

(2017) 07 RAJ CK 0009
In the Rajasthan High Court
Case No : 599 of 2001

Pratap Singh S/o Shri Kishan Singh

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 313](#), [Section 374](#) - Examination of witnesses by police - Power to examine the accused - Appeals from convictions
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Citation : (2017) 07 RAJ CK 0009

Hon'ble Judges : Gopal Krishan Vyas, Manoj Kumar Garg

Bench : DIVISION BENCH

Advocate : Chaitanya Gehlot, C.S. Ojha

Judgement

1. The instant appeal has been filed by the two accused-appellants namely Bhanwar Lal and Pratap Singh under Section 374 Cr.P.C. against the judgment and order dated 05.09.2001 passed by the learned Addl. Sessions Judge (FT), Rajsamand in Sessions Case No.28/2001 by which the learned trial court convicted the accused-appellant Pratap Singh for offence under Sections 302 and 201 IPC and convicted the accused-appellant Bhanwar Lal for offence under Section 302 / 34 and 201 IPC and passed the following sentence which reads as under :

PRATAP SINGH

Section 302 IPC-- Life Imprisonment and a fine of Rs.5,000/-

Section 201 IPC-- one year's R.I. and a fine of Rs.2,000/-

BHANWAR LAL

Section 302 / 34 IPC-- Life Imprisonment and a fine of Rs.5,000/-

Section 201 IPC-- one year's R.I. and a fine of Rs.2,000/-

In default of payment of fine for both the offence to further undergo 1 year's S.I.

2. Both the sentences were ordered to run concurrently.

During the pendency of this appeal, the accused-appellant

Bhanwar Lal died on 18.12.2011. Therefore, vide order dated

04.07.1997 this Court dismissed the appeal qua the accused-

appellant Bhanwar Lal as abated.

3. Now we are deciding the appeal of accused-appellant Pratap Singh only.

4. As per the facts of the case, Kheem Singh (PW-1) brother of the deceased Raghuveer Singh lodged an oral report at Police Station Raj Nagar, District Rajsamand on 20.11.1999 at about 1:15 PM. Upon which FIR No.783/1999 (Ex-P/2) was registered on 20.11.1999. In the FIR following allegations were levelled by the complainant Kheem Singh which reads as under :

"VERNACULAR MATTER OMITTED"

5. After registration of FIR, the SHO Police Station Raj Nagar commenced investigation and during investigation on the basis of extra judicial confession made by the accused-appellants Pratap Singh and Late Bhanwar Lal (died during the pendency of the appeal) made before Goverdhan Singh (PW-9) and Bhanwar Singh (PW-10), the SHO P.S. Raj Nagar arrested the accused-appellants Pratap Singh and Late Bhanwar Lal and upon information given under Section 27 of the Evidence Act (Ex-24) by accused-appellant Pratap Singh recovered sword vide Ex-P/18 on 07.12.1999. The usual investigation was made at the place of occurrence and on completion of investigation filed charge-sheet

against the accused-appellants Pratap Singh and Late Bhanwar Lal in the court of Chief Judicial Magistrate, Rajsamand for offence under Section 302 and 201 / 34 IPC from where the case was committed for trial to the Court of District and Sessions Judge, Rajsamand.

6. The District and Sessions Judge, Rajsamand thereafter transferred the case for trial in the Court of Additional District and Sessions Judge, Rajsamand where trial was concluded. Before transferring the case to the Court of Additional District and Sessions Judge, Rajsamand, the District and Sessions Judge after providing an opportunity of hearing framed charges against the accused-appellants Pratap Singh and Late Bhanwar Lal for offence under Section 302 and in alternative under Section 302 / 34 and Section 201 IPC. Both the accused-appellants denied the charges and prayed for trial.

7. In the trial, an opportunity was granted to the prosecution to lead evidence. From the prosecution side 14 witnesses were produced to prove the case and thereafter statement of accused-appellants Pratap Singh and Late Bhanwar Lal were recorded under Section 313 Cr.P.C. but they denied all the allegations levelled by the prosecution witnesses and stated that it is a case of false implication.

