

Karan Singh vs State Of Haryana & Anr on 28 May, 2013

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Bench: Dipak Misra, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1474 of 2010

Karan Singh

...Appellant

Versus

State of Haryana & Anr.

...Respondents

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 6.2.2009 in Criminal Appeal No.226-DB of 2007, passed by the High Court of Punjab & Haryana at Chandigarh, by way of which the High Court has affirmed the judgment and order dated 8.2.2007, passed by the Additional Sessions Judge, Bhiwani in Sessions Trial No.110 of 8.9.2005, by way of which and whereunder the Trial Court has convicted the appellant under Section 302 of the Indian Penal Code 1860 (hereinafter referred to as the 'IPC'), and sentenced him to undergo imprisonment for life and to pay a fine of Rs.25,000/-. In default of payment of such fine, he would further suffer RI for a period of 3 years.

2. Facts and circumstances giving rise to this appeal as per the prosecution are that:-

A. In the intervening night between 6-7.1.2005, Maya Devi (PW.3), mother of Raj, deceased was irrigating her agricultural fields alongwith her daughter Birma (PW.4). On hearing the cries of her daughter Raj, Maya Devi and Birma reached the spot and saw that one Kalia had caught hold of Raj and Karan Singh, the appellant had put a rope around her neck and was dragging her deeper into the fields. Maya Devi (PW.3) raised considerable hue and cry but attracted no help, and Raj died on the spot as a result of the throttling. In the morning, Maya Devi (PW.3) went to the place of occurrence alongwith her son Hariom (a simpleton). There were marks of dragging in the wheat field. A contusion mark on the neck of deceased was also clearly visible.

B. Maya Devi (PW.3) went to the police station to file a report. On her way there, she met some police officials and she informed them about the incident, based on which, an FIR was registered on 7.1.2005, under Sections 302/34 IPC at the Police Station, Sadar Charkhi Dadri.

C. The dead body of Raj was sent for post-mortem. Dr. U.S. Dasodia (PW.7), conducted the post-mortem on the body of the deceased and found a ligature mark on her neck. He has opined that she died due to asphyxia, caused by strangulation which was sufficient to cause death in the ordinary course of nature. The time gap between her injuries and death was only a few minutes, and between her death and post- mortem, less than 24 hours.

D. The police recorded the statements of various persons including Maya Devi (PW.3), Birma (PW.4) alongwith other people. After completing the investigation, a chargesheet was filed against the appellant. The co-accused Kalia, could not be apprehended and was declared as a proclaimed offender.

E. The case of the prosecution is that Karan Singh, the appellant, had a certain dispute with deceased Raj regarding the non-payment of dues to her to the extent of Rs.47,000/-, as consideration for the sale of a buffalo by the deceased Raj. Since the appellant had not paid the said money, there was a quarrel between them on 3-4.1.2005 as regards the same, wherein appellant had threatened to kill her. In furtherance thereof, Raj was murdered by the appellant.

F. The prosecution examined several witnesses including Maya Devi (PW.3), Birma (PW.4) and Omkar Singh (PW.8). The statement of the accused-appellant was recorded under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.') After the conclusion of the trial, the learned Sessions Judge, Bhiwani, convicted and sentenced the appellant, as has been referred to hereinabove.

Hence, this appeal.

3. Shri Neeraj Kumar Jain, learned senior counsel appearing for the appellant has submitted, that the investigation in the instant case, was tainted. The statement under Section 161 Cr.P.C. had been recorded after several months of the incident. Raj, deceased was a woman who had gotten separated from her husband for the reason that she had been a woman of easy virtue, and had also been living separately from her mother and sister. The specific case of Maya Devi (PW.3), mother of deceased was, that she had gone along with her daughter to irrigate the fields, though in her cross-examination she has admitted that the agricultural land had been given to one Khazan, upon sharing of the agricultural produce (Batai). Birma (PW.4), the sister of the deceased has deposed that they did not cultivate the land themselves.

The Trial Court did not believe the version of events as provided by Maya Devi (PW.3) and Birma (PW.4), but treated the case as one of circumstantial evidence. The entire case of the prosecution is improbable. Thus, the appeal deserves to be allowed.

4. On the contrary, Shri Manjit Singh, AAG, appearing for the State of Haryana, has opposed the appeal contending that the courts below have recorded concurrent findings of fact. The defence had not put any question in the cross-examination either to Maya Devi (PW.3) or Birma (PW.4), regarding the non-payment of the sum of Rs.47,000/- as consideration for the sale of a buffalo by the deceased Raj to Karan Singh, appellant, despite the fact that there was ample evidence on record to show that there had been an altercation regarding the non-payment of the said amount on 3.1.2005, between the deceased and the appellant. The appellant had threatened to kill her. Moreover, this statement stood corroborated by the deposition of Omkar Singh (PW.8). In the event that there had been some impropriety in the course of the investigation, the same had been only at the behest of the appellant and that too, entirely in his favour and certainly not in the favour of the prosecution. The appellant has made a disclosure statement about concealing the rope that had been used in the crime, but the Investigating Officer has not made any effort to recover the same. Thus, the appeal is liable to be rejected.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. Consistent versions have been provided by the material witnesses regarding the non-payment of the sum of Rs.47,000/- as sale consideration for the sale of a buffalo, by the appellant. This version of events also fully stands established by the evidence provided by Maya Devi (PW.3) and Birma (PW.4). In his statement under Section 313 Cr.P.C., the defence did not ask any question to test the veracity of the said statement, either to Maya Devi (PW.3) or to Birma (PW.4). Mere denial stating that the same is incorrect by the appellant, is not sufficient and there is no reason to disbelieve the said portion of the case of the prosecution. It also stands established from the material on record, that there had been an altercation between the appellant and the deceased 2-3 days before the incident, and the appellant had threatened the deceased with dire consequences. Such version of events stands further fortified, by the evidence of Omkar Singh (PW.8).

