
(1985) 07 RAJ CK 0043
In the Rajasthan High Court
Case No : Criminal Appeal No. 320 of 1981

Karamveer Singh	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 19-07-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 306
Penal Code, 1860 (IPC) — Section 201, 302, 392

Citation : (1985) WLN 663

Hon'ble Judges : Mohini Kapoor, J; Mahendra Bhushan Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mahendra Bhushan Sharma, J.—Accused appellant Karamveer Singh has filed this appeal against his conviction under Sections 302, 392 and 201, IPC. On the first count, the learned Addl. Sessions Judge, Kishangarh has sentenced the accused appellant to an imprisonment for life and to pay a fine of Rs. 201/- and in default of payment of fine to suffer further rigorous imprisonment for one year. On the second count, the accused appellant has been sentenced to undergo five years" rigorous imprisonment and to pay a fine of Rs. 201/- and in default of payment of fine to further suffer one year"s rigorous imprisonment. Under the third and on the last count, the accused has been sentenced to two year"s rigorous imprisonment and to pay a fine of Rs. 101/- and in default of payment of fine to further undergo six months" rigorous imprisonment. All the substantive sentences of the accused appellant have been ordered to run concurrently.

2. The facts of the case are that on October 31, 1979, a report was lodged that on the last Amavashya of the year 1979, the two deceased Gurdayal Singh and Sahjad Singh, had left their houses from village Khundroth, for labour. On October 7, 1979, a mile away from village Khundroth a dead body was found floating in the well and the villagers lodged a report Ex. P. 15, in the Police Station Madhan, tehsil, Behror. Therein, it was stated that a dead body is floating

in the well. An inquest, Ex. P. 19, was prepared. The dead body was of a male, but could not be identified. Another dead body was seen in a well, which is known as Patkadewala, and report of the incident, Ex. P. 11, was lodged by Dilip Singh. An inquest report of the dead body was prepared and, it was noticed that on the hand of the dead body was engraved the name of Gurdayal Singh. One Sher Singh also lodged a report, Ex. P. 10, in the police Station, Madhan, on October 31, 1979, where in it was stated by him that his brothers, Gurdayal Singh and Sahjad Singh, had left the house to find work. Gurdayal Singh did not return and, therefore, his brother Sher Singh went in his search. He could not be found in the village Dhavana to which Sahjad Singh belonged. It was given out that Gurudayal Singh and Sahjad Singh did not return to village Dhavana. He went to village Khundroth where Sherbai wife of Udami gave out that Gurdayal Singh and Sahjad Singh had come to village Khundroth and stayed there in the night. On the next day, they had taken liquor in the house of Dilip Singh. One of them had stayed with Dilip Singh and the other with Banwari. Thereafter, as stated earlier, two dead bodies were recovered from the well. Sher Singh suspected that somebody has caused the death of Gurudayal Singh and Sahjad Singh. A FIR was registered and the case was investigated.

3. The Court examined Dr. Suresh Chandra (PW 1). Dr. Suresh Chandra was posted as Medical Officer Incharge, Government Hospital, Madhan. On October 8, 1979, i.e. the day on which he conducted autopsy on the unclaimed dead body, found in the jungal of Khundroth, tehsil Behror. It was only a human skeleton of a male and, as such, could not be identified. The Doctor could not know about the time of death and also the cause of death. Dr. Suresh Chandra also examined a dead body on October 17, 1979 and stated that on the left arm was engraved the name of Gurdayal Singh. The dead body was in a decomposed state and was skeleton and there were magotes. He could not know the cause of death. He prepared the post-mortem report Ex. P. 2. He stated that looking to the condition of the skeleton he was of the opinion that the person must have been killed first and thereafter the dead body was thrown into the well.

4. Accused Lal Singh, who was later on given pardon and turned as an approver, was arrested on November 1, 1979, vide arrest memo Ex. P. 24. Nothing was recovered from his person at the time of his arrest. His statement u/s 164, Cr.PC was recorded by Udai Chand Barupal. Thereafter the learned Magistrate had given pardon to him u/s 306 of the Code of Criminal Procedure. Lal Singh turned as approver.

