

Jeet Ram Vs. State of Rajasthan

Jeet Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/770365

Court : Rajasthan

Decided On : Sep-11-1987

Reported in : 1987WLN(UC)499

Judge : Shyam Sunder Byas and; Milap Chandra, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 317 of 1982

Appellant : Jeet Ram

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shyam Sunder Byas, J.

1. The appeal is directed against the judgement of the learned Additional Sessions Judge (1), Hanumangarh dated Feb. 12, 1982 convicting the appellant Jeetaram under Section 302, IPC and sentencing him to imprisonment for life with a fine of Rs. 100/-, in default of the payment of fine to further undergo one month's rigorous imprisonment.

2. Briefly stated, the prosecution case is that PW 3 Devi Lal is the son of PW 2 Loona Ram Kumbhkar. The accused was their share-cropper while the deceased Brij Lal was engaged by them as a labourer to work in their fields situate in Rohi

Sahjipura P.S. Hanumangarh district Sri Ganga Nagar. On July 19, 1981, PW 3 Devi Lal, the accused Jeetram and the deceased Brij Lal worked in the said fields. At about 5.00 p.m., Devilal (PW 3) went to his house in village Sahjipura to bring food for the accused and the deceased leaving both of them working in the fields. At about 9.00 or 9.30 p.m., Devilal went back to the fields to provide food to the deceased and the accused, but found none of them there. He slept there in the field in that night. When he woke-up at about 5.00 or 5.30 a.m. on the next day, he started the water-pump of his tube-well to provide water to the standing crops in the fields. He there after went in the fields and found the dead body of Brij Lal at a place where the water channels cross each other. The dead body was lying in the water with big multiple wounds. A blood-stained Kassi was also found lying nearby. He went to inform his father Loona Ram whom he found at the bus stand. He narrated the incident to him. His father directed him to go back to the fields where the dead body was lying and to keep a watch there. Loona Ram went to the Police Station, Hanumangarh and verbally lodged report Ex.P 2 of the occurrence. He expressed his suspicion on the accused that it was he who killed Brij Lal. The police registered a case and proceeded with the investigation. The Station House Officer Bhagwan Das (PW 8) arrived on the spot, inspected the site, prepared the site plan, site inspection note and the inquest of the victim's dead body. He found some feet marks near the dead body. He lifted them by preparing their moulds with the plaster of Paris. He seized and sealed the blood-stained Kassi, which was found lying near the dead body. The post mortem examination of the victim's dead body was conducted at about 4.00 p.m. on July 20, 1981 by PW 1 Dr. Saharan. The doctor noticed the following ante-mortem injuries on the victim's dead body:

- (1) Incised wound 4-1/2' X 1-1/2' X 1-1/2' on the left side of neck mid length obliquely placed, injuring big vessels of neck;
- (2) Incised wound 1-1/2' X 1/2' X 1/2' on left side anteriorly lower part of chin;
- (3) Incised wound 2-3/4' X 1/2' X 1/2' extending from right side of upper lip to left side of lower lip;
- (4) Incised wound 3' X 1/2' X 1/2' on the right hand dorsally;

- (5) Incised wound 3-1/2 X 1/10' X skin deep on left side of neck extending to midline towards the head from injury No. 1;
- (6) Incised wound 3-1/2' X 1/2' X skin deep right side of neck upper part;
- (7) Incised wound 1/2' X 1/8' X skin deep centrally on chin;
- (8) Incised wound on left side of chest anteriorly upper part 1' X 1/8' X 1/8';
- (9) Abrasion 1/2' X 1/2' left side chest anteriorly upper part.

3. Injury No. 9 was found to have been caused with some blunt weapon while the rest by sharp-edged weapon. In the opinion of Dr. Saharan, the cause of death was shock as a result of injuries to big vessels and due to all the injuries. Injury No. 1 was alone and the remaining injuries collectively were found sufficient in the ordinary course of nature to cause death. The post-mortem examination report prepared by him is Ex.P 1. At about 10.00 p.m. on July 21, 1981, the accused went to the house of PW 4 Hari Ram. PW 6 Rewat Ram, where he found Rewat Ram and the accused confessed before them that he had killed Brij Lal with a Kassi and requested them to take him to police. They refused to take him to police but took him to Panchayat Member Balwant Singh (PW 6). Before they could contact Balwant Singh at his house, the accused slipped away. The accused was arrested on July 30, 1981. His finger prints were taken. He was produced before the Judicial Magistrate Mr. Puniya (PW 7) on August 4, 1981. On his consent, specimen of his foot prints by preparing the moulds were taken in the presence of the Magistrate. The chance footprints, specimen foot-prints, finger prints and the Kassi found on the spot were sent for scientific examination to the State Forensic Science Laboratory, Jaipur. The opinion of the finger-print expert was not received from there but the opinion regarding foot-prints was received vide report Ex.P 20. The opinion was that all the foot-prints, that is, found on the place of the incident and the specimen taken in the presence of the Magistrate, were of the same feet. On the completion of the investigation, the police presented a challan against the accused in the Court of the Judicial Magistrate, 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 faced the trial. In his statement under Section 313 Cr.PC, he admitted that he was one of the share-croppers in the fields of PW 2 Loona Ram. He denied to have made any extra-judicial confession before PW 4 Hariram and PW 6 Rewat Ram. On the conclusion of the trial, the learned Sessions Judge held the charge of murder duly proved against the accused. The accused 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 the learned amicus curiae and the learned Public Prosecutor. We have also gone through the case file.

