

Harkesh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-28-2003

Reported in : 2003CriLJ4181; RLW2004(2)Raj979; 2003(4)WLC522

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 302

Appeal No. : D.B. Criminal (Jail) Appeal No. 781 of 1998

Appellant : Harkesh

Respondent : State of Rajasthan

Advocate for Def. : Satish Purohit, Public Prosecutor

Advocate for Pet/Ap. : Anurag Sharma, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Khem Chand Sharma, J.

1. This criminal appeal by appellant Harkesh sent through, Superintendent, Central Jail, Jaipur arises out of the judgment of the learned Additional Sessions Judge, Gangapur City converting the appellant for offence under Section 302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs. 500/-, in

default thereof to undergo simple imprisonment for two months.

2. The appellant was charged with the offence of committing murder of his real brother Hansraj by inflicting injuries with a knife, in the intervening night of 28/29.7.1998 while deceased was sleeping at the field. According to the prosecution case, Hari Prasad Meena P.W. 1 submitted a written report Ex.P.1 at the police station Bamanwas on 29.7.1997 mentioning that Hansraj, son of his uncle Sukh Lal, in routine, went to the field known as Telyadi Wala in the evening at about 7-8 on 28.7.1997 to keep watch. He used to sleep at the field. It was mentioned that today i.e. on 29.7.1997 in the morning at about 6 A.M., when Lakhan Lal Meena went to attend the call of nature at his field, he found Hansraj dead. He then disclosed this fact in the village. As per the case of the complainant, he alongwith Ramswaroop Meena, Batti Bairwa and Chuttan Lal son of Badri Meena and other villagers went at the field of Lakhan Lal and found Hansraj dead, having numerous knife injuries on his person. It was mentioned that some unknown persons killed Hansraj, causing injuries by knife. The police on the basis of this written report registered a case for offence under Section 302 IPC vide FIR No. 130/1997 (Ex.P.2) and proceeded with the investigation.

3. During the course of investigation, site-plan Ex.P.3 and inquest report Ex.P.4 were drawn. Blood stained soil and controlled soil was taken vide memo Ex.P.5. A towel, a knife, a watch and one ball-pen were seized from the place of occurrence vide Ex.P.6. Foot-prints were also taken vide Ex.P.12. Post mortem on the dead body of Hansraj was conducted by Dr. MP Jain, P.W. 18 on 29.7.1997 and the post mortem report is Ex.P.15. As per the post mortem report there were as many as 27 injuries on various parts of the body of the deceased, out of which 2 were bruises and the rest 25 were stab wounds. As per the opinion of the doctor the cause of death was cardiorespiratory failure due to multiple injuries to lung, liver, stomach (vital organs) and internal haemorrhage and external haemorrhage.

4. As per the prosecution case, on 2.8.97 appellant Harkesh made an extra judicial confession (Ex.P.10) before some of the villagers. Appellant Harkesh, was arrested vide arrest memo Ex.P.18 on 2.8.1997 at 2.00 P.M. and he was medically examined for his injuries and injury report is Ex.P.16. Underwear and Baniyan of

appellant Harkesh were seized vide memo Ex.P.9. A pair of shoes of appellant Harkesh was also seized vide Ex.P.11. On completion of investigation, the police filed a charge sheet against the appellant Harkesh in the court of Civil Judge (Jr. Division), Bamanwas who finding the case exclusively triable by court of sessions, committed the case for trial to the court of Sessions.

5. The learned trial court, on the basis of evidence and material collected during investigation and placed before it and after hearing counsel for the parties, framed charges against the appellant for offence under Section 302 IPC. The accused denied the charge and claimed to be tried.

6. In order to prove its case, the prosecution examined as many as 19 witnesses and produced some documents. Thereafter, the appellant was examined under Section 313 Cr.P.C. In defence no witness was examined. In his explanation, the appellant denied the charges and stated about his false application.

