

Rai Singh Vs. State

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Court : Rajasthan

Decided On : Jan-13-2009

Reported in : 2009(2)WLN404

Judge : N.P. Gupta and; C.M. Totla, JJ.

Appellant : Rai Singh

Respondent : State

Disposition : Appeal allowed

Judgement :

C.M. Totla, J.

1. Appellant accused is as per judgment of 13.03.2003 in Sessions Case No. 7/2002 before the Court of Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Hanumangarh-convicted and sentenced for (1) Section 302, IPC, life imprisonment and fine of Rs. 1,000/-, in default three months' simple imprisonment, (2) Section 302 read with Section 3(2)(5) of the SC/ST Act, with fine of Rs. 1,000/- in default three months' simple imprisonment. L.I. to run concurrently.

2. Assailed is the above conviction and sentence.

3. As per prosecution, sequence of investigation following incident is that on 27.11.2001, at 8 A.M., on telephone, one Dharmपाल informed Police Station, Nohar that Rai Singh of their village, has killed her Bhabhi Kamlesh, whose dead body is in their home and Raisingh is sitting - recording information in Roznamcha as entry No. 1329 SHO proceeded to spot at village Bhukarka, where accused Raisingh stated to him and he took down as Parcha-Bayan Ex.P 12 that they are four brothers-elderest is Sultan Singh, then Umrao Singh, then himself and youngest Karni Singh who is living with mother and house compound of all the brothers is common - on the death of wife, Umaro Singh brought other wife Kamlesh who, being of caste Chamar, was not liking of appellant because they are Rajput and so he several times, asked Umrao Singh to leave back her, but Umrao did not. Appellant further stated that on that morning, brother left for his work to Elnabad. Then, around 6.15 - 6.30 a.m. their sister Raju was going to her in-laws, and Kamlesh did 'Sir-Parosa' (some ritual ceremony for well being and good luck) to her - when his mother was in the room, he, the appellant, having opportunity, killed Kamlesh by blow of lathi, because he did not like coming of her in compound and doing 'Sir-Parosa' to sister which resulted in eroding their social prestige. Appellant also stated that when he with lath was going to police station for giving information and presenting himself, than there outside the house met him Dharmपाल and Bhopal Singh to whom he narrated the incident and they asked him to keep sitting there as they are informing the police, so he is sitting there with lathi. SHO Shri Tara Chand recorded his statement Ex.P-10 and making his endorsement to the effect that the offences of Section 302, IPC and Section 3(2)(5) SC/ST Act are made out forwarded the same to police station for registration of case and also informed Circle Officer. On receipt of this information, at police station, FIR 478/01 Ex.P-3 registered for the above offences. In course of investigation,

(1) SHO inspected site, prepared site plan Ex.P-1 and memo Ex.P-1A where near the kitchen, dead body of Kamlesh was lying in pool of blood and near was 'chappal' of deceased.

(2) The sample of Blood and plain soil taken and sealed, packets marked as B, C, - memos prepared are Exs. P-4 & P-5.

- (3) Dead body examined, memos are Exs. P-2 and P-3. Circle Officer Shri Ram Gopal
- (4) preparing memo Ex.P-7, arrested appellant at 10.15 a.m. and his
- (5) worn clothes-pant and shirt and also shoes having some blood stains seized and sealed, packet marked as D memo prepared is Ex.P-8.
- (6) As per information Ex.P-22, appellant presented a lathi which preparing memo Ex.P-9, seized and sealed - as per arrest memo Ex.P-7, lathi was with appellant accused.
- (7) After post-mortem by Medical Officer, blood stained clothes on the person of deceased 'Odhni', 'Lehanga' & 'Kabza' etc. seized and sealed vide Ex.P-10, packet marked E.
- (8) On handing over by Medical Officer, 'Borla', ear-ring, 'Omsona', and silver 'pai-jeb' and wrist watch found on her person seized and sealed - vide memo Ex.P-11.
- (9) A report Ex. P21 purporting to be bearing thumb impression of Sultan Singh and endorsement of Circle Officer dt. 27.11.2001 is also on record, according to which at 6.30 a.m., his younger brother Raisingh killed Kamlesh, the wife of Umrao. Post-mortem conducted and as per report of post-mortem, found were fracture of frontal and occipital bone and also of jaw and 9th-10th right ribs with head injury and death caused due to head injury leading to coma. As per dates, statements of Dharpal and Ramgopal Singh recorded on the same day and statement of Rajendra S/o. Deceased (son of Kamlesh with earlier husband) on 01.12.2001 also recorded are some other statements.
4. These articles sent to FSL with forwarding letter Ex.P-19 and receipt is Ex.P-18.
5. As per FSL report Ex.P-27, blood smeared soil, pant, shirt and shoes of accused, clothes of deceased had blood stains and on pant of accused and blouse of deceased was 'A' group blood.
6. Case registered in Magisterial Court on submission of charge-sheet, committed to Sessions and Sessions Case No. 7/02 registered.

