

Sharvan Singh Vs. State of Rajasthan

Sharvan Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/770010

Court : Rajasthan

Decided On : Jan-14-2000

Reported in : 2001WLC(Raj)UC190; 2000(2)WLN430

Judge : N.N. Mathur and; S.C. Mital, JJ.

Appeal No. : D.B. Crl. Appeal No. 246 of 1980

Appellant : Sharvan Singh

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Kamlesh Sharma

Disposition : Appeal dismissed

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 16.5.1980 passed by the Addl. Sessions Judge, Bhilwara convicting the appellant Sharvan Singh of offence u/s 302 I.P.C. and sentenced to imprisonment for life and to pay a fine of Rs. 200/- in default of payment to further undergo two months rigorous imprisonment. He has also been convicted for the offence u/s 201 I.P.C.

2. The prosecution case as set out during the trial is that the accused Sharwan Singh (herein after referred to as the appellant) lodged a first information report at P.S. Mandal on 01.12.1979 at 9.00 A.M. stating inter alia that he was a second driver on truck No. PUI 8992 alongwith first driver deceased Avtar Singh. At about 3:15 A.M. on a call of a girl the first driver of the truck Avtar Singh got down from the truck and proceeded towards her. He did not return for about 20 minutes inspite of horn given by him. Suspecting some foul, he awaked Mukhtiar Singh, Khalasi of the truck. In the morning he alongwith Mukhtiar Singh went in search of him. They found the dead body of Avtar Singh near a bamboo tree in the field. He was killed by strangulation. On this information, police registered a case for offence u/s 302 I.P.C. and proceeded with the investigation. During investigation on 2.12.1979 PW/1 Mukhtiar Singh gave a statement before the police that Avtar Singh was killed by none else but the second driver Sharwan Singh. On the basis of statement of Mukhtiar Singh, the accused Sharwan Singh was arrested on 6.12.1979. After usual investigation, police laid a charge sheet against the accused appellant for offences under Sections 302 and 201 I.P.C.

3. The accused appellant denied the charge and claimed trial. During the trial, prosecution examined as many as 9 witnesses. In the statement u/s 313 of Code of Criminal Procedure, the appellant repeated the story as given by him in F.I.R. In addition he stated that after the postmortem of the dead body of Avtar Singh, police wanted to bury the body but he collected a sum of Rs. 2000/- from other drivers and made arrangement to send the dead body to Punjab. He also informed the owner of the truck. He was not allowed to go to Punjab by the police. He further stated that the police had given severe beating to him and the Khalasi. The trial court relying on the testimony of PW/1 Mukhtiar Singh and other circumstantial evidence held him guilty of murder of Avtar Singh. Accordingly, the learned Judge convicted him for the offence u/s 302 I.P.C. and sentenced as mentioned above.

4. Assailing the judgment of conviction, it is argued by Mr. Kamlesh Sharma, learned Counsel for the appellant that the statement of PW/1 Mukhtiar Singh is not trustworthy. It is submitted that the omission on the part of Mukhtiar Singh, not to disclose the name of the accused at the earliest is fatal to the prosecution. He has

also submitted that the statement of Mukhtiar Singh was not recorded on 02.12.1979 as alleged by the prosecution but in fact it was recorded on 6.12.1979. Learned counsel has also pointed out serious infirmities in the statement of PW/1 Mukhtiar Singh. Mr. Sharma has also criticised the recovery of the currency note of Rs. 450/- and bank passbook on the ground that before the recovery, the truck was already given in possession to PW/7 Gulshan, the owner of the truck. On the other hand, learned Public Prosecutor has supported the judgment of the trial court.

5. We have considered the rival contentions and scanned the prosecution evidence carefully.

6. PW/2 Dr. C.L. Sharda has stated that on 1.12.1979, he conducted the postmortem of the dead body of Avtar Singh and noted the following injuries. He has proved the post mortem report Ex. P3.

1. Abrasion 4cm x 2cm on the post side of Rt. fore-arm at the level of upper 1/3 which was antemortem in nature.

2. Well defined legature marks (in two rows of 1.5 cm with and just near to each other) of cord. Brownish in colour with reddish margins on neck going transversely behind, encircling to neck completely just over and above to thyroid.

In his opinion, the cause of death was asphyxia due to strangulation. Thus it is proved that Avtar Singh died of homicidal death.

