

Findal Vs. State

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Court : Himachal Pradesh

Decided On : Jun-29-1953

Reported in : AIR1954HP11

Judge : Chowdhry, J.C.

Acts : [Evidence Act, 1872](#) - Sections 24, 27 and 32(1); ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 164 and 342; ;[Indian Penal Code \(IPC\), 1860](#) - Section 300

Appeal No. : Criminal Appeal No. 2 of 1953

Appellant : Findal

Respondent : State

Advocate for Def. : L.N. Sethi, Govt. Adv.

Advocate for Pet/Ap. : A.C. Mehta, Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry, J.C.

1. This is an appeal by Findal, aged 36, against his conviction under Section 302 Penal Code by the learned Sessions Judge of Manasu for the murder of one

Sundar Singh by poisoning him with aconite and the sentence of transportation for life imposed upon him. He acquitted Mst. Nilam Dasi, who was tried along with the appellant for abetment of the offence, because in his opinion the prosecution had failed to prove conclusively that she had supplied aconite to the appellant.

2. The facts of the prosecution case are briefly as follows: The deceased and his elder brother Mohar Singh lived together in village Gharshial, Tehsil Rohru. The appellant also belongs to the same village. Mohar Singh first married Mst. Karam Patti (P. W. 4), and she became the common wife of both the brothers. A few years later Mohar Singh married the aforesaid Mst. Nilam Dasi of village Manghiyara, and she also subsequently became the common wife of the two brothers. Findal appellant used to work on the joint land of Nilam Dasi's mother and step-brother in Man-ghiyara, and there he became intimate with Nilam Dasi. In the months of Magh and Phagun preceding the occurrence, roughly about January or February 1952, Findal approached Sundar Singh with a request that he should accept 'reet' money and release Nilam Dasi from wedlock to enable him (Findal) to take her as his wife. Mohar Singh was at the time away at Chamba. Sundar Singh refused to accept Findal's suggestion. Thereupon the appellant and Nilam Dasi conspired to kill Sundar Singh. In furtherance of the conspiracy Nilam Dasi supplied aconite to Findal. On the morning of 18-3-1952 Findal arrived at his house in Gharshial. He is a married man and has children, but at the time of the occurrence his wife was away at her parents with the children.

On the evening of 18-3-1952 Findal came to Sundar Singh's house and took him away to his own house to help him in some work. There Sundar Singh was given tea mixed with powdered aconite by Findal. When Sundar Singh returned home after about an hour he exhibited symptoms of poisoning : he was restless and started vomiting. He immediately remarked in the presence of his first wife Mst. Karam Patti (P. W. 4), his sister Mst. Satto (P.W. 5) and his mother Karam Dasi (P. W. 23) that he had been poisoned by Findal and was thus being separated from his children. Findal was at once sent for. Other residents of the village were also called, and to them also Sundar Singh made a similar complaint. When Findal arrived he was confronted with Sundar Singh's accusation by one of the neighbours, Rama Nand (P. W. 7). Findal at first denied the charge. But when

Sundar Singh himself later taxed Findal with having poisoned him, Findal admitted the charge either expressly or impliedly by keeping silent (there being a difference between the prosecution witnesses on the point).

3. After the aforesaid tacit or explicit confession of his guilt Findal was detained at Sundar Singh's house. About a couple of hours after his return from Findal's house Sundar Singh expired the same night. Bahadur Singh Lambardar (P. W. 2) was sent for from another village, and he arrived the following morning, i.e. on the morning of 19-3-1952. After making enquiries from those present at Sundar Singh's house he got a report scribed by Ranbir (P. W. 21) of Gharshial. The report mentioned the fact of Sundar Singh's death. It also mentioned that the deceased himself was said to have told people that he had been administered poison with tea by Findal. This report was taken to the Police Station at Rohru by Mundru (P. W. 1), the village Chowkidar. The police station is about 14 miles from Gharshial, and the Chowkidar reached there at about 4 p. m. the same day. S. I. Bali Ram (P. W. 27) reached Gharshial on 20-3-1952 and started investigation. He despatched the dead body to Rohru, where 'post mortem' was held on 21-3-1952 by Dr. Shib Dev Singh (P. W. 16).

