
(2017) 03 RAJ CK 0061
In the Rajasthan High Court
Case No : 100 of 1989

Lal Singh @ Lala Singh S/o Balbir Singh	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 174](#), [Section 437A](#)
a> - Power to examine the accused - Police to enquire and report on suicide, etc
[1767](#)

Citation : (2017) 03 RAJ CK 0061

Hon'ble Judges : Gopal Krishan Vyas, G.R. Moolchandani

Bench : DIVISION BENCH

Advocate : M.K. Garg, Deepak Agarwal, J.P.S. Choudhary, Pritam Solanki

Judgement

1. The instant appeal is directed against the judgment dated 31/03/1989 passed by Additional District and Sessions Judge, Rai Singh Nagar, District Sri Ganganagar in Sessions Case No.77/1987 by which the accused-appellants have been convicted under Section 302 / 34 of IPC with life imprisonment but no fine has been imposed.

2. The contents of F.I.R. No.36/87 (Ex.D.5) does not discloses name of any accused person and has been lodged against unknown, which reads as under :-

"VERNACULAR MATTER OMITTED"

3. The case was committed to learned trial Court, which after framing charges, conducted the trial. The prosecution

produced ten witnesses and after examination of the accused persons under Section 313 of CrPC, defence also produced two witnesses and twenty one exhibits were marked by the prosecution, the defence also got five exhibits marked in its defence and the trial Court concluded the trial with aforesaid verdict by convicting all the accused persons under Section 302 / 34 of IPC, ignoring the mandate of imposing fine, a requisite under Section 302 of IPC. 4. Heard submissions of rival sides, learned counsel for the appellants has contended that trial Court has committed material illegality and perversity in passing the impugned judgment, since F.I.R is highly delayed, initially, the incident was registered under Morgue and F.I.R does have got names of Abha Ram and Ahmedaram Meghwal, who allegedly apprised to the complainant brother of the deceased regarding the witnessing of the body in a water ditch, they did not divulge anything regarding "last seen together" or anything about extra judicial confession, and both these versions have been invented through improvements, in order to fasten illegal involvement of the appellants-accused persons. Had there been any truth with respect to alleged fact of "last seen together", then it would have been narrated right at the time, when information relating to witnessing of body, in the pond, was given and this aspect would have certainly been mentioned in the F.I.R itself, and so far as witnesses of recovery are concerned, one of the witness has not been produced by the prosecution, whereas other is a close relative of the complainant party, so their testimony cannot be relied and it is also improbable that the belonging of the deceased person, whose body was allegedly found in the water pond, like Gamcha and Juti would be removed and kept intact somewhere else for alleged recovery. Doctor has also opined that

strangulation marks found on the neck of the deceased could not be caused by lathi, but prosecution has shown recovery of lathi, which is of no use and obviously does not connect the accused with crime. Story of the prosecution is based on bogus surmises, which is not reliable at all and is not sufficient to prove the alleged offence, but ignoring all these truths, learned trial Court has wrongly convicted the accused persons, hence, the appeal be allowed and the conviction be set aside.

Learned public prosecutor has argued that there is no error in the findings of learned trial Court because there is reliable evidence of "last seen together" with "extra judicial confession" against the accused persons, which has rightly been accepted by learned trial Court. Recoveries have been made on the instances of accused persons, which relates to the belongings and weapon of assault used in the crime, Gamcha and Juti of the victim has also been recovered from the possession of the accused persons, the injuries are well corroborated by medical evidence and appeal does not have got any force, so it be dismissed.

5. Perused the record and examined the evidence thoroughly.

PW.5 Dr. Mahaveer Prasad conducting the autopsy on the body of the deceased has said that the body of the deceased was having bruises on chest, neck and right arm and all these injuries were "ante-mortem" in the nature, but Ex.P.10 Panchayatnama of the body as well as Ex.D2 "status report of the dead body" discloses that there was no injury found on the body of the deceased. The autopsy was conducted on 13/05/1985 and Ex.P1 Postmortem Report dated 13/05/1985 has got a noting disclosing duration of death three to four days from, 13/05/1984.

According to the testimony of PW.1

Govind Ram, a version of "extra judicial confession" has been stated and has also been brought forth, since he has said that the accused persons confessed before him that they pressed "lathi" upon the neck of the deceased, which caused his death and after disclosing this the accused persons implored for pardon, but PW.5 Dr. Mahaveer Prasad has said that the strangulation was done with some "soft object" and neck choking was not caused by any hard object akin to lathi, this Medical expert has also said that the injuries found on the body of the deceased, were results of struggle.