7. PW/1 Mukhtiar Singh has stated that he was a 'Khalasi' on the truck No. PUI-8992. Deceased Avtar Singh was the first driver and accused Sharvan Singh was the second driver on the said truck. After loading the goods from Bombay, they were proceeding towards Delhi. They reached at Gangrar at about 9.00 or 9.30 P.M. It took three days to drive from Bombay to Gangrar: The truck was being driven by Avtar Singh. They took their dinner and consumed liquor at Gangrar. Avtar Singh told him that they will proceed further in the morning. He also asked him to sleep on the top of the cabin. He climbed on the terrace of the cabin and went to sleep. Both the drivers namely Avtar Singh and Sharvan Singh went to

sleep in the truck. Sharvan Singh slept on the driver seat whereas Avtar Singh slept on the seat behind the driver's seat. In the night, hearing the voice of Sharvan Singh, he got up. He found that the truck was parked near a river. He got down and after making some inquiry from Sharvan Singh, he entered in the truck. He found a rope around the neck of Avtar Singh., Sharvan Singh threatened him that if he disclose this fact to anybody, he would be killed. He tried to got down, but he was stopped by Sharvan Singh. Sharvan Singh dragged the body of Avtar Singh and put it on his back. He asked him to give support to his legs. He also threatened if he does not give support to the legs of Avtar Singh, he would be killed. They took the dead body at some distance from the road and laid on the surface. Thereafter the accused took out some papers from the pocket of Avtar Singh. The watch from the dead body was also taken away by Sharvan Singh. He also stated that the dead body was laid at a distance of about 20 steps from the place where the truck was parked. He also stated that few shrubs were also near the said place. Thereafter they moved from there. The truck was being driven by accused Sharvan Singh. They went to the hotel of Gyani on 'Mandal Circle'. They reached at the hotel at about 4.30 A.M. Accused Sharwan Singh told to Gyani that Avtar Singh, the driver of the truck had gone behind a girl but he has yet not returned. Gyani advised him to make a search. Therefore, they boarded the truck and went to the octroi outpost, Bhilwara. They again returned to the hotel of Gyani. Accused Sharwan Singh told Gyani that they have been able to locate the dead body of Avtar Singh. Sharwan Singh advised him to report the matter to the police. Thereafter they went to the police station. On the basis of the information given by Sharwan Singh, police recorded the First Information Report. He also stated that Avtar Singh did not permit Sharwan Singh to drive the truck as in his view, his driving was not good. The witness also stated that he was threatened by Sharwan Singh that if he disclose the fact with respect to the death of Avtar Singh, he will be killed. After lodging the First Information Report, they returned to 'Mandal Circle'. In the cross-examination, he admitted that on the next day of lodging the First Information Report, the owner of the truck had arrived from Ludhina. He also admitted that the owner was called by the accused. He also stated that the accused had awaken him in night at about 3.30 A.M. He further stated that a person sleeping on the terrace of the cabin cannot hear the scream of a person

from the cabin, particularly when he is sleeping. He also admitted that when they had gone to the hotel of Gyani, the accused went for answering the call of the nature. He also stated that he did not disclose the fact of the murder of Avtar Singh to Gyani at that time as he was still under the threat of accused Sharwan Singh.

8. PW/3 Kesu is a witness of Memo of the site plan. PW/4 Saren Singh stated that in the morning at about 5.00 A.M. the driver and cleaner approached to him. Both of them were talking something. He inquired from them as to what was the problem. The driver disclosed that on a called by a girl, driver of the truck has gone to her but he has yet not returned. He advised them to make a search. Thereafter they proceeded towards Bhilwara. After one and half hour, they returned and reported that the driver has died. He advised them to make a report to the police.

9. PW/5 Raghunath is the motbir of recovery of the currency note and pass book vide Ex. P. 5. PW/6 Ram is also a Motbir. PW/7 Gulshan is the owner of the truck. He stated that deceased Avtar Singh was his employee for the last 12 to 14 years. Accused Sharwan Singh was sent for first time on the Bombay route with Avtar Singh. He also stated that the money for the necessary expenses remains with the first driver. He had paid Rs. 2,500/- for meeting the necessary expenses. In the cross-examination, he stated that the dead body reached at Ludhiana on 2.12.1979 at about 7.00 or 8.00 P.M. He reached to Mandal on 6.12.1979. He also stated that when he reached Mandal, Sharwan Singh was in lock-up. He further stated that Avtar Singh was a person of good character. He never heard any complaint against Avtar Singh.

