

Ramesh Kumar Vs. State of Rajasthan

Ramesh Kumar Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/763661

Court : Rajasthan

Decided On : Jan-18-1999

Reported in : 1999CriLJ871; 1999(2)WLC8; 1999(1)WLN130

Judge : V.G. Palshikar and; Bhagwati Prasad, JJ.

Acts : [Evidence Act, 1872](#) - Sections 25, 26 and 28; Code of Criminal Procedure (CrPC) , 1974 - Sections 154, 162 and 162(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Constitution of India](#) - Article 20; Rajasthan Police Service Rules, 1954; Rajasthan Police Subordinate Service Rules, 1989 - Rule 4

Appeal No. : D.B. Criminal Appeal No. 421 of 1994

Appellant : Ramesh Kumar

Respondent : State of Rajasthan

Advocate for Def. : L.R. Upadhyaya, P.P.

Advocate for Pet/Ap. : Doongar Singh, Adv.

Disposition : Appeal dismissed

Judgement :

V.G. Palshikar, J.

1. Being aggrieved by the order of conviction dated July 27,1994 passed by the Additional Sessions Judge No. 1, Sri Gangangar in Sessions Case No. 48 of 1992 convicting the accused appellant under Section 302, I.P.C. and sentencing him to undergo sentence of imprisonment for life the appellant has preferred this appeal on the grounds stated in the memo of appeal as also canvassed orally by the learned counsel appearing on his behalf.

2. The facts giving rise to the present appeal, stated briefly, are that on 4-3-1992 at about 8.30 a.m. first information report was lodged by one Hari Prasad Meena in Police Station, Purani Abadi, Sri Ganganagar that he was working on the Kaluwala check post along with two Homeguards Kamal Singh and Ram Chandra of Border Home Guard. He further reported that at about 6.45 a.m. a man drenching wet came to the Check-post and disclosed his name as Ramesh son of Bhalu Ram Kumar, resident of Ward No. 37, Purani Abadi, Sri Ganganagar and said that he i.e. Ramesh has at about 5.00 a.m. killed his wife and children and wanted to commit suicide but could not as the water in Ganga Canal was shallow. On this report further investigation was taken up. The accused was then arrested. On completion of investigation he was duly prosecuted. In support of the prosecution 15 witnesses were examined. On appreciation of the evidence as recorded the learned Additional Sessions Judge convicted the accused as aforesaid to suffer imprisonment for life.

3. Shri Doongar Singh, learned counsel appearing on behalf of the accused challenged the order of conviction on several grounds, namely, (a) that the entire evidence on record on the basis of which conviction is ordered is unacceptable, unreliable and therefore, insufficient for recording conviction. He claimed therefore, that the order of conviction is liable to be set aside, (b) there is no eye witness account of the incident and the entire conviction rests on extra judicial confession allegedly made by the accused. Each confession is liable to be rejected as 'it is not admissible in evidence; (c) the evidence of neighbouring witnesses who came on the site of crime immediately after knowledge of crime contradict the evidence of witnesses who heard the extra judicial confession and, therefore, the order of conviction is not liable to be maintained; and (d) no motive is established by the prosecution for which accused could have murdered his wife and children.

4. The extra judicial confession has been made to a Constable of the Rajasthan Armed Constabulary which is a wing of Police and, therefore, it is a statement made to a police officer. Consequently, is inadmissible in evidence. If that is excluded nothing remains as evidence on the basis of which conviction can be sustained. In any view of the matter, therefore, according to the learned counsel, the conviction is liable to be set aside.

5. The learned counsel arguing on behalf of the appellant has raised two questions of law which if decided in favour of the appellant will not require adjudication of factual aspect of the case. They are, (i) all the extra judicial confessions on which reliance is placed for ordering the conviction by the learned Sessions Judge are made to police officers and hence inadmissible by reason of the provisions of Section 25 of the Indian Evidence Act; (ii) these extra judicial confessions cannot be used in evidence for any purpose in view of the provisions of Section 162 of the Code of Criminal Procedure as these extra judicial confessions are also statements made by any person to a police officer and, therefore, the same cannot be used for ordering conviction of the accused.

