

Ran Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-10-1999

Reported in : 1999CriLJ2089; 1999WLC(Raj)UC501

Judge : V.G. Palshikar and; Mohd. Yamin, JJ.

Acts : Evidence Act - Sections 25; [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302; Code of Criminal Procedure (CrPC) - Sections 174

Appeal No. : D.B. Cr. Jail Appeal No. 84 of 1996

Appellant : Ran Singh

Respondent : State of Rajasthan

Advocate for Def. : Chandra Lekha, Public Prosecutor

Advocate for Pet/Ap. : D.D. Kalla, Adv.

Disposition : Appeal allowed

Judgement :

Mohd. Yamin, J.

1. Accused appellant faced trial under Sections 302 and 201, IPC before the learned Additional Sessions Judge, Nohar and was convicted under Section 302, IPC and sentenced to Life Imprisonment and a fine of Rs. 1000/- and three years'

imprisonment and a fine of Rs. 1000A under Section 201, IPC by the judgment dated 3-1-1996. The same is assailed by way of this appeal.

2. The case of the prosecution is that Smt. Santokhi Devi is the wife of Ran Singh and the real sister of deceased Sultan. Sultan had five brothers out of whom Jagdish has agricultural land in village Jhiloda. This was being cultivated by Sultan. Some time in the end of February, 1994 Sultan and his son Rambhagat went to village Jhiloda in order to cut the crop from the field. They were staying with Santokhi. It is alleged that during the night in between 1st and 2nd March, 1994 Sultan after taking dinner went to sleep in a kotha with accused appellant. DW-1 Kalu is the maternal nephew of Santokhi was also staying in the house of Santokhi. Rambhagat, the son of deceased, went to the house of his uncle Jai Singh to sleep that night. Next day i.e. 2-3-1994 when Rambhagat came back he did not find his father and on inquiry he was told that abscess on the head of Sultan had burst and he had gone to Bhadra. Thereafter Rambhagat went to the field. Sultan did not return even in the evening. Then Rambhagat went to village Bhadra where he told to his uncle that Sultan had left. When he returned, the accused appellant told that he had done away with Sultan and in case he would tell it to anybody, he would also be killed. Then Rambhagat went to Delhi and brought his maternal uncle Satbir with him. He then reported the matter to the police on 10-3-1994 vide Ex. P/5. It may also be stated that one Amar Singh had reported to the S.H.O. Bhirani on 6-3-94 about disappearance of Sultan. Dead body of Sultan was found in a kund situated in the field of Risal Singh on 7-3-94 and report to this effect was made at the police station vide Ex. P/11 by Pratap Singh. The matter was investigated by Bhaglaram PW. 8 who arrested the accused appellant on 20-3-94. It is alleged that a kasia was recovered at the instance of the accused appellant on 21-3-1994 which had blood stains. The quilt and bedding of the deceased were also recovered from the room where he stayed at the instance of the accused appellant. After investigation, challan was submitted before the concerned magistrate who committed the accused appellant along with Smt. Santokhi to the learned Sessions Judge. Smt. Santokhi was charged with offence under Section 201, 1PC but has been acquitted by the learned Sessions Judge and the accused appellant convicted as stated above.

3. We have heard the learned counsel for the accused appellant as well as learned public prosecutor and with their help reappreciated and scanned evidence.
4. Learned counsel for the accused appellant submitted that the conviction of the accused has been recorded on the basis of extra judicial confession, recovery of weapon of offence and other circumstantial evidence. He also submitted that there is extraordinary delay in lodging the FIR which remains unexplained. He also submitted that the weapon of offence was examined by the chemical examiner but did not have any blood stains and that the accused appellant has been falsely implicated.
5. On the other hand, learned Public Prosecutor has tried to support the conviction of the accused appellant by the learned Additional Sessions Judge.
6. From the postmortem report Ex. P/3 which is proved by PW-3 Dr. Subhash Rajput who conducted the autopsy on 7-3-94 it is found that deceased had following injuries on his body :-
- (1) Incised wound 5' x 2' x 2' left temporozygotratic region horizontally.
 - (2) Incised wound 1-3/4' x 1A' bone deep left mardible bone broken.
 - (3) Incised wound 3/4' x 1/4' x 1/8' left mid neck vertically.
7. According to him the cause of death was head injury and injury No. 1 was sufficient to cause death in its nature. In view of this opinion of Dr. Subhash Rajput there remains no doubt that the death of deceased was neither accidental nor suicidal but homicidal.
8. The million dollor question remains whether it was accused appellant who committed murder of deceased Sultan PW-1 Kailash who is the son of Ran Singh accused has admitted that deceased along with his son Rambhagat had came to village Jhiloda. Even DW-1 Kalu admitted that Sultan and Rambhagat were staying in the house of accused. PW-4 Rambhagat who is the son of deceased has stated that he left his father in the house of Ran Singh. Ran Singh as well as Sultan went to sleep in a room in the house. He himself went to the house of Jai

