

**Kalu Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Sep-30-2004

**Reported in :** RLW2005(2)Raj863; 2004(1)WLC45

**Judge :** Shiv Kumar Sharma and; Ajay Rastogi, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 34, 302, 459 and 460; Code of Criminal Procedure (CrPC) - Sections 161 and 313; Identification of Prisoners Act - Sections 4 and 5; Evidence Act - Sections 27

**Appeal No. :** D.B. Criminal Appeal No. 1174 of 2003

**Appellant :** Kalu Singh

**Respondent :** State of Rajasthan

**Advocate for Def. :** Brahma Nand Sandhu, Public Prosecutor

**Advocate for Pet/Ap. :** Rohan Jain, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Shiv Kumar Sharma, J.**

1. Prithvi Singh and Parbat Singh, two old aged neighbours were found beheaded in the morning of October 5, 2001, Police Station Pagaria was approached and in

the course of investigation the police came to the conclusion that it was Kalu Singh (herein after described as 'accused') who had committed the crime. The accused was placed on trial before the learned Additional Sessions Judge (Fast Track) No. 3 Jhalawar in Sessions Case No. 74/2003. Learned Judge vide judgment dated August 7, 2003 convicted and sentenced the accused as under.-

Under Section 302 IPC:

To suffer Imprisonment for life and fine of Rs. 2000/-, in default to further suffer Six Months Simple Imprisonment. Under Section 459 IPC:

To suffer Rigorous Imprisonment for Five Years and fine of Rs. 500/-, in default to further suffer One Month Simple Imprisonment.

The substantive sentences were directed to run concurrently.

2. It is the prosecution case that Prithvi Singh had five daughters, therefore he took the accused in adoption. On the pursuation of Prithvi Singh, accused left the house of his original father and came with his wife to the house of Prithvi Singh and started residing there. Soon the dreams of Prithvi Singh broke into pieces and he ousted the accused from the house and demanded the adoption deed back. Thereafter on October 5, 2001 Prithvi Singh and Parbat Singh found dead. Madan Singh son of Parbat Singh lodged the report with the Police Station Pagaria camp Kholkheri. A case under Sections 302, 34 and 460 IPC was registered and investigation commenced. Autopsy on the dead bodies were performed. Statements of witnesses under Section 161 Cr.P.C. were recorded. Marks of foot-prints were lifted. The accused was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 3, Jhalawar. Charges under Sections 302 and 459 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 24 witnesses and got exhibited 34 documents. In the explanation under Section 313 Cr.P.C., the accused claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing the final submissions convicted and sentenced the accused as indicated herein above.

3. We have given anxious consideration to the rival submissions and weighed the material on record.

4. Since there were no eye witnesses to the occurrence, the prosecution relied on the following circumstances in support of its case:-

i) Motive.

ii) Foot prints on the scene of occurrence matched with the foot prints of the accused.

iii) Recovery of knife stained with human blood, at the instance of the accused.

iv) Recovery of adoption deed at the instance of the accused.

5. Their Lordships of Supreme Court in Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343, laid down the principles relating to circumstantial evidence thus:-

Para 10)

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.'

MOTIVE:

6. It is well settled that motive which is not capable of precise proof if proved may lend additional support to strengthen the probability of commission of the offence by the accused. Coming to the facts of the instant case we find that from the

evidence of Madan Singh (PW.1), Smt. Sakan Bai (PW.3), Smt. Kamla Bai (PW.4), Smt. Munna Bai (PW.5), Smt. Prem Bai (PW.6) and Smt. Sugna Bai (PW.7) it has been established that since Prithvi Singh had five daughters and did not have any son, he took the accused in adoption and handed over adoption deed to him. The accused came with his wife to reside in the house of Prithvi Singh. When Prithvi Singh did not feel love and affection in the relationship with the accused, he ousted the accused from his house and demanded back adoption deed. The accused did not return adoption deed and developed enmity with Prithvi Singh. After the death of Prithvi Singh the adoption deed, executed on January 5, 2000 by Prithvi Singh in favour of the accused was recovered from the possession of the accused vide recovery memo Ex.P-9. Madan Singh (PW. 1) and Bane Singh (PW.22) were the motbirs of recovery. The accused too in his explanation under Section 313 Cr.P.C. admitted that Prithvi Singh adopted him. It is thus established that there was bad blood between Prithvi Singh and the accused. These facts may lend support to strengthen the probability of commission of the offence by the accused.

