
(2017) 05 RAJ CK 0154
In the Rajasthan High Court
Case No : 650 of 1998

Joga Ram S/o Laxman @ Lacha

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#), [Section 374\(2\)](#), [Section 437A](#) - Examination of witnesses by police - Power to examine the

Citation : (2017) 05 RAJ CK 0154

Hon'ble Judges : Gopal Krishan Vyas, Inderjeet Singh

Bench : DIVISION BENCH

Advocate : Panney Singh, Ridmal Khan Mehar, J.P.S. Choudhary

Judgement

1. In this criminal appeal, the accused appellants, namely, Jogaram, Misriya @ Mishrilal and Poonama Ram @ Puna, under Section 374 (2) Cr.P.C ., have assailed the judgment dated 30th of October 1998 passed by learned Addl. Sessions Judge, Bali, District Pali, in Session Case No.18/1994, whereby the appellants were convicted for the offence under Sections 302 / 34, 201 and 120B of IPC and following sentence was passed against them: -

Appellants No.1 & 2 Joga Ram & Misriya @ Mishrilal

302/34 of IPC : Life Imprisonment & Fine of Rs.2000/-. In default of payment of fine, to further undergo three months- S.I.

201 of IPC : 3 Yeas- Simple Imprisonment & Fine of Rs.500/-. In default of payment of fine, to further undergo month month-s S.I.

Appellant No.3 Poonama @ Puna 120B of IPC : Life Imprisonment & Fine of Rs.1000/-. In default of payment of fine, to further undergo one month-s S.I.

2. Briefly stated, the facts of the case are that on 17.01.1994, A.C.F. of Forest Department, Mr. Chandrapal Singh (PW.29) submitted a report (Ex.P/15) written by cattle guard, Prem Singh, at Police Station Khivanda, District Pali, stating therein that on 16.01.1994 Ganga Singh (deceased) who was posted as Forest Guard, In-charge of Check Post of Forest Department, Sumer asked him that you may go for patrolling near Kaliya Mahadev Mandir in the forest; and after sometime, Ganga Singh, Parvat Singh, Baktawar Singh came there, at about 01.30 PM. All the persons after taking food, Ganga Singh and Hukama Ram went in the forest for patrolling but did not come back till night, therefore, an enquiry was made by Smt. Antar Kanwar (PW.16) wife of deceased, Ganga Singh, for his whereabouts, however, could not be traced out. Smt. Antar Kanwar raised suspicion that her husband, Ganga Singh, was not allowing the animals of appellants for grazing in the forest area, therefore, relations of appellants with Ganga Singh were not cordial. A missing person report was submitted at Police Station Khivanda, on 17.01.1994 before lodging the FIR, during search the dead body of Ganga Singh was found in the forest and near the body, blood stained stones were lying there, it was apprehended that Ganga Singh has been murdered by unknown persons and his dead body was thrown at another place.

3. Upon the aforesaid written complaint, FIR No.3/1994 was registered at Police Station Khivanda, for the offence under Sections 302 and 201 of IPC and investigation was commenced by the S.H.O.

4. Smt. Antar Kanwar and another witness PW.2 Prem Singh

specifically alleged in their statements recorded under Section 161 Cr.P.C. that before some days of the incident, a quarrel took place between the appellants and Ganga Singh because deceased Ganga Singh while performing his duty on the post of Forest Guard not allowed the appellants- cattle to graze in the forest area. As per allegations, the appellants and other villagers made a complaint to the Hon-ble Chief Minister for his transfer. In the investigation to ascertain the correctness of the said fact, statement of some other witnesses were also recorded during investigation. The he accused appellants were arrested on the basis of circumstantial evidence and during police custody upon information given under Section 27 of the Evidence Act by the appellants, one "Lathi" (stick) of Bamboo, blood stained stone and cap of the deceased were recovered in the presence of two Motbir witnesses, namely, Bhim Singh and Surendra Singh and the recovery memos of cap, "Lathi" (Bamboo stick), and stone collected from the place of incident, were prepared and all the articles seized including jacket of deceased, Ganga Singh and sent to the FSL for examination. The report (Ex.P/38) was received from the FSL, Jaipur on 06.12.1996, according to said report human blood was found upon the seized articles but blood group was not ascertained.

