Sant Ram Vs. the State

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Court : Himachal Pradesh

Decided On : Mar-09-1953

Reported in : AIR1953HP105

Judge : Chowdhry, J.C.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164, 211, 211(1), 213, 225, 289(1), 342, 364, 364(2), 533 and 537; ;Indian Penal Code (IPC), 1860 - Sections 302, 380 and 392; ;Evidence Act, 1872 - Section 24

Appeal No. : Criminal Appeal No. 14 of 1952

Appellant : Sant Ram

Respondent : The State

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

Advocate for Pet/Ap. : Paras Ram, Adv.

Judgement :

Chowdhry, J.C.

1. This is an appeal by one Sant Ram, aged 22, of village Droh in Kangra district against his conviction by the learned Sessions Judge, Sirmur, for offences punishable under Section s 302 and 392, I. P. C, and the sentences of transportation for life and five years' R. I. imposed upon him under the respective

sections, the sentences running concurrently.

2. The prosecution story, as found established by the learned Sessions Judge:, is as follows. The appellant came to Nalian in search of employment and casually met one Jiwanu. (P. W. 10). Jiwanu introduced him to his former' master Kr. Pratap Singh (P. W. 19), and the latter engaged the appellant. on 18-1-1952. Kr. Pratap Singh's wife was already away at Lucknow, and he himself left for Patiala on 19-1-1952. The only inmates of the house left after his departure were his child aged 11 years, a maid servant Mt.Sandla who looked after the child, a servant named Chambel Singh (P. W. 25) and the present appellant. Chambel Singh also went away on 21-1-1952 to attend a marriage. That night, i.e. on the night between the 21st and 22nd January 1952, the, appellant committed the murder of Mt. Sandla, and after breaking open a number of boxes he stole golden and silver ornaments and Rs. 6,300/-in currency notes. The murder was committed by tying a 'pashmina shawl and a muffler so tightly round the mouth and the neck of Mt. Sandla that, in the opinion of Dr. Nirmala Devichand (P. W. 27), death was caused by strangulation and the consequent asphyxia.

3. The crime was detected early the following morning by Atma Ram (P. W. 2), a servant of Kr. Pratap Singh's cousin Kr. Jitendra Singh (P. W. 8), when, he went as usual to fetch milk from Kr. Pratap Singh's house. Nobody responded to Atma Ram's calls and the only person he found in the house was Kr. Pratap Singh's child who was crying. Atma Ram took the child to his master and the latter along with Mohan Singh (P. W 1), Mansa Ram (P. W. 3), and Sri Gopal (P. W. 28) went to Kr. Pratap Singh's house and found the dead body of Mt. Sandla lying in a courtyard with her hands and feet tied and also her face and neck, as aforesaid, and locks of boxes broken open and things scattered about. Kr. Jitendra Singh soon lodged the first information report and the police arrived and, sending the dead body to the Civil Hospital at Nahan for post-mortem examination., locked and sealed the house until the arrival of Kr. Pratap Singh the same evening. As the newly appointed servant, the present appellant, was found missing, suspicion naturally fell upon him, and he was eventually arrested in his, own village in Kangra district on 4-4-1952. On the same date the stolen property including currency notes worth Rs. 4,000/-, and some articles which the appellant had

purchased with the stolen money, were recovered by the police in the same village at the pointing out of the appellant from the houses of the appellant's brother-in-law Mahant (P. W. 26) and his uncle Labhu (P. W. 31) and one other also named Mahant (P W. 29). The appellant was brought to Nahan on 7-4-1952. The following day he expressed his desire to make a confession and was sent to Ch. Hardayal Magistrate first class (P. W. 9). No Magistrate was, however, in station on that or the following day except Sri C. L. Kapila, who was to hold the inquiry. The confession was accordingly recorded by Ch. Hardayal (P. W. 9) on 10-4-1952.

