

Jai Singh vs The State on 18 November, 1966

Author: Chief Justice

Bench: Chief Justice

JUDGMENT

K.S. Hegde, C.J.

(1) These proceedings arise from the common judgment of the Additional Sessions Judge, Delhi, in sessions cases Nos 6 and 9 of 1966. In the said cases the learned Additional Sessions Judge convicted both the appellants, Jai Singh and Prem Singh, for an offence under section 302 read with section 34 of the Indian Penal Code and sentenced Jai Singh to death, subject to confirmation of the sentence by this Court, but Prem Singh was sentenced to suffer imprisonment for life. Murder reference No. 49 of 1966 is a reference made by the learned Additional Sessions Judge under section 374 of the Code of Criminal Procedure seeking confirmation of the death sentence imposed on Jai Singh. Criminal Appeal No. 93-D of 1966 is the appeal filed by Jai Singh, and Criminal Appeal No. 912-C of 1966 is the appeal submitted by Prem Singh through the Superintendent, Central Jail, New Delhi.

(2) Briefly stated, the case for the prosecution is as follows ; - The deceased Faqir Chand Soni was, the Principal of the Commercial College situate in Park Mansion, Darya Ganj Delhi. The appellants were working in that college as peons. The appellant Jai Singh entered service earlier. It was at his instance that appellant Prem Singh was appointed by the deceased. On August 9, 1965, the deceased gave to appellant Jai Singh a sum of Rs 42.00 for purchasing ghee for him from Delhi Municipal Co-operative Stores. But Jai Singh returned after a considerable time and reported that no body had picked his pocket and had robbed him of the afore mentioned sum of Rs. 42.00. The deceased did not believe that version. Therefore he asked Jai Singh to show his pocket. At that stage, Jai Singh changed his version and told the deceased that the amount in question had fallen out of his pocket. Then the deceased took Jai Singh to task and reprimanded him. At that time Jai Singh began to behave rudely towards the deceased. This attitude of Jai Singh made the deceased to complain against him to the police. On that complaint Sub-Inspector Kundan Lal came to the premises, where the deceased was running his college, and took into custody Jai Singh. For a time he was kept under confinement. Thereafter, he was challaned under section 107/151 of the code of Criminal Procedure. The Court released Jai Singh on bail. On the entreaties of Jai Singh, the deceased re-employed him on August 19, 1965, and thereafter he continued to work in the office of the deceased. But all the same Jai Singh enmity towards the deceased, and on August 30, 1965, the two appellants conspired to murder him and accordingly on that evening, after the students and the staff left the premises, they strangled him to death put his dead body in his office room, closed the same and bolted it and locked the two rooms in front of it. Thereafter they came downstairs and sent away on false pretexts Public Witness .28 Man Bahadur, the Chaukidar attached to the college, and Public Witness . 29 Ram Singh, one of the peons attached to that college. After doing so, they left Delhi and absconded

till they were arrested several months thereafter. In the early hours of the morning, the wife of the deceased, seeing that her husband had not returned home in the night, sent her son Public Witness . 23 Jugal Kishore and a neighbour to find out where the deceased was. They discovered the dead body of the deceased in the office room.

(3) It is satisfactorily proved that Faqir Chand Soni was murdered in his college premises on the night of August 30.31, 1965. The evidence of Public Witness -2. Dr. G. C. Mittal conclusively establishes that the deceased was throttled to death. This opinion has not been challenged before us. It is clear from the evidence of Public Witness . 28 Man Bahadur and P.W. 29 Ram Singh, which evidence we accept, that the deceased was alive at about 8.30 p. m. on August 30, 1965. It is equally satisfactorily proved from the evidence of a large number of witnesses that on the early morning of August 31, 1965, the deceased was found dead. On this point we have the evidence of Public Witness . 23 Jugal Kishore, Public Witness . 28 Man Bahadur and several others. Up till this stage, there is no controversy.

(4) The question for consideration is whether the prosecution has satisfactorily established that both or any of the appellants was responsible for the murder of the deceased.