#### FOOT PRINTS:

7. In the site plan (Ex.P-3) which was drawn in the presence of Motbirs Balu Singh s/o Parbat Singh (PW.2) and Balu Singh s/o Mangi Lal (PW.8) on October 5, 2001 at place 'X' beheaded dead body of Prithvi Singh was found lying on a cot. Just near to it at place 'Z' imprint of 'left foot' measuring 8.7" was seen. Photos of dead body of Prithvi Singh and chance foot print got photographed on October 5, 2001 at 9.45 AM, vide memo Ex.P-28. The accused was arrested on October 9, 2001 at 11.30 A.M. Photos of left and right foot of the accused got seized vide memo Ex.P-29A. Negative and coloured photographs of chance foot print photographed from crime scene on October 5, 2001 and specimen of left and right foot prints of the accused on two sheets were sent for comparison to the Director Finger Print Bureau Rajasthan by the Superintendent of Police Jhalawar vide letter dated December 5, 2001 (Ex.P-33). Director Finger Print Bureau in the comparison report Ex.P-29 indicated that chance foot print photograph was examined and compared with the specimen left and right foot prints of the accused. Chance foot print photograph was similar with specimen left foot print mark of the accused and

chance foot print and left foot print of the accused were made by the same foot i.e. left foot of the accused.

8. Mr. Rohan Jain, learned counsel for the accused, canvassed that since alleged sample of foot prints of the accused was not taken before a Magistrate, no reliance can be placed on the report of Finger Print Bureau. Reliance is placed on Mohd. Aman v. State of Rajasthan, (1997) 10 SCC 44. We have pondered over the submissions. In Mohd. Aman v. State of Rajasthan (supra), their Lordships of the Supreme Court observed as under:-

Para 8)

'.....Rather, other circumstances appearing on record make the prosecution case doubtful in this regard; first, the articles were kept in the police station for five days without any justifiable reason, secondly the Investigating Officer (PW.20) admitted that the seal, mark of which was put on the articles, was with him since the time of seizure and lastly his letter (Ex.P-59) forwarding the seized articles to the Bureau contains admittedly, an overwriting as regards the date of its writing/dispatch and no satisfactory explanation is forthcoming for the same. Apart from the above missing link and the suspicious circumstances surrounding the same, there is another circumstance which also casts a serious mistrust as to genuineness of the evidence. Even though the specimen finger prints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger prints of the accused but to dispel any suspicion as to its bonafides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate.'

In regard to foot prints it was indicated in para 9 thus:-

'So far as the foot prints are concerned, another reason for which we feel it unsafe to accept the evidence led in this regard is that the sample foot prints were not taken before a Magistrate. This apart the science of identification of foot prints is not fully developed science and therefore if in a given case- unlike the present one

evidence relating to the same is found satisfactory it may be used only to reinforce the conclusion as to identity of a culprit already arrived at on the basis of other evidence.'

9. The fact that foot-marks corresponding to that of the accused was found near the spot of occurrence is relevant. It is an evidence of identifying traces circumstantially. Identification by foot prints is rudimentary science and much reliance cannot be placed on it. It can be relied upon along with other evidence pointing to identity. Bearing this principle in mind when we proceed to scan the material on record we find that in regard to chance foot print photographed from crime scene on October 5, 2001, the accused in his explanation under Section 313 Cr.P.C. stated thus:-

'Mrutak Prithvi Singh ne mughe god le rakha tha. Unke marne ki suchna milte hi main ghatna sthal par gaya tha sambhavtehe ho sakta hai us samai mera per khun par pad gaya ho.'

Since deceased Prithvi Singh look me in adoption, on receiving the information of his death I had gone to the place of occurrence. Possibly at that time, I would have put my foot on blood.)

