

Jai Narain Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/768446

Court : Rajasthan

Decided On : Apr-24-2001

Reported in : 2001CriLJ4915; 2002(1)WLC318; 2003(2)WLN136

Judge : N.N. Mathur and; H.R. Panwar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : D.B. Criminal Appeal No. 22 of 1993

Appellant : Jai Narain

Respondent : State of Rajasthan

Advocate for Def. : I.S. Pareek, Public Prosecutor

Advocate for Pet/Ap. : Sandeep Mehta, Adv.

Disposition : Appeal dismissed

Judgement :

Mathur, J.

1. This appeal is directed against the judgment dated 17.12.1992 passed by the learned Sessions Judge, Merta convicting the appellant of the offence under Section 302 JPC and sentenced to imprisonment for life and to pay a fine of Rs. 500/- and in default of payment of fine, to further undergo three months' simple

imprisonment.

2. Briefly stated the appellant Jai Narain was put to trial on the charge of murder of his wife Mst. Santosh in the intervening night of 28th and 29th April, 1992. The father of appellant PW-4 Dunga Ram vide Ex.P.8 gave information at Police Station, Chitava, in the early morning i.e. 7.35 A.M. of 29th April, 1992 with respect to the unnatural death of his daughter-in-law Mst. Santosh. The police proceeded with an enquiry under Section 174 of the Code of Criminal Procedure. According to the version set out in the said report, on receipt of the information from his son Girdhari, he went to the field, where Smt. Santosh was lying dead. On enquiry, it was disclosed by his son appellant Jai Narain that his wife Smt. Santosh complained of headache and, as such, he gave him a pill paracetamol. After sometime, she complained of pain in the neck. He pressed the neck and soon thereafter, there was no movement in the body. On enquiry by the police, he disclosed that his son was married about two twelve years back. Mst. Santosh did not produce any child. He also stated that on being questioned about the death of Mst. Santosh, it was disclosed by his son (accused appellant) that deceased Santosh could not swallow the pill paracetamol and complained pain in neck. He thought that it has struck in the neck and, therefore, he pressed her neck and she died after sometime. He also disclosed that families of his three sons reside in the field. On the same day at about 12.30 P.M., P.W. 6 Parma Ram the grand father of deceased Santosh submitted a written report Ex.P. 10. As per the version set out in the said report, his grand daughter Smt. Santosh was married to appellant Jai Narain. She was at the in-laws' house as the appellant had taken her thirteen days back. On 29th April, 1992, one Rameshwar informed him that as his grand daughter has fallen sick and, therefore, his presence was required in village Nagwada. Accordingly, he went to village Nagwada and found his grand daughter dead. He noticed swelling & four marks on the neck with blood. He suspected it a case of murder by strangulation at the hands of appellant Jai Narain. The police registered a case against the appellant for the offence under Section 302 f PC and proceeded with investigation. The police prepared the inquest report and sent the dead body for post mortem. After usual investigation, police laid a chargesheet against the appellant for offence under Section 302 IPC. The appellant denied the charges levelled against him and claimed trial. The prosecution in support of the

case examined as many as eleven witnesses. The appellant in his statement under Section 313 Cr.P.C. denied the correctness of the prosecution evidence appearing against him. The trial Court relying on the evidence of extra judicial confession of the accused appellant before PW-6 Parma Ram and PW-7 Uda Ram corroborated by other circumstances particularly his conduct, found the charge of murder proved and, accordingly, convicted and sentenced as noticed above.

3. It is contended by Mr. Sandeep Mehia, learned counsel for the appellant, that the trial court has committed error in convicting the appellant solely on the evidence of extra judicial confession alleged to have been made before PW-6 Parma Ram and PW-7 Uda Ram, who are highly interested and partisan witnesses. It is also submitted that as the confessional statement is alleged to have been made by the accused in the presence of the police, it is not admissible in evidence being hit by Section 25 of the Evidence Act. It is submitted that the evidence of extra judicial confession has been introduced later on as it does not find place in FIR. It is lastly contended that as the dead body of Smt. Santosh was in the house in which three families were residing, it can not be conclusively said that Smt. Santosh was murdered by the appellant. On the other hand, learned Public Prosecutor has supported the judgment of the trial court.