(5) The evidence available against each of the two appellants may be analysed under three broad heads, i.e. -

(I)The confessional statement made by each of them. (ii) The confession of the co-accused, and (iii) The circumstantial evidence.

At the very outset I may say that prosecution has not examined anyone who claims to have witnessed the occurrence.

(6) We may first take up the case against Jai Singh. In convicting him, the Court below has relied on the confession made by him before Public Witness . 42 Mr. D.V. Kapoor, Sub-Divisional Magistrate, Delhi. In addition, it has also relied on the several circumstances put forward by the prosecution. It will be convenient to take up first for consideration, his confessional statement Exhibit P.A.A.A/3. Before a confession can be relied on, the Court has to see whether the same was made voluntarily and whether the facts stated therein can be accepted as true. The Court below has come to the conclusion that the confession in question was voluntarily made. The only ground, on which the voluntary character of his confession was assailed before us by Mr. Frank Anthony, the learned counsel for Jai Singh, was that Jai Singh was in police custody for about 9 days prior to his being produced before Mr. Kapoor on December 20, 1965, for recording his confession. The police were having the custody of Jai Singh during the period in question under orders of the Magistrate for the purpose of investigation. Hence the mere fact, that Jai Singh was in the custody of the police for about a period of 9 days before he was produced, before the Magistrate for recording his confession, by itself, is not a sufficient ground for holding that the confession in question cannot be considered as having been made voluntarily. It must be remembered that after Jai Singh was produced before Mr. Kapoor, the latter placed him under judicial custody for a period of 4 days, so that he may reflect over the matter and consider the advisability of making a confessional statement. Thus, he afforded

him sufficient time to free himself from the influence of police, even if there was any. On the material on record, it is not possible to conclude that the confession in question was prompted or induced by external forces. But the mere fact, that the confession in question appears to have been voluntarily made, is not sufficient to rely on the same. The Court must go further and see whether the facts stated therein can be accepted as true. In his confession, dealing with the actual killing of the deceased, Jai Singh stated thus :- "I caught the sahib by his neck from behind, while Prem Singh wrapped a piece of cloth round his neck. Thereafter, I pulled that piece of cloth from one side, while Prem Singh from the other, as a result whereof the sahib fell down the ground. Then Prem Singh pulled the testicles of the sahib and I went to the room of the sahib, from where I picked up a purse containing Rs. 80.00, one transistor, one watch and two fountain pens, and then came outside, where Prem Singh was also present."

This version materially differs from that given by Prem Singh, in his confession. That apart, that version does not accord with the medical evidence in the case. The post-mortem certificate issued by Dr. Mittal describes the injuries found on the dead body of the deceased thus :- "1. Lacerated wound 2/10" x 1/10" x skin deep on front of nose. Skin over the wound missing. 2. Bruising of both lips in its whole length on inner surface, along with superficial cuts by teeth edge. 3. Lacerated wound 2/10" X 1/10" X skin deep on the right index finger. Back aspect skin over the wound missing. 4. Lacerated wound 3/10" X 1/10" X skin deep along with abrasions on front of right forearm lower end. 5. Bruise 4" x 1" on outer aspect of chest right side. 6. Bruise 1" X 1" on back of chest right side. 7. Bruise "" x "" on right side of neck 2" below the angle of joint with linear abrasions around. 8. Bruise "" x "" on left side of neck front middle. 9. Multiple linear abrasions 8 in number on front and sides of neck, each 2/0" long."

According to Dr. Mittal, there was effusion of blood in the muscle bed under injuries Nos 7, 8 and 9 ; thyroidicartilage was fractured on left side in the region of was left ala ; hyoid was fractured on left side away from the greater cornu ; pinpoint haemorrhages over uvula and under part of larynx smeared with blood ; blood had come out from nostrils and mouth and there was no ligature mark on the neck. In the opinion of the doctor, death was due to asphyxia from throttling and injuries found were possible caused by nails and fingers.