Findal had escaped on the evening of 19-3-1952 but was arrested on the evening of 20-3-1952 as he was trying to conceal himself on a tree near village Manghiyara by Dwarka Das (P. W. 18) and Bahadur Singh (P. W. 19) of that village. The same night he was handed over to the police at Gharshial. S. L. Bali Ram conducted a search of Findal's house at Gharshial on the evening of 20-3-1952 in the absence of Findal and recovered some opium, aconite roots and a tea kettle. He also took into his possession a lota in which Mst. Karam Patti had collected the vomit of Sundar Singh. On 21-3-1952 some more aconite and an axe and a stone were recovered from the same house at the instance of Findal. The confessions of Findal and Nilam Dasi were recorded on 23-3-1952 by Sri Surat Singh, a 2nd class Magistrate of Rohru, specially empowered to record statements under Section 164, Criminal P. C.

4. On 'post mortem' the doctor found no sign of disease or injury which could cause death, but he found signs of irritation in the mouth, oesophagus and

stomach and general venous congestion. In the opinion of the doctor death was due to shock as a result of poisoning. The liver, kidney, stomach and small intestine with their contents and the vomit were sent to the Chemical Examiner, who found aconite in the contents of the stomach and the small intestine and also in the vomit of the deceased, but none in the liver or the kidney. The pieces recovered from Findal's house were found by the Chemical Examiner to be pieces of aconite. The axe and the stone recovered from the house of Findal were also sent to the Chemical Examiner, and he found aconite on both. I would now take up one by one the criticisms levelled against the prosecution evidence by the learned counsel for the appellant.

5. Before I take up the criticisms, it has to be stated that the learned counsel for the appellant did not question the medical evidence and the Chemical Examiner's report. In other words, he had nothing to say against the prosecution case that Sundar Singh died of aconite poisoning. He did not also say a word against the credibility of the witnesses as such although, no doubt, he referred to certain discrepancies and alleged improvements in their statements. I shall presently show that the so called discrepancies and improvements do not at all vitiate their testimony.

6. The confession of the appellant Findal may be taken up first. (After holding that the confession was true and voluntary his Lordship proceeded :)

7. It was next argued that Findal's confession was in fact not voluntary: the Magistrate who recorded the confession did not care to satisfy himself that the confession was being made voluntarily, nor did he leave any material on the record from which it could be deduced by this Court that he had so satisfied himself. And in this connection he cited -- 'Prag v. Emperor', AIR 1930 Oudh 449 (A), -- Emperor v. Ramsidh Rai', AIR 1938 Pat 352 (B), and -- 'Gurubaru Praja v. The King', AIR 1949 Orissa 67 (C). He further argued on the basis of the last mentioned ruling and -- 'Mt. Bhukhim v. Emperor', AIR 1948 Nag 344 (D), that it was incumbent upon the Magistrate to find out why the appellant was making the confession. He also cited -- 'Punia Mallah v. Emperor', AIR 1946 Pat 169 (E), for the view that after the necessary warning the accused should have been given

sufficient time to reflect whether he would make a confession or not, 15 minutes not being sufficient for the purpose.

There can be no quarrel with the propositions laid down in the aforesaid rulings, the question is whether they were contravened in the present case. The Magistrate has deposed that besides the recorded questions he had put a number of other questions to the appellant. He has however not said what those other questions were. In the circumstances, while there is no reason to doubt the statement of the Magistrate about his having put other questions to the appellant, the voluntariness or otherwise of the confession must be judged only from the recorded questions and answers. These recorded questions and answers show that the Magistrate did not only give the prescribed warning that he was a Magistrate and that if Findal made a confession it may be used as evidence against him, but that he put at least three other questions with a view to satisfying himself that the confession was being made voluntarily and without any coercion or inducement.