5. The learned amicus curiae did not challenge the opinion of PW 1 Dr. Saharan relating to the cause of death of Brijlal. We have also gone through the statement of Dr. Saharan and find nothing therein to distrust his opinion. As many as eight incised wounds and one abrasion were found on the victim's dead body. The death of the victim had occurred on account of infliction of these injuries to him. The death of Brijlal was homicidal and not natural.

6. Admittedly, there is no ocular witness of the incident and the prosecution case rests entirely on the circumstantial evidence. For convenience, the circumstantial evidence adduced by the prosecution may be summarised as under:

(1) the accused and the deceased were working together in the fields when PW 3 Devilal left them. The deceased was, thus, in the company of the accused;

(2) the shoes of the accused were found at the site of the incident;

(3) the accused made extra-judicial confession before PW 4 Hari Ram and PW 6 Rewat Ram and;

(4) the foot marks found on the scene of the incident tallied with the specimen moulds of the feet of the accused.

7. The learned Sessions Judge was of the view that taken these four sets of circumstantial evidence together, they were sufficient to establish the charge, that the accused was the perpetrator of the murder of Brij Lal.

8. In assailing the conviction, it was vehemently contended by the learned amicus curiae that the various sets of circumstantial evidence do not stand proved. The prosecution was guilty of fabricating and creating false evidence. It would be proper to deal with the contentions of the learned amicus curiae at seriatim.

9. We shall first take the evidence relating to foot-prints. It was argued by the learned amicus curiae that the moulds of the foot prints prepared at the site and the moulds of the specimen foot-prints prepared in the presence of the Judicial Magistrate PW 7 Mr. Puniya were not produced as material exhibits during trial by the prosecution. It cannot be, therefore, said that the moulds received in the Forensic Science Laboratory were the moulds prepared on the spot and prepared in the presence of the Magistrate. It was argued that it was incumbent on the prosecution to have produced these moulds as material exhibits in the Court for their identification by the witnesses and the Magistrate. Reliance in support of the contention was placed on Rule 6.26 of the Rajasthan Police Rules, 1965 (here in after to be referred to as 'the Rules' and on the decision rendered in Harji Ram v. State of Rajasthan (1985 Cr. LR (Raj) 47) decided by a Division Bench of this Court, to which one of us (Justice S.S. Byas) was a party. The contention of the learned amicus curiae has considerable weight.

10. The procedure for lifting the foot-prints has been laid down in the Rules. Rule 6.26 lays down the procedure as under:

In making moulds for production as evidence the following precautions should be observed

(a) The footprints found on scene of the crime must be pointed out to the reliable witnesses at the time and these same witnesses must be present during the preparation of the moulds;

(b) The latter must also be signed or marked by the witnesses and the officer preparing them while still setting;

(c) After the procedure described in Sub-rule (2) above has been completed a mould should be prepared in the presence of the Magistrate or witnesses of one of

the foot prints of the suspect made in their presence. This mould should be signed by the Magistrate or witnesses when still setting;

(d) Both moulds should be carefully preserved for production in court for identification by witnesses and comparison by the Court.

11. Unfortunately, in the instant case, the moulds prepared either at the site or in the presence of the Magistrate have not been produced in the court during trial for identification by witness and comparison by the court. No explanation has been furnished by the prosecution for the non-production of the moulds. We are, therefore, unable to say whether the moulds sent to the Forensic Science Laboratory were those very moulds prepared on the site and prepared in the presence of the Magistrate.

12. Apart from that, the evidence relating to moulds of the footprints found on the site is not of much help to the prosecution. The accused and the deceased were working together in the fields of PW 2 Loona Ram the accused being his share-cropper and the deceased being his labourer. The dead body was found in the junction of the channels in the fields of PW 2 Loona Ram. The accused was working there. As such, there was nothing unusual that his foot-prints were found there in the fields. The presence of the foot-prints of the accused would have assumed some importance if the murder was committed at some other place where the presence of the accused was not, normally, expected. The presence of the foot-marks of the accused in the fields where he was working as share-cropper has no unusual phenomenon. The evidence relating to foot-prints is, therefore, of no material help to the prosecution, and does not furnish much incriminating evidence against the appellant.

13. As regards extra-judicial confession alleged to have been made by the accused before PW 4 Hariram and PW 6 Rewatram, it was argued by the learned amicus curiae that there was no occasion for the accused to approach these witnesses for help. PW 6 Rewatram is the real maternal-uncle of the deceased while PW 4 Hariram is the real uncle of PW 6 Rewatram. The accused cannot be taken to be a gothamite to approach the close relatives of the deceased and to ask for their help and to make a clean-breast confession of the guilt before them. The

contention is again not without force.

