

(1997) 04 MP CK 0009

Madhya Pradesh High Court

Case No: Criminal A. No. 278 of 1988

Narain Puran Singh Verma and
Another

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: April 30, 1997

Acts Referred:

- Evidence Act, 1872 - Section 24

Citation: (1998) 1 MPLJ 232

Hon'ble Judges: S.P. Khare, J; S.K. Dubey, J

Bench: Division Bench

Advocate: Neema Khara, for the Appellant; A.K. Khaskalam, Dy. A.G., for the Respondent

Final Decision: Allowed

Judgement

S.P. Khare, J.

Appellant Narain Singh has been convicted u/s 302, Indian Penal Code for fraticide and sentenced to imprisonment for life. He has also been convicted u/s 364, Indian Penal Code and sentenced to rigorous imprisonment for ten years for this offence.

Puran Singh (PW-1) is father of accused Narain and deceased Gopal aged about eight years. On 11-4-1986 he had gone to Berla and on his return to his village Kospatar in the evening he found his son Gopal missing. He made a search for him. He informed Village Patel Prem Chand (PW-2). The accused confessed at about 10 p.m. before Prem Chand (PW-2) and his father Puran Singh (PW-1) that he committed murder of Gopal. He was assisted by accused Santan Verma who has been acquitted. On 12-4-1986 at about 7.30 a.m. Puran Singh (PW-1) lodged the F.I.R. Ex. P/1 at Berla Police Station. The Police reached the village. S. R. Diwan (PW-12) interrogated the accused at the house of Prem Chand (PW-2) in his presence and in the presence of Goverdhan Singh (PW-9). The accused gave the information that he has hidden the dead body of Gopal who was also known as Palu near the

Nala. His information was recorded in the memo Ex. P/2. The accused took them to the Nala and he took out the dead body of Gopal from the Nala. It was recovered as per Ex. P/3. The dead body was sent for post-mortem examination. The autopsy was conducted by Dr. C. S. Verma (PW-4). His report is Ex. P/9. In his opinion the cause of death of Gopal was throttling. It is also the case of the prosecution that the deceased was last seen with accused Narain by Lakhan (PW-3) aged about nine years on 11-4-1986. According to the prosecution the motive for causing the death of the deceased by the accused was that he had sold his own share of the land and he wanted to grab the share of Gopal after causing his death.

In this appeal it is not disputed that Gopal met a homicidal end. That is amply proved by the medical evidence and other material on record. The only question is whether the accused is the author of this crime. We have heard the learned counsel for both the sides and carefully scrutinised the evidence on record. We are of the opinion that evidence adduced by the prosecution does not establish the guilt of the accused beyond reasonable doubt. We shall deal with the prosecution evidence in detail.

Extra-judicial confession:

Puran Singh (PW-1) has deposed that he asked the accused at about 8 p.m. regarding the whereabouts of Gopal. The accused denied having his hand in this affair. The witness has further stated that he was called at about 10 p.m. by Prem Chand (PW-2) and he told him that the accused is confessing his guilt. Thereupon, he asked the accused what he has done. The accused replied that he has killed Gopal with the help of Santan Verma of Bemetara. Next day morning he went to the police station and lodged the report Ex. P/1. In cross-examination he has stated that Lakhan (PW-3) gave information at the house of Prem Chand (PW-2) that he had seen accused Narain with Gopal in the day time. Then accused Narain was taken inside the house of Premchand (PW-2) and he was questioned by Prem Chand, Sachidanand and Om Prakash. The witness has further stated that he did not go inside the house of Prem Chand. He has denied to have made the statement marked A to A in Ex. D/1 u/s 161, Criminal Procedure Code

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Prem Chand (PW-2) has deposed that he confronted accused Narain with the statement made by Lakhan (PW-3) as having seen him sending Gopal on a cycle with some unknown person. Accused Narain denied having any knowledge of Gopal. He was interrogated for about two hours by him and other villagers and he asked Puran Singh (PW-1) to go to the police station and lodge the report. Thereafter the accused took him to a nearby lane and said he had committed the mistake he has done the job. ^^dkdk xYrh gks x;h gS dke dj fn;s gS** He asked the accused to be more clear and then he broke down and acknowledged having caused the death of Gopal, in the presence of other persons. In cross-examination he has admitted that

in the statement made u/s 161, Criminal Procedure Code, (Ex. D/2) he did not disclose that the accused took him in a lane and there he made a clean breast of the whole thing. This is a material omission. Sachidanand and Om Prakash before whom the accused is said to have made the confessional statement have not been examined.