6. Shri Doongar Singh learned counsel for the accused appellant relying on the provisions of the Rajasthan Police Service Rules, 1954 and Rajasthan Police Subordinate Service Rules, 1989 has contended that a constable of the Rajasthan Armed Constabulary is also a police officer within the meaning of Section 25 of the Evidence Act or Section 162 of the Code of Criminal Procedure and, therefore, a statement made to or before such constable of the Rajasthan Armed Constabulary is inadmissible in evidence and cannot be used for any purpose in evidence as envisaged by provisions of Section 25 of Indian Evidence Act or Section 162 of the Code of Criminal Procedure.

7. Section 25 of the Evidence Act reads thus : '25. Confession to police officer not to be proved.- No confession made to a police officer shall be proved as against a person accused of any offence.' Thus provision of law is enacted to prevent coercive confessions which may be restricted by police officers from persons accused of any offence. It is a safeguard embodying principles of natural justice as also fundamental rights contemplated by Article 20 of the [Constitution of India](#). It

protects every person from possible misuse of the power by a police officer in relation to commission of any offence. A perusal of the provisions of Section 26 and Section 28 of the Indian Evidence Act further fortifies this aspect of avoiding misuse of power by police officer and, therefore, not allowing proof of such confession by a person accused of any offence. Section 28 provides that confession as contemplated by 24 of the Indian Evidence Act also became relevant if it is proved that such confession was made after the impression caused by any inducement, threat or promise has been fully removed.

8. What has been prohibited under Section 25 of the Indian Evidence Act is statement of a police officer against a person accused of any offence to a police officer. The position of law in this regard is well settled. The words 'police officer' are not to be construed in a narrow meaning but has to be construed in wide and popular sense. It cannot, therefore, compass any officer who has certain powers of the police conferred on him and those powers which are conferred on the police the existence of which will make the officer police officer within the meaning of Section 25 are powers of investigation, arrest, detention etc. as envisaged by Chapters XII and XIV of the Code of Criminal Procedure, 1973. If the power to arrest, power to investigate and power to prosecute is not enthused in an officer, he cannot be called a police officer within the meaning of Section 25, Evidence Act even if he is a member of police department in wider sense. Shri Doongar Singh has relied on provisions of Rule 4 of the Rajasthan Police Subordinate Service Rules, 1989 which provides that the Service shall consist of four sections, fourth section being Rajasthan Armed Constabulary. Relying on the provisions of the Rules as also the Rajasthan Police Service Rules it was argued that the officers of any of the four sections mentioned Rule 4 of the Rules of 1989 cannot be interchanged. A Commandant of the Rajasthan Armed Constabulary cannot be transferred as Inspector of Police and, therefore, officials of the Rajasthan Armed Constabulary are police officers within the meaning of Section 25 of the Indian Evidence Act as also Section 162 of the Code of Criminal Procedure and hence it was argued by the learned counsel that the statement made to them are inadmissible in evidence and cannot be used for any purpose.

9. We are unable to accept the argument based on the provisions of Section 25, Indian Evidence Act for two reasons, firstly, a constable of the Rajasthan Armed Constabulary though a police in a general sense is not a police officer enthuse with the powers of police as contemplated by Chapters XII and XIV of the Code of Criminal Procedure. He has no power to effect arrest or to make investigation and hence is not a police officer. We are also unable to accept the argument for another reason, namely, the alleged extra judicial confession in the present case is not a confession made by a person accused of any offence. Because a person is accused of any offence only after a report of his having allegedly committed an offence is lodged in the Police Station and it is recorded as contemplated by Section 154, Cr.P.C. It is only after lodgment of the first information report under Section 154, Cr.P.C. that a person can be said to be an accused of any offence. In the present case at about 7 in the morning when the statement was made by Ramesh to W. P. 3 Hari Prasad and P.W. 12 Shivcharan, Ramesh was not accused of any offence and, therefore, there is no question of this confession not to be allowed to be proved against him. The position as to what is to be meant a person accused of any offence is no longer res integra and a person can be said to be an accused only when such accusation is duly reported to the police. A report to a police officer is the first information report under Section 154, Cr.P.C. Such report in the present case was made after making of the confessional statement by the accused and, therefore, the provisions of Section 25, Evidence Act are not attracted in the present case. This contention of Shri Doongar Singh must, therefore, fail.