4. Before we deal with the contentions, it would be appropriate to indicate the prosecution evidence produced before the trial court. PW-1 Dr. Dinesh Sharma has stated that he was one of the members of the Board conducting the post mortem of the dead body of Smt. Santosh. The Board noticed the following injuries on her person:

- '1. Abrasion with bruise 1.5 cm x 0.5 cm near right angle on neck;
2. Abrasion 1cm x 0.2 cm right side of neck 2.5 cm below injury No. 1;
3. Abrasion multiple of 0.1 cm x 0.1 cm x 4cm above medial and of right clavicle;
4. Abrasion 0.2 cm x 0.2 cm at middle of neck;
5. Abrasion 1.5 cm x 0.2 cm just ahead to midline of neck on left side of neck;

6. Abrasion 3cm x 0.2 cm extending upwards & laterally on left side of neck just lateral to injury No.5;
7. Abrasion 1cm x 1cm, 1 cm above injury No. 6;
8. Bruise inner side of lower lip 3.5 cm x 0.5 cm on right side;
9. Abrasion 2cm x 0.2 cm oblique on middle of forehead extending upwards & laterally on right side upto 2cm below hair line;
10. Abrasion 1cm diameter left elbow posterio laterally;
11. Abrasion 1.5 cm x 1 cm left leg antero laterally 5cm below left knee joint;
12. Bruise 4cm x 1cm on left anterior side of iliac spine;
13. Abrasion 1.5cm x 1cm, two in number just lateral to injury No. 12;
14. Bruise 3cm x 2cm left leg anteriorly, 7cm below left knee joint;
15. Bruise 3cm x 2cm, right leg anteriorly 7cm below right knee joint;
16. Abrasion 2cm x 1 cm at 10th intercostal space 5cm midline on right side on back.'

He has proved the post mortem report Ex.P.1. He also stated that the Board found fracture of thyroid bone in the middle. In the opinion of the doctor, Mst. Santosh died of asphyxia due to throttling. He also stated that if the neck is pressed with force, it may cause injury resulting into death. He also stated that other injuries must have been sustained by the deceased on account of struggling at the time of throttling.

5. PW-2 Sampat is a photographer, who has taken the photographs of the deceased. PW-3 Gula Ram is a formal witness. PW-4 Dunga Ram is the father of appellant Jai Narain. He has stated that deceased Smt. Santosh was his daughter-in-law being wife of appellant Jai Narain. He also stated that he used to reside in the village, whereas his son and his wife used to stay in the field, He was informed by Girdhari that Mst. Santosh has died. On receiving this information, he went to

the field. The Sarpanch was already on the spot. He was advised to inform the police. He submitted a written report before the police vide Ex.P.8. He admitted his signatures 'A to B' on Ex.P.8. In the cross- examination, he admitted that he had not submitted any written report at the police station but had only lodged an oral report. Ex.P.8 was read over to him but he disowned the same.

6. PW-5 Kumbha Ram has stated that he was informed about the death of Smt. Santosh. He instructed Girdhari to report the matter to the police. He denied to have seen the dead body of Santosh. This witness has been declared hostile by the prosecution.

7. PW-6 Parma Ram is the grant father of deceased Smt. Santosh. He stated that about 12 or 13 days prior to the death of Santosh, appellant visited their house to collect Smt. Santosh. The appellant told him that presence of his wife Smt. Santosh was necessary in the house as his examinations are approaching fast. Thus, on the request of the appellant, they sent Santosh alongwith him. On 29th at about 4.45 A.M. brother-in-law of Santosh arrived and informed about the sudden serious illness of Smt. Santosh. He enquired if she was alive or dead. He answered in affirmative. Thereafter, he went to Uda Ram, whose daughter was also married in the same village. Thereafter he alongwith Uda Ram went to the house of appellant Jai Narain. There, they found the dead body of Smt. Santosh and noticed marks of nail scratches on both sides of neck. He reprimanded them for giving the false information. He told them that they informed only about the illness of Santosh, whereas she has been murdered. On this, Jai Narain disclosed that Smt. Santosh has been killed by him. On further enquiry, appellant stated that he sat over the chest of Smt. Santosh and pressed the neck with both the hands. The accused further gave out the reason for killing Smt. Santosh that she was not educated and he wanted to bring an education lady. The witness further stated that he lodged the report Ex.P.10. In the cross-examination, he admitted to have reached at village Nagwada at 11 A.M. He was also confronted with his earlier statement Ex.D.1 in which the name of the person, who gave him the information, has been mentioned as 'Girdhari'. He stated that he had given the name of Rameshwar. He pleaded ignorance as to how the name of Girdhari was mentioned therein. He also admitted that deceased Smt. Santosh after marriage

and before death never made any complaint against the accused appellant.