(7) We have earlier seen that according to the confessional statement of Jai Singh, the deceased was strangled to death by putting a piece of cloth round his neck and tightening the same by pulling from both the ends. If what is stated in the confessional statement is true, then ordinarily there should have been a ligature mark on the neck of the deceased. At any rate, if death had been caused in the manner stated in Jai Singh's confessional statement, the injuries noticed earlier, could not have been there. In Modi's Medical Jurisprudence and Toxicology at page 160 (Fifteenth Edition) it is observed thus : - "STRANGULATION is a violent form of death, which results from constricting the neck by means of a ligature without suspending the body. It is called throttling, when constriction is produced by the pressure of the fingers and palms upon the throat. Strangulation may also be brought about by compressing the throat with a foot, knee, elbow, or some other solid substance."

Dr. Mittal has specifically stated that the deceased was throttled to death His evidence gains corroboration from the injuries, noticed earlier. That evidence throws doubt on the version given by Jai Singh in his confession. Further, Dr. Mittal did not observed any injury on the testicles of the deceased. Hence, it is not possible to hold that the facts stated by Jai Singh in his confession, at any rate, those relating to the manner of killing the deceased, are true. As such, it is not possible to rely on the confession of Jai Singh (8) This leaves us with the circumstantial evidence appearing against him. Circumstantial evidence has its own limitations. Before acting on that evidence, the Court must first see whether the circumstances put forward are satisfactorily proved and whether the proved circumstances are sufficient to bring him satisfactorily the guilt to the accused. The established circumstances must not only be consistent with the guilt of the accused, but at the same time they must be inconsistent with his innocence. While appreciating circumstantial evidence the Court should not view in isolation the various circumstances. It is necessary to take an overall view of the matter, but without substituting conjectures for legal inferences. I shall bear in mind these principles while examining the circumstances put forward against the appellant Jai Singh.

(9) It is an admitted fact that Jai Singh was in the service of the deceased for several years prior to the murder of the deceased. It is also admitted that he was in his service till August 9, 1965.

(10) Evidence has been adduced to show that on August 9, 1965, the appellant Jai Singh was given Rs. 42.00 by the deceased for purchasing ghee, but Jai Singh came back and told that his pocket had been picked and the money in question had been stolen. Then the deceased asked Jai Singh to show him the pocket. At that stage, Jai Singh changed his version and told the deceased that the money had fallen from his pocket ; whereupon the deceased reprimanded him. Jai Singh, in his statement under section 342 of the Code of Criminal Procedure, has admitted all these facts. Evidence has also been led to show that at the instance of the deceased, Jai Singh was arrested and prosecuted and that later on he was released on bail, Jai Singh has admitted these facts. The facts, thus established, prima facie show that Jai Singh had reasons to be inimically disposed towards the deceased.

(11) There is considerable evidence in the case to show that some days after Jai Singh was released on bail, the deceased re-employed him. On this point we have the testimony of Public Witness . 23 Jugal Kishore, son of the deceased, Public Witness . 28 Man Bahadur, the Chaukidar attached to the deceased's college, Public Witness . 29 Ram Singh, the peon attached to that college and Public Witness . 38 K.C. Mehra, an Ex. employee of the deceased. We see no reason to disbelieve the evidence of these witnesses. In particular, we see no reason to disbelieve the evidence of K.C. Mehra. Nothing was said against him except that at one time he was the employee of the deceased He was not serving in the college in question at the time he gave evidence in the case. Jai Singh denied the fact that he rejoined duty after he was arrested on August 9, 1963. According to him, he left Delhi on August 20, 1965. This version is completely falsified by the testimony of Public Witness . 2 Narain Das, elder brother of the accused, who stated in his cross-examination that Jai Singh went away from his house on the morning of August 31, 1965. To prove that Jai Singh was in the service of the deceased till the date of the murder, the college attendance register has been produced. It was contended on behalf of the accused that the entry relating to Jai Singh in the attendance register was fabricated during the investigation of this case. As we see no reason to disbelieve the evidence referred to earlier, we have not thought it necessary to consider the genuineness of that entry.