The motive for making the confession was also ascertained by one of these questions because Findal was clearly asked if he wished to make the statement voluntarily and of his own free will or he was making it under coercion, persuasion or inducement by some body or on the asking or the fear of the police. To this Findal made the following detailed answer:

'I wish to make the statement of my own free will. Nobody forced me to make the statement. Nor any Police Officer has made any promise or inducement to me. Now there is no police man here. Because I am in the room, I have no fear for making the statement. I will state whatever I wish.'

The Magistrate further deposed that he gave Findal 40 minutes for reflection. There is no doubt that the Magistrate admits that this time was given after he had put the unrecorded questions to Findal, and that after the recorded questions and answers 5 or 10 minutes were further given for reflection; but that, in my opinion, makes no difference. Even though 40 minutes were given for reflection before the recorded questioning and answering, Findal had already been questioned by the Magistrate with a view to satisfying himself that the confession was being made

voluntarily. The only effect of the omission of the Magistrate to record the earlier questions and answers is that they are not available to the Court for finding out the voluntary nature of the confession, but there is no reason to doubt the statement of the Magistrate that the aforesaid time for reflection was given to Findal after questioning him.

There is also no reason to doubt the statement of the Magistrate that these unrecorded questions were also put by him with the same object with which the recorded questions were put, namely, to satisfy himself as to the voluntary nature of the confession. Indeed, the learned counsel for the appellant did not for a moment suggest that any portion of the statement of the Magistrate was unworthy of credence. The requirement of Findal having been given sufficient time to compose himself after he had been warned and before he made his confession, is therefore satisfied.

8. Another argument put forward by the learned counsel for the appellant in regard to the appellant's confession was that it is in conflict with the prosecution evidence. The , only conflict pointed out by him related to the manner of poisoning Sundar Singh. Findal's statement about it in his confession is the following:

'I prepared tea for Sundar Singh and mixed in it the aconite root after grinding it. I had already ground that aconite root. Thereafter I had called Sundar Singh to lift that stone. I had placed it near the hearth in a paper. When I put the aconite in tea, the light was dim. He was also sitting beside the hearth. Then I too gave him tea in a glass and myself took in a cup. One 'Chapati' which was surplus from morning meal was lying there. I gave him half of it and the remaining half I took myself.'

The learned counsel then referred to the description of this incident as given by the prosecution witnesses Bahadur Singh (P. W. 2), Gokal (P. W. 8) and Mst. Karam Dasi (P. W. 23). So far as Bahadur Singh's version is concerned, it is wholly inadmissible in evidence since he deposed to what Findal purports to have stated before the police. And that statement to the police did not lead to any discovery within the purview of Section 27. Evidence Act. The Sessions Judge should not therefore have allowed the said statement of Bahadur Singh to come on the record. As regards the statements of the other prosecution witnesses, they

purport to state what Sundar Singh told them on enquiry on his return from Findal's house. Rama Nand's version of it may be taken as representing what others have also stated, and it is to the following effect:

'On enquiry Sundar Singh told me that Findal had administered poison to him along with tea. He said that Findal poured tea in two glasses and then went out and put some bread and some other substance into one of them and then handed him the bigger glass while keeping the smaller one for himself.'

The discrepancy pointed out by the learned counsel for the appellant was that Findal did not speak in his confession of having gone out and put aconite into the tea there, but that it appears from Findal's confession that aconite was mixed with tea inside the room close to the hearth where Sundar Singh was also sitting taking advantage of dim light. Now, as rightly pointed out by the learned Government Advocate, Sundar Singh did not, and could not, know when the poison was administered, for otherwise he would not have taken the poisoned tea. He came to that conclusion only when on the way to his house, or on reaching there, the poison began to work. It may be that Findal had gone out of the room, and therefore Sundar Singh thought that poison was mixed with the tea when Findal went out. There is therefore no real discrepancy between Findal's version of the incident in his confession and that related by the prosecution witnesses as gathered from Sundar Singh.