5. After completing investigation charge sheet was submitted against the appellants on the basis of circumstantial evidence of recovery of cap, stick (Lathi) and blood stained stones. In the investigation, cap and stick were identified by two witnesses Prem Singh and Parvat Singh, working as Cattle Guard and Forest Guard, in Forest Department in front of Magistrate. Finger prints of all the accused appellants were also taken but there is no report of finger print expert is on record.

6. After filing charge sheet the learned Munsif and Judicial

Magistrate, Desuri, committed the case to the court of Addl.

Sessions Judge, Bali, District Pali (Trial Court) for trial.

7. The learned trial court after hearing arguments of both the sides framed charges against the accused appellants for the offences under Sections 302, 302 / 34, 201 & 120B of IPC, but all the three accused appellants denied the allegations levelled against them and prayed for trial.

8. During trial, statements of 29 prosecution witnesses were recorded and 57 documents were exhibited from the prosecution side to prove the allegations levelled against the appellants. After recording the evidence of prosecution, statements of accused appellants were recorded under Section 313 Cr.P.C., but all the appellants denied the allegations levelled against them by the prosecution witnesses and pleaded innocence. No evidence was produced by them in defence.

9. The learned trial court after hearing and evaluating the evidence of both the sides, convicted the accused appellants vide judgment impugned dated 30.10.1998 for the offences under Sections 302 / 34, 201 and 120B of IPC and passed the sentence mentioned above.

10. Learned counsel for the appellants while challenging the aforesaid judgment argued that prosecution has failed to prove its case beyond reasonable doubt on the basis of circumstantial evidence of recovery and raised following grounds:

[A]. That there is no eyewitness or direct evidence in this case to prove the allegation of murder against the appellant.

[B]. The entire prosecution case is based upon circumstantial evidence of recovery of cap, which is said to be wore by deceased, Ganga Singh, at the time of incident given by the Forest Department to Forest Guard and recovery of "Lathi"

(stick) and verification of place of occurrence upon information given by the appellants. However, none of the independent Motbir witnesses, in whose presence, the so-called recovery was made, supported the prosecution case as they turned hostile.

[C]. Learned counsel for the appellants further submits that there is no evidence of -motive- which is main ingredient of murder. The only allegation of the prosecution witness is that Ganga Singh while working on the post of Forest Guard did not allow the cattle of appellants for grazing in the forest area. Due the said reason a quarrel took place between appellants and the employees of Forest Department including Ganga Singh, so also, villagers and appellants made complaint to the Chief Minister who visited Pali a day before to transfer Ganga Singh at some other place. It is submitted that some of the witnesses submit that some conversation were hard by them for taking action against deceased, Ganga Singh those witnesses turned hostile and did not support the prosecution case. Learned counsel for the appellants invited our attention towards entire evidence and submitted that complete chain of circumstances, which is required to be proved by the prosecution beyond reasonable doubt, is lacking in this case, therefore, finding of conviction recorded by the trial court on basis of such type of circumstantial evidence deserves be discarded for the purpose of arriving at the finding of guilt. It is also argued that so-called identification of cap, and stick is seriously doubtful because on the one hand vide Ex.P/11 and Ex.P/12 both articles were seized on the spot then how those seized articles were opened for the purpose of identification and

who has broken the seal for the purpose of identification, has not been proved by the prosecution, therefore, the alleged recovery of cap and stick to connect the accused appellants with the crime, has not been proved by the prosecution beyond doubt.

[D]. Learned counsel for the appellants further argued that in the FSL report, although human blood was reported, but blood group was not ascertained. Lastly, it is argued that most of the witnesses turned hostile and did not support the prosecution story, so also, the allegation of motive that deceased Ganga Singh did not allow appellants to graze their animals in the forest area, cannot be treated -motive- so as to commit murder to Ganga Singh. The entire prosecution case is based upon mere suspicion raised by the wife of deceased, Ganga Singh, which has not been proved by the independent witness, therefore, the judgment impugned may kindly be quashed.

11. In support of his case, learned counsel for the appellants relied upon following judgments:

1. Sharad Birdhichand Sarda Vs. State of Maharashtra, reported in (1984) 4 SCC 116.
2. Mahendra Singh @ Ghoda Vs. State of Rajasthan, reported in 2016 (3) Cr.L.R. (Raj.) 1519.
3. State of Rajasthan Vs. Mangal Singh & Ors. reported in 2017 (1) Cr.L.R. (Raj.) 435.
4. Dharmendra Vs. State of Rajasthan, reported in 2017 (1) Cr.l.r. (Raj.) 451.
5. Hansraj Vs. State of Rajasthan reported in 1996 (2) RCD 598 (Raj.)
6. Ishwar Singh Vs. State of Rajasthan, reported in 2017 (1)

Cr.L.R. (Raj.) 364.