8. PW-7 Uda Ram has s'tated that PW-6 Parma Ram visited his house and asked to accompany him to village Nagwada to attend his grand daughter Smt. Santosh, who was reported to be sick. He went to village Nagwada alongwilh PW-6 Parma Ram. He found that Smt. Santosh was dead. She was killed by strangulation. There were scratches by nails on her neck. On enquiry from appellant Jai Narain, he confessed stating that he killed Mst. Santosh as she was not educated. He further stated that incident was reported by PW-6 Parma Ram at the Police Station. Nothing substantial has been elicited in the cross-examination to discredit the testimony of this witness.

9. PW-8 Bhanwar Singh has stated that he was Head Constable at Police Station, Chatava on 29.4.92. He has stated that PW-4 Dunga Ram submitted a written report atthe Police Station in the early morning of 29th April, 1992. In the cross-examination, he has admitted that the police reached on the spot at about 9 A.M. He also stated that when necessary enquiry was being done by the police on the spot, PW-6 Parma Ram and PW-7 Uda Ram also arrived. He further admitted that they had reached on the spot on the basis of report submitted by Dunga Ram. The information by Parma Ram was submitted later on.

10. PW-9-Bhagwan Singh has stated that he was Incharge of the Police Station, Chitava. He has stated that on receiving the information Ex.P.10, he reached at the place of incidentl. He has given the details of investigation.

11. PW-10 Chunni is the-brother of deceased Smt. Santosh. He has stated that whenever deceased Smt. Santosh used to visit, she used to say that her husband often expressed that he will contract second marriage as she was not educated. PW-11 Ganesh Ram is the father of deceased Smt. Santosh. He has given his statement almost in the line of PW-10 Chunni.

12. There is no ocular evidence of eye witnesses in this case. The prosecution case primarily rests on extra judicial confession of the appellant before PW-6 Parma Ram and PW-7 Uda Ram, coupled with the conduct of appellant. The prosecution has also relied upon the existence of a motive, which infuriated the

appellant to commit the crime.

13. The Apex Court in a recent decision *Gura Singh v. The State of Rajasthan* (1), after referring to its earlier decisions, has pointed out the position of law of extra judicial confession as follows:

'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.'

Thus, the extra judicial confession which is not obtained by coercion, promise of favour or false hope and is plenary in character and voluntary in nature, can be made the basis for conviction even without corroboration.

14. In the instant case, the principal criticism made against the extra judicial confession is that it is not admissible in evidence being hit by Section 25 of the Evidence Act as the same has been made in the presence of the police.

15. Mr. Sandeep Mehta, learned counsel for the appellant, has invited our attention to the statement of PW-8 Bhanwar Singh, Head Constable, Police Station, Chitava. He has stated that on receiving the information about the unnatural death of Smt. Santosh, he left the Police Station and on the way, the S.H.O. met him at Ghatva Road. He admitted that when the police was busy in conducting the preliminary enquiry on the spot, PW-6 Parma Ram and PW-7 Uda Ram also arrived. Learned counsel has also, invited our attention to the statement of PW-9 Bhagwan Singh, the Investigating Officer. He has admitted in the cross-examination that while they were preparing the site plan, Parma Ram, grand father of deceased Santosh alongwith Uda Ram arrived. He also admitted that Parma Ram and Uda Ram went to the Police Station in the jeep of Deputy Superintendent of Police. It is submitted by the learned counsel that according to PW-6 Parma Ram and PW-7 Uda Ram, when they reached on the spot, the alleged confession was made by the appellant on the spot. It is further submitted

that both the witnesses reached on the spot at the time when the police was holding preliminary enquiries in the matter of death of Smt. Santosh. Thus, confession by the appellant must have been made in the presence of the police.

16. We find no substance in the contention for the simple reason that PW-7 Uda Ram has categorically stated in the cross- examination that appellant made extrajudicial confession inside the house only in the presence of four persons namely appellant Jai Narain himself, his brother Rameshwar, Parma Ram and Uda Ram. He has also given the exact time of making the extra judicial confession i.e. 10 A.M. The relevant part of the statement of PW- 7 Uda Ram is extracted as follows:

^t;ukjk;.k us ;g ckr vius edkuds vUnj dgh FkhA t;ukjk;.k dk HkbbZ jkes'oj Hkh ogka ij Fkk vkSj ogka vkSjrsFkhA t;ukjk;.k us tc mDr ckr dgha rc t;ukjk;.k] jkes'oj] esa vkSj ijekjke pkj ghiq#'k Fks] ckdh vkSjrs FkhaA ;g ckr t;ukjk;.k us gekjs dks dgha rc djhc 10cts lqcg dk le; Fkka**

In view of the clear statement of PW-7 Uda Ram, it cannot be said that the appellant Jai Narain made confession in the presence of police.