The learned counsel for the appellant cited in this connection -- 'Jagmal v. Emperor', AIR 1943 All. 211 (F). It was held in that case that where a part of the confession is wrong in a material particular, it is difficult to hold that the rest of the confession is true. The part of the confession found wrong in that case was where the accused stated that he had strangled the deceased, and this was because the medical examination found no marks of strangulation. There is no such thing in the present case: the only discrepancy pointed out has already been explained, while the medical evidence and the Chemical Examiner's report support the confession.

9. It is clear that the grounds on which the appellant's confession was criticized have no force. There is however one other circumstance attending the recording of

the appellant's confession which, though not stressed by the learned counsel for the appellant, must be stated here. That circumstance is that Findal was brought from police custody before his confession, and after his confession he was again handed over to the police. It is true that, when handing him over to the police after the confession, the Magistrate directed that he be taken to the judicial lock up, and that this direction was actually carried out, but the Magistrate did not assure Findal before proceeding to record his confession that he will be sent back to the judicial lock up and not to the custody of the police.

What was necessary was to remove all fear of the police from the mind of Findal before the Magistrate proceeded to record the confession, and this could not possibly be done by the Magistrate giving such directions only after the confession had been recorded. On more occasions than one this Court has animadverted on the undesirability of an accused being kept in police custody after he expresses the desire to confess. The proper course to adopt after expression of such a desire by the accused is to put him in the judicial lock up and to let him remain there for a sufficiently long time to enable him to reflect on the consequences of making a confession, before producing him before a Magistrate for the recording of his statement under Section 164, Criminal P. C.

Furthermore, not only should the accused be taken back to the judicial lock-up after the recording of his confession, but before the Magistrate proceeds to record the confession the accused should be assured that after he has made his statement he would not be delivered to police custody but would again be sent back to the judicial lock-up. So long as these precautions are not observed, there is always danger of the confession not being held to be voluntary. It is regrettable that cases still come to light in which these salutary directions are not observed. So far, however, as the present case is concerned, there exist circumstances of more than counter-vailing weight which save the appellant's confession from being branded as not voluntary despite the non-observance of the aforesaid directions.

10. One circumstance which goes strongly in favour of the confession being held to be voluntary is that it was not retracted in the Court of the Committing Magistrate and it was retracted in the Sessions Court at a late stage. The trial in

the Sessions Court lasted from 11-10-1952 to 31-1-1953, and the appellant was represented by a counsel in that Court. It was however only on 18-12-1952 after the close of the prosecution evidence that Findal retracted the confession in his statement under Section 342 of the Code. It was then also that he stated for the first time that he was maltreated by the police and was not in his proper senses and so he could not say whether he made any confession before the Magistrate.

In the committing Magistrate's Court Findal was not represented by counsel, though his co-accused Nilam Dasi was. Proceedings in that Court lasted from 16-5-1952 to 31-7-1952, and on 10-7-1952, the appellant's statement under Section 342 was recorded. In that statement he admitted having made the confession without any reservation. The counsel for the appellant contended that although the appellant admitted in the committing Magistrate's Court that he had made the confession, the other answers he gave in that Court on being questioned under Section 342 amounted to a retraction of the confession. This argument has no force.

Firstly, the other answers may have amounted to a retraction of his guilt, but by giving those answers Findal cannot be said to have retracted the confession itself because he specifically admitted having made the confession. Secondly, the other answers go a long way to support the confession, and the portion, of it in which he denied his guilt is not only supported by any evidence but, on the contrary, it has been shown to be totally unfounded by the prosecution evidence. (His Lordship held that the confession was both true and voluntary and proceeded :)

11. The first information report, it has been seen, was lodged without delay. The learned counsel for the appellant criticized it for not containing the names of the prosecution witnesses. And in this connection he cited --'Harji v. Emperor', AIR 1918 Lah 69 (G), in which in the first column at p. 70 the first report of that case was criticized for not mentioning the names of the eye-witnesses although the man who made the report had already met those witnesses. In the present case there is no doubt that Bahadur Singh (P. W. 2) had met the persons assembled at Sundar Singh's house before getting the report scribed by Ranbir (P. W. 21), but none of those persons were eye-witnesses to the occurrence. They had only seen

Sundar Singh exhibiting symptoms of poisoning and heard him accusing Findal of having poisoned him on return from Findal's house. Both these facts find mention in the report for it was mentioned in it that the deceased was said to have stated that he had been administered poison with tea by Findal. It was, in the circumstance, not necessary for Bahadur Singh to have mentioned the names of the witnesses.