7. Sumer Singh Vs. State of Rajasthan, reported in 1997

Cr.L.R. (Raj.) 363.

12. Per contra, learned Public Prosecutor vehemently argued that although prosecution case is based upon circumstantial evidence but it has been proved beyond reasonable doubt on the basis of reliable evidence of recovery and motive, therefore, the finding of learned trial court does not require any interference. Learned Public Prosecutor further argued that deceased, Ganga Singh, was working on the post of Forest Guard and as per his duties, he was to protect the forest, therefore, while performing his duties, Ganga Singh did not allow the appellants- animals to graze in the forest area. The appellants were illegally cutting the trees in the forest area, which was resisted by deceased Ganga Singh while discharging his duties not allowed the appellants to cut the trees, therefore, the appellants were bearing enmity with the deceased.

13. While inviting attention towards the statement of witness, Prem Singh (PW.2) and statement of Smt. Antar Kanwar (wife of deceased), it is submitted that incident of quarrel in between the appellants and deceased Ganga Singh, was informed by Ganga Singh, therefore, there was motive left with the appellants to cause death of Ganga Singh. While inviting attention towards the statements of PW.11, Ganesh Devasi, it is submitted that said witness categorically stated in his statement that before registration of the FIR, Prem Singh and Ganga Singh, met him near temple of Lord Mahadev in forest and food was offered to them and after taking food and tea, Ganga Singh, Prem Singh, and Hakma Rebari all left his house. The witness Ganesh Rebari (PW.11) stated before the court that appellant Poonma and one

Heera, were sitting near the house. The crux of argument of learned Public Prosecutor is that, appellants were having motive to kill deceased, Ganga Singh, who was working as Forest Guard in the forest area to protect the forest; and while discharging his duties, he did not permit the appellants to leave their animal for grazing in the forest area, therefore, they killed deceased, Ganga Singh in the forest using stone and Lathi, which is evident from the fact that near the body of deceased, blood stained stones were recovered by the police during investigation.

14. Learned Public Prosecutor further submit that after arrest, on the basis of information given by the appellants, "Lathi" and blood stained stones, used for inflicting injury to the deceased and cap of deceased were recovered in the presence of two witnesses by the investigating officer vide Ex.P/10, P/11 and P/12 although witnesses, Bheem Singh and Surendra Singh turned hostile, but they accepted their signatures and thumb impression upon recovery memos in their statements. Therefore, the learned trial court while accepting the testimony of investigating officer with regard to recovery of articles coupled with report of FSL (Ex.P/38), in which human blood was reported upon articles, held the accused appellants guilty on the basis of recovery of articles, thus, the finding of guilt recorded by the trial court does not suffer from any illegality.

15. Learned Public Prosecutor invited our attention towards the statement of PW.16, Smt. Antar Kanwar, wife of deceased and submitted that said witness categorically stated in her statement that her husband late Ganga Singh, went in the forest with Prem Singh, in connection their duties to protect the forest specifically stated that on 17.01.1994 her husband along with Baktawar Singh, Prem Singh went in the forest for patrolling. At the time of

leaving house, my husband said that he will come back in the evening at 05-06.00 PM and instructed me to prepare food but did not come back in the night, but Prem Singh came back at 06/07.00 PM, upon enquiry made through children from Prem Singh, it is informed that we both separated at the time of patrolling in the morning. That witness, Prem Singh, Inder Singh and some other persons went into forest to search my husband, on the day D.F.O. also came there and made enquiry to search my husband.

16. The witness PW.16, Smt. Antar Kanwar categorically stated before the court that accused appellants made complaint to the Chief Minister and gave threatening to my husband that you will be killed if you will not permit our cattle to graze in the forest. As per allegation of the wife of deceased Smt. Antar Kanwar, the appellants were having grievance with her husband, Ganga Singh, therefore, first they made efforts for his transfer, but later on they committed murder of my husband.

17. While inviting attention towards the statement of Investigating Officer, Daulat Singh, it is submitted that although witnesses of recovery turned hostile but this witness has categorically proved the recovery of Lathi, cap and blood stained stones, therefore, the finding arrived at by the learned trial court in the judgment impugned does not require any interference so as to maintain conviction of the appellants. In view of above arguments, it is submitted that there is no question to disbelieve the testimony of the investigating officer as well as Smt. Antar Kanwar wife of deceased, and Prem Singh, who went along with Ganga Singh in the forest on the relevant day, more so, chain of circumstances loudly speaks that appellants has rightly been convicted for the offence of murder of deceased, Ganga Singh.