7. At the conclusion of trial and after hearing counsel for the parties, the learned trial court found the prosecution case as alleged proved and accordingly convicted and sentenced the appellant as mentioned hereinabove vide impugned judgment and order dated 9.10.1998. Hence, this appeal against conviction and sentence.

8. We have heard learned counsel for the parties and have carefully gone through the evidence and material on record.

9. There is no direct evidence and the case squarely rests on circumstantial evidence. Having gone through the impugned judgment we find the following circumstances put forward by the prosecution and relied upon by the learned trial court:

(1) Extra-judicial confession (Ex.P.10) made before the residents of the same village to which the appellant belongs.

(2) Injuries found on the fingers of the appellant and for which there is no explanation.

(3) Blood stains on the Baniyan and Underwear recovered from the body of the appellant, for which also, there is no explanation.

10. During the course of arguments, Shri Anurag Sharma, learned Amicus Curiae while referring some lacunas in the prosecution case has urged that the prosecution has utterly failed to prove the circumstances in a manner so as to complete the chain of circumstances pointing out only to the guilt of the appellant. As per the learned counsel neither the name of the appellant finds place in the FIR nor he was present in the village as he had gone to Delhi 5-7 days prior to the date of incident. There was no immediate cause or motive for the murder. Learned Amicus Curiae argued that the prosecution has failed to produce the FSL report to prove the presence of human blood on the Baniyan and Underwear seized from the body of appellant. Further, there is no report as regards the blood stained and controlled soil as also the foot- prints, though these articles were sent to FSL for chemical examination. On the strength of above arguments, learned counsel submitted that conviction of the appellant cannot be sustained.

11. The learned Public Prosecutor on the other hand has supported the judgment of the learned trial court and contended that no interference is required in the impugned judgment in the facts and circumstance of the case as the prosecution has been able to establish the circumstances in a manner so as to complete the chain of circumstances pointing out only towards the guilt of the appellant.

12. We have considered the rival submissions. From the evidence on record, we find that extra judicial confession of the appellant made before the villagers is one of the important circumstance existing against the appellant. Before we proceed to have reappraisal of the evidence concerning confession, we would like to refer the law on the point.

13. In Gura Singh v. State of Rajasthan (1), their Lordships of the Supreme Court have observed as under:

'It is settled position of law that extra-judicial confession, if true and voluntary, it can be relied upon by the court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extra-judicial confession as an item of

evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement.'

14. The Apex Court in the cases of *Rao Shiv Bahadur Singh v. State of V.P.* (2), *Maghar Singh v. State of Punjab* (3), has held that the evidence in the form of extra-judicial confession made by the accused to witnesses cannot be always termed to be a tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone.

15. Their Lordships of the Supreme Court in another case *Narayan Singh v. State of M.P.* (4), have cautioned that it is not open to the court trying the criminal case to start with a presumption that extra-judicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. The retraction of extra-judicial confession which is a usual phenomenon in criminal cases would by itself not weaken the case of the prosecution based upon such a confession.

16. In the case of *Kishore Chand v. State of H.P.* (5), their Lordships of the Supreme Court have held that an unambiguous extra-judicial confession possesses high probative value force as it emanates from the person who committed the crime and is admissible in evidence provided it is free from suspicion and suggestion of any falsity. However, before relying on the alleged confession, the court has to be satisfied that it is voluntary and is not the result of inducement, threat or promise envisaged under Section 24 of the Evidence Act or was brought about in suspicious circumstances to circumvent Sections 25 and 26. The court is required to look into the surrounding circumstances to find out as to whether such confession is not inspired by any improper or collateral consideration or circumvention of law suggestion that it may not be true. All relevant circumstances such as the person to whom the confession is made, the time and place of making it, the circumstances in which it was made have to be scrutinised.

17. Again in the case of Madan Gopal Kakkad v. Naval Dubey (6), their Lordships of the Apex Court held that extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plinary in character and voluntary in nature can be made the basis for conviction even without corroboration.

