

(1988) 05 CAL CK 0002

Calcutta High Court

Case No: None

Rajesh Thakur

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 16, 1988

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (1988) CriLJ 1477

Hon'ble Judges: Sankar Bhattacharyya, J; J.N. Hore, J

Bench: Division Bench

Judgement

J.N. Hore, J.

Rajesh Thakur, the appellant before us, was convicted by the learned Additional Sessions Judge, Asansol u/s 302, Indian Penal Code for committing murder of Sakhichand Rajak and sentenced to imprisonment for life and a fine of Rs. 1,000/-, in default rigorous imprisonment for six months more.

2. Briefly stated, the prosecution case is as under:

Sakhichand Rajak (the deceased) was a resident of Budha Chamantalao, Asansol, P.S. Asansol, District Burdwan. The appellant Rajesh Thakur also lives in the same locality.

3. Paresh Thakur and appellant Rajesh Thakur had quarrel with the complainant party for a long time and on 26-1-83 Paresh assaulted Lakshman Rajak, father of the deceased. Lakshman lodged a diary with the local police station over the said incident and at this the appellant became very angry.

4. On 30-1-83 at about 3-30 P.M. complainant Munna Rajak (PW 1) who is a washerman by profession was going on a bicycle with washed clothes for delivery to Hotel Sassi. When he reached near the house of the accused, the latter caught hold

of him and demanded an explanation as to why he had lodged a complaint against him. The complainant replied that he had no knowledge about the matter and left the place out of fear leaving the cycle there. Reaching home he narrated the incident to the inmates including his elder brother Sakhichand Rajak. Sakhichand proceeded to the place of occurrence followed by complainant Munna Rajak. They found the accused standing near/ his house and the cycle lying there. When Sakhichand asked the accused as to why he had snatched away the cycle with washed clothes the latter stabbed him on the thigh with a big knife causing a bleeding injury. Sakhichand started running being chased by the accused. After covering some distance Sakhichand fell down on the ground. The accused, then slashed his throat with the said knife causing his instantaneous death. Being attracted by the alarm raised by him and his mother who had in the meantime arrived there, neighbours came and apprehended the accused with the blood-stained knife.

5. PW. 1 Munna Rajak then went to Asansol Police Station and lodged the First Information Report on the basis of which a case u/s 302, Indian Penal Code was registered against the accused appellant. PW 7 S.I.G.C. Bhattacharyya took up investigation, took the accused into custody and seized the blood-stained knife and the blood-stained wearing apparel of the accused.

6. The accused made a judicial confession, since retracted, which was recorded by P.W. 10 Sri Jagannath Podder, learned Judicial Magistrate, 1st Class, Asansol.

7. After completion of investigation, police submitted charge-sheet against the accused, which, in usual course ended in the committal of the case to the Court of Session.

8. In defence, the accused pleaded innocence alleging that he was falsely implicated. The further defence case was that the accused made the confessional statement before the learned Magistrate because of the merciless beating by the police and threats for further beating and arrest of his parents.

9. In order to bring home the charge to the accused, the prosecution examined 10 witnesses while the defence examined none. Out of them, PW. 1 Munna Rajak, younger brother of the deceased and P.W. 2 Rajkumari Rajak, married sister of PW 1 are the alleged eye-witnesses to the occurrence. PW. 3 Manik Chand Rajak, brother of PW 1, and PW 6 Trilok Kapur alias Kachi are witnesses to seizure. PW 4 Dr. K.M. Hasnat is the autopsy surgeon. PW 5 Ranjit Sanyal is a post-occurrence witness. PW 8 is the constable who escorted the dead body and identified it to the autopsy surgeon. P.W. 7 S.I.G.C. Bhattacharyya is the First Investigating Officer and P.W. 9 S.I.D. K. Roy is the Second Investigating Officer who submitted the charge-sheet. P.W. 10 Sri Jagannath Podder is the learned Magistrate who recorded the confessional statement of the accused u/s 164, Criminal P.C.

10. The murder of Sakhichand Rajak is not challenged before us and has been proved by overwhelming evidence. PWs. 1, 2, 3 and 5 saw Sakhichand lying dead on the road at Budha Chamantalao with cut-throat injury and a bleeding injury on the thigh. PW 7 held inquest on the body of the deceased which was found lying on the road with cut throat and bleeding thigh injuries. PW. 4 who held the post-mortem examination on the body of the deceased on 31-1-83 at 12-40 P.M. found the following injuries:

1) Transverse incised wound about 3"" deep and about 6" long over front of neck chest below chin. Vessels were;cut transversely. Trachea was cut completely and transversely.

2) Penetrating wound about 2" X 6" deep over anterior surface of right thigh, about 4" below groin.

