

Nathu Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-23-1985

Reported in : 1985WLN(UC)125

Judge : S.K. Mal Lodha and; S.S. Byas, JJ.

Appeal No. : D.B. Criminal Appeal No. 9 of 1980

Appellant : Nathu Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

S.S. Byas, J.

1. Accused Nathusingh was convicted Under Section 302, IPC for committing the murder of his wife Mst. Dariyab Kanwar and was sentenced to imprisonment for life with a fine of Rs 1000/-, in default of the payment of fine to further undergo six months rigorous imprisonment by the learned Sessions Judge, Jalore, vide his judgment dated Dec. 7, 1979. The accused has come-up in appeal to challenge his conviction.

2. Stated in succinct, the prosecution case is that Mst. Dariyab Kanwar and her son Gangasingh (PW 1), aged about 19 years, were sleeping in the open court-

yard of their house in village Thanwla P.S. Ahore district Jalore in the intervening night of June 27/28, 1979. At about 3.00 or 3.30 A.M., Gangasingh awoke on bearing some noise. He got up and saw blood oozing out from the head injury of his mother Mst. Dariyab Kanwar and his father (accused Nathusingh) standing by her with an axe in his hand. The accused struck one more blow on the head of Mst. Dariyab Kanwar. Ganga Singh raised cries, hearing which his brother Rawatsingh (PW 2), his cousin Bhawani Singh (PW

3) and his uncle Ramsingh (PW

4) arrived on the spot. They all caught hold of the accused & tied him with a cot to prevent his escape. Bhawanisingh (PW

3) went to Gudda & brought doctor Chandraprakash (PW5) on the spot at about 4.50 A.M. Mst. Dariyab Kanwar was still then alive, but passed away after sometime. PW 1 Gangasingh went to Police Station, Ahore and presented written report Ex. P 1 of the occurrence at about 8.00 A.M. on June 28, 1979. The police registered a case and took up the investigation. Station House Officer Shaukat Ali (PW

9) contacted the Deputy Superintendent of Police Amrit Soni (PW

6) The investigation was made by the Deputy Superintendent of Police. He arrived on the spot, inspected the site and prepared the inquest report of the victim's dead body. Her blood-stained clothes were seized and sealed. The accused was arrested on the same day, vide arrest memo Ex- P.

7. Dhoti (Ex.

2) and shirt (St. 3), which he was wearing at that time and which were found smeared with blood, were seized & sealed. In consequence of the disclosure statement made by the accused on the same day, axe (Ex 1), which he had wielded in inflicting the blows to the victim, was recovered. The autopsy of the victim's dead body was conducted at about 11.30 A M. on June 28, 1979 by PW 5 Dr Chandra Prakash. He noticed the following ante-mortem injuries on her dead body:

External

(1) Incised wound 15.0 cm x 5.0 cm x 5.0 x bone deep (antero-posterior). Scalp and for the starting 5.0 cm above the left eye-brow extending posteriorly straightly over scalp 5.0 cm above the left ear. Margins of wound sharply cut. Skull bone cut throughout the wound and small pieces of bones were found in the wound (of varying sizes). Membranes of brain out in the wound. Brain material coming out from the wound. Hair found in the wound. Weapon used sharp

(2) Incised wound 4 cm. x 0.5 cm. x skin deep (transversely) situated on left side of face and lateral to the lateral end of left eye-brow. Weapon used sharp.

(3) Incised wound 7 cm. x 0.3 c.m. x bony-deep situated on central part of scalp. Weapon used sharp.

(4) Incised wound 4.0 cm x 0.3 cm, x skin deep situated on left parietal region of scalp in between injury No. 1 and 3. Weapon used sharp.

Internal

Fracture of skull bones, including left frontal and parietal bones measuring 15.0 cm. x 5 c.m. antero-posteriorly. There were multiple pieces of bones of varying sizes impacted in brain tissue. There was effusion of blood and clots around the fractured site, fractured ends of bone deeply stained with blood and did not wash with water.

3. In the opinion of Dr. Chandra Prakash, the cause of death of Mst. Dariyab Kanwar was come due to fracture of skull and injuries to brain. The post-mortem Examination issued by him his Ex.P 6. The accused was lodged in judicial custody on June 29, 1979. On July 7, 1979, he made a confession (reduced into writing in Ex. P 13) before PW 11 Sari Heeralal Caanda-the then Additional Munsif & Judicial Magistrate, Jalore. The articles were sent for chemical examination and blood was detected on most of them, including the axe and clothes of the accused. On the completion of investigation, the police submitted the challan against the accused in the Court of Munsif & Judicial Magistrate, Jalore, who in his turn, committed the case for trial to the Court of Sessions. The learned Sessions Judge

framed a charge under Section 302, IPC against the accused, to which he pleaded not guilty and claimed to be tried. In support of its case the prosecution examined twelve witnesses and filed some documents. In defence, no evidence was adduced by the accused. In his statement recorded under Section 313, Cr. PC the accused claimed absolute innocence and alleged that he was falsely implicated due to his enmity with the prosecution witnesses. On the conclusion of trial, the learned Sessions Judge found the charge duly brought home to the accused. He was consequently convicted and sentenced, as mentioned at the very out-set. Aggrieved against his conviction, the accused has taken this appeal.