10. Statement made by accused under Section 313 Cr.P.C. can lend credence to evidence led by prosecution. In Mohan Singh v. Prem Singh, 2003 Cr.L.J. 11, the Hon'ble Supreme Court held as under:-

'The statement made in defence by accused under Section 313 Cr.P.C. can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 Cr.P.C. can not be made the sole basis of his conviction.'

11. On a close look at the entire evidence of the case we find that the accused did not go to the place of occurrence on hearing the information about death of Prithvi Singh. There is nothing on record to establish this fact. Even no such suggestion was made to prosecution witnesses at the time of cross examination. The accused was arrested on October 9, 2001 i.e. after four days of the incident and no

evidence was adduced by him that during that period he had ever gone to the house of Prithvi Singh. Explanation put forth by the accused appears to be false and it provides additional link to the chain of circumstantial evidence. In these circumstances even though the specimen of foot prints of the accused were not taken before the Magistrate we find the evidence of Bhanwar Singh I.O. (PW.18) who was competent to take foot prints of the accused under Section 4 of the Identification of Prisoners Act, satisfactory.

#### RECOVERY OF KNIFE STAINED WITH HUMAN BLOOD:

12. The information supplied by the accused about the knife under Section 27, Evidence Act was recorded in memo Ex.P-23 on October 15, 2001. Pursuant to the said information the accused pointed the place where knife stained with blood was concealed and got it recovered. Recovery memo Ex.P-7 was drawn which bore the signatures of Motbirs Madan Singh (PW.1) and Bane Singh (PW.22). The accused also put his signatures on the said memos. Knife was sent to Forensic Science Laboratory which sent its report (Ex.P-32). According to FSL report (Ex.P-32) knife was found stained with human blood. We have closely scrutinised the statements of Bhanwar Singh, I.O. (PW.18), Madan Singh (PW, 1) and Bane Singh (PW.22) although they were subjected to cross examination but their testimony could not be shattered. The prosecution is able to establish that knife stained with human blood was recovered at the instance of the accused. Ratio indicated in *Deva v. State of Rajasthan*, AIR 1999 SC 214, on which reliance is placed by the learned counsel for the accused is not applicable to the facts of the instant case. In *Deva v. State of Rajasthan* the eye witnesses though stated that there was a struggle between the accused and the deceased did not state that the accused had a knife with him with which he assaulted the deceased. In that situation their Lordships of the Supreme Court held that recovery of knife at the instance of the accused was of no consequence. In the case on hand it is not in dispute that Prithvi Singh met with a homicidal death and was beheaded with a sharp edged weapon therefore recovery of knife stained with human blood at the instance of the accused assumes significance.

#### RECOVERY OF ADOPTION DEED:

13. It is also established by the prosecution that adoption deed executed by Prithvi Singh was recovered from the possession of the accused vide recovery memo (Ex.P-9) and the accused in his statement under Section 313 Cr.P.C. admitted that he was taken in adoption by Prithvi Singh.

14. In the ultimate analysis, we find a combination of facts creating network through them there is no escape for the accused, From the material collected it is established that the accused was taken in adoption by Prithvi Singh. For some time the accused resided with Prithvi Singh in his house but Prithvi Singh did not approve of the behaviour of the accused and his family ousted them from his house and demanded back the adoption deed. Relations of the accused with Prithvi Singh became strained. Thereafter Prithvi-Singh was found beheaded in his house. About the chance foot print found near the dead body of Prithvi Singh, the accused gave explanation that he had gone to the place of occurrence on receiving the information of death of Prithvi Singh, possibly at that time he would have put his foot on the blood. This explanation was found false. Finger Print Bureau gave report about the chance foot print and the left foot print of the accused that they were made by the same foot i.e. left foot of the accused. Adoption deed and knife stained with human blood got recovered at the instance of the accused. The evidence collected by the prosecution is qualitatively such that on every reasonable hypothesis the conclusion is that accused is guilty. We find that the chain of circumstantial evidence against the accused is complete and incapable of any explanation or any other hypothesis than of the guilt of the accused.

15. For these reasons, we dismiss, the appeal and maintain the conviction and sentence awarded to the accused under Section 302 and 459 IPC.