11. Death, in the opinion of the doctor, was due to shock and haemorrhage as a result of the above injuries which were ante-mortem and homicidal in nature. According to him, the injuries were caused with some sharp-cutting weapon like a big knife or dagger, nature and the sites of the injuries, particularly injury No. 1, and the weapon used leave no doubt whatsoever that the injuries, particularly injury No. 1 were caused with the intention to cause death. It is a case of brutal murder perpetrated with inhuman cruelty.

12. The next point - and the crucial one - for our consideration is whether the accused- appellant committed the said murder.

13. The prosecution has adduced three types of evidence - direct evidence of the two alleged eye-witnesses - P.Ws. 1 and 2; judicial confession of the accused and circumstantial evidence.

14. Let us first advert to the testimony of the two alleged eye-witnesses - PWs. 1 and 2.

15. P.W. 1 Munna Rajak is the younger brother of the deceased and the defacto complainant. His evidence is that on 26-1-83 between 7.00 and 7.30 P.M. his father Lakshman Rajak was returning home when accused Rajesh Thakur demanded money from him. Lakshman refused to give any money to the accused. The accused then struck him with a knife on the left palm causing bleeding injury. Lakshman lodged a diary at the police station which enraged the accused.

16. The further evidence of PW 1 is that on 30-1-83 at about 2.30 p.m. he was going to Hotel Sassi on a bicycle with washed clothes for delivery of the same to the hotel. When he was passing by the side of the house of the accused, the latter caught his cycle and gave him two blows. He then left the place out of fear and returned home. He reported the incident to his elder brother Sakhichand Rajak who proposed to go to the spot and bring the cycle and clothes. Accordingly, both of them proceeded towards the house of the accused. He was following his elder brother at a distance

of 6 or 7 feet. He saw the accused standing near his house and the bicycle laden with clothes was lying there on the road. When Sakhichand asked the accused as to why he had snatched away the bicycle with washed clothes, the latter stabbed him with a big knife on the left thigh causing bleeding injury. Sakhichand started running being chased by the accused. After covering some distance Sakhichand fell down on the ground near their house and became unconscious. His mother, since deceased, was standing there. The accused cut the throat of Sakhichand with the knife causing his instantaneous death. He and his mother raised alarm. The people of the locality came and caught the accused red-handed with the blood-stained knife in his hand. He then went to Asansol Police Station and lodged the First Information Report. Police came to the locality in a jeep and arrested the accused.

17. It transpires from the cross-examination that his house is on the western side of the road which runs north to south. The house of Rajan Mia is adjacent to their house on the same side. The house of Punilal is adjacent to that of Rajan Mia on the same side of the road. The house of Debkilal is a big one which is on the other side of the road opposite to the houses of Punilal and Rajan Mia. It further transpires from the cross-examination that Sakichand was murdered on the road in between the houses of Punilal and Debkilal. PW 1 has further stated in the cross-examination that the accused stopped him on the main road wherefrom a lane leading to the house of the accused on the east starts. The place where the cycle was stopped by the accused is about 6/7 feet away from the house of the accused.

18. PW 2 Rajkumari Rajak is the younger married sister of the deceased. At the relevant time she was staying in the house of her father. Her testimony is that on 30-1-83 at about 2.30 p.m. her brother Munna Rajak (PW 1) started for Hotel Sassi on a bicycle loaded with washed clothes for delivery of the same to the hotel. He came back soon and reported to Sakhichand Rajak and other inmates that the accused had snatched away his bicycle with the clothes near the house of the accused. Sakhichand and Munna then went near the house of the accused to bring the cycle and clothes, She also followed them. She saw the accused giving a knife blow on the thigh of Sakhichand causing a bleeding injury. Sakhichand started running being chased by the accused. After covering a distance of 6/7 cubits Sakhichand fell down on the road and the accused immediately cut his throat with the knife which he had in his hand causing his instantaneous death. Except PW 1 no other person was present at that time.

19. In the cross-examination she has stated that the place where the cycle was lying is about 100 feet away from their house. The accused was hiding at the corner of the junction of the road and the lane and on seeing them he came running on the road from the place of hiding. She and Munna were at a distance of 5/6 cubits.

20. Let us consider if the testimony of these two witnesses can be accepted as true and reliable. PW 2 claims to have followed the deceased and PW 1 had witnessed the incident of assaults. But PW 1 does not speak of her presence at the time of the

incident. Her name also does not figure as an eyewitness in the First Information Report. That apart, she did not state to the Investigating Officer (PW 7) that she followed Munna and Sakhichand. This is an important omission which discredits her testimony in this regard. It is therefore doubtful if she witnessed the incident of assaults at all and we are not prepared to place any reliance on her testimony in this regard. Her testimony to the effect that Munna started for Hotel Sassi on a bicycle for delivery of washed clothes to the hotel but soon returned home and reported that the accused had snatched away the bicycle with clothes and that Sakhichand and Munna then left home to bring the bicycle and the clothes is, however, free from any infirmity and there is no reason to disbelieve this part of her testimony.

