

Baldev Raj vs State Of Haryana on 17 September, 1990

Equivalent citations: 1991 AIR 37, 1990 SCR SUPL. (1) 492, AIR 1991 SUPREME COURT 37, 1991 CRIAPPR(SC) 57, 1991 CALCRILR 9, 1991 SCC(CRI) 659, 1991 (1) SCC(SUPP) 14, 1990 (4) JT 524, (1991) EASTCRIC 37, (1990) 2 GUJ LH 552, (1991) 1 RECCRIR 75, (1991) 2 CRICJ 197, (1991) 48 ALLCRIC 21, (1991) 1 ALLCRILR 60, (1991) 2 CURLJ(CCR) 92

Author: M. Fathima Beevi

Bench: M. Fathima Beevi, M.H. Kania

PETITIONER:

BALDEV RAJ

Vs.

RESPONDENT:

STATE OF HARYANA

DATE OF JUDGMENT 17/09/1990

BENCH:

FATHIMA BEEVI, M. (J)

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FATHIMA BEEVI, M. (J)

KANIA, M.H.

CITATION:

1991 AIR 37 1990 SCR Supl. (1) 492
1991 SCC Supl. (1) 14 JT 1990 (4) 524
1990 SCALE (2) 615

ACT:

Criminal Trial--Extra-judicial confession--Evidentiary value of--Whether can be relied upon by Court for conviction.

HEADNOTE:

The appellant was convicted under s. 302 IPC for murdering his wife. The prosecution case was that on the fateful day the deceased had taken meals to the appellant while he was working in the field near his tubewell. Her dead-body was recovered two days later in a nearby drain. He made an extra-judicial confession the same day at the panchayat in the presence of PWs 3, 4 and 5 to the effect that he had

killed his wife in the wheat field and threw the dead-body in the drain at night after removing her ornaments. The FIR was lodged thereafter in the presence of the appellant and the fact of his statement was recorded therein. The weapon of offence, the kassi, and the ornaments were recovered from the hut near the tubewell at his instance. PW 3 narrated the events that preceded the occurrence. PWs 4 and 5 fully corroborated the evidence of PW 3 in that the appellant had confessed his guilt in their presence. The evidence was accepted by the trial court.

The High Court sustained the conviction on the view that various circumstances conclusively proved the guilt of the appellant beyond reasonable doubt.

In the appeal it was contended for the appellant that the extrajudicial confession even if true, was not voluntary but induced on the promise that he would be pardoned and the same having been retracted could not form the basis for a conviction in the absence of any material corroboration. Dismissing the appeal,

HELD: 1. The High Court was right in its conclusion and there was no ground for interference.

2.1 An extra-judicial confession, if voluntary can be relied upon by the court alongwith other evidence in convicting the accused. The

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value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. Though the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be rounded on such evidence.

2.2 In the instant case, the fact that the appellant made the confession is proved by cogent evidence. He and his father were brought before the panchayat held in the presence of PWs 3, 4 and 5. He was questioned and was asked to speak the truth. This prompting by the panchayat does not amount to inducement or threat. The testimony of PW 4, a lambardar, and PW 5, the Sarpanch being responsible persons could not be doubted in the absence of any material to show that they had been motivated to falsely implicate the appellant. The circumstances under which the statement was made leaves no room for doubt that the confession was voluntary.

2.3 The discovery of the dead body from the drain through the wheat field, presence of blood in the field, recovery of gold ornaments from the roof of the hut and blood stained kassi from the hut near the tubewell were material circumstances providing connecting links in the chain of circumstantial evidence. The appellant when exam-

ined did not offer any explanation except to deny his involvement. PW 3 had testified to the fact that the deceased had complained about the ill-treatment by her husband. In the light of such evidence, it is preposterous to maintain that she may have been assaulted by some unidentified assailant somewhere in the fields and the appellant had been falsely implicated in the offence.

3. The circumstances thus proved were conclusive of the guilt of the appellant and incapable of being explained on any other reasonable hypothesis. Conviction has, therefore, to be maintained.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 206 of 1979.

From the Judgment and Order dated 27.9. 1978 of the Punjab and Haryana High Court in Criminal Appeal No. 17 13 of 1975.

A.S. Sohal and S.K. Jain for the Appellant.

