

SUPREME COURT OF INDIA

Nathu

Vs.

State of U.P.

Crl.A.No.147 of 1954

(Vivian Bose, T. L. Venkatarama Ayyar and B. P. Sinha, JJ.)

21.09.1955

JUDGEMENT

VENKATARAMA AYYAR J.:

1. On 17-5-1952 Sri Nand Lal Kureel, the City Magistrate of Manipuri, returned home from court at about 5 p.m. and found his son, Sumer Singh, aged about 10 or 11 years, missing. After some fruitless search, he reported the matter to the police. On information given later that night by P. W. 26, Sri Kureel sent for Bhola, the first accused, who stated that he and the second accused, Ram Singh, had in the course of the day lured away the boy. The second accused was then sent for, and he also made similar statement. Thereupon, Sri Kureel handed them over to the police for further investigation.

At about 3 a.m. on the same night; Bhola and Ram Singh took the police, Sri Kureel and some others to any outlying garden, and at their instance, the dead body of Sumer Singh was discovered in a well in that garden. The post-mortem examination showed that death was due to asphyxia. Both the courts below have held that it was not a case of accidental drowning but of murder by strangulation; and that finding has not been disputed. The only question is, who perpetrated the crime?

2. Accused 1 and 2 were in the lock-up until 22nd May, when they were taken into jail custody. On the 24th, both of them made confessional statements (Exhibits P-5 and P-6) before a Special First-class Magistrate, P.W. 28. These confessions, though subsequently retracted, have been found by both the courts to have been true and voluntary, and it was on the strength of these confessions which received corroboration in material particulars from the evidence in the case, that accused 1 and 2 were convicted.

In the confessional statement, accused 1 and 2 stated that on the day previous to the occurrence, the appellant told them to bring the deceased and promised to pay Rs. 5 each, that accordingly on 17-5-1952 they enticed the boy away to an outlying garden stating that they might eat mangoes, that while they were in the garden the appellant came there, tied an 'angochha' round the neck of the deceased and strangled him, themselves holding the deceased by the hand and feet, and that they then threw him into the well.

These statements have been relied on in support of the conviction of the appellant and one of the contentions urged on his behalf is that they are inadmissible in evidence, and that the conviction

based thereon is illegal. This question will be considered in due course.

3. The appellant, as appears from the evidence of Sri Kureel, which has been accepted by both the courts, was arrested on the night between 20th and 21st May. Though the confessional statements of accused 1 and 2 were recorded on the 24th May, seeing that they were in police custody from the night of the 17th down to the 22nd it may be presumed that the appellant was arrested on the night of the 20th as the result of statements made by accused 1 and 2.

The police, however, released the appellant immediately, and it was not till 8-6-1952 that he was re-arrested. It is certainly remarkable that the police should have released the appellant immediately after his arrest on the 20th without further investigation, and it is even more remarkable that no steps should have been taken to apprehend him at least after the confessions implicating him were made by accused 1 and 2 on the 24th.

The explanation for this conduct as found by both the courts below was that the local police were reluctant to bring the real offenders to book. To appreciate this, it must be mentioned that the fourth accused, Bagh Ali, was a head constable who had been dismissed from service, that proceedings were taken against him under S. 107 Criminal P.C., and by an order passed by Sri Kureel on 30-4-1952 he had been bound over.

It is the evidence of Sri Kureel that Bagh Ali was shadowing him thereafter, and there is also the evidence of P. Ws. 21 and 22 that Bagh Ali was swearing vengeance against Sri Kureel. Sri Kureel naturally suspected the fourth accused of having had a hand in the affair, and communicated his suspicion to the police.

The station officer at the time was Sri Surendra Shankar Singh, P. W. 32, and it is stated that he had known the fourth accused since 1941 when the latter was a head constable at Agra and the witness a constable, and was interested in shielding him. It is suggested that P. W. 32 released the appellant on the night of the 20th, and failed to take action against him with a view to save the fourth accused. P. W. 32 denied that he arrested the appellant on the 20th, but his evidence has not been accepted.

4. To continue the narration, when Sri Kureel discovered that P. W. 32 was not keen on investigating the matter, he complained to the Superintendent of Police, and it was thereafter that the appellant was arrested on the 8th June. From that time down to 7th August he was in jail. On that day, he was sent for interrogation on the C.I.D. Inspector, P. W. 33, who had been deputed to make the investigation. P. W. 33 held the appellant in custody till 20th August at the Krishna Talkies.

On the 20th, the appellant was sent back to jail custody, and on the 21st he made the confessional statement, Exhibit P-15, to P. W. 28. In this statement, he implicated the fourth accused as the prime offender. Meantime, the fourth accused had been arrested on 4-8-1952, and eventually, the four accused were committed to the Sessions Court for trial on the charge that they had murdered Sumar Singh.

The Sessions Judge held that the confessions of accused 1 and 2 had been sufficiently corroborated, and convicted them under S. 302, but in view of their age - they were aged 14 and 16 - sentenced them to transportation for life. As regards the appellant who was the third accused, he held that his confession was corroborated by the evidence of P. Ws 13 and 15 and by the confession of accused 1 and 2, and accordingly convicted him under S. 302 and sentenced him to death.

As regards the fourth accused, he held that there was only the confession of the third accused

against him, and that was not sufficiently corroborated by the other evidence in the case. He accordingly gave him the benefit of doubt, and acquitted him. Accused 3 appealed to the High Court of Allahabad, and there was also a reference under S. 374 for confirmation of the sentence of death.

On a review of the evidence, the learned Judges agreed with the conclusion of the Sessions Judge, and confirmed both the conviction of the appellant and the sentence passed on him. Against this judgment the appellant has preferred this appeal to this Court by special leave.