4. We have heard Shri M.C. Bhandari, learned counsel for the accused and Shri Niyazuddin Khan, learned Public Prosecutor for the State. We have also gone through the case file carefully.

5. Before proceeding further, it may be pointed out that Mr. Bhandari did not challenge the opinion of Dr. Chandra Prakash (PW 5) relating to the cause of death of Mst. Dariyab Kanwar. We have carefully gone through the testimony of Dr. Chandra Prakash and find no reasons to distrust his opinion relating to the victim's cause of death. The death of Mst. Dariyab Kanwar was, thus, not natural but homicidal

6. The accused was convicted on the following sets of evidence, namely (1) his judicial confession Ex P 13, (2) the testimony of PW 1 Gangasingh, PW 2 Rawatsingh, PW3 Bhawani Singh and PW 4 Ramsingh and (3) the recovery of axe Ex. 1 at his instance and his clothes being found smudged with blood.

7. In assailing the conviction of the appellant, Mr. Bhandari made a scathing criticism of the judgment of the court below and contended that that the conviction was erroneous and unsustainable in law. The contentions raised by him are:

(1) Confession Ex.P 13 was wrongly admitted, read and acted upon against the accused in convicting him. It was not a voluntary confession;

(2) In case the confession Ex. P 13 of the appellant is excluded, the evidence of the four eye witnesses, Gangasingh, Rawatsingh, Bhawani Singh and Ramsingh

was wholly insufficient to prove the charge that the accused had killed his wife Mst. Dariyab Kanwar, and

(3) the mere fact of blood being found on the axe and the clothes of the accused was not sufficient to connect him with the commission of the offence.

8. It would be proper to deal with these contentions at seriatim.

9. As regards the judicial confession Ex. P 13, the contention of Mr. Bhandari is that it was not properly recorded. Incriminating questions were put to the accused by the Magistrate. These questions amount as a short of his cross-examination. These questions being leading-questions should not have been put to the accused and the answers given by him should not be taken into consideration. The law forbids the Magistrate from putting incriminating and leading questions to the accused while recording his confession under Section 164, Cr. PC. The learned Magistrate Shri Heeralal Chanda (PW 11), in his cross-examination, had admitted that he had gone through the statements of the witnesses recorded by the police during investigation and on the basis of information gathered from their statements, he had put questions to the accused. It was argued that the whole procedure adopted by the learned Magistrate was, thus, improper and illegal. Reliance in support of the contention was placed on Mst. Bhukhia w/o Gajraj v. Emperor (1948) 49 Cr.LJ 461, In re Madegowda AIR 1957 Mys 50 and Lonimohan Das v. The Union Territory of Manipur (1974) Cr.LJ 1186. In reply, it was submitted by the learned Public Prosecutor that though leading and incriminating questions were put to the accused by the Magistrate while recording his confession under Ex. P. 13, these leading and incriminating questions are not sufficient to wipe off or erase out his whole confession Ex. P. 13. We have given our anxious consideration to the rival submissions.

10. The matter, being of vital importance, may be examined at some length. It would be appropriate to re-produce the confession in order to properly appreciate the rival contentions raised at the Bar. The confession Ex. P. 13 was recorded on July 7, 1979. It reads:

iz'u & dkSu lh rkjh[k dks rgeus viuh vkSjr dks ekjk

mRrj & ,s rkfj[k ;kn ugh gS A frfFk ;kn gS] pksFk dh jkr Fkh eghuk ;kn ugh gS A

iz'u & rsjh vkSjr dgka lksbZ Fkh

mRrj & esjh vkSjr ?kj ds vkaxu es lksbZ Fkh A ikl es esjk yM+dk xaxkflag lks;k gqvk Fkk A

iz'u & fQj rgeus D;k fd;k

mRrj & eSus esjh vkSjr dks jkf= es txk;k A esjk u'kk mrj x;k Fkk A eSus mlls chM+h ekaxh Fkh A mlus dgk fd vHkh jkr es dgka ls yk Alks eS ckgj vkdj lks x;k fQj fdokfMa;s dh ekjh A