18. After hearing learned counsel for the parties, we have perused the entire evidence along with finding of learned trial court in the judgment impugned. There is no dispute that deceased Ganga Singh was working as Forest Guard and deployed as In-charge Chowki of the forest area- Sumer. On 16.01.1994, Ganga Singh, Prem Singh, Parvat Singh and Baktawar Singh went in the forest near the temple of Lord Mahadev, where they took food and thereafter Ganga Singh and Hukma Devasi, went in the forest for patrolling but till night, Ganga Singh did not come back at his home and upon search when his whereabouts were not traced out, a Missing Person Report was submitted at Police Station Khivanda; and later on when dead body was recovered ACF, Mr. Chandrapal Singh (PW.29) submitted a report on 18.01.1994 against unknown persons for committing murder of Ganga Singh, Forest Guard of Sumer area. Upon the report submitted by Mr. Chandrapal Singh (PW.29) FIR was registered under Sections 302, 201 and 120B of IPC and accused appellants were arrested during investigation on the basis of doubt created by PW.16 Smt. Antar Kanwar (wife of deceased), and Prem Singh. During investigation upon information given by the appellants, recovery of cap, Lathi and blood stained stones were recovered vide Ex.P/10, Ex.P/11 and Ex.P/12. Now question arose, whether prosecution has proved its case beyond reasonable doubt on the basis of recovery of articles and evidence of motive alleged by the wife of deceased witness PW.16 Smt. Antar Kanwar and witness Prem Singh.

19. There is no dispute that dead body of deceased Ganga Singh who was working on the post of Forest Guard was recovered in the forest of Aravali hills in the boundary of Sumer. After registration of F.I.R. No.3/1994 (Ex.P/25) under Section 302 IPC investigation was made by the police. The recovery memo of dead

body was prepared at the place where the dead body of Ganga Singh, was found. "Panchayatnama" (Ex.P/1) of dead body was prepared on 18.01.1994 at 03.10 PM and before that details of condition of dead body was recorded at the place of occurrence vide Ex.P/2 at 02.55 PM in the presence of two witnesses, namely, Khinv Singh and Hanuwant Singh. The dead body of deceased Ganga Singh, was taken to the hospital for postmortem and vide Ex.P/6, postmortem was conducted at Govt. Hospital, Desuri by the Medical Board in which 15 injuries were found upon the body of deceased. After postmortem the body was handed over to the family members for cremation.

20. Upon perusal of the statements of prosecution witnesses, it is revealed that PW.1- Khim Singh (Motbir witness of recovery of dead body and "Panchayatnama" and other memos) turned hostile and did not support the prosecution case. PW.3- Bhabuta Ram, turned hostile and did not prove Ex.P/3 ("Panchayatnama"). The other witness of recovery i.e. PW.6- Bhim Singh did not support the recovery of pieces of Lathi, Cap and blood stained stones and categorically stated that no recovery of cap, dead body and stones was effected in front of him, his signatures were obtained at Sumer Jain Mandir. Witness PW.8- Hanuwant Singh, turned hostile and said that no search was made by the police in front of him and at the place Manvario-Ki-Nal and refused to say that any document was prepared in front of him. PW.10- Surendra Singh, who is witness of recovery of cap and blood stained stone, turned hostile and did not support the prosecution case and specifically stated in the cross-examination that recovery memos were not prepared in front of him.

21. In view of the fact that all witnesses of recovery turned hostile, therefore, how it can be said that prosecution has proved

its case beyond reasonable doubt on the basis of recovery of cap, blood stained stones and Lathi. It is also admitted fact that in the FSL report although human blood was detected upon the articles but blood group was ascertained by the FSL. So far as fact taking of meal in the forest by deceased Ganga Singh, and Prem Singh, we have perused the statement of PW.11- Ganesh, the said witness turned hostile and said that on the relevant day, nobody came to his residence, nor any incident/quarrel took place before him or he was aware about the conspiracy being hatched by the appellants. PW.12- Moda Ram, PW.13- Partaram, and PW.15- Kanaram, turned hostile and did not support the prosecution case.