4. The appellant was committed to Sessions on 15-5-1952 for the offences for which he was convicted as aforesaid by the learned Sessions Judge on 11-9-1952. There is no direct evidence and the conviction is based on the confession of the appellant and its corroboration in material particulars. I shall first deal with certain arguments of a legal and technical nature of the learned counsel for the appellant, for if some of those arguments are accepted much of the prosecution evidence would be eliminated and that which would be left would be too meagre to sustain the conviction for murder.

5. The first argument of the learned counsel for the appellant relates to the charge ofmurder. He contended that the charge did not contain the words 'intentionally or knowingly', as given in the model charge under Section 302, I. P. C., in Rattan Lal and Dhiraj Lal's Law of Crimes. According to the learned counsel the said words constituted an essential ingredient of the charge of murder, and that therefore their omission from the charge had occasioned a failure of justice which was incurable under Section 537, Cr. P. C. A perusal of the charge, however, shows that it contained all the details of the manner in which the murder was alleged to have been committed. That being so, the appellant must have understood it thoroughly that the charge against him was that he had committed the murder intentionally or knowingly although those words were not actually used. These details were also put to the appellant when he was examined in the Court of the committing Magistrate and again in the Sessions Court under Section 342 of the Code. It is clear, therefore, that the charge did not really suffer from the said defect, and that there had been no failure of justice as the appellant had not been misled in his defence. I am supported in this view by a ruling of the Lahore High Court reported

as --'Allah Din v. Emperor', AIR 1927 Lah 432 (A). That was a case where in a charge under Section 498, I. P. C., the words knowledge or reason to believe were missing but it was held that the omission did not affect the case since the accused knew what they were charged with.

6. The next argument of the learned coun-sel was that the provisions of Section 211(1) of the Code had not been properly complied with in that he was questioned under that provision after an order of commitment had been made by the Magistrate under Section 213. He cited the two rulings reported as --'Sripati Duley v. State', AIR 1953 Cal 10 (B), and--'Kashinath Das v. Kalipada Das', AIR 1953 Cal 12 (C), where it has been held that the provisions of Section s 211 and 212 are substantial provisions of procedure the non-compliance with which is not curable by the provisions of Section 537, Cr. P. C. The reasoning behind those rulings was that if the accused is not required under Section 211(1) of the Code to give in orally or in writing a list of the witnesses whom he wishes to be summoned to give evidence on his trial before making an order of commitment, the Magistrate is deprived of the opportunity of exercising his discretion under Section 212 of summoning and examining any of the said witnesses which might conceivably have resulted in the accused being discharged. The two rulings cited by the learned counsel are, however,, distinguishable since in one of them the provisions of Section 211(1) were not at all complied with and in the other they were complied with after making the order of commitment and: the accused gave a list of witnesses. In the present case even if it be supposed that the appellant was examined under Section 211(1) after the making of the order of commitment, he refused to give any list of witnesses before the committing Magistrate and stated that he would submit such a list in the Court of Session. That being so, there was no. question of the Magistrate exercising the discretion under Section 212 of the Code of summoning and examining any of those witnesses and of possibly discharging the accused.

In the next place, it is not borne out that the inquiry from the accused under Section 211(1) was in this case made after the passing of the order of commitment. The learned counsel for the appellant sought to draw that conclusion from the fact that in the order-sheet the writing of the order of commitment

preceded the result of the examination, of the accused under Section 211 (1). The record of the case, however, shows that the page containing the question and answer of the accused under Section 211(1) precedes the order of commitment, all the pages of the record being duly stitched and serially numbered. This state of the record confirms the presumption that judicial and official acts have been regularly performed. A perusal of the order-sheet relied upon by the learned counsel for the appellant shows that the examination of the accused under Section 211(1) was mentioned at the end by way of an addendum because it had not been mentioned at its proper place in the sequence of events of the day. This is clear from the use of the word 'neez', or also, before the relevant sentence. That this is the correct interpretation to be put upon the order-sheet is further confirmed from the fact that the sentence in question appears after it had been mentioned in the order-sheet that the accused had been sent to the judicial lock up. It could not possibly bo suggested that the accused was examined under Section 211(1) after he had been sent to the judicial lock up. The argument of the learned counsel relating to non-compliance with the provisions of Section 211(1) of the Code has, therefore, no force.