10. The second limb of argument of the learned counsel for the appellant is regarding the rejection of the extra judicial confession under the provisions of Section 162, Cr.P.C. because of the statement made to P.W. 3 Hari Prasad and P.W. 12 Shivcharan are statements made to a police officer and, therefore, cannot be used for any purpose as envisaged by Section 162, Cr.P.C. Section 162(1), Cr.P.C. reads thus:

162. Statements to police not to be signed: Use of statements in evidence.- (1) No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced to writing, be signed by the person making it,

nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.' It is now settled position in law that the prohibition contained in Section 162, Cr.P.C. extends to:

(1) all statements :

(a) The statement need not be confession: it applies equally to all statements, confessional or otherwise;

(b) the statement need not be reduced into writing; it applies equally to all statements whether reduced into writing or not;

(2) by whomsoever made:

(a) the prohibition applies equally to statements made by any person, whether accused or not;

(b) the person making the statement need not be in the police custody while making the statement; but-

(i) the statement must be made to a police officer; and

(ii) must be made in the course of an investigation under Chapter XII, Cr.P.C.

It will thus be seen that for being excluded from using the statement made to a police official it must be made in the course of investigation under Chapter XII, Cr.P.C. A constable or an official of the Rajasthan Armed Constabulary is not invested with any powers of investigation as contemplated by Chapter XII, Cr.P.C. and, therefore, there is no question of the statement being made to any of them being excluded from use by recourse to the provisions of Section 162, Cr.P.C. Assuming that an official of the Rajasthan Armed Constabulary is a police as contended by the learned counsel relying on several Rules contained in the Rajasthan Police Service Rules, 1954 and the Rajasthan Police Subordinate Service Rules, 1989 in order that it could be so excluded, it must be in the course of investigation under Chapter XII of the Code of Criminal Procedure. In the

present case the statement made to Hari Prasad P.W. 3 and Shivcharan Singh P.W. 12 is immediately after the occurrence i.e. failure on the part of the accused Ramesh to commit suicide and after he came to Checkpost and requested the officials present therein to hand him over to police. The accused tried to commit suicide and failed because of shallow water in Ganga Canal and then came out and made the confessional statement. The confessional statement, therefore, is a statement not made in the course of investigation which commenced after the recording of the first information report by the police after production of the accused before the police by Hari Prasad, P.W. 3. There is, therefore, no reason why this statement should be excluded. The learned Judge was right in accepting the evidence of these persons as proving the extra judicial confession made by the accused Ramesh. On this point, therefore, there is no substance in the appeal.

11. That takes us to the consideration of the appeal on factual merits. With the assistance of the learned counsel for the accused and the learned Public Prosecutor we have scrutinised the record and reappreciated the evidence.

12. P.W. 1 is Dr. Markandey who conducted the post-mortem on the body of Savitri, wife of Ramesh, the accused. He has opined that the death was caused due to injury on the head and the injury was sufficient in the ordinary course of nature to cause death. He thus proves that the death of Savitri was homicidal in nature.

13. P.W. 2 Rajkumar is a Hotelier having a hotel near the Kaluwala Checkpost. He stated that he does not remember any one coming from Ganga Canal to his hotel. He is declared hostile. His testimony in the circumstances is inconsequential and liable to be ignored.

14. P.W. 3 Hari Prasad is the main witness who was at the relevant time a constable in Rajasthan Armed Constabulary and was working at Kaluwala Checkpost on 4-3-92 when at about 6.45 a.m. accused Ramesh Kumar came to the Checkpost. He was drenched wet and told the witness that he was very agitated in mind and he has killed his wife and children. He then told the witness that he wanted to commit suicide but could not die as the water in Ganga Canal was shallow. P.W. 4 Darshan Singh is the neighbour of the accused. He was

declared hostile. We have perused his statement and we are of the opinion that his entire statement is worthless. P.W. 5 Banjeet Singh is another neighbour who went to the house of the accused after the police had arrived there and found two of the children lying dead and wife and daughter of the accused lying in injured condition. He states that he heard some one saying that these persons were killed by Ramesh, the accused. P.W. 6 is yet another neighbour who has been declared hostile. His testimony also is inconsequential.

15. P.W. 7 Ram Chandra is a Sipoi of Border Homeguard. He has deposed that on 4-3-92 he was working on the Kaluwala Checkpost, Sri Ganganagar and with him was Hari Prasad, a constable of Rajasthan Armed Constabulary. This witness refused to identify the accused in Court and has stated that he did not hear as to what transpired between the accused and the constable Hari Prasad as he was standing at a distance of 20 yards from where they were talking. He is also declared hostile.