21. The evidence of PW 1 does not suffer from any serious blemish. The First Information Report (Ext. 1) was lodged by him within one hour of the occurrence. The distance of the Police Station is 3 Km. The First Information Report was, therefore, very prompt and there was no time and opportunity for concoction and embellishment. There is no serious discrepancy between the testimony of PW 1 and the story in the First Information Report regarding the time, place and manner of the occurrence and the name of the assailant. There are, however, some discrepancies, deviations and embellishments in some minor details which do not warrant rejection of his entire evidence. In the First Information Report it is stated that on 26-1-83 Paresh Thakur assaulted his father whereas PW 1 has stated in court that the accused assaulted his father on 26-1-83. PW 1 has also stated in his evidence that the accused gave him two blows when he caught him and snatched away the bicycle. But there is no mention of the alleged blows in the First Information Report. These discrepancies or embellishments are minor and not glaring or utterly irreconcilable with the truth of the rest of his testimony. There are chaffs which may be easily separated from the grain. It has to be remembered that the human faculties of hearing, sight, recollection and description are necessarily imperfect. Prof. Munsterbag has pointed out "we never know whether we remember, perceive or imagine". H. G. Wells once said that the human mind is an imperfect instrument which, in attempting to grasp facts, unconsciously twists and turns them often. Even truthful witnesses have a tendency to make incorrect statements or exaggerations quite subconsciously. It is the duty of the court to sift the wheat from chaff, to separate the true from the false and if after this has been done, there remains a residuum of credible testimony, he should thereon found his judgment and not reject the whole evidence.

22. Presence of PW 1 at the time of the occurrence has not been challenged by the defence. A specific suggestion was put to the witness to the effect that both PW 1 and his brother Sakhichand were attacked by Punilal on the road and while the witness fled away Sakhichand was murdered by Punilal and that the appellant was falsely implicated out of previous grudge. The suggestion was stoutly denied by the witness. So, according to the defence case, PW 1 was not only present at the time of occurrence, but also was a target of attack. The suggestion that Punilal murdered

the deceased but PW 1 has falsely implicated the appellant out of enmity or grudge seems to be preposterous. It is unbelievable that PW 1 would spare the real assailant and falsely implicate the accused.

23. The testimony of PW 1 receives corroboration from the medical evidence.

24. The evidence of PW 1 goes to show that immediately after the occurrence, being attracted by the alarm raised by him, the people of the locality came and apprehended the accused red handed with the blood-stained knife in his hand. Mr. Roy, learned Advocate appearing on behalf of the appellant has urged that this part of the testimony of PW 1 should be discarded on the ground that this does not find place in the First Information Report. But this has not been challenged in the cross-examination. Moreover, the testimony of PW 1 in this regard is corroborated by PWs. 5 and 7. PW 7 has stated that the accused was already apprehended by the people of the locality. This part of his testimony has not been challenged in the cross-examination. We have, therefore, no hesitation in accepting the prosecution case that the accused was apprehended immediately after the occurrence with a knife in hand.

25. The evidence of PW 7 and the seizure list Ext. 2/1 show that PW 7 seized one big blood-stained knife (Mat. Ext. I) and the blood-stained wearing apparel of the accused from Mari shop near the place of occurrence at 5.15 p.m. The knife was produced by the accused. PW 3, a witness to the seizure, did not see the actual seizure of the articles. There is, however, no reason to disbelieve the testimony of PW 7. The report of the Chemical Examiner Ext. 6 shows that the dagger and the wearing apparel of the accused were stained with blood but the origin and group of the same could not be determined due to disintegration. According to medical evidence, the seized knife is the likely weapon of offence.

26. The apprehension of the accused by the people of the locality immediately after the occurrence with a knife in hand and recovery of a blood-stained knife (MatExt. I) which is the likely weapon of offence and the blood-stained wearing apparel of the accused lend great assurance to the truth of the testimony of PW 1. Upon a careful scrutiny, we have, therefore, no hesitation in accepting the testimony of PW 1 as true and reliable.