7. The next argument of the learned counsel for the appellant was directed against the examination of the appellant under Section 342 of the Code in the Court of the committing Magistrate. This statement of the accused was tendered in the Sessions Court under Section 287 of the Code and is marked Ex. P. LL. The contention of the learned counsel was that the statement was inadmissible in evidence inasmuch as it did not contain the certificate, as required by Section 364(2) of the Code, that the record contained a full and true account of the statement made by the accused. There is a certificate of the Magistrate appended at the foot of the statement to the effect that the statement of the accused was recorded in his presence and hearing and that the same had been heard and admitted by the accused to be correct, but there is not the further certificate, as required by the said provision, that the record, contained a full and true account of the statement made by the accused. The Magistrate used a rubber stamp for the said certificate, and it appears, therefore, that the said omission existed in other cases of the examination of the accused under Section 342 of the Code also in that Court. It is surprising that a rubber stamp should have been got prepared for

the Court in question which failed to comply with one of the important ingredients of Section 364 of the Code. The attention of the District Magistrate in question will be invited to this fact so that the mistake may be rectified in the Court of the Magistrate in question and of any other Court where a similar defective rubber stamp might be in use.

It was further argued by the learned counsel that Section 533 of the Code did not cure the defect because no evidence was taken underthat section that the statement in question was a full & true account of the accused, & because the error had injured the accused' as to his defence on the merits. In support of his argument he cited the ruling reported as --'Kishan Chand v. Emperor', AIR 1938 Pesh 5 (D). That was a case where the Magistrate had omitted to sign the certificate prescribed by Section 164 of the Code. It was, however, held that the defect was cured since no prejudice had been shown to have been caused to the accused due to the omission. The main thing to see, therefore, is whether the error had injured the accused in this case as to his defence on the merits.

8. It was stated by the learned counsel for the appellant that he had instructions to say that his client stated before the committing Magistrate when confronted with his confession that he had made the confession at the instance of the police and that it was incorrect. No such statement actually appears in Ex. P. LL, That, it was argued by the learned counsel for the appellant, was immaterial since the Magistrate had failed to certify that the record contained a full and true account of the statement made by the accused. It is, however, noteworthy that no such allegation was made by the accused when he was examined under Section 342 of the Code in the Sessions Court. All -that he stated when confronted with Ex. P. LL. was that it was incorrect and had been made as a result of tutoring by the police. He did not say that he had made a certain statement which was missing from Ex. P. LL. The aforesaid statement made by the counsel for the appellant in this Court on instructions from his client was, therefore, clearly an afterthought. There is one other important reason for holding that the accused could not possibly have made the said statement before the committing Magistrate under Section 342. A perusal of Ex. P. LL. would show that in that statement under Section 342 before the committing Magistrate the accused virtually reiterated almost every detail of his

confession. It is incredible, therefore, that he should have further stated before the committing Magistrate that the confession, was incorrect or that it had been made at the instance of the police. The foundation for the argument that the omission in question had injured the accused as to his defence on the merits, therefore, totally vanishes. As to whether in fact the record Ex. P. LL contained a full and true account of the statement of the accused under Section 342 in the Court of the committing Magistrate, there is at least the certificate that the statement was read out to the accused and admitted by him to be correct. Had there been any omission, the accused could not but have pointed it out to the Magistrate then and there. I have no doubt, therefore, that, notwithstanding the absence of a certificate to that effect, the record in question did contain a full and true account of the statement of the appellant. I hold that the defect stands cured under Section 533 of the Code, and that the statement of the appellant Ex. P. LL was admissible in evidence.