Mahabir Singh and A.G. Prasad for the Respondent. The Judgment of the Court was delivered by FATHIMA BEEVI, J. Raj Kumari (20), the daughter of Ishar Dass. was married to the appellant Baldev Raj a year before her tragic death in February, 1975. It appears that all was not well with the couple. Raj Kumari left for her parents house in village Raison 75 Kms. away from her matrimonial home in village Urlana Khurd. She stayed with her parents for some days complaining ill-treatment by the husband. On the assurance of the father-in-law, she was sent back with her husband hardly a couple of months before the incident on 14.2. 1975. On that fateful day, it is said that Raj Kumari took meals to the appellant who was working in the wheat field near his tubewell.' Raj Kumari did not return home. Her dead-body was discovered in the drain on 16.2. 1975. Multiple injuries were seen on her person. Complaint was lodged at the police station on February 16, 1975 at about 5.30 P.M. against the appellant who was finally chargesheeted for the offence under section 302 and 201, I.P.C. The learned Sessions Judge convicted the appellant under section 302, I.P.C., and sentenced him to undergo imprisonment for life. The High Court dismissed the appeal against the conviction and sentence. This appeal by special leave is directed against the judgment of the High Court. The conviction of the appellant is based on circumstantial evidence only. The main item of the evidence consists of the extrajudicial confession stated to have been made by the appellant in the presence of Ishar Dass (PW-3). Ramji Dass (PW-4) and Satnam Dass (PW-5) at the panchayat on 16.2. 1975. besides the recovery of incriminating articles at the instance of the appellant and the motive as spoken to by Ishar Dass. According to the prosecution, on 15.2.1975 the appellant's father Hakam Chand contracted Ishar Dass when Raj Kumari was found missing from 14.2. 1975. Ishar Dass arrived at village Urlana Khurd accompanied by Satnam Dass, Sarpanch of his village, and others. At the panchayat held in the presence of Ramji Dass, Nand Lal, Satnam Dass and others, the appellant stated that he killed his wife in the wheat field and threw the dead-body in the drain at night after removing her ornaments. PWs 3, 4 and 5 testified the fact but Nand Lal (DW-I) did not

support the prosecution version. It is also the prosecution case that the appellant was handed over to and arrested by the police at the time the complaint was lodged after the discovery of the dead-body and that the appellant had produced the kassi and the gold ornaments concealed in the hut near the tubewell. PW-10, the Sub-Inspector of Police, deposed to having interrogated the appellant and effected the recovery on the basis of the statements made by the appellant. Ishar Dass (PW-3) narrated the events that preceded the occurrence and also proved the letter he had received from the appellant's father when Raj Kumari was staying with him. He also stated the circumstances under which he happened to be at the panchayat on 16.2. 1975 along with the others after being informed by Hakam Chand. PWs 4 and 5 fully corroborated the evidence of PW-3 in that the appellant had confessed his guilt in their presence. The evidence was accepted by the trial court and the High Court to sustain the conviction against the appellant. The argument on behalf of the appellant that the medical evidence is conflicting with the prosecution case was rejected by the High Court finding that the ante-mortem injuries found on the body of Kumari could have been caused with the weapon recovered even on the statement made by the Doctor (PW-1). The recovery of the bloodstained earth from the wheat field near the tubewell, recovery blood-stained kassi and the ornaments worn by Raj Kumari by PW-10 in the opinion of the High Court lent assurance to the statement made by the appellant before the panchayat. The High Court was of the view that the various circumstances conclusively proved the guilt of the appellant beyond reasonable doubt. The main contention advanced on behalf of the appellant before us is that the High Court failed to appreciate the inherent infirmities in the prosecution evidence and that there is no legal evidence to support the findings. It was maintained that the testimony of PWs 3, 4 and 5 relating to the extra-judicial confession is discrepant and incredible, that the confession even if true, was not voluntary but induced and the same having been retraced cannot form the basis for a conviction in the absence of any material corroboration.

The learned counsel for the appellant contended that the High Court had refused to give benefit of doubt to the accused despite facts apparent on the face of the record any interference is called for. The extra-judicial confession, according to the learned counsel, being a very weak piece of evidence, could not have been accepted as true or voluntary in view of the admission made by the prosecution witnesses and improvement in the story given by Ishar Dass. He pointed out that at the panchayat the appellant was induced to make a statement on the promise that he would be pardoned and therefore the confession is unacceptable.

