

(2003) 04 AHC CK 0053
In the Allahabad High Court
Case No : Criminal Appeal No. 2068 of 1981

Tota Ram and Others (in Jail)	Vs	APPELLANT
State of U.P.		RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Evidence Act, 1872 — Section 24, 27
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2003) 3 ACR 2145

Hon'ble Judges : V.N. Singh, J;U.S. Tripathi, J

Bench : Division Bench

Advocate : Raghu Bansh Sahai, S.K. Kulshrestha, M.C. Agarwal and Anoop Trivedi, for the Appellant; A.G.A., for the Respondent

Judgement

V.N. Singh, J.—This appeal has been filed against the judgment and order dated 10.9.1981, passed by Sri K. N. Misra, the then IIIrd Additional District and Sessions Judge, Bareilly in S.T. No. 123 of 1981 (under Sections 302/34 and 201, I.P.C., Police Station Mirganj, Bareilly) by which, he held Appellants Tota Ram alias Toti, Bhoop Ram, Kanti and Munna Lal guilty of the offences under Sections 302/34 and 201, I.P.C. and convicted and sentenced them to undergo imprisonment for life u/s 302/34, I.P.C. and two years" R.I. u/s 201, I.P.C.

2. Brief facts of the case is that, informant Anokhey Lal lodged a report on 22.12.1980 at Police Station Mirganj at 9.30 a.m. that, since 5-6 days, there was a rumour in the village that, Appellants Tota Ram alias Toti, Bhoop Ram, Kanti and Munna Lal have committed murder of Shri Ram and have concealed the dead body in the Dabri of Ramganga. Bhoop Ram wanted to keep Smt. Bhoori wife of the deceased Sri Ram as his wife. Shri Ram was missing since night of Tuesday, i.e., 16.12.1980.

3. At about 5 a.m. while he along with Ramdeo and Kedar was enjoying the heat of fire, he called Appellants Tota Ram alias Toti, Bhoop Ram, Kanti and Munna Lal, but except Appellant Munna Lal, three Appellants Tota Ram alias Toti, Bhoop

Ram and Kanti came there. On enquiry they confessed that in the night of Tuesday at about 9 p.m. they committed murder of Shri Ram and concealed the dead body in the Dabri of Ramganga. He called chaukidar Banke. All the three Appellants Tota Ram alias Toti, Bhoop Ram and Kanti again confessed the guilt before chaukidar. On pointing out of three Appellants Tota Ram alias Toti, Bhoop Ram and Kanti at about 6.30 a.m. in presence of complainant Anokhey Lal, Kedar and Banke, the dead body of Shri Ram kept in a bag tied with rope along with nine full bricks and five half brick was recovered from the Dabri of Ramganga.

4. Anokhey Lal directed Chaukidar Banke to watch the dead body and dictated a written report to Ram Deo and brought the three Appellants Tota Ram alias Toti, Bhoop Ram and Kanti with the help of Kedar and Ramdeo to the police station and lodged the F.I.R.

5. The case was investigated by S.I. N. C. Sharma and after completing the formalities of the investigation, he submitted charge-sheet against the Appellants.

6. Appellants Tota Ram alias Toti, Bhoop Ram, Munna Lal and Kanti were charged under Sections 302/34, I.P.C. and 201, I.P.C. They pleaded not guilty.

7. Prosecution examined complainant Anokhey Lal P.W. 1, Ramdeo P.W. 2 and Banke Lal P.W. 3, who deposed that, three Appellants Tota Ram alias Toti, Bhoop Ram and Kanti confessed their guilt before them and on their pointing out the dead body of Shri Ram was recovered.

8. Prosecution also examined S.I. N. C. Sharma P.W. 4, who proved the F.I.R. Ext. Ka-2 and copy of the G.D. Ext. Ka-3. He also proved panchayatnama, photo nash and challan nash and specimen of seal Exts. Ka-4 to Ka-7. He also proved fard recovery of bricks and rope Ext. Ka-8. He also proved two site plans Exts. Ka-9 and Ka-10 as well as charge-sheet Ext. Ka-11.

9. Prosecution also examined Dr. K. S. Tiwari, P.W. 5, Radiologist, who conducted the post-mortem of dead body of Shri Ram and proved the post-mortem report Ext. Ka-12.

10. Prosecution also examined constable Satya Bhan Singh P.W. 6, who brought the dead body of Shri Ram and produced before the doctor and also identified the dead body as well as produced the clothes at the police station.