7. Accused when charged for the offence of Section 302, IPC, and Section 3(2)(5) of the SC/ST Act-that on 27.11.07 at 6, 6.03 a.m. in the morning he in the house and with intention of causing death of Kamlesh because she was of Scheduled Caste, caused her death by blow of lathi - denied and claimed trial. Of the twelve prosecution witnesses examined, Rajendra PW 3, 10 years is son of deceased and eye-witness-Dharmmpal PW 1 and Bhanwarlal PW 8 are the persons said to have met soon after the incident to accused and prosecution has declared them hostile. Krishna Kumar PW 2, Bhopal Singh PW 9 and Veer Bal PW 10 are the motbirs of recoveries and site inspection etc. PW 11 SHO and PW 7 Circle Officer are investigating officers, whereas Jai Singh PW 4 constable on receipt of Parcha-Bayan Ex.P-11 registered FIR Ex.P-13. Constable Ramniwas PW 12 and Prathviraj PW 5 pertain to delivering of articles at FSL. Dr. Vinod Chaumwal PW 6 is Medical Officer who conducted postmortem and has proved report Ex.P-20.

8. Appellant, when examined under Section 313, Cr.P.C., stated that the witnesses are telling lie and he is falsely implicated. Appellant described that on death of wife, his brother Umrao Singh brought another wife and they were living happily-Kamlesh had three children who were living with her first husband Hanuman in village Japal and as Kamlesh was living with Umrao, so Hanuman being angry, used to tell and threaten that Kamlesh has badly insulted and hurt his reputation, so he will be killing Kamlesh-on the day of the incident, in the morning, accused was away at house of Mansingh, where Maniram came and informed that Hanuman, having beaten Kamlesh, has run away, so he, the appellant, soon reached home, where Kamlesh was lying in the compound in bleeding stage, to whom he offered water and tried to raise her. As per accused, Raju or any other was not there and he also carried Kamlesh to jeep. As per accused, he is illiterate and to police also, he narrated the same.

9. In defence Mani Ram DW 1 and Man Singh DW 2 have deposed as per above above version of appellant.

10. The learned Sessions Judge, also relying on the statement of PW 3, convicted and sentenced the appellant as above.

11. Learned Counsel for the appellant, raising several points, basically argued that (1) FIR being entirely confessional, cannot be read against appellant, for any purpose and though learned trial Judge accepted this but partially relied on it. (2) Nothing is recovered on the information and disclosure of appellant-accused - not even on basis of FIR, any recovery is made. (3) Witness Rajendra, child from erstwhile husband of Kamlesh, is falsely implanted subsequently with ulterior motive-no one even remotely suggests presence of Rajendra PW 3. (4) Blood stains found on clothes of accused are naturally bound to be as deceased was his bhabhi. (5) No other family member is amongst prosecution witnesses. Argued that version given by accused is not only probable but fully believable and there is no worth evidence against appellant. In support of contentions, learned Counsel placed reliance on Ota Ram v. The State of Rajasthan reported in 1980 Cr.L.R.(Raj.) 288.

12. Learned Public Prosecutor, supporting impugned judgment, argued that there is no reason to not to believe statement of Rajendra PW 3 and only accused was there.

13. Considered rival arguments and perused the record and judgment of learned Sessions Judge.

14. From the evidence, it stands proved that Smt. Kamlesh died in the morning of 27.11.01 due to injury inflicted on her person. As per report Ex.P-20 and evidence of Dr. Vinod Chaumwal PW 6, autopsy on Smt. Kamlesh conducted at 2 p.m. On 27.11.01 and with clotted blood found in her mouth and nostril following were external injuries:

(i) Lacerated wound 3-1/2 x 1/2 x 1/2 cm between chin and lower jaw.

(ii) Lacerated wound 12 x 5 cm Bone deep on forehead with fracture of frontal bone-Grievous Blunt.

(iii) Lacerated wound 6 x 1 cm x Bone deep occipital region of scalp with fracture of occipital bone-Grievous.

(iv) Bruise on right side of nose c fracture of nasal bone Grievous-Blunt.