7. Omkar Singh (PW.8) is an independent witness who has deposed that on the fateful day, he had gone to bring some vegetables from a shop. The accused-appellant had then come there from the

side of the Harijan Basti, asking where Raj (prostitute) had gone, and had stated that he would kill her within 2-3 days. The accused-appellant had been having illicit relations with the deceased, and at the said time, the accused had been under the influence of alcohol.

8. None of these witnesses have been properly cross-examined by the defence. Both the courts though have expressed their anguish regarding the manner in which the investigation was conducted, they have convicted the appellant for the offence punishable under Section 302 IPC, and have awarded appropriate sentences. A large number of other theories were introduced by the defence stating that the deceased had been a woman of easy virtue, and that it was for this reason that her husband had divorced her, she had settled in the village and had been living in a separate house, away from her mother's house, and that even here, she had been having illicit relationships with a large number of persons, etc. In relation to the same, a Panchayat was also conducted, and Maya Devi (PW.3) etc. had been humiliated. Be that as it may, this kind of theory could not adversely affect the case of the prosecution.

9. So far as the issue of cultivating the said land is concerned, the defence had not asked PWs.3 and 4 to furnish any further details regarding the cultivation of the land, in relation to the terms and conditions of the Batai, and also regarding who's duty it was to irrigate the land, and what the source and means of irrigation were, as they have claimed to be in the agriculture fields at mid night for purpose of irrigating the same. Their presence cannot be doubted, as it is usual for every agriculturist to carry out the task of irrigation, whenever his/her turn for irrigation arises.

10. As the defence has not put any further question in the course of the cross-examination of Maya Devi (PW.3) and Birma (PW.4) in this regard, we are not in a position to grant the benefit of any of these issues to the appellant. The theory of political rivalry between certain persons and the appellant, at whose behest Maya Devi (PW.3) and Birma (PW.4) had levelled the allegation of such a heinous crime, do not inspire confidence. The same are thus liable to be rejected.

11. There is adequate evidence on record to show that Rajesh Kumar, SI (PW.9), who had conducted the investigation at its initial stage, had not acted in accordance with law and had favoured the appellant. It was for this reason that the police authorities upon a complaint made, changed the Investigating Officer, who then conducted the investigation properly.

12. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The Investigating Officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The Investigating Officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth." Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias. Words like 'personal liberty' contained in Article 21 of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal

liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the Investigating Officer to ensure that an innocent person should not suffer from unnecessarily harassment of false implication, however, at the same time, an accused person must not be given undue leverage. An investigation cannot be interfered with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous influence, and investigation must be carried out with equal alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Article 21 of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19, 20 and 21 of the Constitution. (Vide: Babubhai v. State of Gujarat & Ors., (2010) 12 SCC 254).

13. In *Ram Bihari Yadav v. State of Bihar & Ors.*, AIR 1998 SC 1850, this Court observed, that if primacy is given to a designed or negligent investigation, or to the omissions or lapses created as a result of a faulty investigation, the faith and confidence of the people would be shaken not only in the law enforcing agency, but also in the administration of justice.

A similar view has been re-iterated by this Court in *Amar Singh v. Balwinder Singh & Ors.*, AIR 2003 SC 1164.

Furthermore, in *Ram Bali v. State of Uttar Pradesh*, AIR 2004 SC 2329, it was held by this Court that the court must ensure that the defective investigation purposely carried out by the Investigating Officer, does not affect the credibility of the version of events given by the prosecution.

14. Omissions made on the part of the Investigating Officer, where the prosecution succeeds in proving its case beyond any reasonable doubt by way of adducing evidence, particularly that of eye-witnesses and other witnesses, would not be fatal to the case of the prosecution, for the reason that every discrepancy present in the investigation does not weigh upon the court to the extent that it necessarily results in the acquittal of accused, unless it is proved that the investigation was held in such manner that it is dubbed as “a dishonest or guided investigation”, which will exonerate the accused. (See: *Sonali Mukherjee v. Union of India*, (2010) 15 SCC 25; *Mohd. Imran Khan v. State Government (NCT of Delhi)*, (2011) 10 SCC 192; *Sheo Shankar Singh v. State of Jharkhand & Anr.*, AIR 2011 SC 1403; *Gajoo v. State of Uttarakhand*, (2012) 9 SCC 532; *Shyamal Ghosh v. State of West Bengal*, AIR 2012 SC 3539; and *Hiralal Pandey & Ors. v. State of U.P.*, AIR 2012 SC 2541).