(12) Arguments were advanced on behalf of Jai Singh to show that he could not have had any enmity against the deceased if the deceased was generous enough to take him back to duty and forget the past. Adequacy of a given motive depends upon the mental make up of the person concerned. Further there is evidence in this case to show that Jai Singh believed that the deceased re-employed him out of fear.

(13) We have it from the evidence of Public Witness . 28 Man Bahadur and P.W. 29 Ram Singh, which evidence we believe, that the last persons, who were seen in the company of the deceased during his lifetime, were Jai Singh and Prem Singh. Their evidence was criticised on the basis of immaterial contradictions. But, reading their evidence as a whole, we feel convinced that by and large they have given truthful evidence. It is true that they were still serving in the college in question at the time they gave evidence. But that by itself is no ground to disbelieve their testimony. Further, their evidence, to a large extent, is corroborated by the contents of Exhibit P.A./1, the first information, given in this case, which, as we shall presently see, was laid before the police as early as 5.50 a.m. on August 31, 1965.

(14) It is seen from the evidence of Man Bahadur and Ram Singh that Jai Singh sent them away at about 9 or 930 p.m. on the night of August 30, 1965, from the college on false pretexts. As usual, those two witnesses were sitting near the stairs in the ground floor. The college was run in the second floor. According to these witnesses at about 9 or 930 p.m. on that night, Jai Singh came downstairs and gave Rs. 2.00 to Man Bahadur and told him that the deceased wanted him to purchase bread and eggs for the second time and deliver the same at his house with the instructions that he (the deceased) would be dining out and that he would be late in going over to his house. At the same time, he gave Rs. 1.00, 8.00 to Ram Singh and asked him to go and get chapatis and meat for him from a shop. The evidence of these witnesses, to an extent, is corroborated by Public Witness . 23 Jugal Kishore and Public Witness . 36 Smt. Sushila Soni The owner of the shop, from whom Ram Singh purchased chapatis and meat, corroborates him. We are in agreement with the court below that the evidence in question is acceptable. Man Bahadur and Ram Singh deposed that when they returned after doing what they were asked to do, the appellants were not there. We attach no importance to the circumstance that the police did not seize the chapatis and meat brought.

(15) Then we have evidence to show that on the night of September 2-3, 1965, Jai Singh and Prem Singh were found loitering in the railway platform at Mothura. and they had no tickets. Therefore, they were produced before a Railway Magistrate. They were convicted and fined. They were unable to pay the fine. Hence Jai Singh left as security Exhibit P. 20, the transistor, which he had with him. Thereafter, the next day, he pledged that transistor with Public Witness . 10 Raghbir Singh for a sum of Rs 30.00 and from that sum he paid the amount of fine All these facts are admitted by Jai Singh in his statement under section 342 of the Code of Criminal Procedure.

(16) From the evidence of Public Witness . 12 Gyan Prakash, Manager of Krishna Theatre Party, we have it that Jai Singh and Prem Singh joined the concern as employees and that Jai Singh was in his service till December 5, 1965 While joining the service there, he gave his name as Gobind. Jai Singh, in his statement, has admitted these facts. He has no explanation as to why he gave a false name while seeking employment in the Theatre in question.

(17) There is unimpeachable evidence of Public Witness . 25 Raj Karan to show that the arrest warrant, issued against Jai Singh, could not be executed either in Delhi or in his native village till the middle of December, 1965. The evidence on the record shows that he was absconding. This evidence was not challenged before us.

(18) There is evidence to show that while in police custody, he made the disclosure statement Exhibit P. o. in pursuance of which Exhibit P. 20, the transistor, was recovered from Public Witness . 10 Raghbir Singh That fact is not denied by the accused. But we are in agreement with Mr. Frank Anthony that some of the statements in Exhibit P. o. are inadmissible in evidence. The only portion that is admissible is : "I had pawned the transistor with a servant of a tea stall owner at Railway Station, who sells tea on the platform, for Rs. 251.00." The past history of the transistor found in that statement is no doubt inadmissible in evidence. But then it must be remembered that Jai Singh stated about the pawning of the transistor in question in the course of the investigation in the murder of the deceased. What is important is not the discovery of the transistor. Transistors were discovered year back. But the Statement in question was made in the course of an investigation of the charge of murder of Faqir Chand Soni, against him.