18. In the light of aforesaid enunciation of law, we would now evaluate the evidence both oral and documentary.

19. Ex.P.10 is the written confessional statement, which bears the signature of appellant Harkesh from portion marked 'C' to 'D' and the signatures and thumb impressions of the villagers before whom the appellants confessed. He made the confessional statement before the residents of the same village, of which he belongs. In Ex.P.10 the appellant has stated that first he entered in the village at 12.00 O clock and from there went to forest and returned to the village. Thereafter he went to the 'Bada' of Ram Swaroop. Thereafter went to the house of Kishan from where he took Sulpi (a clay article used for smocking tobacco) and Kothli (an article of stitched cloth used for keeping tobacco) and then went to the field and found that Hansraj was sleeping alone. He came beneath Bewadi (a big Bush); put off his clothes and put the same under the bush. Then he returned to the place where Hansraj was sleeping and started inflicting knife blows on the chest of Hansraj while he was sleeping on the cot. The appellant further stated that he chased Hansraj inflicting injuries to him up to Banjad and pushed him there and then inflicted 4-5 injuries by knife. Hansraj then ran from there and fell down in the field of Lakhan and became unconscious. As per the memo of confession, the accused inflicted 20 knife blows and killed the deceased. Thereafter he left the place and went to Gangapur and from Gangapur he went to Delhi and then returned to his house. None had brought him and he came himself. This document has been signed by the appellant and other villagers and was submitted to the police on 2nd August, 1997.

20. Having gone through the written confessional statement (Ex.P.10), we are of the view that confession is true and it was made to the signatories of Ex.P.10 voluntarily, without threat, coercion, force or promise. While examining the accused under Section 313 Cr.P.C., question No. 7 was specifically put to him

regarding extra judicial confession Ex.P.10 having been made by him to the villagers but his answer to this specific question was that 'it is wrong' (Galat Hai). Thus evidently, the appellant has failed to offer any explanation as to the disclosure statement made before the witnesses and recorded in writing as Ex.P.10, which bears his signatures as also the signatures of the witnesses in whose presence he confessed.

21. It is well settled that corroboration of confessional statement is required to be sought only as a measure of abundant caution but to satisfy ourselves, we have gone into the oral evidence produced by the prosecution to corroborate the memo of extra-judicial confession (Ex.P.10) for which the prosecution has examined Bharat Lal P.W. 5 and Ram Sahai P.W. 6. In his examination-in-chief PW 5 Bharatlal has deposed that on the next day of Tiye ki bethak, the appellant came to the village. All the villagers collected at the school, inquiries were made from the accused and then, in the presence of the villagers the accused Harkesh confessed that he killed Hansraj. Accused Harkesh disclosed that he came to his house and then went to the field where Hansraj was sleeping and he murdered Hansraj by inflicting knife blows. The witness was cross-examined at length but nothing could be elicited to suggest that the confession was not voluntary or it was obtained by coercion, threat or promise.

22. PW 6 Ram Sahai, in his examination-in-chief, has deposed that the accused himself came to the village at 3.00 P.M. The appellant confessed in the presence of the villagers present at the school that he had killed Hansraj. The appellant confessed that at 12 O' Clock in the night he saw Hansraj sleeping at the field. He put off his paint and shirt and kept the same on the tree. He first ascertained that his parents and uncle (Tau) were sleeping in their house at the village and for that purpose he went to the village and came back and inflicted knife blows on the chest of Hansraj when he was sleeping. When Hansraj ran away from the house, he chased him and inflicted knife blows. This Witness categorically deposed that the accused made confession at his own accord and it was voluntary without any threat, coercion or promise. Even from his cross-examination, nothing could be suggested that the confessional statement was not voluntary or was the result of any inducement, threat or promise.