Thus, unless lapses made on the part of Investigating authorities are such, so as to cast a reasonable doubt on the case of the prosecution, or seriously prejudice the defence of the accused, the court would not set aside the conviction of the accused merely on the ground of tainted investigation.

15. This Court in *Dayal Singh & Ors. v. State of Uttaranchal*, (2012) 8 SCC 263, has laid down certain norms for taking stern action against an Investigating Officer, guilty of dereliction of duty or misconduct in conducting investigation, and held that the State is bound to initiate disciplinary

proceedings against such officers even ignoring the law of limitation, and even if such officer has retired.

16. In the instant case, the Trial Court and the High Court have elaborately examined the grievances raised by the complainant regarding the tainted investigation carried on by the first Investigating Officer, Shri Rajesh Kumar, and the High Court has commented on the same as under:

“It is well established on record that SI Rajesh Kumar had not conducted the investigation properly and he was favourably inclined to the appellant and therefore, spoiled the case. Detailed reasons have been recorded by learned trial court in paragraph 19 of its judgment manifesting that the appellant had influence over the police. We agree with the said reasoning of the trial court which is also apparent from the contentions advanced by learned State counsel, as noticed hereinabove. There were marks of dragging the deceased as mentioned in the inquest report, but still SI Rajesh Kumar did not depict the said marks in the rough site plan Ex.P-25 prepared by him. He also did not avail of the services of dog squad or crime team of the Forensic Science Laboratory. Shutter of shop, where the deceased used to reside, had also been broken, but the Investigating Officer did not care to get the same photographed nor mentioned the same anywhere in the investigation proceedings. Therefore, the complainant cannot be made to suffer for the lapse of the Investigating Officer.....The complainant is a widow having seven daughters and only one son, who is also simpleton. The deceased was also a divorcee and was living alone in the house (shop) in the fields in her parental village.....The complainant Maya Devi, who is mother of the deceased, is a widow and illiterate rustic villager, whereas the deceased was divorcee. On the other hand, the appellant is an influential person and was Sarpanch at the time of occurrence. The complainant named the appellant and his co-accused Kalia in the FIR itself. However, distorted version was recorded in the FIR and when the complainant party received copy of FIR on 26.1.2005 (as stated by Birma Devi PW.4), they learnt of the same and then they approached the Superintendent of Police (SP), who also did not take any action because the appellant, along with Member Legislative Assembly, had met the SP. Thereafter, with change of SP, the complainant party again approached the new SP and it was only thereafter that on 18.2.2005, correct statements of Maya Devi and Birma Devi were recorded. The appellant was so much influential that even thereafter, he was not arrested for more than four months and in fact, SI Rajesh Kumar did not arrest him and the next Investigating Officer ASI Raghbir Singh arrested the appellant on 24.6.2005. The appellant had been named in the FIR on 7.1.2005, but still SI Rajesh Kumar did not even join him in investigation and did not interrogate him, what to talk of arresting him. The statements of Maya Devi and Birma Devi, therefore, cannot be discarded in view of the manner in which SI Rajesh Kumar was conducting the investigation from the very beginning.”

17. After considering the entire evidence on record, the High Court has concurred with the findings recorded by the Trial Court as under:

i) There is no reason for the false implication of the appellant, who being the Sarpanch of the village was an influential person.

ii) Omkar Singh (PW.8) was an independent witness and there was no ground to disregard his testimony.

iii) Abadi was at some distance from the place of occurrence.

Therefore, the hue and cry raised by Raj-deceased, and subsequently by Maya Devi (PW.3), could not have attracted the attention of any person.

iv) No attempt was made by the defence to falsify the allegation of the non payment of the sum of Rs.47,000/-, as consideration for the sale of a buffalo by the deceased to the appellant.

18. In view of the above, we do not find any force in the appeal, which lacks merit and is accordingly, dismissed.

19. Before parting with the case, we feel it necessary to bring the matter to the notice of the administration of the State of Haryana that in spite of the fact that certain serious findings have been recorded by the Trial Court, as well as by the High Court regarding the unfair investigation conducted by Shri Rajesh Kumar, who was the SHO of the Police Station, Sadar Dadri on 7.1.2005, but for the reasons best known to the administration, no action was taken against him. We have no words to express our anguish, and fail to understand under what circumstances the State authorities have adopted such an indifferent attitude where a helpless divorcee has been murdered, and her widowed mother has been crying and running from pillar to post to secure justice, but the administration did not feel it necessary to wake up from its deep slumber. We request the learned Chief Secretary of the State of Haryana to examine the case, and proceed in accordance with law. A copy of the judgment be sent by the registry directly to the Chief Secretary, Haryana.

.....J. (Dr. B.S. CHAUHAN)J. (DIPAK MISRA) New Delhi,
May 28, 2013