circumstantial evidence, we have, therefore, to see : whether the circumstances, on which reliance has been placed by the learned trial Court, are fully established and whether the facts so established are. consistent only with the hypothesis of the guilt of the accused-appellant and are of conclusive nature and exclude every hypothesis other than the guilt of the accused-appellant?

8. The first circumstance, on which reliance has been placed by the prosecution and which has been believed by the learned trial Court, is the recovery of the clothes of the accused-appellant, which were found stained with human blood. The origin of the blood-group found on the clothes of the accused-appellant could not be determined as the blood was found disintegrated on the clothes. We have,

thus, to see : whether this circumstance stands established from the evidence produced by the prosecution and is an incriminating circumstance that can be read against the accused-appellant?

The clothes were worn by the accused-appellant when he was arrested and these clothes were recovered in the presence of various witnesses. Human blood has been found on the clothes though the blood-group could not be determined as the blood was found disintegrated. PW 7 Jawahar Singh has admitted that appellant Laxman was given beatings by the villagers who collected there. He has, also, admitted that the police, also, gave beatings to accused Laxman by Dandas. The other witnesses have, also, admitted that beatings were given to accused-appellant Laxman by the villagers. It is possible that in the course of giving beatings by the police the accused-appellant might have received injuries which may have resulted in bleeding and the clothes might have stained with the blood.

Even otherwise, this circumstance of recovery of the clothes of the accused, which were later on found (sic) with human blood, cannot be read as an incriminating circumstance against the appellant because the evidence has not been produced by the prosecution to show that during the whole period when these articles remained with the police, the seals on these articles were not tampered with. The person, in whose custody the articles remained, i.e., the Malkhana Incharge of Police Station, Bhim, has not been produced, who could have deposed that the is remained in his custody in the same sealed condition in which they were deposited till they were sent for F.S.L. examination. On the contrary, the evidence produced by the prosecution shows that the seals on these articles did not remain intact during this period. PW 4 Rajendra Singh, Police Constable posted at Police Station, Bhim, who took the articles on 8-2-95 for F.S.L. examination and approached the Officer of the Superintendent of Police, Rajasamand, for obtaining the forwarding letter, has stated that the Office of the Superintendent of Police, Rajsamand refused to take these articles as the seals on them were not found intact and returned the same to him. The articles were brought back to the Office of the Superintendent of Police on 9-2-95 after re-sealing them and thereafter the forwarding letter was given to this witness. In these circumstances it, therefore, cannot be said that the seals on the packet containing the clothes of the accused-

appellant remained intact through-out when they remained in the police custody. Therefore, this circumstance cannot be said to be, in any way, an incriminating circumstance against the appellant and this circumstance does not stand established against the appellant.

9. The next circumstance relied-upon by the prosecution and believed by the learned trial Court is the blood-stains found on the Kulhari. The Kulhari was recovered from the place of the incident and not on the information and at the instance of the accused-appellant. It was found stained with human blood. This Kulhari was not put to the doctor. Since the Kulhari was not recovered on the information or at the instance of the accused-appellant and, therefore, the recovery of the Kulhari, which was found stained with human blood, cannot be taken as an incriminating circumstance against the accused-appellant.

10. The last circumstance, which has been relied-upon by the prosecution and believed by the learned trial Court is making of the extra-judicial confession by the accused-appellant fore PW 1 Dewa, PW 2 Narain Singh, PW 5 Khangar Singh and PW 7 Jawahar Singh.

An extra-judicial confession, if it is voluntary and truthful, is an efficacious piece of evidence to establish the guilt of the accused and it is not necessary that the evidence of extra-judicial confession should be corroborated on all material facts. Now, we have to see: whether the evidence of extra-judicial confession produced by the prosecution is reliable, trustworthy and beyond reproach?

11. PW 1 Dewa has stated that when accused Laxman was called and an enquiry was made from him, he said that Megha Maharaj tutored him and, therefore, they committed the murder of Bhima. In the cross-examination he has admitted that when Laxman admitted his guilt, he was standing at a distance of ten Paces, i.e. about a distance of thirty feet. He has, also, admitted in the cross-examination that when the police made an enquiry from the accused then he was sitting at a distance and, therefore, he cannot say what enquiry was made. This witness has, also, admitted that he cannot say who were the persons making enquiry from the accused.

This witness was sitting at a distance of about 10 Paces, i.e., about thirty feet and, therefore, it was not possible for him to hear what statement was made by the accused.

12. PW 2 Narain Singh has, also, stated that he had gone to Police Station, Bhim on a motorcycle, lodged the report there and in his absence the extra-judicial confession was made by the accused. The evidence of this witness relating to extra-judicial confession is, also, of no avail as no extra-judicial confession was made by the accused in the presence of this witness.

13. PW 5 Khangar Singh has, also, admitted that he was at a distance of about fifty feet when Jawahar Singh made an enquiry from accused Laxman and he, could not hear what was stated by the accused to Jawahar Singh. This witness, also, therefore, does not show that the confession of the guilt was made by the accused before him.