15. All injuries were by blunt weapon, frontal and occipital bone found fractured and also fractures of lower jaw, nasal bone and 9th & 10th rib of right side-all injuries were ante mortem and death caused due to head injury within 12 hours, that is between 2 a.m. and 2 p.m. of 27.11.2001. As such, it stands proved that death of Kamlesh was caused by head injury leading to coma.

16. Considering evidence SHO PW 7 has deposed that at 8 a.m. one Dharmpal S/o. Ganpatram informed him on telephone that at village in house of Rajputs, murder is committed, so he along with police personnel, reached village Bhukarka-there statement of appellant Raisingh was taken and recorded which is Ex.P-12 and he, making his own endorsement, forwarded it to police station with constable Jaisingh, where formal FIR Ex.P-31 was registered. As per this FIR Ex.P-13, after the incident, when appellant himself was going to police station for informing and surrendering, then, just out of his house, met him Dharmpal and Bhopal Singh to whom he narrated the incident and they asked him to sit there while they informed police. Dharmpal PW 1 states that he was standing near his house out of his Nohra and several persons were standing there, out of them one said that some struggle has occurred at the house of Hanuman Singh, so he went to find out, then there villagers told him to phone the police, he telephoned the police and after some time, came police and he indicated to police house of Hanuman-villagers at house of Hanuman, were not allowed in. Signatures of this witness PW 1 are on Exs. P-1, 2, 3, 4 and 5 and he is declared hostile. When cross-examined, the witness has denied material portions of his statement under Section 161 Ex.P-6 which are: (1) Raisingh was coming out of his house and in whose hand, was a wire knit lathi. (2) Bhopal Singh was also with PW 1. (3) To him and Bhopal Singh, appellant narrated that he has killed Kamlesh as above because of above reasons-the witness denying stating so has also denied its truthfulness.

17. Similarly, Bhopal Singh PW 9 too, is declared hostile and when confronted of his investigational statement Ex.P-26, containing (a) in the morning, he and Dharmpal were standing out of house of Hanuman Singh; (b) Ram Singh came from in the house, having a lathi in his hand; (c) Ram Singh stated them that he has killed Kamlesh by blows of lathi and also narrated reasons as above - witness denying having stated so, has also termed this to be untrue and in his cross-

examination, stated that no one of the family of Umrao Singh, including his brother, was unhappy because of Kamlesh - thus both above witnesses do not, in any way, support prosecution.

18. As above in the recorded FIR Ex.P-12 and also in statements of Dharm Pal and Bhopal Singh or any other witnesses, even of recovery, do in any way disclose any fact indicating presence of Rajendra. Even SHO PW 11 who reached on the spot also does not stated any thing like that any one mentioning about Rajendra or any other person.

19. Rajendra PW 3 is 10 years and as per opinion of the learned trial Judge noted at the beginning of the statement that child understands and replies questions, but administration of oath was not deemed appropriate because of age. As per Rajendra PW 3, while sun was rising i.e., in morning he came to his mother at village Bhukarka and mother (Kamlesh) was standing in Bakhal (compound) of house, there Umrao Singh inflicted blow of lathi on the head of mother and as mother began to weep, than Umrao Singh inflicted two more blows on her head - blood oozed from the head and as accused also ran to beat him, he, in a tractor, came to Nohar and then back came to own village Jamal. Rajendra further stated that because of blows of lathi, inflicted by the accused, his mother was killed-in cross-examination, states that he did not tell above incident to anyone in gram Bhukarka and further stated that he witnessed the incident from 50-60 steps and then returned in a tractor to Nohar, which became available at stand, in which tractor also was a driver and another person than from Nohar by bus he went to his village and all throughout the way, he did not speak to anyone about it. As per PW 3 he disclosed incident to his father in village Zamal and his statements were recorded by the police 6-7 days after the incident. As per PW 3, his mother was wearing Salwar Jumper of red colour (seized clothes are lehanga, lugri, kabza & aagi). As per PW 3, place where the injury was inflicted, was not kitchen, but injury was inflicted in a room and he knows accused because mother was taken away by brother Umrao Singh of accused. PW 3 further disclosed that he has one younger brother and a younger sister both living at home and no one taking education.

20. As above discussed, neither PW 1 or PW 9 or anyone else states about presence of Rajendra PW 3, nor FIR Ex.P-1 has so. Rajendra PW 3 himself states that his statement was taken 6 - 7 days after the incident. Further Rajendra PW 3 when confronted with his statement Ex.D-1, could not disclose any reason as to why Ex.D-1 do not contain the fact of accused running after him for beating him-whereas, as per him, he had stated so that when accused ran after him to beat him, he on a tractor came to village Nohar. If accused ran after the incident behind this witness to beat him, then normally it is a fact which ought to have found mention in his statement under Section 161, Cr.P.C.