23. PW 8 Murari Lal and PW 11 Hariman have also stated similar to what above two witnesses have stated and hence these two witnesses have corroborated the statements of Bharat Lal (PW 5) and Ram Sahai (PW 6).

24. We also do not find any suggestion having been put to the prosecution witnesses whether there was animosity of the appellant with the witnesses of confession. The persons before whom the accused appellant made confession belonged to his village and they have categorically deposed that accused appellant without fear and pressure, on his own accord made voluntary confession.

25. Thus, from the evidence discussed above, it must be concluded that appellant Harkesh made confessional statement at his own accord, it was voluntary and was not obtained either by coercion nor threat or promise. Accordingly, the first important circumstance stands well established beyond reasonable doubt.

26. Now we proceed to deal with remaining circumstances, first of which is the injuries found on the fingers of the appellant. PW 18 Dr. M.P. Jain who conducted autopsy on the dead body of deceased noticed as many as 27 injuries, out of which 25 were stab wounds caused by knife. The injuries No. 16 and 27 have been stated to be grievous in nature. In the opinion of Dr. Jain, the cause of death was cardiorespiratory failure due to multiplicity and injuries to lung, liver, stomach and internal haemorrhage and external haemorrhage. Dr. Jain also examined, the injuries of appellant and prepared report Ex.P.16. He found one abrasion and two incised wounds both measuring 0.7cm x 1mm x skin deep on middle phalanx of right little finger and three incised wounds measuring 0.5 cm x 1cm x skin deep, 0.4cm x 1mm x skin deep, 0.3 cm x 1mm x skin deep on middle phalanx of right ring finger. As regards the injuries of appellant, Dr. Jain explained that the incised wounds of the appellant can be caused in the course of infliction of knife injuries to some person. The presence of injuries on the person of appellant was also noticed by PW 19 Ghanshyam Singh at the time when he arrested the appellant and he made a reference of the injuries in the arrest memo Ex.P.18. As per the doctor, the duration of injuries No. 1 to 27 found on the person of deceased and the incised wound of the appellant was the same, meaning thereby the injuries of the

deceased and that of appellant were sustained at the same time. That apart, the accused appellant in his examination under Section 313 Cr.P.C. could not be able to offer any explanation as to how he sustained the injuries described in the injury report, although specific question No. 20 was put to him. He simply relied 'does not know' (PATA NAHIN). In these circumstances it can safely be inferred that accused appellant sustained injuries in the process of inflicting injuries to the deceased. The second circumstance, therefore, also stands established.

27. Now remains the last circumstance i.e. the presence of blood stains on the Baniyan and underwear of the appellant. The Baniyan and underwear of the appellant were seized by the investigating officer but the same could not be produced in the court. Admittedly, the prosecution has not been able to produce the above seized items in the court. Further, there is no FSL report as regards the presence of blood on the underwear and Baniyan of the appellant. It may also be noticed that the incident happened in the night intervening 28/29.7.97, whereas the accused was arrested on 2.8.97 i.e. after 5 days of the incident and the underwear and baniyan were also settled after 5 days of the incident. Thus the fact that at the time of recovery of these articles after five days of the incident cannot at all be believed, as no one would continue to wear the same cloths having blood stains after the commission of crime. In this view of the matter, we are of the firm view that the prosecution has not been able to prove the last circumstance against the appellant.

28. The two important circumstances, first the extra judicial confession of the appellant and second, the injuries noticed on the person of appellant having found established beyond doubt, in our considered view, are sufficient to complete the chain of circumstances, which unmistakably prove the gruesome offence of murder, unerringly establishing the guilt of the accused appellant beyond all reasonable doubts. Accordingly, we hold that appellant was the perpetrator of the crime. The trial court has rightly found him guilty of committing murder of his brother Hansraj.

29. The result of above discussion is that this appeal fails and is hereby dismissed. The conviction of the appellant under Section 302 IPC and the sentences awarded

thereunder by the trial court are maintained.

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