12. The learned Sessions Judge was of the view that the evidence with regard to motive was not 'very satisfactory'. The learned counsel for the appellant endorsed that view. But I agree with the learned Government Advocate that the learned Sessions Judge was not correct in this view. One reason given by the learned Sessions Judge was that there was no evidence with regard to liaison between Findal and Nilam Dasi except their confessions. That is immaterial if the prosecution evidence regarding Findal having approached Sundar Singh to release Nilam Dasi is believed. Three witnesses were produced on this point, i.e. Mst. Satto (P. W. 5), Mst. Karam Patti (P. W. 4) and Budh Singh (P. W. 14). The learned counsel for the appellant adopted the reasoning of the learned Sessions Judge for holding motive not proved by these witnesses. Mst. Karam Patti admits that Findal did not make the approach in her presence, but that she heard of it from Sundar Singh. The learned Sessions Judge has therefore brushed aside her statement as hearsay.

The statement of Sundar Singh deceased as reproduced by Mst. Karam Patti is, however, admissible under Section 32(1), Evidence Act. Reference may in this connection be made to the illustration (a) appended to that section where, the question being whether A was killed by B under such circumstances that a suit would lie against B by A's widow, the statement made by the deceased A as to the cause of his death referring to the actionable wrong under consideration has been described as a relevant fact. In other words, the statement of the deceased held admissible under Section 32(1), Evidence Act related to the contemplated litigation as the cause or motive for the murder. Likewise, the unsuccessful approach made to Sundar Singh by the appellant for the release of Nilam Dasi was the cause or motive of the present murder.

True, the statement had been made before the murder, and Sundar Singh was not near his death when he made the statement, but the application of the aforesaid provision of Section 32, Evidence Act is not subject to these limitations. -- 'Pakala Narayana Swami v.Emperor', AIR 1939 PC 47 (H). Mst. Karam, Patti's statement was therefore wrongly rejected. (On consideration of other evidence his Lordship held that the motive for the crime was established and proceeded :) He has not pointed out how the witness tried to do it, but the learned counsel for the appellant has. In her examination in chief Mst. Satto deposed that in the month of Magh Findal requested Sundar Singh in her presence to release Mst. Nilam Dasi from her mafital bond and accept 'reet' money from him, and that Sundar Singh did not agree. It was brought out in her cross-examination that in the Court of Committing, Magistrate she had stated further that Sundar Singh replied to Findal that his brother might accept the 'reet' money but not he.

There is no improvement in the statement of Mst. Satto in the Court of the Sessions Judge. On the contrary, she omitted to mention an additional fact which she had stated before the committing Magistrate. In that Court she stated not only that Sundar Singh refused to accept 'reet' money but also that the money might be accepted by his brother. This additional fact did not in any way take away from the fact that Sundar Singh did refuse to accede to Findal's request. Another so-called improvement pointed out by the learned counsel for the appellant was that Mst. Satto did not state in the Committing Magistrate's Court, as she did before the Sessions Judge, that one of the things stated by Sundar Singh on his return from Findal's house was that some bread was also put into the tea.

The putting in of bread into the tea was however a detail which was of no significance, and, in any case, it is a detail which has nothing to do with the incident of the appellant approaching Sundar Singh with a request for Nilam Dasi's release. The learned Judge was therefore in error in rejecting the testimony of Mst. Satto. As regards the remaining witness Budh Singh, the learned Sessions Judge has not said that he did not believe the witness. What he remarked was that it was incredible that Sundar Singh's refusal could have offended the appellant. He was further of the view that Nilam Dasi being the common wife of the two brothers, the consent of Sundar Singh alone could not have brought about the release. As

already stated, there are no grounds on which the witness was, or could be, disbelieved; the grounds mentioned are rather grounds relating to the working of the mind of the appellant Findal.