8. In spite of granting an opportunity to lead evidence in defence, no evidence was produced by the accused-appellants Pratap Singh and Late Bhanwar Lal in their defence.

9. The learned Trial Court after providing an opportunity of hearing to both the parties finally decided the Sessions Case No.28/2001 vide judgment and order dated 05.09.2001 and held the accused-appellant Pratap Singh guilty for commission of offence under Section 302 and 201 IPC and held accused-

appellant Bhanwar Lal guilty for commission of offence under Section 302 / 34 and 201 IPC and passed the sentence mentioned above.

10. As observed above, the accused-appellant Bhanwar Lal died during the pendency of this appeal. Therefore, we are adjudicating the appeal qua the accused-appellant Pratap Singh.

11. Mr. Chaitanya Gehlot, counsel appearing for the accused-appellants has vehemently argued that no eye-witness of the case, nor any allegation is levelled in the FIR with regard to motive by the complainant Kheem Singh (PW-1), brother of the deceased Raghuveer Singh, but during investigation after 15 days of the incident on 05.12.1999 for the first time statement of two witnesses were planted by the prosecution to connect the accused-appellants with the crime on the basis of extra judicial confession. The statement under Section 161 Cr.P.C. of witnesses Goverdhan Singh (PW-9) and Bhanwar Singh (PW-9) were recorded on 05.12.1999 in which a story of extra judicial confession was concocted by the prosecution so as to connect the accused-appellants with the crime and after recording their statement the accused-appellant Pratap Singh was arrested on 06.12.1999 vide Ex-P/21 and after his arrest upon his information Ex-P/22 the sword was recovered vide Ex-P/18 on 07.12.1999.

12. Counsel for the accused-appellants further argued that it is a case in which not only the evidence of extra judicial confession was created but also false recovery of sword was made by the Investigating Officer which is evident from the fact that the accused-appellant Pratap Singh was in Police Station when the Investigating Officer called the witnesses of extra judicial confession. To prove the said fact, learned counsel for the accused-appellants invited our attention towards the statement of

Goverdhan Singh (PW-9) who has categorically stated in his cross-examination that when he was called by the Police in Police Station, Pratap Singh was already sitting in Police Station. Meaning thereby it is a pure case of false implication on the basis of so called concocted evidence of extra judicial confession. Learned counsel for the accused-appellants further argued that there was no occasion or reason left with the accused-appellants to make extra judicial confession after 15 days before two unknown persons Goverdhan Singh (PW-9) and Bhanwar Lal (PW-10) but the learned trial court completely ignored the said fact and erroneously accepted their testimony so as to hold accused-appellants guilty for alleged offence of murder on the basis of circumstantial evidence and extra judicial confession. Learned counsel for the accused-appellants argued that the recovery of sword is totally concocted because as per record of the case the sword was deposited in Malkhana on 20.11.1999 whereas as per Ex-P/18 sword was recovered at the instance of accused-appellant Pratap Singh on 07.12.1999. Therefore, the recovery of sword from the accused-appellant is totally false.

13. So far as recovery of cloths of accused-appellants are concerned, it is submitted that the said recovery was made at the instance of accused-appellant Pratap Singh on 07.12.1999 and at the instance of Late Bhanwar Lal on 13.12.1999 but these articles were deposited in Malkhana on 13.12.1999. Thus there is great discrepancy with regard to the fact of depositing the articles. Learned counsel for the accused-appellants submitted that link evidence stands broken for the reason that Shamshuddin (PW-8) Malkhana In-charge has stated on oath that articles were sent to FSL with Constable Baluram (PW-13) on 27.12.1999 but Baluram (PW-13) stated before the Court that the articles were given to

him by Shamshuddin (PW-8) on 28.12.1999. In view of above, it is submitted that the entire case which is based upon the extra judicial confession in recovery of sword so as to connect the accused-appellants with the crime has not been proved beyond doubt. Therefore, the conviction and sentence passed against the accused-appellant Pratap Singh deserves to be quashed and he is entitled to be acquitted from the charges levelled against him.