5. Karamveer Singh accused appellant was arrested on November 18, 1979. vide arrest memo Ex. p. 25. While in police custody on November 18, 1979, at 2.30 p.m. he made a discovery statement to the SHO, Radhey Gopal (PW 20). Radhey Gopal (PW 20) is Investigating Officer. The information was furnished by the accused to the said Radhey Gopal, Investigating Officer, that one bag of nylone belonging to Karamveer Singh containing his clothes baniyan etc. and silver tabiz of Shahjad Singh have been concealed by him in between Beedwala well and

hillock and he can get it recovered. In pursuance of the above information, the accused led the SHO (PW 20) and other witnesses, Matadeen (PW 16) and Ramjilal (PW 13) to the place where he concealed the said articles and in their presence got recovered the bag containing the clothes of Karamveer Singh and the silver tabiz belonging to Sahjad Singh. The accused is said to have made another discovery statement on November 23, 1979 to the SHO, Radhey Gopal (PW 20) that a lathi of bamboo, which has been used by him as a weapon of offence in causing the death of Gurdayal Singh and Sahjad Singh have been concealed by him in his house and he can get it recovered. In pursuance of the said information the accused led the SHO and the above mentioned motbirs, including Matadeen (PW 24) to his house and got recovered the same.

6. After investigation a charge-sheet was filed against the accused appellant. Approver Lal Singh was examined before the learned committing Magistrate as well as before the learned Sessions Judge. The learned Sessions Judge placing reliance on the testimony of approver as well as on the recovery of the above property and holding that the statement of the approver was corroborated in material particulars, convicted and sentenced the accused appellant as aforesaid.

7. We have heard the learned counsel for the accused appellant and the learned Public Prosecutor and have been taken through the evidence on record.

8. The contention of the learned Advocate for the accused appellant is that Lal Singh cannot be said to be an accomplice and, his statement, therefore, is not admissible in evidence as an accomplice. His contention is that a look at his statement will show that he does not involve himself in the main offence of the alleged murder of both Gurdayal Singh and Sahjad Singh and has kept himself aloof. It is only for the offence u/s 201, IPC that the approver has stated that he was asked by the accused to assist him in throwing the dead body in the well. In respect of the contention that Lal Singh is not an accomplice, the learned Advocate for the accused appellant has placed reliance on *Jehana v. Crown* AIR 1923 Lah 345, and *Dr. Jainand and Another Vs. Rex*, In *Jehana v. Crown* (supra) it has been held that one who deposes that he only helped the accused in disposing of the body of the deceased after he was killed by the accused is no accomplice. In the case of *Dr. Jainand v. Rex* (supra), the view has been taken that when an accused person in his statement or confession imputes the commission of the offence to his co-accused, but does not implicate himself as fully and substantially as does his co-accused, the said statement cannot be used as evidence against the co-accused. A look at the statement of the approver, Lal Singh, who was examined as a witness in the trial Court as PW1, would reveal that the approver has stated that he returned from the house of Dilip Singh. He saw that Karamveer Singh was standing at his house. The accused called him and asked as to which place the persons who are sitting in the house of Dilip Singh belong. He gave out that Gurdayal Singh was of village Padala and his relation Sahjad Singh is also there. The accused asked the reason of their coming to the village and he (Lal Singh) gave out that they have come to the village to

collect the labourers. The accused then asked Lal Singh as to whether Gurdayal Singh and Sahjad Singh had any money with them and Lal Singh replied that they might be having Rs. 1000/- or Rs. 800/- with them. The accused then asked him to deprive them of the money, on which Lal Singh said how it shall be possible. Karamveer Singh asked him to accompany him (Lal Singh) and he would snatch the money. He further said that he and the accused went to the house of Dilipsingh & Lalsingh called Gurdayalsingh. Gurdayalsingh asked as to who is and where from he has come ? The accused gave out to Gurdayalsingh that he has come to collect the labourers. The accused gave out that he will help him. Then he(Lalsingh), Gurdayalsingh and accused Karamveer Singh proceeded from there to the well. It is further stated by Lal Singh that he was ahead of the two, i.e., deceased Gurdayal Singh and accused Karamveer Singh and was carrying a torch. When they were so going the accused gave a lathi blow on the neck of Gurdayal Singh, deceased. He (Lal Singh) disclosed that he turned back and saw that accused Karamveer Singh gave another lathi blow to Gurdayal Singh, deceased. He asked Karamveer Singh as to what he has done. Karamveer Singh asked him to remain silent. Thereafter Karamveer Singh accused took search of Gurdayal Singh (deceased) and took out Rs. 42/- from his pocket. A hundred rupee-note was further taken out from the Nada of the Payajama. Gurdayal Singh was having golden-loongs in both of his ears and they were snatched away by the accused, Karamveer Singh, who kept them in his pocket. Karamveer Singh asked to lift Gurdayal Singh. Lal Singh gave out that he was afraid, but Karamveer Singh asked him to help him. He caught hold of the legs of Gurdayalsingh and Karamveer Singh caught hold of his hands and threw Gurdayal Singh into the well known as Patkada. Thereafter both of them left the place. Lal Singh has further stated that money must be with Sahjad Singh. Sahjad Singh is sitting at the house of Banwari. Karamveer Singh told Lal Singh to ask Sahjad Singh to come to the well where meat had been cooked, and he (Sahjad Singh) was required there. Sahjad Singh accompanied him. According to him, Karamveer Singh was found sitting in the way. All the three started towards the well. He (Lal Singh) was again ahead of the three and while they were so proceeding Karamveer Singh gave a lathi blow on the neck of Sahjad Singh and when he turned back, he (Lal Singh) saw that the accused, Karamveer Singh gave another blow by lathi on the neck of Sahjad Singh, as a result of which he fell down on the ground. Karamveer Singh took a search. There was a tabiz on his arm which was taken away by Karamveer Singh. He caught hold of the legs of Sahjad Singh as told by Karamveer Singh and Karamveer Singh caught hold of Sahjad Singh by his hand and he was thrown into the well.