22. Upon assessment of entire evidence, it emerges from the evidence that the finding of conviction is mostly based upon testimony of three witnesses, viz. PW.2- Prem Singh, PW.16- Smt. Antar Kanwar and the Investigating Officer. Admittedly, there is no eyewitness but as per statement of PW.16, Smt. Antar Kanwar, deceased left the house along with Prem Singh, in the evening Prem Singh (PW.2) came back to the house but deceased Ganga Singh did not come back, therefore, search was mounted by the police as well as employees of Forest Department. Upon perusal of entire evidence there is no evidence on record to prove the allegation of Smt. Antar Kanwar (PW.16) and Prem Singh (PW.2) with regard to motive and conspiracy. All the independent witnesses turned hostile and did not support the prosecution case based upon circumstantial evidence, but the learned trial court on presumption convicted the accused appellants for alleged offence of murder of Ganga Singh on the basis of recovery of cap, Lathi and blood stained stones, so also, upon the evidence of quarrel in between deceased Ganga Singh, Forest Guard and the appellants because he was not allowing the animals of appellants to graze in

the forest area. In our opinion, the allegation made by PW.16, Smt. Antar Kanwar, has not been supported by any witness, so also, witness PW.2 Prem Singh cannot be treated to be a trustworthy witness because he was the person with him Ganga Singh left his house and went in the forest but in the evening, Prem Singh came back alone and upon making enquiry from him, he went to search deceased, Ganga Singh along with other employees.

23. In our opinion, as per verdict of Hon''ble Apex Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra reported in AIR 1984 SC 1622, and subsequent judgment in the case of Sangili Vs. State of Tamil Nadu, reported in 2014 (10) SCC 264, the prosecution is required to prove its case beyond reasonable doubt, if the prosecution case is based on circumstantial evidence. In the case at hand, the prosecution has miserably failed to prove its case beyond reasonable doubt because most of the witnesses turned hostile. There is no trustworthy or reliable evidence to prove motive, therefore, finding of guilt recorded by the trial court on the basis of circumstantial evidence is not sustainable in law.

24. Recently, the Hon''ble Supreme Court in the case of Sangili (supra) while following the earlier judgment in the case of Sharad Birdhichand Sarda (supra) the Hon''ble Supreme Court held as under: -

"23. In Mani v. State of Tamil Nadu, (2009) 17 SCC 273, this Court made following pertinent observation on this very aspect:

"26. The discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case...."

24. There is a reiteration of the same sentiment in Manthuri Laxmi Narsaiah v. State of Andhra Pradesh, (2011) 14 SCC 117 in the following manner:

"6. It is by now well settled that in a case relating to circumstantial evidence the

chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused

must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

25. Likewise, in *Mustkeem alias Sirajudeen v. State of Rajasthan*, (2011) 11 SCC 724, this Court observed as under:

"24. In a most celebrated case of this Court, *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185)

"(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely "may be" fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the

Act is the information leading to discovery and not any opinion formed on it by the prosecution."

(emphasis supplied)

26. It is settled position of law that suspicion however strong cannot be a substitute for proof. In a case resting completely on the circumstantial evidence the chain of circumstances must be so complete that they lead only to one conclusion, that is, the guilt of the accused. In our opinion, it is not safe to record a finding of guilt of the appellant and the appellant is entitled to get the benefit of doubt. We, therefore, allow the appeal and set-aside the conviction

and sentence of the appellant. The appellant be set at liberty unless required in any other case."

25. Upon assessment of entire circumstantial evidence of present case in the light of aforesaid judgments, we find that prosecution has failed to prove its case beyond reasonable doubt on the circumstantial evidence of last seen, recovery of Lathi, blood stained stones, and cap of deceased, and further there is no reliable evidence to prove and establish the motive for commission of offence.

26. Consequently, we are of the opinion that the finding of the learned trial Court so as to hold accused appellants guilty is not sustainable in law and accused appellants are entitled to be given benefit of doubt.

27. Accordingly, the instant criminal appeal is allowed, the judgment impugned dated 30th of October 1998 passed by learned Addl. Sessions Judge, Bali, District Pali, in Session Case No.18/1994, is hereby quashed and set aside. The sentence awarded to the accused appellants has already been suspended. Their bail bonds are hereby discharged.

28. Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellants are directed to forthwith furnish personal bonds in the sum of Rs.20,000/- and a surety bond in the like amount each, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellant, on receipt of notice thereof, shall appear before Hon"ble the Supreme Court.