21. I.O. Dy. S.P. PW 7 deposes that he recorded statement of Rajendra on 1.12.2001 and no reason has been assigned of this delayed recording of his statement which bears significance, because there is no circumstance indicating his presence. Neither it can be said that presence of Rajendra PW 3 should have been there in normal course. Even for the sake of argument if he came to see his mother, then also, it is relevant that he did come in the early morning from a distant village-no one has stated to the effect that PW 3 was there from previous day or evening. Here, it is also significant that none of two brothers and mother who though as per FIR, are living there in the same compound, are among the prosecution witnesses so, in the opinion of the Court, presence of PW 3 cannot be believed-accepting his presence is accepting much coincidence which is not warranted or corroborated by any other circumstance or evidence.

22. Reading together Sections 25 and 27 of the Indian Evidence Act, it is clear that no confession made before a police officer can be proved against a person accused of an offence,-as such plain confession made before a police officer is not admissible. As per Section 27 of the Evidence Act, only that part of the information - even FIR (if by accused)-which relates or leads to discovery of a fact can be proved and is admissible.

23. Here the FIR is by accused appellant himself and as is clearly held by the Hon'ble Apex Court in : AIR 1966 SC 119, Aghnoon Nagesia v. State of Bihar, any confession to police officer is not admissible in evidence against the accused. This confession, for the purpose of Section 25, includes made even before investigation

has begun. The Hon'ble Court, dealing with confessional FIR by accused observed and held that-

18. If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence, but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.

So such information contained in the first information report as to leading to the discovery of the fact is admissible.

24. Similarly, in : AIR 1997 SC 496 B.A. Ramaiah v. State of Andhra Pradesh, in certain terms, Hon'ble the Apex Court held that as against the accused who made it (FIR), the statement cannot be used if it is inculpatory in nature, nor it can be used for the purpose of corroboration or contradiction, unless its maker offers himself as a witness in the trial. In : AIR 1972 SC 922 K.H. Amulakh v. State of Gujarat, is also so held that confessional statement made by accused, is not admissible as hit by Section 25.

25. Dealing with the same, in : 2002 CrL.J. 3704, Ajai Singh v. State of Rajasthan, Hon'ble Court held that no part of confessional statement even first information report can be given by the accused received as an evidence except to the extent it is permitted by Section 27 of the Evidence Act, that is to the extent leads to discovery of some fact.

26. So, position regarding admissibility of first information report by accused himself is very clear-not necessarily that the whole of the first information report is to be excluded but confessional part is mandatorily to be excluded. Only for the portion coming in the ambit of Section 27 can part of such first information be admissible, but that part must be clearly distinguishable and separable from the confession of the person (accused).

27. Even otherwise, first information report is not a substantively piece of evidence and broadly is used for corroboration or contradiction.

28. As above, first information is if confessional statement by the person facing charge, then confession by itself cannot be proved and is not admissible against the accused. So alleged admission of Appellant accused in his statement (FIR) is of no consequence in this case.

29. Now, coming to the recovery-that is alleged part of the first information report, as per first information report Ex.P-12, he (appellant) kept sitting there with lathi on asking of Dharpal and Bhopal Singh. This statement is straight clear that the lathi is (was) with the appellant accused at that very time he gave this statement, the FIR. As per arrest memo of accused Ex.P-7, accused was having a lathi which is being seized separately. Circle Officer PW 7 deposes that he arrested accused and seized his worn clothes and accused informed him that lathi of 'Bans', having wire knits at a end, is being presented by him - memo of information is Ex.P-22 and seizure memo is Ex.P-9. As such it is clear that lathi is presented by accused himself, meaning thereby that not a fact discovered on disclosure by accused. Further, lathi does not appear to have any blood stains and is such a article which is commonly held, particularly, by villagers, so this recovery is of no consequence.

30. For the above reasons, there is no reliable evidence to connect the accused with the crime, so the accused deserves to be acquitted.

31. Accordingly, the appeal is accepted. The conviction and sentence awarded to the accused Appellant Rai Singh S/o. Shri Hanuman Singh,-in Sessions Case No. 7/2002 vide judgment dt. 13.03.2003 for the offences of Section 302, IPC, and Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act,-is set aside and he is acquitted of these charges. The accused-appellant is in jail, he shall be released forthwith, if not required to be detained in any other case.