14. Per contra, learned Public Prosecutor vehemently argued that it is a case in which two trustworthy witnesses Goverdhan Singh (PW-9) and Bhanwar Singh (PW-10) categorical stated before the Court that extra judicial confession was made by the accused-appellant Pratap Singh before them in which he has categorically narrated the whole incident of murder of Late Raghuveer Singh by inflicting injury by sword. Therefore, there is no reason to disturb the findings of learned trial court based upon the trustworthy witnesses of extra judicial confession.

15. Learned Public Prosecutor further argued that the prosecution has proved recovery of sword and cloths of accused-appellants and as per FSL report human blood of AB group was found upon the cloths and sword recovered at the instance of the accused-appellants. Therefore, there is no question to say that the prosecution has concocted false story so as to connect the accused-appellant Pratap Singh with the crime committed by him. More so it is a case in which investigation was conducted because there was no eye-witness of the case but during investigation statement of two independent witnesses were recorded before whom extra judicial confession was made by the accused-appellants and the learned trial court while relying upon the said confessional statement held the accused-appellants guilty. Therefore, there is no error in the judgment which requires no

interference in this appeal. Learned Public Prosecutor argued that the finding of the learned trial court does not suffer from any infirmity or illegality, therefore, the instant appeal may kindly be dismissed.

16. Heard the learned counsel for the accused-appellants and the learned Public Prosecutor and perused the impugned judgment as also record.

17. After hearing the learned counsel for the parties, we have perused the FIR filed by the complainant Kheem Singh, brother of the deceased Raghuveer Singh. Admittedly there is no whisper about the motive or involvement of the accused-appellants with the crime. It is also obvious that before recording evidence of two witnesses under Section 161 Cr.P.C. on 05.12.1999 after 15 days of the incident no evidence came on record so as to connect the accused-appellants with the crime but as per statement of Goverdhan Singh (PW-9), he was called by SHO Police Station Rajsamand at the Police Station and at that time accused-appellant Pratap Singh was already sitting in the Police Station. In the cross-examination following statement was given by Goverdhan Singh (PW-9) before whom the alleged confessional statement was made by the accused-appellant Pratap Singh which reads as under :

"VERNACULAR MATTER OMITTED"

18. Similarly the witness Bhanwr Singh (PW-10) before whom alleged confessional statement was made by the accused-appellant Pratap Singh gave following statement in his cross-examination which reads as under :

"VERNACULAR MATTER OMITTED"

19. Upon perusal of above statement, it is obvious that the story of extra judicial confession narrated by these witnesses is totally

concocted because their statements were recorded after 15 days from the date of occurrence before that accused-appellants were already taken in custody by the Police Station and they were sitting in the Police Station when these witnesses were called. It is settled principle of law that evidence of extra judicial confession is weak type of evidence. In this case, it emerges from the evidence that there was no occasion for the accused-appellants to make confession before two unknown persons i.e. Goverdhan Singh (PW-9) and Bhanwar Singh (PW-10) but the entire prosecution case is based upon the testimony of these witnesses before whom confessional statement was alleged to be made.

20. We have perused the statement of Himmat Singh (PW-15) who has categorically statement in the cross-examination that the accused-appellants were taken in judicial custody by the Police after 5-6 days from the date of occurrence but as per documentary evidence the accused-appellant Pratap Singh was arrested on 06.12.1999 and Late Bhanwar Lal was arrested on 13.12.1999, therefore, obviously when the alleged extra judicial confession was made or the recovery was stated to be made, the accused-appellants were already in police custody. We have perused the statement of Smt. Kailash (PW-6) wife of Raghuveer Singh. The said witness has categorically stated in her cross-examination that the accused-appellants Pratap Singh and Bhanwar Lal were taken in custody by the Police after 2-3 days from the date of incident. Following statement was given by Smt. Kailash (PW-6) in her cross-examination which reads as under :
"VERNACULAR MATTER OMITTED"