The evidence of Puran Singh (PW 1) and Prem Chand (PW-2) regarding the extra judicial confession made by the accused is not satisfactory and does not inspire confidence. The F.I.R. Ex. P/1 shows that it is a mixture of hearsay and direct evidence with regard to the alleged confession. It is doubtful that accused Narain made any confessional statement. At any rate it was not voluntary. It appears to have been made under fear on account of the threat given by the village patel to lodge the F.I.R. against accused Narain. It was procured after two hours of interrogation by a person in authority. When an extra-judicial confession is surrounded by suspicious circumstances its credibility becomes doubtful and it loses its importance. [Balwinder Singh Vs. State of Punjab](#) .

In Kartar Singh v. State of Punjab : (1994) 3 SCC 569 the Supreme Court sounded a caveat that the fascicule of sections 24 to 30 Evidence Act aim to zealously protect the accused against becoming the victim of his own delusion or the mechanisation of others to self-incriminate in crime. The confession, therefore, is not received with an assurance if its source be not omni suspicious mojes, above and free from remotest taint of suspicion. The mind of the accused before he makes a confession must be in the state of perfect equanimity and must not have been operated upon by fear or hope or inducement. Hence threat or promise or inducement held out to an accused makes the confession irrelevant and excludes it from consideration. Tested on this touchstone, in the present case, the extra-judicial confession cannot be relied upon.

Recovery of dead body:

S. R. Diwan (PW-12), Sub-Inspector of Police, has deposed that on 12-4-1986 after recording the F.I.R. he went to village Kospatar and inspected the "spot" of the incident. He interrogated the accused at the house of Prem Chand (PW-2) and he disclosed to him that he has buried the dead body of Palu inside the water of the Nala. According to the Sub-Inspector this statement was made by the accused at 3 p.m., and it was recorded as per Ex. P/2. Prem Chand (PW-2) deposes that this statement was recorded near the Nala and it was signed by him there. Goverdhan Singh (PW-9) says that this statement was made at 12 noon at the house of Premchand. It was not made at 3 p.m. It appears that the memorandum Ex. P/2 was prepared after the recovery of the dead body. The dead body of Gopal was no doubt recovered from Nala but it is doubtful that it was done at the instance of the accused. In case the accused had made the confessional statement in the previous night before Premchand (PW-2) and Puran Singh (PW-1), the immediate reaction would have been to ask the accused where is the dead body of Gopal. On that point

they are silent.

Last seen:

Lakhan (PW-3) is aged nine years. He is a child witness of tender age. He has stated that accused Narain brought Gopal near his house at 11 a.m. and handed him over to another man to take him to Nala for the purpose of bathing. In cross-examination he has stated that accused Narain did not proceed towards the Nala in his presence. He did not know the man who took Gopal on his cycle. It was natural for this witness to inform others if he suspected something but he did not do so. If accused Narain did not go with Gopal, as the witness says, it cannot be said that he was last seen with the accused. On the other hand he was last seen with accused Santan who has been acquitted.

Motive:

Puran Singh (PW-1) does not say a word in his examination-in-chief regarding the alleged motive. He was the only person who could tell whether the accused wanted to grab the share of the land of Gopal. Therefore, the allegation with regard to motive remains in the realm of imagination.

After considering the entire evidence on record we find that the extra-judicial confession alleged to have been made by the accused was not true and voluntary, the recovery of dead body of the deceased in consequence of the information given by the accused and at his instance is doubtful, the circumstance relating to last seen is not proved and the motive could not be established. The circumstantial evidence does not unerringly and conclusively lead to the only hypothesis that accused Narain has caused the death of Gopal. In the absence of any direct evidence and clinching circumstantial evidence the accused cannot be convicted of the serious offence of murder. Suspicion and conjecture cannot take the place of legal proof.

In the result this appeal is allowed. The conviction of accused Narain Singh under sections 302 and 364, Indian Penal Code and the sentences are thus set aside.