(19) From the evidence of Public Witness . 23 Jugal Kishore, P W. 28 Man Bahadur and Public Witness . 40 Sushil Kumar, it is proved that the transistor Exhibit P. 20 belonged to the deceased. From the evidence of Man Bahdur we further get it that the transistor in question was with the deceased on the day of the occurrence. It is true that Exhibit P. 20 is of a common type of transistor The deceased had a transistor similar to Exhibit P. 20 is beyond doubt-See Exhibit P.Y It is proved that he had a licence for a transistor. The person, who sold a transistor to him, Mohd Usmas (P W. 19), has come and deposed to the sale The mechanic, who manufactured the transistor Exhibit P.20, Abdul Samad, (P.W. 201 has spoken to its manufacture. It is true that no witness has spoken of any special indentifying mark found in the transistor that was with the deceased. But from the evidence available, the only reasonable inference is that the deceased was the owner of Exhibit P. 22 and that he was in possession of the same at about the time of his murder. In this connection, it is necessary to examine the version given by Jai Singh. As seen earlier he admits having pawned Exhibit P. 20 with P. W. 10 Raghbir Singh. He was in a position to tell the Court as to how he came by Exhibit P.20. Admittedly, the version put forward by him at about the time of pawning of the transistor was that he had purchased the same in Delhi. Further, he had told Public Witness . 10 Raghbir Singh that he had a licence for the same, which he had kept in his attache-case, which had been lost. Even according to Jai Singh, those versions are false. He has no explanation for giving those false versions. His present version is that the transistor in question belongs to his brother D.W. 2 Narain Dass and that he took it away from his house. D.W. 2 wants us to believe that Exhibit P 20 had been pawned with him by one om Parkash and Jai Singh took it away from his house during his absence on August 31, 1965. D.W. 2 is necessarily an interested witness. That apart, his evidence is wholly unbelievable. The same was not commended for our acceptance by the learned counsel for Jai Singh. D.W.2 wants the Court to believe that one om Parkash, who address he does not know, pawned it with him. Admittedly, he had no licence for the transistor in question. The contention of Mr. Anthony that we should disbelieve the prosecution version that the deceased has a transistor, because he did not obtain a licence before purchasing it, is wholly unacceptable. We see no force in the above contention. On a review of the entire evidence in the case, we are satisfied that

the transistor Exhibit P. 20 belonged to the deceased.

(20) The circumstances proved in this case, in my opinion, satisfactorily that establish the accused stole the transistor at about the time of the murder of the deceased. The rule laid down by the Supreme Court in *Tulsiram Kanu v. The State* and *Wasim Khan v. The State of Uttar Pradesh* is applicable to the facts of the present case (21) Now we shall come to the comments made on the prosecution evidence. Our attention was invited to the fact that the first information does not make any reference to the theft of the transistor, though that fact was known to Public Witness . 28 Man Bahadur even before the first information was laid. On that ground we are asked to reject the prosecution version that the transistor was stolen at the time of the murder of the deceased. Evidently, Public Witness . 23 Jugal Kishore did not connect the loss of the transistor with the murder of his father. It is clear from the information given by him that he had proceeded on the basis that his father was murdered by the appellants as a result of enmity. It may be that either Public Witness . 23 Jugal Kishore and Public Witness . 28 Man Bahadur were mixing up facts when they stated that they knew about the missing of the transistor even before the first information was lodged in the case, or that they did not attach any importance to that circumstance. In either case, it does not affect the merits of the case. The fact, that no investigation was directed towards the missing of the transistor till the arrest of Jai Singh, has no importance on the facts and circumstances of this case.