iz'u & fdokafM+;k dgka Fkk]

mRrj & fdokafM+;k iksy es iM+k Fkk A

iz'u & fQj D;k gqvk

mRrj & vkSjr fdokM+ dh yxh lks og fpYykbZ yM+dk xaxkflag fpYyk;k rks esjk HkkbZ jkeflag ogka vk;k A mlus vkdj esjs dks idM+k] fdokfM;k esjs ls fy;k A

iz'u & fQj D;k gqvk

mRrj & esjh vkSjr nfj;kdaoj fdokfM+;s ds yxrs gh ej xbZ A

iz'u & fQj D;k gqvk

mRrj & lqcg ds oDrs iqfyl vkbZ vkSj mlus vkdj esj dks fxjrkj fd;k A rc ls tsy es gh gwa A

iz'u & fQj D;k gqvk

mRrj & irk ugh ckn es D;k gqvk A eq>s iqfyl us idM+ fy;k Fkk A

11. A bare reading of Ex- P 13 shows that the accused was questioned by this learned Magistrate as where and why he had killed his wife. Not only so, he also put a question to the accused as to from where he had picked up the axe which was wielded by him in inflicting the blows to the victim. Questions No. 1, 2 and 4

are leading, incriminating and of the nature of cross-examination

12. A Magistrate recording the confession Under Section 164, Cr. PC is not justified in extracting by putting questions by way of cross-examination, facts which the accused had not spoken to before him or which tend to incriminate him. It is quite injudicious on the part of the Magistrate to put leading questions to accused and elicit necessary facts from him while recording the confession Under Section 164, Cr. PC.

13. In Mst. Bhukhia's case (supra), the Magistrate, who recorded the confession, instead of allowing the accused to make a statement in his own words, put three leading questions to him. The questions indicated that the Magistrate was told what the accused was to state and he elicited the necessary facts by putting him three leading questions. The learned Judges of the Nagpur High Court held that the procedure adopted by the Magistrate was highly objectionable and the confession so recorded must be rejected as not voluntary. In Re Madagowda's case (supra), the Magistrate's action in putting leading questions and thereby subjecting the accused to a kind of cross-examination at the hands of the Magistrate while recording a confession Under Section 164, Cr. PC was highly depreciated. The Magistrate knew before-hand what the accused had stated before the police during investigation. He put questions in that light to the accused. The learned Judges of the Mysore High Court observed that it was a serious irregularity on the part of the Magistrate that the accused was subjected to a kind of cross-examination by him. We feel lured to quote the following passage from the judgment:

The observations of the learned Judges of this Court in the case cited above, (17 Mys. LJ 238(D)) to the effect that much of the force of the confession statement is taken away if what is stated in the confession was already known to the police before the confession was recorded, applies to this confession with all force. The manner in which the questions were put by the learned Magistrate PW 22 to the accused during the course of recording Ext. P-30 and the answers elicited, indicate that the accused was subjected to a kind of cross-examination at the hands of the learned Magistrate. It is really surprising that a Magistrate of the

standing of PW 22 should have committed these serious irregularities in recording such a simple confession as Ext P.30.

14. In the instant case, the Judicial Magistrate Sari Chanda (PW11) admitted in his cross-examination that he had gathered from the police papers as to what was the case against the accused, It is, thus, clear that Shri Chanda put the questions No. 1 to 4 to the accused in the light of the material made available to him by the police-papers. In the case of Loni Mohan Das (supra), the Magistrate, who recorded the confession Under Section 164, Cr.PC asked the accused whether he had killed Digdeshchandra Das with an axe. The answer of the accused was 'yes'. The learned Judges of the Guhati High Court held that the confessional statement was not voluntary and was inadmissible in evidence because the accused did not make any statement voluntarily but answers were elicited by the Magistrate by putting questions to the accused. The procedure adopted by the Magistrate was not appreciated.

15. A perusal of confession Ex. P 13 shows that the very first question which the Magistrate put to the accused was 'on which date he had killed his wife'? It shows that the Magistrate had already taken it for granted that the accused had killed his wife. The second question is where was his wife sleeping at that time? The next question is from where had he picked up the axe? All these questions are incriminating and show that they were put to elicit confession from the accused. These questions were leading and amounted, to cross-examination of the accused. It has been admitted by the Judicial Magistrate PW 11 Shri Chanda that he had gone through the police papers before recording the confession of the accused. Taking the nature of questions put to the accused and the perusal of the material available against the accused by the Magistrate, we are of the considered opinion that confession Ex. P13 was not voluntary. The procedure adopted by the Magistrate cannot be appreciated.