9. It was next argued that the Sessions Judge had failed to comply with the provisions of Section 289(1) of the Code. The accused was examined by the Sessions Judge under Section 342 with a view to enabling him, to explain the various circumstances appearing in theevidence against him, and at the end he was asked generally whether he wished to say anything else. No specific question was, however, put to him as to whether he meant to adduce evidence, as required by Section 289(1). It was, therefore, contended by the' learned counsel for the appellant that the conviction and sentence of the appellant should bet set aside on the authority of --'Raghu Bhumij v. Emperor', AIR 1920 Pat 471 (E). That case is, however, distinguishable since there was a total omission of the examination of the accused under Section 342. On the other hand, there is a ruling of the. Allahabad High Court reported as--Premgir v. Emperor', AIR 1918 All 298 (F), where an omission under Section 289(4) of the Code by reason of the accused not having been called upon to enter on his defence was held to have been covered by the provisions of Section 537 of the Code as it was manifest that the accused was not in any way prejudiced by the omission. One of the circumstances taken into consideration in that case was that the accused was defended by a pleader. In the present case also the appellant was defended by a counsel in the Sessions Court, so that if he did mean to adduce any evidence his counsel could not have

failed to make that request before the Sessions Judge. It is noteworthy that in answer to the said general question the accused did say that all the recovered articles had bean purchased by him. from Nabha and other places and that he was prepared to prove that fact provided he was sent there to find out the names of the persons from whom he had made the purchases. He further stated that he did not know their names and could not furnish any list.

It is manifest, therefore, that the matter of adducing evidence was pointedly in the mind of the accused when he made this statement, and that the only wish expressed by him was to be allowed to go to Nabha to ascertain the names of the persons from whom he had made the alleged purchases. That request of the accused was turned down by the learned Sessions Judge, as his order-sheet shows, and the learned counsel for the appellant did not question that order. The accused did not express any wish to produce any other evidence. It has also been noticed that he refused to give any list of witnesses to the committing Magistrate, adding that he would, do so in the Sessions Court. Even in the argument before me the learned counsel for the appellant did not point out the evidence which the accused would have produced had he been interrogated by the Sessions Judge under the provisions of Section 289(1). In these circumstances, I am clearly of the opinion that this omission also occasioned no failure of justice and was, therefore, covered by the provisions of Section 537 of the Code.

10. Lastly, the learned counsel attacked the admissibility of the confession of the appellant. It was argued by him on the authority of--'Emperor v. Rarnsidh Rai', AIR 1938 Pat 352 (G), that it is not enough for the Magistrate to record the confession and say that he was satisfied as to its voluntary nature, but that the Courts before whom the confession is used must have materials on which they can be satisfied that the confession was in fact voluntary. In that case the record did not show that any such question was asked bythe Magistrate. That criticism is, however, not applicable to the confession in the present case. The Magistrate, Ch. Hardayal (P. W. 9), who recorded the confession, did not only state in the Sessions Court that he recorded the confession after fully satisfying himself that the deponent was making it voluntarily, but he has left enough material on the record of the confession in the shape of questions and answers from which the Courts before

whom the confession is used can be satisfied that the confession was in fact voluntary. Apart from giving the warning and explanation as required by Section 164(3), the Magistrate further asked the appellant whether he was making the statement on the persuasion of the police, whether he was making it of his own free will and why he was making the confession. The appellant was produced before the Magistrate from police custody, but the Magistrate had the handcuffs taken off and removed the police from the court-room. He further assured the appellant that after his statement had been recorded he would not be sent to the police custody but to the judicial lock up, and in point of fact the appellant was sent to the judicial lock up after his statement had been recorded. After observing all these formalities the Magistrate gave the appellant half an hour for deliberation, and it was only after that that he proceeded to record the confession. The Magistrate was, therefore, fully justified in saying that he recorded the confession after fully satisfying himself that it was being made voluntarily. Another ruling cited by the learned counsel was --'Jiubodhan v. Emperor', AIR 1917 Pat 475 (H), but the condition laid down in that ruling, namely, that the Magistrate is bound to question the accused closely as to his motive in making a confession, is also substantially satisfied in the present case, for the Magistrate did ask him as to why ha was making the confessional statement. Of course, it cannot be said that the appellant was questioned closely as to his motive, as laid down in this ruling, but that is not absolutely necessary. All that Section 164(3) requires is that no Magistrate shall record a confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily. What shape or form the questions are to take, and how closely are the questions to be put to the accused, are matters which must be left to the discretion of the Magistrate according to the facts and circumstances of each case. It may be that in a certain case the Magistrate would not be justified in believing that the confession was being made voluntarily unless he questions the accused closely as to his motive in making the confession. In another case the Magistrate may not have put any question to the accused as to his motive, and yet the precautions taken by him and the other questions put by him to the accused might be sufficient to satisfy him that the confession was being made voluntarily. I am supported in this view by a ruling of the Orissa High Court reported as--'Suka Misra v. the State', AIR 1951 Ori 71 (I).