(22) From the evidence of Public Witness . 23 Jugal Kishore, it is seen that he found his father dead at a bout 5.30 a.m. on August 31, 1965. He immediately telephoned to the police about the same. Public Witness . 31 E. Tika Ram recorded that message. That record is marked as Exhibit P. V. V. That gives the name of the informant as Jugal Swami and it further shows that the informant gave the information that his father was being murdered (khun kar rahe hain). Jugal Kishore (P.W. 33) denies having given that information. According to him, lie gave the information on the phone in English and he told that his father had been murdered. Exhibit P.V.V. is in Hindi. It is clear that the name of the informant is wrongly mentioned there. P. W. 23's signed statement was recorded within about 5.50 a. m. That statement contains the present version. I am of the opinion that out of confusion Public Witness . 31 did not get the facts correctly when. he spoke on the phone. Further, Exhibit P.V.V. cannot be considered as the first information. It was neither read out to the informant nor signed by him. Hence it does not fulfil the requirements of section 154 of the Code of Criminal Procedure. Its authenticity cannot be relied on. I do not think, there is any need to refer to the decided cases read to us on this point.

(23) The fact that in the general diary of the Station the names of the persons, who murdered the deceased, were not mentioned, is not a circumstance that militates against the prosecution case At the time those documents came into existence, it was not known, who had murdered the deceased though Jugal Kishore and suspected that the appellants might have done it. I see no force in the contention of Mr. Frank Anthony that the first information Exhibit P A. /1 must have been recorded after the inquest report was submitted. There is no real basis for that contention Discrepancy as regards the exact time of murder is of no importance in this case.

(24) Lam in agreement with Mr. Frank Anthony that Public Witness . 37 G. B. Mathur is not a reliable witness. The trial Court did not rely on his evidence. According to the defence, he is a "procured witness". It appears to be so I have not placed any reliance on his evidence in considering the case against the appellants. Hence no purpose will be served in resummoning him, as desired by the defence, for confronting him with some of the statements said to have been made by him during investigation.

(25) The Court below was not able to place reliance on certain portions of the evidence of Public Witness . 18 Dev Raj and Public Witness . 35 Sewa Ram. I think, it was right in doing so. Their evidence to the extent it was rejected by the Court below is artificial. But the fact that in the prosecution case there are few unacceptable links or even forged links, if the Court is fully satisfied with the remaining evidence, is no ground to discard the entire prosecution case. Each case has to be judged on its own merits. If it is possible to separate the grain from the chaff, it is the duty of the Court to do so.

(26) For the reasons mentioned above, I affirm the conviction of Jai Singh under section 302 of the Indian Penal Code.

(27) So far as Prem Singh is concerned, the Court below did not accept the statements made by him in his confession as being wholly true. According to his confession, he did not do anything till Faqir Chand Soni was dead. Therefore, his statement Exhibit P.B.BB/4 is no confession in law. The facts stated in that statement do not accord with the medical evidence. Hence the confession in question has to be rejected as it cannot, in any case, be accepted in full.

(28) We have already rejected the confession of Jai Singh. Hence the same cannot be taken into consideration, under section 30 of Evidence Act, against Prem Singh.

(29) The only remaining evidence against him is that he fled from Delhi with Jai Singh, after the murder of Faqir Chand Soni ; moved about with him for sometime ; took up employment in the Krishna Theatre with him, giving his name falsely as Kundan Lal, and was absconding for about 4 months. This evidence, no doubt, raises a great deal of suspicion against him But it is insufficient to establish his guilt. Hence he is entitled to the benefit of doubt.

(30) In the result, Prem Singh's appeal (Criminal Appeal) No.912-C of 1966) is allowed and he is acquitted. He shall be set at liberty forthwith. But Jai Singh's appeal (Criminal Appeal No. 93-D/of 1966) is dismissed. Now coming to the question of sentence, taking into consideration the facts and circumstances of the case and in particular the fact that he was only about 18 years old at the time of the commission of the offence, I think the ends of justice will be met if he is sentenced to suffer imprisonment for life. It is ordered accordingly. Hence murder reference No. 49 of 1966 is rejected.

Khanna, J.

(31) I agree.