16. A confession, if comes out of the free and willing mind of the accused, is entitled to highest credit. An accused can be safely convicted on the sole strength of his confession provided it is voluntary and is not otherwise polluted. The reason is that a voluntary confession is presumed to flow from the highest sense of guilt.

The confession, in order to seek the conviction, must be the out come of the free mind and a free will of the accused. In the instant case, as discussed earlier, confession Ex. P 13 was recorded in a highly objectionable manner. It is, therefore, inadmissible and should not be read and acted-upon against the accused. It should be excluded from consideration altogether in assessing the guilt of the accused.

17. However, the matter does not end here. The pertinent question is whether the conviction of the appellant can be maintained on the other evidence produced by the prosecution. It was contended by Mr. Bhandari that the evidence of PW 1 Gangasingh, PW 2 Rawatsingh, PW 3 Bhawani Singh and PW 4 Ramsingh, taken together with the recovery of axe Ex. 1 and the blood-stained Dhoti Ex, 2 and shirt Ex 3 of the accused, are wholly insufficient to maintain the conviction. It was, on the other hand, contended by the learned Public Prosecutor that all these four witnesses are close relatives of the accused. The first two are the sons, the third is his nephew and the fourth is his brother. He was seen standing near the victim with an axe in his hand Blood was coming out of the head injury of the victim and the accused was standing nearby with an axe in his hand. His clothes (Dhoti Ex 2 and Shirt Ex 3) were found proved with blood. These circumstances, taken together, lead to the irresistible conclusion that the accused and the accused alone is the perpetrator of the murder of his wife. He find considerable force in the submissions of the Public Prosecutor.

18. PW1 Gangasingh is the son of the appellant. The victim was his mother. He deposed that in the fateful night he was slepping in the open court-yard of the house. The victim was also sleeping nearby. At about 3.00 or 3.30 A.M., his sleep was disturbed by some noise and he got-up. When he got-up, he saw blood coming out from the wound of the head of his mother and the accused was standing nearby her cot with an axe in his hand. He raised cries. Rawatsingh, Ramsingh and Bhawani Singh came there. They caught hold of the accused and tied him with a cot to prevent his escape. It is he who filed the First Information Report Ex. P. 1 at the Police Station. He has admitted that he is the author of Ex P 1. In Ex. P 1, he, of course, stated that he had seen the accused striking blow with his axe to the victim. He, however, resiled from this portion. It appears that when

he lost his mother, his loyalty changed and shifted in favour of his father. However, his statement, despite his shift in loyalty, furnishes strong and formidable evidence against the appellant. He saw the victim with a bleeding wound on her head and the appellant's standing nearby with an axe in his hand. From these circumstances it can be safely gathered that it was the accused who had inflicted injuries to the victim. PW2 Rawatsingh, who is another son of appellant, stated that on hearing the cries of Gangasingh (PW 1), he rushed to the spot. He saw the accused standing in the courtyard. Gangasingh told him that their mother was killed by the appellant. The accused was, thereafter, caught hold of and tied with a cot. The same version was given by PW4 Ramsingh, who is the real brother of the appellant. When he reached the site of occurrence, he found the accused standing in the court-yard with an axe in his hand. The victim was lying in a pool of blood. Gangasingh (PW 1) told him that the appellant had struck blows with an axe to his mother. PW3 Bhawani Singh is the real nephew of the appellant. When he arrived on the spot, he found the accused in the open court-yard. The evidence of these four witnesses could not be impeached or shaken in cross-examination. It is difficult to conceive that these witnesses would falsely depose against the appellant, who is father of two of them, uncle of one of them and brother of the fourth.

19. The accused was arrested soon after the police arrived on the spot on June 28, 1979. The arrest memo is Ex. P. 7. He was wearing Dhoti Ex. 2 and shirt Ex. 3. They were found stained with blood. As they were found stained with blood, they were seized and sealed. Accused Axe Ex. 1 was discovered in consequences of the disclosure statement made by the accused. The accused had thrown away the axe after commission of the offence. It was also stained with blood. Taking these two sets of evidence together, namely, the evidence of the four with referred to above and the accused's clothes being found stained with blood and the recovery of axe at his instance, the irresistible and inescapable conclusion is that it was, the appellant and the appellant alone who had committed the murder of his wife Mst. Dariyab Kunwar. The conviction of the accused on these sets of evidence can be safely maintained.

20. Even after excluding the confession Ex. P. 13 from consideration, we find sufficient evidence, as discussed above, to maintain the conviction of the appellant. He was rightly convicted and sentenced. No interference is called for.

21. We accordingly dismiss the appeal. However, we may add that the period of detention undergone by him during investigation, enquiry and trial shall be set-off against the term of imprisonment imposed upon him.

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