17. PW-6 Parma Ram is the grand father of deceased Santosh. There is no reason for him to falsely implicate Jai Narain. The extra judicial confession has been made just after the incident. There is nothing to suggest that extra judicial confession was obtained by coercion or promise. PW-7 Uda Ram has also stated that appellant disclosed to him that he killed Smt. Santosh as she was not educated. This finds corroboration from the evidence of motive.

18. PW-10 Chunni and PW-11 Ganesh Ram are brother and father of deceased Santosh respectively. They have stated that whenever Smt. Santosh visited their house, she used to complain that her husband appellant Jai Narain used to say that he would kill her as she was not educated. The extra judicial confession finds corroboration from the medical evidence as well.

19. It is significant to notice that in the instant case, information has been given by none else than the father of appellant PW-4 Dunga Ram. He has admitted his

signatures on the report Ex.P.8, though in the cross-examination he denied to have submitted a written report at the police station. It appears that in the cross-examination, he has tried to favour his son appellant Jai Narain. Be that as it may, he has admitted his signatures 'A to 8' on Ex.P.8. PW-8 Bhanwar Singh, Head Constable, Police Station, Chitava has stated that PW-4 Dunga Ram submitted a written report Ex.P.8 at 7.35 in the morning on the basis of which they proceeded with the enquiry under Section 174 of the Code of Criminal Procedure. The important incriminating circumstance against the appellant is that by lodging the FIR Ex.P.8, an attempt was made to mislead the investigation regarding the unnatural death of Smt. Santosh.

20. So far as the contention of the appellant that there is an omission in the FIR regarding the extra judicial confession, is concerned, in our view the same is not sustainable. Learned counsel in support of the contention has placed reliance on a decision of the apex court in R.K. v. State of Madhya Pradesh (2). It is held therein that omission of an important fact in the FIR affects the probabilities of the case. The Apex Court has not laid down that a material omission will be sufficient to discard the entire evidence but has only laid down that it will affect the probative value of the relevant prosecution evidence.

21. In the instant case, PW-6 Parma Ram in Ex.P.10 has clearly stated that his grand daughter Smt. Santosh has been killed by accused Jai Narain by strangulation. It is significant to notice that on receiving the information of the illness of grand daughter of PW-6 Parma Ram, he reached on the spot at about 10 and the FIR has been lodged at the Police Station at about 12.30 P.M. The witness was stunned to see the dead body his grand daughter. In such circumstances, it may not be possible to give complete details of extra judicial confession but suffice it to say that he has clearly stated that Smt. Santosh was killed by Jai Narain by strangulation. Thus, in our view, there is no material omission on the FIR.

22. It is next contended by the learned counsel that house in which Smt. Santosh was found dead, the other members of the family also used to reside and, as such, it cannot be said that murder was committed by the appellant Jai Narain alone.

Learned counsel has placed reliance on a decision of the Apex Court in G.R. v. State of Rajasthan (3. We have gone through the said judgment. This case does not advance the case of the appellant. In the said not advance the case of the appellant. In the said case, there was specific evidence that beating and maltreatment to the deceased was not meted out by her husband alone but also by her parents-in-law. Thus, there was the evidence of motive against husband and his parents to get rid of the deceased. In such circumstances, the Court held that the possibility cannot be ruled out that deceased was strangled by other members of the family. In the instant case, there is specific evidence of PW-10 Chuni and PW-11 Ganesh Ram, brother and father of deceased Santosh respectively that it was the appellant Jai Narain, who wanted to get ride of his wife Smt. Santosh as she was uneducated. Thus, this contention is also rejected.

23. In view of the aforesaid, we are satisfied that appellant had made a voluntary extra judicial confession before PW-6 Parma Ram and PW-7 Uda Ram without undue influence, pressure, promise or inducement. Such a statement was made by the appellant Jai Narain instantaneously immediately after the occurrence to the witnesses, who are independent and reliable.

24. Consequently, we find no merit in this appeal and the same is dismissed. The appellant Jai Narain is in jail. He will undergo the remaining part of the sentence.