To the same effect is a ruling of this Court reported as -- 'Ranjha v. the State', AIR 1951 Him-P. 7,5 (J), where it was laid down that it was not necessary that the Magistrate should ssk the accused as to why hewas going to make the confession, and that all that was necessary for him to do was to have satisfied himself by questioning him that he was making the confession voluntarily. The satisfaction of the Magistrate on that score in the present case was fully justified, as adverted to above. For the same reason another ruling cited by the learned counsel for the appellant, i.e.,--'Patey Singh v. Emperor' AIR 1931 All 609 (K), which makes it incumbent upon the Magistrate not merely to put the usual formal questions but to direct his attention to the circumstances under which the confession came to be made has no application here.

11. Stress was laid by the learned counsel for the appellant on other ruling reported as-- 'Nazir v. Emperor', AIR 1933 All 31 (L), where it was laid down as follows:

'It has been stressed over and over again that when a confession is made and subsequently retracted, the committing Magistrate and the Sessions Judge should enquire into all the circumstances in which it was made and those in which it was subsequently retracted.'

It cannot, however, be said that this salutary rule was not followed by the Sessions Judge in the present case. Those circumstances may briefly be examined again. Most of the stolen property had already been, recovered at the instance of the appellant on 4-4-1952. He must have, therefore, realised that the game was up and that he had better confess the guilt. A perusal of his confession will show that he was smitten with remorse immediately after the commission of the murder. There was nothing strange, therefore, for such a man to have made a clean breast of the whole thing when he realised that there was no escape for him. Furthermore, the appellant was not in police custody for an unduly long time, and there was no undue delay in the police producing him before a Magistrate after he had expressed his desire of making a confession. It is also noteworthy that in the Sessions Court, where the confession was retracted for the first time, no allegation of torture or of pressure of any kind was made by the appellant against the police,

for all that he said was that he had been tutored by the police to make the statement. The circumstances immediately attending the making of the confession have been referred to above in speaking of the precautions taken by the Magistrate who recorded the confession and the questions put by him to the appellant. As regards the circumstances in which the confession was retracted, it is significant that the retraction did not take place until after the entire, prosecution evidence had been recorded in the Sessions Court, and this despite the fact that the appellant was represented by a counsel from the commencement of the trial. This tardy retraction loses all its force when it is borne in mind, as adverted to above, that the confession was adhered to by the appellant before the committing Magistrate. I, therefore, fully agree with the learned Sessions Judge that the confession in the present case was a voluntary one.

12. The next question is whether the confession is true. Even in the case of a nominal retraction, as in the present case, the rule of caution which requires a retracted confessionto be corroborated in all its material particulars before forming the basis of conviction must be followed. The evidence produced in this case fully satisfied that rule. The confession begins by stating the circumstances in which the appellant secured employment with Kr. Pratap Singh, and these find corroboration from the statements of Jiwanu (P. W. 10), Ram Gopal (P. W 4), Kr. Pratap Singh (P. W. 19) and Chambel Singh (P. W. 25). The last two of these witnesses further corroborate the confession with regard to the number of days the appellant was in Kr. Pratap Singh's service before he committed the offences and the absence of Kr. Pratap Singh & the other servant Chambel Singh on the crucial night. There is of course no eye-witness to corroborate the details of the murder and theft, but that part of the confession finds ample corroboration in the medical evidence of Dr. Nir-mala Devichand (P. W. 17), in the fact of the muffler with which the deceased was strangulated being identified by Jiwanu (P. W. 10), Kr. Pratap Singh (P. W. 19) and Chambel Singh (P. W. 25) as belonging to the appellant, in the recovery of the stolen property at the instance of the appellant, from his village on 4-4-1952 and in the identification of that property by Kr Pratap Singh (P. W. 19) and Abdul Karim (P. W. 32) as belonging to them. It has to be noted here in passing that the ornaments and currency notes in question had been entrusted to Kr. Pratap Singh for safe custody by Abdul Karim. Indeed, the learned counsel for the appellant had