5. On behalf of the appellant, it is urged that there is no reliable evidence to connect him with the offence, and that the conviction is accordingly bad. The evidence in support of the conviction consists of the confession of the appellant, Exhibit P-15, the evidence of P.Ws. 13 and 15 which has been relied on as corroborating it in material particulars and the confessions of accused 1 and 2, Exhibits P-5 and P-6.

It is argued by Mr. Varma for the appellant that the confession, Exhibit P-15, was not voluntary, that the evidence of P. Ws. 13 and 15 is neither reliable, nor does it sufficiently corroborate Exhibit P-15, and that the confessions of accused 1 and 2 are inadmissible as against the appellant, and should not have been acted upon.

The question how far the confessions of co-accused, could be treated as evidence against an accused was considered elaborately in - 'Kashmira Sing v. State of Madhya Pradesh', AIR 1952 SC 159(A) and it was held therein that such statements, were not evidence as defined in S. 3 of the Evidence Act, that no conviction could be found thereon, but that if there was other evidence on which a conviction could be based, they could be referred to as lending assurance to that conclusion and for fortifying it.

Exhibits P-5 and P-6 are, therefore, not substantive evidence, and could only be taken into consideration if there is other independent evidence on which the conviction could be based. In the present case, that evidence consists only of the confession of the appellant, Exhibit P-15.

6. It is contended for the appellant that this confession cannot be acted upon, firstly because it is not voluntary, and secondly because there is no evidence worth the name to corroborate it. On the question whether Exhibit P-15 was voluntary, the cardinal feature to be noted is that the appellant was kept separately in the custody of the C.I.D. Inspector (P.W. 33) from the 7th August to 20th August and the confession was recorded on the 21st August.

It appears to us that the prolonged custody immediately preceding the making of the confession is sufficient, unless it is properly explained, to stamp Exhibit P-15, as involuntary. P. W. 33 made no attempt to explain this unusual circumstance. It is true that with reference to this matter the appellant made various suggestions in the cross examination of P. W. 33, such as that he was given 'bhang' and liquor, or shown pictures or promised to be made an approver, and they have been rejected - and rightly - as unfounded.

But that does not relieve the prosecution from its duty of positively establishing that the confession was voluntary, and for that purpose, it was necessary to prove the circumstance under which this unusual step was taken. There being no such evidence, we are unable to act upon Exhibit P-15, as a voluntary confession. It was argued that better evidence was not forthcoming, as the investigation by P.W. 32 was, as already stated, half-hearted and perfunctory, and no adequate steps were taken to secure evidence before P. W. 33 took up the matter on 18-7-1952.

All this is true, and the result is no doubt very unfortunate; but that does not cure the defect from which Exhibit P-15 suffers. It was also argued that both the courts below had found that Exhibit P-15 was voluntary, and that was a finding with which this Court would not interfere in special appeal. But then, the courts below have, in coming to that conclusion, failed to note that P. W. 33 has offered no explanation for keeping the appellant in separate custody from the 7th to 20th August and that is a matter which the prosecution had to explain, if the confession made on 21-8-1952 was to be accepted as voluntary.

In this view, the only substantive evidence against the appellant, Exhibit P-15, falls to the ground, and in strictness, the further questions whether that has been corroborated by the evidence of P. Ws. 13 and 15, and whether Exhibits P-5 and P-6 lend assurance to it do not arise.

7. We may, however, add that the question whether the evidence of P.Ws. 13 and 15 affords sufficient corroboration to the confession of the appellants is not wholly free from doubt. The deposition of P.W. 13, as it appears in the records, is incomplete, and if true, it shows that the appellant was seen with the deceased and accused 1 and 2 near the scene of occurrence at about midday.

P.W. 13 deposes that he gave this information to P. W. 32; but the latter does not speak to it, and he had not been asked about it. P.W. 15 also gives evidence similar to that of P.W. 13, but admits that he did not know the deceased or accused 1 and 2.

8. It is argued for the appellant that in view of these infirmities the evidence of P.Ws. 13 and 15 should not be accepted. There can be no doubt that their evidence if believed, would be corroboration of Exhibit P-15 on a material point, viz., that the appellant was seen with the deceased at about the time of the occurrence near the garden and it is also true that the question whether that should be believed is one on which this Court would not ordinarily interfere with the views of the courts below.

But in the view that Exhibit P-15 is not shown to be voluntary, there is no need to further discuss the question whether if it was voluntary, the evidence of P. Ws. 13 and 15 affords sufficient corroboration thereof.

9. Then, there remain the confessions of accused 1 and 2, Exhibits P-5 and P-6. There being, in our view, no substantive and independent evidence on which a conviction could be based, the confessions cannot be used for sustaining the conviction, and should be left out of consideration altogether. We may also add that we are not satisfied that those statements can be regarded as lending assurance to the confession recorded in Exhibit P-15.

On the contrary, the difference between the two is such as to throw considerable doubt on both. While accordingly to Exhibits P-5 and P-6 the appellant was the prime offender, according to Exhibit P-15 Bagh Ali the fourth accused, was the moving spirit and it was he that actively intervened and spurred him on to commit the crime while he was, wavering. Both these statements cannot be true and if either of them must be untrue, the question arises as to how and why the untruth in the one or the other was brought about.

In this situation, we should be reluctant to hold that Exhibits P-5 and P-6 lend any assurance to the truth of the confession in Exhibit P-15. We are, therefore, of opinion that there is no reliable evidence on which the appellant could be convicted.

10. In the result, the appeal is allowed, the conviction and sentence of the appellant are set aside, and it is directed that he be set at liberty.

Appeal allowed.

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