11. From the side of the Appellants no oral evidence was given. They deposed that, they have been falsely implicated in this case.

12. As the Appellants were convicted by the learned Sessions Judge, aggrieved by that judgment this appeal has been filed.

13. The learned Counsel for Appellant has argued that Appellant have been convicted by the learned Sessions Judge on the ground of extra-judicial confession and recovery of the dead body.

14. So far as the recovery of the dead body on the pointing out of Appellants

Tota Ram alias Toti, Bhoop Ram and Kanti is concerned, i.e., for the applicability of Section 27 of Indian Evidence Act, Appellants should have been in the custody of police officer.

15. According to prosecution, at the time of alleged confession, Appellants were not in the custody of police officer.

16. In such circumstances, it is clear that Section 27 of the Indian Evidence Act is not applicable to the present case.

17. Moreover, it has also been argued that, discovery evidence itself not a substantive evidence, but only corroborative evidence and the discovery evidence by itself is subsidiary and cannot sustain a conviction.

18. It has also been argued that, discovery must be on some fact, which was not known previously from other sources and knowledge of the fact was first derived from the information given by the accused.

19. In this connection, attention of the Court has been drawn towards the decision in Jaffar Hussain Dastagir Vs. State of Maharashtra, in which, it was held that, for applicability of Section 27 of the Evidence Act, prosecution must establish that information given by the Appellant led to the discovery of fact, and discovery must be of some fact, which police had not previously learnt from other sources and that knowledge of the fact first was derived from the information given by the accused.

20. In this connection, attention of this Court has also been drawn towards the decision in Velayudhan Piliat and Narayana Piliat Vs. Thanu Pillai and Krishnan Nair, , in which, it has been held that, "if police already knew, where the incriminating articles were hidden, their discovery by the accused is inadmissible in evidence".

21. Argument of the learned Counsel for the Appellants is that, on the same analogy, knowledge of fact regarding recovery of the dead body should be derived from the information given by the Appellants. It should not be known from other sources.

22. The argument of the learned Counsel for the Appellants is that, in the present case in the F.I.R., it has already been mentioned that, there was a rumour that dead body of deceased Sri Ram has been concealed in the Dabri of Ramganga.

23. It has been argued that on same analogy, discovery of dead body by Appellant is inadmissible.

24. It has also been argued that, dead body was recovered from an open place which was inaccessible to all, hence it cannot be said that it was concealed by the Appellants.

25. It has also been argued that, the alleged confession is not admissible u/s 24

of the Indian Evidence Act, because Banke Lal Chaukidar (police officer) deposed that, Pardhan told Bhoop Ram, Kanti and Tota Ram alias Toti that if they gave true information, they would be pardoned.

26. It has been argued that if confession has been made under promise of pardon, then confession is irrelevant.

27. In this connection, attention of the Court has been drawn towards the decision in Veera Ibrahim Vs. The State of Maharashtra, , in which, it has been held that "to attract the prohibition enacted in Section 24, these facts must be established:

- (i) that the statement in question is a confession ;
- (ii) that such confession has been made by an accused person ;
- (iii) that it has been made to person in authority ;
- (iv) that the confession has been obtained by reason of any inducement, threat or promise proceeding from a person in authority ;
- (v) such inducement, threat or promise must have reference to the charge against the accused person ;
- (vi) the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which could appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of temporal nature in reference to the proceedings against him.

28. Argument of the learned Counsel for Appellants is that, Pardhan is a person in authority and chaukidar Banke Lal is police officer and according to the statement of Bankey Lal Chaukidar, Pradhan Anokhey Lal gave the promise of pardon, if Appellants give true statement.

29. It has also been argued by the Appellants that, according to the prosecution case only three Appellants Tota Ram alias Toti, Bhoop Ram and Kanti made extra judicial confession and on their pointing out recovery of the dead body of Shri Ram was made. It is not the case of the prosecution that, Appellant Munna made any extra judicial confession or on his pointing out, the recovery of the dead body was made.

30. The argument of the learned Counsel for Appellant that as such on the basis of confession of other Appellants, learned trial court was not justified in convicting Appellant Munna Lal.

31. It has also been argued by the Appellants that extra judicial confession made before Pradhan is not admissible in evidence, because being a Pradhan, he was a person in authority in view of the decision in case of Lallan v. State 1969 ACrR 245.