no criticism to offer against these recoveries, and he did not advance any argument against the culpability of the appellant for the theft of those articles. On foot of the appellant's confession and the said corroborative evidence, therefore, I have no hesitation in holding that the appellant was responsible for the strangulation of Mt. Sandla which resulted in her death, and that he committed theft in the house of Kr. Pratap Singh on the night in question.

13. A word about the actual offences committed by the appellant. In this connection, there can be no doubt about the soundness of the proposition propounded by the learned counsel for the appellant on .the authority of--'Ghulam Mohammad v. Emperor', AIR 1942 Lah 271 (M), that a confession, if accepted at all, should be accepted as a whole. The learned counsel contended that all that the confession established was that the appellant had tied the deceased's mouth with his muffler and with the deceased's pashmina shawl, and that this did not prove that he had strangulated her. The medical evidence, however, shows that the mouth and the neck of the deceased were tied first with the woollen muffler and above that with the shawl, and that the skin of the whole neck was blenched due to tight compression by the folds of the muffler and had become hard and parchment like. That evidence is further to the effect that on dissection the soft tissues showed ecchyrnosis of blood in subcutaneous tissues and adjacent muscles and that the third ring of the trachea was fractured. It is clear, therefore, that strangulation and the consequent asphyxia were the direct result of the appellant having tied the mouth and neck of the deceased with his own muffler and the deceased's pashmina shawl. The learned Sessions Judge was right in holding that the ap-pellant knew that this act of his was so imminently dangerous that it must, in all probability, cause death, or such bodily injury as was likely to cause death. It is further clear that the appellant committed the act without any excuse for incurring the risk of causing death or such injury as aforesaid since he has admitted in his confession that the only reason why he acted in this manner was that the deceased, whose age has been given in the postmortem report as between 35 and 40, and whom the appellant has repeatedly described in his confession as an old woman, had abused him for having broken a spoon and threatened to get him imprisoned by reporting the matter to the master when he returned. The act of the appellant, therefore, clearly fell within the purview of para.

4 of Section 300, I. P. C., and amounted to murder.

14. I am, however, not in agreement with the learned Sessions Judge that the appellant was guilty of the offence of robbery. True, the appellant did commit theft, but theft is robbery if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint, as defined in Section 390, I. P. C. These conditions are not satisfied in the present case since according to his confession the appellant committed the murder at about 9 P. M., being enraged with the deceased's abuses and threat. Thereafter he continued thinking and weeping up to 4 A. M., and during this interval he even heated the milk and gave it to the child to drink. It was only after 4 A. M. that he started breaking open locks of boxes and packing the stolen articles in a trunk. It cannot, therefore, be said, or at least said with certainty, that the murder had any connection with the theft. It appears that the appellant committed the murder on the very slight provocation of having been abused by the deceased for breaking the spoon and threatened to be complained against to the master of the house on his arrival, that he was filled with remorse thereafter and that it was only as an afterthought that he committed theft about seven hours subsequently. I hold, there- . fore, that it was not the offence of robbery under Section 392 but of theft in a dwelling house under Section 380, I. P. C., that was committed by the appellant. At the same time, I see no reason to reduce the sentence of five years' rigorous imprisonment under this count.

15. The result is that the appeal is dismissed,the conviction of the appellant & the sentence oftransportation for life under Section 302, I. P. C.,are maintained, and his conviction under Section 392 is altered to one under Section 380, I. P. C.,but the sentence of five years' rigorous imprisonment is maintained. The two sentenceswill run concurrently.