Singh and slept there. When he returned in the morning he did not find his father and when he inquired he was told by the accused that Sultan had gone to Bhadra in the morning as his carbuncle had burst. According to the FIR this information was given to the witness Rambhagat by his aunt Smt. Santokhi but in his deposition before Court he has said that it was told by the accused. However, Rambhagat was satisfied. It may be stated that on 6-3-94 one Amar Singh who is the brother of deceased reported to the police that Sultan had a carbuncle on his head for last 10-12 days and was taking treatment and his whereabouts were not known from the morning of 2nd of March, 1994. It was also mentioned in the report that there existed no suspicion on the family members of Smt. Santokhi and that Sultan had gone somewhere on his own accord. In spite of this PW-4 Rambhagat has stated that when he returned along with Amar Singh, accused Ran Singh took him in a corner of the house and told that he had killed Sultan and later on threw the dead body in a kund and threatened the witness that in case he divulged it to anybody he would also be killed. This witness did not disclose the confession to anybody and instead went to Delhi wherefrom he returned on 10-3-94 and then the FIR was lodged stating the extra judicial confession was made by the accused appellant before this witness. We are not proceeding with the presumption that extra judicial confession is a weak type of evidence. We have to test it in this case on its merits. We are of the view that the conduct of this witness is not natural. Amar Singh is the real uncle of Rambhagat who lodged a report about disappearance of Sultan on 6-3-94. It is thus clear that by 6-3-94 there was no suspicion on the accused appellant as reported by Amar Singh to the police. Had accused appellant made any confession before Rambhagat, by that time since Amar Singh being an uncle of Rambhagat had met him, he would have definitely told to Amar Singh and Amar Singh in turn told to the police. Secondly, the accused appellant as per the statement of Rambhagat PW-4 was threatening to Rambhagat that if he divulged he would also be killed. It means that the accused appellant had no faith in the witness. Ordinarily an accused would make an extra judicial confession before such a person whom he believes that he would save him. The accused by making such an extra judicial confession before this witness would not put his neck in the noose by accepting his crime before him. So, as stated earlier, we are of the view that the statement of Rambhagat is unnatural. It

does not inspire confidence. The accused appellant could not have made extra judicial confession before him.

9. PW-5 Jai Singh is a brother of deceased. According to him the dead body of deceased was recovered from the kund on 7-3-94 and on the same day it was cremated. He has accepted that Rambhagat did not tell him that the accused had made a confession before him. He has -instead stated that the accused appellant made a confession before him on 8-3-94. He told that after cremation of Sultan police had taken him as well as Ran Singh to Police Station, Bhirani. He has further told that even on 9-3-94 he, Kalu and Ran Singh were taken to Police Station and that Ran Singh had made a confession before the police. It appears this witness developed the story of extra judicial confession made by accused before him on 8-3-94. It appears that accused appellant was coerced by police to accept his guilt and thereafter the witness cooked up story of confession made on 8-3-94 so that it may look natural. Accused was not so close as to have confidence in him. Hence he would not confess before, him. In view of AIR 1994 SC 214 : 1994 Cri LJ 245, Chittar v. State of Rajasthan, conviction of accused on the basis of retracted extra judicial confession would not proper.

10. The other evidence against the accused is said to be recovery of a kasia but it does not connect because as per report of the FSL Ex. P/24 the origin of the stains of blood on it could not be determined as the blood was not sufficient for test. Therefore, the kasia recovered at the instance of the accused appellant does not connected him with the crime.

11. The recovery of quilt and bedding would not connect the accused with the crime because it is admitted case of the prosecution that the deceased stayed in the house of Ran Singh and their recovery from the house is very natural.

12. The circumstances relied by the learned Sessions Judge are that the accused had led the police to the place where he had burnt his clothes and that there was a bad odour in the room where the deceased and the accused had stayed over night. Needless to say that there is no recovery of any ash. Even otherwise this circumstance does not connect the accused appellant with the crime as burning of clothes belonging to the accused appellant does not definitely connect his

involvement with the crime. The bad odour in the room may for any reason. No recovery of decomposed body of deceased has been made from the room. The odour may be for any reason including the presence of putrefied body of even a rat. Therefore, these circumstances do not connect the accused appellant with the crime.

13. In such cases where there is no eye witness motive is very material. Prosecution does not allege any motive of the accused appellant behind the murder. Here the prosecution itself does not alleged any motive behind the murder. Therefore, the accused could not have been held guilty for this motiveless crime.

14. It transpires from the delay in the FIR that the accused appellant has been framed. Whereabouts of Sultan were not known to Rambhagat right from the morning on 2-3-94. But he kept silence. It was on 6-3-94 for the first time that Amar Singh reported to Police Station, Bhirani that his brother Sultan suffered from carbuncle for last 10-12 days and was missing. This report clearly mentions that there was no suspicion on the family members of Smt. Santokhi (and Ran Singh) who was the real sister of the deceased.: On 7-3-94 the dead body of Sultan was found in a kund. Ex. P/10 proves the proceedings which were started under Section 174, Cr.P.C. Even in these proceedings the accusing finger did not move towards the accused appellant though by that time it was clear that the deceased was murdered. It is for the first time on 10-3-94 that the accused appellant was named in the FIR by Rambhagat PW-4 who is the son of the deceased. He says that the accused appellant had confessed before him much before he left for Delhi but he did not explain as to why he did not report the matter to the police immediately thereafter. Even PW-5 Jai Singh accepts that it was on 8-3-94 that the accused appellant made a confession before him but even then he kept silence and did not report the matter to the police though he is the real brother of the deceased. From his statement it appears that the accused appellant was called by the police where he under duress of police made a confession before the police which is hit by Section 25 of the Indian Evidence Act, therefore, it was planned that this witness Jai Singh PW-5 and PW-4 Rambhagat may allege that the accused appellant had made extra judicial confession before them much

before the date of confession before the police. On the one hand, we find that the prosecution has miserably failed to explain the delay in lodging the FIR naming the accused appellant and on the other hand it is found that it was waited to cook up story of confession to frame the accused appellant. The delay of FIR in such a case is definitely fatal to the prosecution. On reapplication of evidence, we find that the prosecution has not been able to prove its case. Consequently, the accused appellant deserves acquittal.

15. In the result, the appeal is accepted. The accused appellant is acquitted from the charges of Sections 302 and 201, I.P.C. He is in custody and shall be released forthwith, if not required in any other case.

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