27. Let us next consider the judicial confession made by the accused (Ext.5). The confession was recorded by PW 10 Shri Jagannath Poddar, the learned Judicial Magistrate, 1st Class, Asansol. Ext. 5 is the confessional statement. The material part of the confession, translated into English is as follows:

I was passing along the road. When I was passing along the main road at Budha at 4.00 p.m., Late Sakhichand was coming with many persons. Sakhichand's brother spat on him. When I protested they came to assault me. Then I wielded a knife aiming at whoever came in front of me. Then Sakhichand started running and fell down. I again stabbed him on the throat. Thereafter I fled away

28. Let us first consider if the confession is free and voluntary. The accused was arrested on 30-1-83 at 5.15 p.m. He was forwarded to the learned Additional Chief Judicial Magistrate, Asansol on 31-1-83 for recording his confessional statement u/s 164 Criminal Procedure Code. On 31-1-83 the accused was produced before PW 10 at 1.00 p.m. along with the record. PW 10 gave the necessary caution to the accused but in spite of that he wanted to make a confessional statement, the learned Magistrate then sent the accused to the jail custody for reflection and directed for his production on 2-2-83 at 1.00 p.m. for recording his confession. On 2-2-83 the accused was produced before him at 1.00 p.m. and the learned Magistrate again gave him caution. As the accused was still willing to make a confessional statement. The learned Magistrate then recorded his statement. It is clear from the above that the accused was in police custody for a very short period. He was given 48 hours for reflection. The time for reflection appears to be quite sufficient to remove the fear of police from the mind of the accused. The learned Magistrate told the accused that he was a Magistrate and cautioned him that he was not bound to make any statement and that if he made any statement it might be used against him and he might be sentenced to imprisonment and fine. The learned Magistrate also told the accused that he would not be sent to police custody even if he declined to make a confession. In the jail, the accused was kept segregated and one room was allotted to him exclusively. The learned Magistrate also asked him as to why he was willing to confess. The accused replied that he wanted to speak the truth out of repentance. There was none else present at the chamber of the learned Magistrate where the confessional statement was recorded. The learned Magistrate was also satisfied that the statement made by the accused was free and voluntary. It may be mentioned here that the confession was retracted at a very late stage at the time of the examination of the accused u/s 313 Criminal Procedure Code. It has been stated by the accused in his examination u/s 313, Criminal Procedure Code that he was mercilessly beaten by the police but no complaint whatsoever was made by the accused either before the learned Additional Chief Judicial Magistrate or the learned Judicial Magistrate who recorded the confession. Considering all the facts and circumstances, we are satisfied that the confession was entirely free and voluntary.

29. Conviction on a retracted confession, if voluntarily made, is not legally barred. But as a matter of prudence and caution, which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless it is corroborated by independent evidence. In this case, the confession of the accused that he struck with a knife and when the deceased ran and fell down he again stabbed him on the throat receives ample corroboration from the medical evidence; apprehension of the accused by the people of the locality with a knife in hand; the recovery of a blood-stained big knife from the accused; the recovery of a blood-stained trouser which the accused was wearing, and above all, the testimony of PW 1 who was an eye-witness to the occurrence. We have no hesitation in accepting this part of the confession as true.

30. The other part of the confession that the deceased and PW 1 came with a large number of persons and were about to attack him when he gave a blow with knife is of exculpatory nature. It seeks to raise the plea of the right of self-defence. This exculpatory part of the confession has been proved to be false by PW 1. His evidence clearly shows that he and the deceased only went to the accused and people of the locality arrived after the fatal assault when he raised alarm. It is quite improbable that the accused would have dared attack the deceased in this manner had a large number of people come there with the deceased. We have, therefore, no hesitation in rejecting this part of the confession as false.

31. It may be incidentally noted here that there was no question of the existence of the right of private defence when the fatal blow was inflicted. The deceased after receiving the first blow on the thigh was running for his life being chased by the accused. He fell on the ground and the accused then brutally slit his throat with a knife causing his instantaneous death.

32. It has been submitted that an admission or confession can be taken either as a whole or not at all. It is now well-settled that the part of the confession which appears to be true may be accepted rejecting that part which is false. In [Keshoram Bora Vs. State of Assam](#), the Supreme Court observed as follows:

It is well settled that where a confession or an admission is separable there can be no objection to taking one part into consideration which appears to be true and reject the other part which is false. In the case of [Nishi Kant Jha Vs. The State of Bihar](#), this Court observed as follows at p. 430 of AIR : at p. 679 of Cri LJ:

In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Ext. 6 of the High Court had acted rightly in accepting the inculpatory part and piecing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime

33. We have, therefore, no hesitation in rejecting the exculpatory part of the confession which has been proved to be false and accepting the inculpatory part which has been proved to be true by independent evidence.

34. From the above discussion it would be clear that the prosecution has proved beyond any shadow of doubt that the accused-appellant committed the murder of the deceased. The appellant was rightly convicted by the court below.

35. In the result, the appeal is dismissed and the order of conviction and sentence passed by the learned Additional Sessions Judge is affirmed.

Sankar Bhattacharyya, J.

36. I agree.