16. P.W. 8 Dr. Om Prakash is another doctor who conducted post-mortem on the bodies of the children and has proved that their death was also homicidal. P.W. 9 is Kamal Singh, a Sipoi of Border Home Guard. He was on the Kaluwala Checkpost at the relevant time. He has deposed that he along with Ram Chandra and Hari Prasad were on duty when a man called Ramesh came in wet condition and told the witness that he has finished his home. The witness very candidly says that the accused did not tell that he has killed his children. He understood what was meant by [^]?kj [kRe djds vk;k gw** was that he killed his family. The witness then says:

[^]ifjokj [kRe djus dh ckr tc jes'k dqekj uscrkbZ rc eSaus vius dkuksa ls lquh Fkh**

This witness also states that Ramesh came after jumping into the canal and he wanted to commit suicide but could not do so because of shallow water in the canal. P.W. 10 is a Radiologist who examined the X-ray plates of Priyanka, daughter of Ramesh Kumar for head injury. P.W. 11 Ved Prakash stated that he was working as Station House Officer at Police Station, Purani Abadi on 4-3-92 when Hari Prasad constable (P.W. 3) came in the Police Station. With him was Ramesh Kumar son of Bhalu Ram, the present appellant accused. On the oral

statement of Hari Prasad (P.W. 3) first information report (Ex. 2) was registered. After registering the report as Crime No. 64 of 1992 he went to the spot and prepared Panchnama of the spot inspection and other proceedings taken up by the police there. The witness has also admitted that though the accused was present with Hari Prasad (P.W. 3) at 8 a.m. when the first information report was lodged, he did not arrest the accused because at that time there was no proof against the accused. From the testimony of this witness the so called contradiction between the evidence of P.W. 3 Hari Prasad and P.W. 8 Kamal Singh regarding the accused being taken to the Police Station by Hari Prasad in private jeep or police taking him in police jeep as alleged by Kamal Singh stands resolved. Even according to the Station House Officer Hari Prasad was the person who produced the accused in Police Station, Purani Abadi at the time when he filed first information report at 8.30 a.m.

17. P.W. 12 Shivcharan is another constable of the Rajasthan Armed Constabulary who was present at Kalu wala Checkpost on 4-3-1992 when accused Ramesh appeared before Hari Prasad who was on duty and the witness was sleeping in the tent. He deposes that Kamal Singh and Ram Chandra were also at that time on sentry duty. The witness thus basically corroborates the testimony of Kamal Singh and Hari Prasad that one person (Ramesh came in wet clothes and was saying that he has killed his family and should be turned over to the police. On hearing this the witness came out of the tent saw the accused in wet clothes and when he asked, the accused told that he tried to commit suicide and jumped in Ganga Canal but could not because the water in the canal was shallow. The accused told to hand over him to the police. The accused further told that he has killed his wife and three or four children. The witness states that Ramesh told him that he killed his wife and children by giving hammer blows. This witness also fully corroborates P.W. 3 Hari Prasad and states that Kamal Singh and Ram Chandra went along with Hari Prasad and accused in a private jeep to Purani Abadi Police Station. The statement by Kamal Singh that the accused was taken in police jeep appears to be an obvious slip of memory on the part of the witness. It cannot be said to be such a contradiction as to require disbelieving of P.W. 3 or P.W. 8 or both of them. P.W. 13 Harlal Singh is another constable who deposes about the recovery of the hammer. P.W. 14 is Malkhana Incharge and

P.W. 15 is Surendra Kumar constable who depoisted six sealed packets in Malkhana in sealed condition.

18. From the entire evidence as appreciated above it will be seen that the statement of Hari Prasad P.W. 3 is corroborated on all material particular by P.W. 8 Kamal Singh and P.W. 12 Shivcharan Singh. Merely because yet another witness Ram Chandra P.W. 7 has turned hostile it cannot be said that the testimony of three witnesses is liable to be rejected as concoction. They corroborate each other on material particulars and there is no stating falsehood. The fact that the accused presented himself infront of these people in drenched condition and confessed before them to have killed his wife and children is duly established. The witnesses corroborate each other and thus prove the extra judicial confession made by the accused to these persons. There is no infirmity in their evidence. There is no reason why they should falsely implicate the accused and we have, therefore, no hesitation in accepting these witnesses as trustworthy as was done by the learned Additional Sessions Judge. Consequently, on reappreciation of these witnesses we find that the conclusion reached by the learned Additional Sessions Judge of guilt of accused in murdering his wife and children was proper and legal and which do not require any interference by this Court.

19. In the result the appeal fails and is dismissed.