6. PW.5 Dr. Mahaveer Prasad has also said that the body was not having removal of skins from chest and arms resulting decomposition, whereas PW.8 Privthvi Singh SHO recovering the body of the deceased has narrated otherwise by saying that mentioning of removal of skin from chest, neck and arms of the body as mentioned in Ex.D.2 is correct and has asserted that skin was found removed from the neck and arms of the deceased and "water was coming out of the mouth of the body", but this fact is denied by doctor conducting the postmortem, since in his cross-examination, he has also said that asphyxia could be resulted because of neck choking and drowning as well and has also said that if strangulation is caused by throttling with lathi, then strangulation signs alike detected could not occur. As such, symptoms found on the body of the deceased and as averred by the SHO are vitally mismatching with the narration of the medical expert.

7. The prosecution has also come with a story that an "extra judicial confession" was made disclosing death by throttling the neck by lathi, but contrary to it, medical expert PW.5

Mahaveer Prasad has distinctly opined that the strangulation was not found to have been done with an object like lathi and it was subjected with a soft object, which too makes the story of the prosecution dubious and weak.

On detection of the dead body, which is stated to be found on the basis of information, rendered by some passerbys, namely, Asharam and Ahemadaram, proceeding under Section 174 / 176 of CrPC for morgue were initiated because nothing of the nature disclosing homicidal act was there, but owing to some improvements and inventions of "extra judicial confession" and that of "last seen together", the story of the prosecution, which too appears to be unreliable, being contradictory in nature, makes the story of the prosecution dubious, suspicious and unreliable.

8. All the evidence of the prosecution says that the field of the deceased was being cultivated by the accused persons at the time of the alleged offence and all the witnesses apart from the wife of the deceased, namely, Smt. Birkha PW.2, who has said that the accused person/s were no more having cultivatory understanding with the deceased and such an arrangement was of bygone time, which was not existing at the time of offence, which too cast a shadow of doubt on going for accounting alleged share for cultivatory money.

9. PW.6 Asharam real brother of deceased, has stated, a version of "last seen together" and has asserted that his deceased brother was witnessed by this testimony asking accounting of his cultivatory share and requesting to leave but the accused persons coercively checked deceased from leaving and allured him to go alongwith, but this version has not been disclosed in the FIR timely by him, rather he did not convey this to

anybody despite after disappearance of his deceased brother and he even did not bother to come over there, even to apprise it to anybody else or to the police authorities after disappearance and further unnatural death of his real brother, which too makes the entire prosecution version unreliable and mysterious because in his testimony PW.4 Om Prakash has said that "the event belongs to one year back and it is a matter of about half past twelve of mid night, Prithvi, his brother was under liquor intoxication and was proceeding towards his home, Bakthawar Singh, Phool Singh, Darbar Singh and Lal Singh came and stopped him, then Prithvi uttered that he will certainly go to his home and asked them for settling his account, PW.4 Om Prakash has also said that he too asked the accused persons by saying that his brother was habitual drunkard so, settle his account, hence they took Prithvi to their Dhani for settling his account, next day he went to his in-law's home and when he came back, Budhram informed him about demise of Prithvi.

10. PW.6 Asharam has come with a narration of "last seen together" since he has said that the event belongs to one year back, he had been to ditch (Khala), ten to eleven or five to seven persons of Village were also there, they witnessed dead body of Prithvi. He has further said that dead body of Prithvi was lying there, while he on way to Village, "Budhram" met, hence it was informed to him that Prithvi's body was lying there in Khala. He has further said that in the night of Saturday, he had gone to his field at about twelve to one mid-night, then a sound "do not kill"..... "do not kill"... was coming from back side, it was voice of Prithvi since he recognized the voice of Prithvi and Pooran Singh was saying, "kill him" and his voice was also recognized by him but voice of his "Mama" could

not be recognized, Prithvi Singh was saying "Mama".....
"Mama"....., in his cross-examination he has said that his statements were taken by thanedar next day. He has also said that he witnessed the dead body on Tuesday and on Saturday, the "voices were overheard".