9. From the above statement, the contention of the learned Advocate for the accused appellant is that so far as approver Lal Singh is concerned, he has not said that he was privy to the main offence of murder. According to him, he was only going ahead on both the occasions and, all of a sudden, accused Karamveer Singh gave lathi blows to both Gurdayal Singh and Sahjad Singh. Placing reliance on the statement of Lal Singh, the contention of the learned Advocate for the

accused appellant is that Lal Singh was not an accomplice and, therefore, his evidence cannot be read against the accused. After having gone through the statement of Lal Singh it can be said that he does not involve himself so far as offence of murder in relation to deceased Gurdayal Singh and Sahjad Singh, is concerned. All that can be said is that he became a privy to the accused appellant in so far as depriving Gurdayal Singh and Sahjad Singh of their money is concerned. It has come in the statement, of approver PW 3 Lal Singh that the accused appellant gave out whether it is possible to snatch away the money, which amounted to Rs. 1000/- or Rs. 800/- and, he (Lal Singh) said that it is possible and became privy to it. An accomplice is one who is in some way or the other connected with the offence in question. He must be supposed to have been directly or indirectly concerned or privy to an offence. In the instant case, as stated earlier, from the statement of Lal Singh (PW 1) it cannot be said that he became privy to or supposed to have concern in causing the death of Sahjad Singh and Gurdayal Singh. Therefore, only on the statement of the approver, which we shall presently deal with, we are satisfied that on dual test the conviction cannot be based. The dual test which an approver has to satisfy is that he must be a truthful witness and he must be corroborated in material particulars by other witnesses.

10. So far as the medical evidence is concerned, only skeletons were recovered and it cannot be said as to what was the cause of death, whether the deceased persons, Gurdayal Singh and Sahjad Singh, died as a result of the injuries received by them on their neck. In the skeletons, there was no fracture on the neck, or on the nearby parts of the neck. According to the statement of Lal Singh (PW 1) the occurrence took place after one day of Amavashya in the year 1979. A look at the FIR Ex. P. 11 lodged by Sher Singh, brother of deceased Gurdayal Singh, shows that it was on the last Amavashya (of the year 1979) that Gurdayal Singh and Sahjad Singh had left for Khundroth to find work. According to the learned counsel for the accused appellant the said day of Amavashya fell on September 21, 1979, whereas Dushehra fell some time in the month of October 1979. Dilip Singh (PW 3), Banwari (PW 7) and Pooran Singh at whose house the deceased are said to have enjoyed liquor have not supported the prosecution case and were declared hostile. Therefore, the statement of the approver that the deceased persons had stayed with them or taken liquor with them or the accused gave lathi blows on the neck of the two deceased persons is not corroborated by the other witnesses.

11. So far as the recovery of nylon bag alleged to be belonging to Gurdayal Singh is concerned, it does not appeal to us as after the accused having caused the death of Gurdayal Singh and having thrown the dead body into the well, would not retain a nylon bag with him so as to create an evidence against him. We place no reliance on recovery.

12. So far as the recovery of silver tabiz on the hand of the deceased, at the instance of the accused appellant, Karamveer Singh, is concerned, the two

witnesses of recovery namely, Matadeen (PW 13) and Ramji Lal (PW 14) have not supported the prosecution case. Thus, we are of the opinion that the statement of the approver is not corroborated in material particulars and, the rule of prudence is that even if the statement of the approver is truthful, which in our opinion Lal Singh is not, it should be corroborated in material particulars by an independent evidence.

13. In the result, we allow this appeal, set aside the judgment dated 20th June, 1980, passed by the learned Addl. Sessions Judge, Kishangarh, acquit the accused-appellant of the offences Under Sections 302, 392 and 201 IPC and set aside the sentences awarded to him for the above offences. The accused is in jail. He shall be released forthwith, if not required in any other case.