21. The witness Kheem Singh (PW-1) accepted in the cross-examination that accused-appellants Pratap Singh and Bhanwar Lal were taken in custody by the Police after 2-3 days from the

date of incident. Following statement was given by Kheem Singh (PW-1) which reads as under :

"VERNACULAR MATTER OMITTED"

22. Upon perusal of the statements of the witnesses more particularly statements of author of FIR Kheem Singh (PW-1), brother of the deceased and Smt. Kailash (PW-6) wife of the deceased, it is obvious that the accused-appellants were taken in custody by the Police just after 2-3 days of the occurrence but their arrest was shown on 06.12.1999 which is evident from the statement of two witnesses Goverdhan Singh (PW-9) and Bhanwar Singh (PW-10) in which both the witnesses categorically stated that they were called in the police station and in the police station the police officials asked them to hear the accused-appellant Pratap Singh when he was in lock up. Meaning thereby both the accused witnesses of extra judicial confession Goverdhan Singh (PW-9) and Bhanwar Singh (PW-10) stated before the Court that the extra judicial confession was made in the police station in the presence of police and till that time the accused-appellants were not arrested by the Police. In view of above, there is no doubt that the whole prosecution story was concocted so as to involve the accused-appellants on the basis of evidence of extra judicial confession. Once the evidence of extra judicial confession is disbelieved then other evidence of recovery become irrelevant so as to hold the accused-appellants guilty for the offence in question. In view of above, we are of the firm opinion that the whole prosecution story is seriously doubtful, therefore, the accused-appellant Pratap Singh is entitled for benefit of doubt and the judgment impugned deserves to be quashed.

23. Upon assessment of entire evidence the findings of conviction recorded by the learned trial court is not sustainable in

law because the learned trial court was under obligation to consider the statement of the witnesses as a whole including cross-examination so as to arrived at with the finding of guilt on the basis of extra judicial confession which is seriously doubtful in view of statement of Kheem Singh (PW-1), Smt. Kailash (PW-6), Goverdhan Singh (PW-9) and Bhanwar Singh (PW-10) because all these witnesses categorically said that accused were taken in custody by the Police just after three four days from the date of occurrence.

24. Recently in the judgment of the Hon''ble Supreme Court in the case of Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan reported in (2013) 5 SCC 722, the Hon''ble Apex Court while discussing earlier judgments rendered by Apex Court, held as infra:

"21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason, that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the Court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the Court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The Court must ensure, that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.

22. In Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773, this Court observed as under: "Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the

evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases where in the guilt of the accused is sought to be established by circumstantial evidence".

xxx 25. In *M.G. Agarwal v. State of Maharashtra* : AIR 1963 SC 200, this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt.

26. Similarly, in *Sharad Birdhichand Sarda* (Supra), this Court held as under:

"Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt of the accused is sought to be established by circumstantial evidence."

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47. In view of the above, we have no hesitation in holding that the prosecution failed to prove the case against the Appellant beyond reasonable doubt and thus, he becomes entitled for benefit of doubt. Thus, the appeals succeed and are allowed. The conviction and sentence imposed on the Appellant are set aside. The Appellant be released forthwith unless wanted in some other case."

25. In view of above discussion and in the light of aforesaid

judgment and evidence on record, we are of the firm opinion that

the impugned judgment is not sustainable in law.

26. Consequently, the appeal is allowed. The judgment dated

05.09.2001, passed by the learned Additional Sessions Judge

(Fast Track), Rajsamand is hereby quashed and set aside. The

accused-appellant Pratap Singh is on bail, his bail bonds are

hereby cancelled and he is not required to surrender.

27. Keeping in view, however, the provisions of Section 437A

Cr.P.C. the accused appellant is directed to forthwith furnish

personal bonds in the sum of Rs.20,000/- and a surety bond in the like amount, 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.