He has further said that when he apprised Budhram about witnessing, dead body of Prithvi, he did not inform him regarding overhearing the voices during night.

Ex.D.4 statement of this witness Asha Ram recorded under Section 174 of CrPC on 13/05/1987 did not disclose anything regarding "over-hearing" of alleged voices like "do not kill"..... "do not kill"..... , which are enough to say that this witness has vitally improved his narrations and the version regarding "over-hearing" of certain murmur or voices alike "do not kill"....."do not kill".....makes the statements of this witness untrustworthy.

11. PW.3 Budhram brother of deceased Prithvi has also said regarding information of "last seen together" but the morgue proceedings does not disclose anything unnatural, which is evident to establish that nothing unnatural was reported to the police authorities at the time of morgue proceedings and something contrary to the version disclosed at the first instance makes the subsequent version, unreliable, non-trustworthy and dubious.

12. PW.1 Govind Ram through whom, story of "extra judicial confession" has been introduced, has said that Bakhtavar Singh called him and narrated him, incident regarding killing of Prithvi, who allegedly died while tried to deter abuses.

PW.1 Govind Ram has said that he conveyed all this to Budhram, who asked him to visit police station next day,

which too appears to be unreliable since anybody whose brother died an unnatural death and something comes to his knowledge regarding "extra judicial confession" having been made by some person disclosing cause of his brother's killing or killers, will certainly rush to the police station along with such a person, making disclosure and will never ask him to wait for a day and to accompany to police station next day, in his cross-examination, he has admitted that Prithvi was his nephew , this witness has also said that Prithvi died, one and half month back from the time of disclosure of "extra judicial confession", but this kind of timing, mismatch with the prosecution story because morgue was registered on 12/05/1987 and F.I.R was lodged on 07/06/1987.

13. PW.2 Birkha wife of deceased Prithvi Raj has said that the day on which body of her deceased husband was found, her husband was wearing Chadar, Kamij, a Gamcha was with him and Juti were there on his feet, but these Gamcha and pair of Juti have been shown to be recovered at the instance of the accused persons.

Smt. Birkha has also said in his cross-examination that her husband was habitual drunkard and did use not to return home for days together, she has also asserted that her deceased husband was prosecuted for the murder of his father-in-law (Sasur), so far as the veracity of recoveries are concerned, she has also said that prior to the identification of recovered items "Gamcha" and "Juti" were shown to her by the police and Budhram was also with her, when policemen shown them Gamcha and Juti, so evidentiary value of recoveries and identification of these recovered articles, diminishes and becomes unnatural.

Recovery of lathi is also of no value because

Dr. Mahaveer Prasad PW.5 has said that choking of the neck was not done with hard object like lathi rather it was done with some soft object.

14. In *Baijnath & Ors. vs. State of Madhya*

Pradesh, 2017 1 SCC 101, Hon"ble the Supreme Court has held that in the cases of deficiencies of proof, benefit would be available to the person charged and in *Narendra Singh & Another v. State of M.P.*, (2004) 10 SCC 699, the Hon"ble Apex Court has also held that in event of there being two possible views, one supporting the accused should be upheld and Hon"ble the Supreme Court has recognized presumption of innocence as a human right.

15. Scanning of entire afore-referred evidence is enough to suggest that the prosecution has miserably failed to establish its case beyond doubt as per the principles of criminal jurisprudence. Story of the prosecution is full of mystery, doubt and un-established versions, and same is not worthy to connect the accused with the crime beyond contours of reasonable doubt.

On the basis of entire appreciation as dwelt above, the appellant-accused persons are entitled to get benefit of doubt because nothing concrete and reliable has emerged from the prosecution evidence against the accused appellants.

Therefore, we are of considered view that learned trial Court has committed material illegality in relying upon the prosecution evidence so, findings of learned trial Court are liable to be set aside.

Hence, the instant appeal is allowed and the impugned judgment is set aside and quashed. All the accused-appellants Lal Singh @ Lala Singh, Dalbara @ Dalbara Singh, Bakhtawar Singh and Puran Singh are acquitted from the charges of

Section 302 / 34 of IPC, they are already on bail, so need not to surrender, their sureties are discharged.

Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellants are directed to forthwith furnish a personal bond in the sum of Rs.30,000/- and a surety bond in the like amount respectively, 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 appellants, on receipt of notice thereof, shall appear before Hon''ble the Supreme Court.