32. It has been argued by the Appellants that, learned trial court was not

justified in not relying on the above mentioned judgment on the ground that no promise of pardon was given by Pradhan while Banke Lal Chaukidar had admitted that, Pradhan gave promise of pardon.

33. It has also been argued by the Appellants that, extra judicial confession made to chaukidar is also not admissible because chaukidar is police officer and learned trial court was not justified in not relying on the decision referred in AIR 1933 192 (Oudh)

34. It has also been argued that, learned trial court was not justified in placing reliance on the decision in the case referred in Smt. Sridevi Vs. State, in which, extra judicial confession was not made to chaukidar, while in the present case, it has been made before the chaukidar.

35. Attention of the Court has also been drawn towards the fact that, there is contradiction in the statement of Anokhey Lal and Ramdeo. Anokhey Lal deposed that while he was enjoying the heat of fire at his baithaka on 22.12.1980, Kedar and Ramdeo came there and informed about the rumour in the village. While according to Ramdeo P.W. 2, he was called by Pradhan on 22.12.1980 at 5 a.m.

36. It has also been argued that Ramdeo P.W. 2 has admitted that he was police constable (under suspension) at the time of incident. His statement cannot be relied as there is contradiction on material point between his statement and statement of Pradhan Anokhey Lal.

37. It has also been argued that, according to F.I.R. Pradhan Anokhey Lal has knowledge that, since 5-6 days there was a rumour in the village that, Appellants Tota Ram alias Toti, Bhoop Ram, Kanti and Munna Lal committed murder of Shri Ram and concealed his dead body in the Dabri of Ramganga, but he did not inform the police station regarding this fact and there is no explanation why Pradhan did not give information to the police station. It creates doubt about the conduct of complainant Anokhey Lal.

38. Argument of the learned Counsel for the Appellants that, complainant should have reported the matter to the police station and should have waited for the police regarding recovery.

39. It has also been argued by the learned Counsel for Appellants that, according to F.I.R. Shri Ram was missing since 16.12.1980 and according to F.I.R. Tota Ram alias Toti, Bhoop Ram and Kanti made extra judicial confession that in the night of Tuesday at about 9 p.m., they carried Shri Ram and committed his murder.

40. Attention of the Court has also been drawn towards the statement of complainant Anokhey Lal, who admitted that, he gave the statement to the Investigating Officer that, since 5-6 days there was rumour in the village that Tota Ram alias Toti, Bhoop Ram, Munna Lal and Kanti committed murder of Shri Ram, who was missing since 16.12.1980, i.e., Tuesday.

41. In this connection, attention of the Court was drawn towards the statement of Dr. K. S. Tewari, who conducted the autopsy on Shri Ram. According to the Doctor, duration of the death of the deceased Shri Ram was 3 to 4 days.

42. Argument of the learned Counsel for the Appellants is that in this way the case of the prosecution becomes doubtful because according to witnesses deceased was murdered 5-6 days back while according to Doctor duration of death is 3 to 4 days only.

43. It has also been argued that, there is no direct evidence against Appellants that they committed murder of deceased Shri Ram.

44. In such circumstances, it is clear that, there is no direct evidence against the Appellants regarding committing murder. Moreover, extra judicial confession was not made by Appellant Munna Lal, nor on his pointing out dead body of Shri Ram was recovered and alleged extra-judicial confession made by other Appellants is not relevant and inadmissible under Sections 24 and 27 of the Indian Evidence Act and there is difference regarding duration of death of the deceased between the F.I.R. statement of the witnesses and statement of Dr. K. S. Tewari, who conducted the post-mortem of Shri Ram and alleged extra judicial confession by three Appellants was made before person in authority and police officer and there is contradiction on the material points in the statement of complainant Anokhey Lal and Ramdeo, the Court is of the view that, the prosecution has failed to prove the guilt against the Appellants beyond reasonable doubt, hence appeal is liable to be allowed.

45. Appeal succeeds and is allowed. The judgment and order dated 10.9.1981 convicting and sentencing the Appellants are set aside. Appellants are acquitted of the charges.

46. Appellants Bhoop Ram and Kanti are already on bail. They need not surrender to their bail bonds. Their bail bonds are cancelled and sureties stand discharged.

47. Appellants Tota Ram alias Toti and Munna Lal are in jail. They shall be released forthwith, if not wanted in any other case.