14. PW 7 Jawahar Singh has admitted that the police came there, slapped accused Laxman and made enquiry from him and then the extra-judicial confession was made by the accused. He has, also, admitted that the beatings were given to the accused by the villagers as well as by the police. 1997 Cri. L.J./171 VIII He has, also, admitted that a written report was given to Narain Singh for lodging the same at the Police Station but no case was registered on the report which was sent; but the police came at the place of the incident and recorded the statement of Dewa and thereafter registered the case.

15. The evidence of these witnesses regarding making of extra-judicial confession by accused Laxman before these witnesses does not inspire confidence. The police came at the place of the incident. The accused was present there. All the witnesses have stated that the accused were arrested from the place of the incident and were taken by the Station House Officer to the Police Station, but the investigating officer denies this fact. He has stated that the accused was arrested later on in the night from the Bus Stand. The evidence of PW 9 Gordhan Lal, which is in contradiction to the evidence of the villagers, does not inspire confidence. The learned trial Court has rightly disbelieved the evidence of this witness on this point. If the investigating officer found the accused standing there

and arrested him then instead of relying the oral extra-judicial confession made by the accused before these witnesses, he should have taken the accused to the Magistrate for recording his extra-judicial confession. Nothing prevented PW 9 Gordhan Lal. S.H.O. to take the accused to the Judicial Magistrate and have his confession recorded in accordance with the provisions of Section 164 Cr.P.C. The extra-judicial confession recorded Under Section 364 Cr.P.C., recorded by the Magistrate, possesses great probative value and affords an assurance to the Court that it is truthful and voluntary. The circumstances Under which the alleged extra-judicial confession was made by the accused before these witnesses, do not inspire confidence.

Considering the evidence available on record, we are of the opinion that the evidence produced by the prosecution relating to the extra-judicial confession, is wholly unreliable and untrustworthy and no conviction can be founded on such evidence. The learned trial Court was, therefore, not right in relying upon this evidence regarding extra-judicial confession alleged made by the accused.

16. There is yet another aspect of the matter which also raises suspicion in the prosecution case. The FIR (Ex.P.26), recorded on the basis of the oral report (Ex.P.1) appears to have been written after the investigation had already started and cannot be treated as an FIR as it is hit by Section 162 Cr.P.C. Admittedly, the police came at the scene of the occurrence when an information was given by PW 2 Narain Singh at Police Station, Bhim. PW 2 Narain Singh has admitted that he went on a motor-cycle to the Police Station and while going to the Police Station, a written report was carried by him which was signed/thumb-marked by 30 to 40 villagers who collected there; and he handed-over that report at the Police Station. PW 5 Khangar Singh has, also, stated that the villagers had written-down a report and put their signatures/thumb impressions on that report and handed-over that report to Narain Singh and Viram Singh to give it at the Police Station. PW 7 Jawahar Singh has, also, admitted that a report was written by the villagers which was handed-over to the persons who had gone to the Police Station to lodge the report.

From the evidence of these three witnesses it, therefore, stands established that an F.I.R. regarding the incident was written by the villagers which was handed-over to Narain Singh (PW 2) to lodge it at the Police Station and that report was handed-over by Narain Singh, as stated by him, at Police Station, Bhim, but that report has been suppressed and the Station House Officer, who came at the place of the incident, recorded the statement of PW 1 Dewa and registered the information on the basis of his statement. When the report of the incident had already been given to the Police, which has been suppressed, the subsequent statement recorded by the police is hit by Section 162 Cr.P.C. and cannot be treated as the First Information Report.

17. This F.I.R. again become suspicious and do show that it was not recorded on the date and at the time alleged to have been recorded. The Court of Additional Chief Judicial Magistrate, Bhim is situated in the same town and not at a far distance but it was not sent to the Court or at the residence of the Magistrate on the same day and it reached the Court on next day at 12.00 in the noon. The learned Judge of the trial Court was, thus, right in holding that the F.I.R. was not recorded at the time and on the date on which it is said to have been written. There is, thus, an extraordinary delay on the part of the investigating agency in sending the F.I.R. to the Court.

Though merely the delay in the despatch of the F.I.R. is not a circumstance, on the basis of which the entire case of the prosecution can be thrown-away, but the delay in the despatch of the F.I.R. to the Court is a circumstance which provides a basis for suspicion about the contents of the F.I.R. The delay affords the prosecution some time and further raises a suspicion that the prosecution has tried to make improvement and embellishment and has tried to set-up a distorted version of the incident. The suppression of the earlier report and the delay in the despatch of the alleged F.I.R. to the Court, with definite possibility speak that improvement and embellishment have been made by the prosecution and a distorted version of the occurrence has been set-up the prosecution and the same raises a suspicion in the prosecution case.

18. In these circumstances, we are of the opinion that the learned Sessions Judge was not right in convicting and sentencing the accused-appellant for the aforesaid offence. The prosecution has miserably failed to prove the case against the accused-appellant and the appellant therefore, deserves to be acquitted.

19. In the result, the appeals filed by the appellant, are allowed. The judgment dated 30-5-96 passed by the learned Sessions Judge, Rajsamand, convicting and sentencing the accused-appellant for the offence Under Section 302 I.P.C., is quashed and set aside and appellant Laxman is acquitted of all the charges levelled against him. He is in jail. He may be released forthwith if not required in any other case.

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