10. PW/8 Hari Singh is the investigating officer. He also stated that accused Sharwan Singh was arrested on 6.12.1979 vide Ex. P. 13. He has given all the details of the investigation. PW/9 Arjun Das stated that on the Bhilwara Chittorgarh route, there is a hotel of Sardar Pyara Singh. He was servant on the said hotel. He knew Avtar Singh as he used to make a halt for taking the food or tea. He also stated that Avtar Singh with two other persons took dinner at about 10.00 or 10.30 P.M. They consumed liquor and took food. Avtar Singh was in drunken condition.

He also stated that second driver had also consumed liquor, and he was in a serious mood. After taking food, they went away. On the second day, he heard that near Mandal some driver has been killed. He identified the photo of the deceased Avtar Singh Ex. P. 1. He also stated that no quarrel had taken place between Avtar Singh and cleaner.

11. The question arises for consideration is as to whether the conviction of the appellant can sustain on the sole testimony of FW/1 Mukhtiar Singh. The criticism against this witness is that he falls in the category of approver as he had helped Sharwan Singh in taking out the dead body of Avtar Singh from the cabin of the truck and leaving at some distance. In our view there is no substance in this contention as Mukhtiar Singh has stated that he only gave support to the legs under the threat of the accused Sharwan Singh. Thus, it cannot be said that the witness Mukhtair Singh willingly helped the accused Sharwan Singh. The another criticism is that Mukhtiar Singh did not disclose the name of the real assailants at the earliest. We find substance in the explanation given by Mukhtiar Singh when he stated that he could not immediately disclose the name of Sharwan Singh as he was threatened by him. He disclosed the name of the accused on the next day of the filing of the F.I.R. i.e. on 2.12.1979. In spite of lengthy cross-examination nothing has been elicited to discredit the testimony of FW/1 Mukhtiar Singh. The statement of Mukhtiar Singh is corroborated by the medical evidence. In view of this, we find the statement of Mukhtiar Singh trustworthy.

12. PW/8 Hari Singh has stated that the accused Sharwan Singh was arrested on 6.12.1979 vide Ex. P. 30. In pursuance of his information Ex. P 14 a pass-book and currency note of Rs. 450 were recovered from the pocket of the pant of the accused lying in the cabin of the truck vide Ex. P 5. It is submitted that as the truck was given in possession of PW/7 Gulshan the recovery vide Ex. P 5 is false. We find no substance in the contention. Even if the truck was given in the possession of the owner of the vehicle, the accused has not been able to explain as to how the pass-book of the deceased came in the pocket of his pant. Prosecution has succeeded in establishing the circumstance of recovery of pass-book of the deceased from the possession of the accused-appellant.

13. The accused has given a false information to the police to mislead them. There is no truth in the version given by the accused. If the deceased had gone on the call of a girl and if he was killed by some stranger, dead body would not have found only at a distance of 25 steps from the place where the truck was parked. It may be stated that the site plan shows dead body was lying at a distance of 26 steps from the place where the truck was parked. Probably, it was not possible to carry the heavy body of Avtar Singh for a longer distance. This clearly shows that the dead body was taken out from the cabin of the truck and carried. This also provides corroboration to the statement of PW/1 Mukhtiar Singh. Appellant has stated in the F.I.R. that he went in search of Avtar Singh, but he did not find. This statement is false and misleading, as admittedly the dead body was lying at a distance of about 25 steps. Therefore, there was no question of going in search.

14. Thus, on consideration of the evidence of PW/1 Mukhtiar Singh corroborated by the medical evidence and other circumstances of the case namely recovery of pass-book and un-natural conduct of the accused, we are of the opinion that prosecution has proved the case against the appellant, satisfactorily and beyond all reasonable doubt. The conviction of the appellant for offence u/ss. 302 and 201 I.P.C. and sentence awarded to him by the learned trial court is correct and call for no interference. The appellant's conviction and sentence as awarded by the trial court is confirmed.

15. In view of the aforesaid, we find no merit in this appeal. Accordingly the appeal filed by Sharwan Singh is dismissed. The conviction of the appellant u/ss. 302 and 201 I.P.C. is confirmed. The accused-appellant is on bail. The bail bond stands cancelled. He shall surrender to the custody to undergo the remaining part of the sentence.