Normally this Court does not interfere with the concurrent findings of the facts of the courts below in the absence of very special circumstances or gross errors of law committed by the High Court and violation of the well established principles of the appreciation of circumstantial evidence, which results in serious and substantial miscarriage of justice to the accused. We heard the learned counsel at length. We find that the High Court was right in its conclusion and there is no good ground for interference. The first information was lodged by Ishar Dass at the police station where the appellant was also present. In the first information report itself Ishar Dass has narrated the story of the panchayat having been held in the presence of PWs 4 and 5 and the appellant having made the confession. PW-5 accompanied Ishar Dass from village Raison. It is difficult to hold that these persons hailing from another village would have been in a position to influence the local people against the appellant and foist a case against him. PW-4, Lambardar (Ramji Dass) substantially

supported the prosecution case. The courts below have carefully analysed the evidence and accepted the same. As rightly pointed out by the High Court, we find no merit in the submission that the medical evidence is not in consonance with the prosecution case. The facts that the autopsy was held nearly 72 hours after the injuries were caused and the witnesses were examined long after the weapon was recovered are relevant in appreciating the evidence of the medical witness. The evidence of this witness read as a whole is only consistent with the case that the injuries could have been caused with the weapon. The fact that the appellant made the confession is proved by cogent evidence. The circumstances that his father was present throughout and the appellant himself did not protest when he was present at the police station negates the suggestion of inducement or threat. The discovery of the dead-body from the drain through the wheat field, presence of blood in the field, recovery of gold ornaments from the roof of the hut and blood stained kassi from its premises near the tubewell are material circumstances providing connecting links in the chain of circumstantial evidence. The appellant when examined did not offer any explanation except to deny his involvement. Ishar Dass testified to the fact that Raj Kumari had complained about the ill-treatment by her husband. In the light of such evidence, it is preposterous to maintain that the deceased may have been assaulted by some unidentified assailant somewhere in the fields and the appellant had been falsely implicated in the offence.

The confessional statement is not a long narration. The substance of the statement is that the appellant killed his wife and threw the dead-body in the drain. PW-4 is the Lambardar of village Urlana Khurd and PW-5 the Sarpanch of Gram Panchayat of village Raison. The fact that a panchayat was held at village Urlana Khurd is admitted even by the hostile witness Nand Lal (DW-I). Ishar Dass when informed by Hakam Chand at his village that Raj Kumari was found missing entertained suspicion. He met his villagers and proceeded to the appellant's village the next day, along with the Sarpanch and other persons. The panchayat was held there on 16.2. 1975. The appellant and his father were brought before the panchayat. The appellant was questioned and was asked to speak the truth and then the appellant with folded hands said that he murdered his wife in the wheat field when she came there with meals and later threw the dead-body in the drain. The prompting by the panchayat does not amount to inducement or threat and the circumstances under which the statement was made leave no room for doubt that the confession was voluntary.

An extra-judicial confession, if voluntary, can be relied upon by the court along with other evidence in convicting the accused. The value of the evidence as to the confession depends upon the veracity of the witnesses to whom it is made. It is true that the court requires the witness to give the actual words used by the accused as nearly as possible but it is not an invariable rule that the court should not accept the evidence, if not the actual words but the substance were given. It is for the court having regard to the credibility of the witness to accept the evidence or not. When the court believes the witness before whom the confession is made and it is satisfied that the confession was voluntary, conviction can be rounded on such evidence. Keeping these principles in mind, we find that the confession has been properly accepted and acted upon by the courts below and there is no scope for any doubt regarding the complicity of the appellant in the crime. The confession of the appellant was voluntary. The testimony of PW-4 and PW-5 being responsible persons could not be doubted in the absence of any material to show that they had been motivated to falsely implicate the appellant. The very presence of the appellant and his father with the party of Ishar Dass throughout the

operation upto lodging of complaint at the police station dispel any suspicion against the prosecution case and clearly point to the truthfulness of the same. We are, therefore, unable to find any infirmity in the confession which has been accepted and relied upon by the courts below.

The circumstances proved are conclusive of the guilt of the appellant and incapable of being explained on any other reasonable, hypothesis. Conviction has therefore to be maintained. The appeal is accordingly dismissed. The appellant who is on bail shall surrender to custody to undergo the sentence of imprisonment.

P.S.S.

Appeal dismissed.