It is, however, to be remembered that of the two brothers only Sundar Singh was present at the time in Gharshial, the other brother Mohar Singh being away at Chamba. There is therefore nothing strange in the appellant having made the approach to Sundar Singh alone. But the refusal with which he met at the hands of Sundar Singh apparently made it futile for him to approach Mohar Singh later. Naturally, therefore, Findal took Sundar Singh's refusal to heart. It may be that one possessed of better intelligence should have taken another chance on the return of Mohar Singh, but such a balanced working of the mind could hardly be attributed to a backward hillman like the appellant.

There is mention in Medical Jurisprudence for India by I. B. Lyon, C. I. E., F. C. S., F.I. C., 3rd (1904) edition, at page 622, of a case of homicidal aconite poisoning where five 'Chamar' coolies were poisoned in Calcutta by one Jitu 'Chamar' at the instigation of Sanu 'Chamar', all being fellow countrymen and friends up to the time of the act, for the mere reason that one of the persons poisoned had a quarrel with Jitu 'Chamar'. It was remarked that no example could be more striking of the recklessness of the poisoner, on the one hand, or, on the other, of the small provocation required in some instances to induce the act. The present case is much stronger since the appellant was being thwarted in his desire to marry Nilam Dasi. The proximity of time of Sundar Singh's refusal to the appellant's poisoning him is also noteworthy. I hold, disagreeing with the learned Sessions Judge, that the motive for the crime has been established.

13. One point argued by the learned counsel for the appellant was that motive not having been established, it was necessary for the prosecution to prove that in administering aconite to Sundar Singh the intention of the appellant was to kill him. According to the learned counsel such an intention had not been proved as there is nothing in the Chemical Examiner's report to show that the aconite found in the stomach contents of the deceased was of a fatal variety. He referred to the fact, mentioned in almost all the books on Medical Jurisprudence and Toxicology, that a

root of aconite is often used both externally and internally by 'Vaidis' and 'Hakims' in this country, and that it is also sometimes added to country made liquors to increase their intoxicating power.

He also argued that the poisoning may have been accidental. He further cited -- 'In re Chinna Hanumakka', AIR 1943 Mad 396 (I), in connection with the question of intention. Motive having however been established, no question of intention arises on the showing of the learned counsel for the appellant himself. It may, however, be stated that it is immaterial that the prosecution have adduced no evidence as to the particular variety of aconite used in the present case. And this for the reason that the nature of the variety used in the present case appears from the result produced by it. Sundar Singh died within three hours of the poisoning. It is apparent therefore that the aconite used in the present case was sufficient both in quality and quantity to produce fatal results. There could, in the circumstance, be no doubt about the intention of the appellant, for a person who administers to another aconite producing fatal results within 3 hours cannot but have the intention of killing him.

The Madras ruling cited by the learned counsel for the appellant has no relevancy since in that case the accused pleaded that she gave aconite to her husband not with the intention of causing his death but with the intention of making him mad. The appellant in the present case did not plead that he had any other intention than of causing the death of Sundar Singh in mixing aconite powder with the tea. In any case, a person who administers aconite of such quality and in such quantity to another as results in his death within three hours must be taken to know that his act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and if death ensues, he is guilty of murder, notwithstanding that his intention may not have been to cause death. See para 4 of the definition of murder in Section 300 Penal Code -- 'Emperor v. Gauri Shankar', AIR 1918 All 283 (J). There could also be no question of accidental poisoning in this case since aconite was not administered by some quack in a drug, nor was it administered in liquor to increase its intoxicating power.

(His Lordship after discussing the evidence held that the guilt was brought home to the appellant and dismissed the appeal).

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