14. PW 4 Hariram and PW 6 Rewatram, no doubt, stated that the accused came to them while they were sitting at the house of PW 6 Rewatram at about 9.30 or 10.00 p.m. on July 21, 1981. The accused straight-way came to them and confessed before them that he had killed Brijlal. When an oral extra-judicial confession is pressed into service as a piece of evidence against the accused, the first and the fore-most question which arises for consideration is whether the confession was made at all by the accused. The question whether the accused made an oral extra-judicial confession or not, depends on the veracity, credibility and the truthfulness of the witnesses before whom it is alleged to have been made. Extra-judicial confessions are made by the accused before a person on whom he reposes confidence. The extra-judicial confession is generally not made before a person on whom the accused can put no reliance and confidence and who can be of no help to him. The extra-judicial confession is seldom made to a close relative of the deceased. The evidence relating to extra-judicial confession can be easily fabricated and manufactured. It is why the extra-judicial confession has been taken to be a weak type of evidence in the chain of circumstances.

15. In the instant case, the statement of PW 4 Hariram and PW 6 Rewatram were recorded under Section 161, Cr.PC on July 22, 1981 by the Investigating Officer. Their statements are Ex. D 3 and Ex. D 7. They stated that at about 10.00 or 10.30 p.m. on July 21, 1981, the accused came to them and confessed before them to have killed Brijlal. The Investigating Officer arrived on the spot on July 20, 1981, inspected the site and prepared the inquest report of the victim's dead body. PW 3 Devilal admitted that when the Investigating Officer arrived on the spot and inspected the site etc., PW 4 Hariram, PW 5 Balwant Singh and PW 6 Rewatram were present. PW 3 Devi Lal further stated that these three witnesses Hariram, Balwant Singh and Rewatram told the Investigating Officer in his presence that the accused had approached them and confessed the guilt before them. Admittedly, according to these three witnesses, the confession was made in the night of July 21, 1981. They were, therefore, not in a position to tell the Investigating Officer on July 20, 1981 that the accused had come to them and made an extra-judicial confession of the guilt before them. The testimony of PW 3 Devilal shows that the

evidence of the extra-judicial was fabricated and manufactured.

11. We have stated earlier that the extra-judicial confession is generally made before those persons in whom the accused can safely repose confidence. PW 4 Hariram and PW 6 Rewatram, being the close relatives of the deceased-victim, the accused could not repose confidence in them so as to make a clean-breast confession. The evidence of these two witnesses is wholly unreliable and undependable. They are guilty of introducing in evidence a false extra-judicial confession of the accused.

17. It is true that the accused was share-cropper with PW 2 Loona Ram. The deceased working in the fields of Loonaram as a labourer. The accused and the deceased were, thus, working together in the fields of PW 2 Loonaram on July 19, 1981. Due to their working together in the fields of Loonaram, they were in the company of each other. When PW 3 Devilal left the fields, the accused and the deceased were still working together in the fields. The deceased was, thus, in the company of the accused, but from this fact alone it cannot be safely inferred that it was the accused who was the perpetrator of the murder of the deceased. It is only a circumstance to be taken into consideration but it is not, in itself, conclusive to fasten the a accused with the murder of Brijlal.

18. The last circumstance which remains against the accused is that his shoes were found in the fields. It is true that a pair of shoes was found in the Dhani situate in the fields. There are two reasons for not accepting the seizure of shoes as a piece of incriminate evidence against the accused. In the first place, it has not been satisfactorily proved that the pair of shoes found in the Dhani was of the accused. No prior test identification was conducted. It is very easy to state during trial that the pair of shoes belongs to the accused and he used to wear it. The second reason is that the accused was working in the fields wherein the Dhani is situate. As such, it was not an unusual feature that his shoes were found in the Dhani. The pair of shoes, thus, does not furnish any incriminating circumstance against the accused.

19. When conviction is sought on circumstantial evidence, the sets of circumstantial evidence must be proved and if they should have the tendency to

conclusively point out that it was the accused who is, in all probability, the perpetrator of the crime. The various pieces of circumstantial evidence are to be read together and should not be taken into consideration in isolation with each other. The circumstances should be incompatible with the innocence of the accused. Here in the instant case, the most formidable evidence against the accused consists of two circumstances: (1) his extrajudicial confession; and (2) his foot-prints were found on the spot. Both these sets of circumstantial evidence do not stand proved. The moulds were not produced in the Court. The evidence relating to extra-judicial confession is totally false. It was fabricated and manufactured. The conviction cannot be maintained on such false and fabricated evidence. The accused was wrongly convicted and his conviction should be set aside.

20. In the result, we allow the appeal of accused Jeetram. His conviction and sentence under Section 302, IPC are set aside and he is acquitted. He is in jail and shall be forthwith set at liberty if not wanted in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com