

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Crl. Appeal No.D-27-DB of 2003
Date of Decision: January 17, 2018**

Bajrang Lal

...Appellant

VERSUS

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH**

Present: Mr.A.S.Virk, Advocate
for the appellant.

Mr.Vivek Saini, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 11.12.2002 and order of sentence dated 14.12.2002, passed by the learned Sessions Judge, Narnaul, whereby he was convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of ₹500/- under Section 302 IPC and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

The brief facts of the case are that the FIR in the present case has been registered on the statement of Banwari Lal, Chowkidar, who got recorded his statement to ASI Ajit Singh. Complainant Banwari Lal stated that he is Chowkidar of the village. On 03.12.2001 at about 10:00 A.M., he was present at the house of Data Ram Ex-Sarpanch of village Jerpur, where

Sugan Singh, Namberdar was also present. In the meantime, Bajrang Lal came there and stated that he murdered his wife while she was sleeping by inflicting two blows on her neck and when she woke up, he gave third blow on her shoulder towards left side and strangled her with chunni (Dupatta), as he does not want to keep her because they have no cordial relations for long time. The complainant further stated that Bajrang Lal told that they were alone in the house at night. Accused also stated that knife is lying on the cot and he came after locking the door and handed over the key to complainant. After handing over the key, the accused started to go back. Then, complainant, Data Ram and Sugan Singh asked him as to where he is going upon which accused told that he is going to the police station Mahendergarh to surrender himself and went away from there. Thereafter, complainant along with Data Ram and Sugan Singh reached the house of Bajrang Lal and opened the lock and found the dead body of Rajpati lying on the cot and clothes of Rajpati were stained with blood and chunni was wrapped around the neck. Leaving Data Ram and Sugan Singh near the dead body, when the complainant was going to inform the police, in the meantime, ASI Ajit Singh met him and the complainant got recorded his statement. This statement, after making endorsement was sent to the Police Station for registration of the FIR whereupon, FIR No.82 dated 03.12.2001 was registered. The special report was sent to the Illaqa Magistrate and others. Then ASI Ajit Singh accompanied Banwari Lal complainant reached the village Jerpur and went to the house of Bajrang Lal where he found Murli Dhar, Tara chand. Data Ram and Sugan Singh. The dead body of Rajpati was lying on the cot having injuries. Photographs were taken.

conducted. Thereafter, the dead body was sent for post mortem examination. PW-9 Dr. Karan Singh, Medical Officer conducted the post mortem examination on the dead body of Rajpati and found following injuries:-

1. *Sharp edged wound with smooth margins stab wound spindle shape ends located on left side of neck at the level of thyroid cartilage on sterno mastoid muscle .2Cm x 5cm x 6cm size. Fresh bleeding was still there. Left side carotid artery and vessel were cut.*
2. *Sharp edged wound on right sterno mastoid muscle 2cm x 5cm x 4cm over carotid vessels were cut.*
3. *Sharp edged wound 2cmx5cmx2cm over left shoulder.*

In the opinion of the doctor, the death in this case was due to cut of major vessels by laterally in the carotid area which was ante-mortem in nature and was sufficient to cause death in routine course of life. The probable duration between the injuries and the death was immediate and the duration between death and post mortem was within 6 to 36 hours.

The doctor also deposed that on 15.12.2001, the police produced a written application along with sealed parcel. He opened the same and it was containing one knife. After seeing the same, he had given the opinion that the possibility of injuries mentioned in the PMR caused by that knife was there.

Then the Investigating Officer came to know that Bajrang Lal had surrendered himself before the police of Police Station Mahendergarh where he made statement to the police which was entered in the daily diary of the Police Station. He admitted, having murdered his wife, by way of that statement. He also told that he had kept the dead body and the weapon

same he had given the same to Sugan Singh, Namberdar, Data Ram Ex-Sarpanch and Banwari Lal, Chowkidar. Inspector Jogender Nath went there and arrested Bajrang Lal. After necessary investigation, challan was presented against the accused-appellant.

On presentation of challan, copies of challan and other documents were supplied to the accused-appellant under Section 207 Cr.P.C. Finding prima facie case, the appellant was charge-sheeted under Section 302 IPC, to which he pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Mahesh Kumar, Draftsman, who prepared the site plan. PW-2 Banwari Lal, Chowkidar, complainant, who reported the matter to the police, turned hostile and has not supported the prosecution version. PW-3 Head Constable Naval Kishore, PW-4 Constable Bhim Singh, PW-5 UGC Subhash Chand and PW-6 Head Constable Raghbir tendered into evidence affidavits Ex.PC to Ex.PF respectively. Learned Public Prosecutor given up PWs Data Ram, Sugan Singh, Tara Chand and Murli Dhar as they were won over by the accused. Certified copies of some documents have been placed on the record i.e. Ex.PG to Ex.PO. PW-7 Gian Singh, Record Keeper, mainly brought the summoned file of matrimonial case titled 'Bajrang vs. Rajwati'. PW-8 Advocate Surajbhan Sharma, mainly deposed regarding the proceedings under the Hindu Marriage Act. PW-9 Dr.Karan Singh, Medical Officer, deposed regarding conducting of post mortem examination on the dead body of Rajpati. PW-10 Head Constable Satbir Singh mainly brought the daily diary of Police Station Mahendergarh and stated that on that day, Bajrang Lal accused came to police station, Mahendergarh and gave

information to him that he was not on good terms with his wife and that he

killed his wife. On his statement, report No.9 was recorded in the daily diary, copy of which is Ex.PT. He also stated that on the same day at 5.30 p.m., Bajrang Lal was handed over to Inspector Jogender Singh, SHO, Police Station City Narnaul. PW-11 Raj Singh, Photographer, mainly proved photographs Ex.P7 to Ex.P11 and negatives thereof Ex.P12 to Ex.P16. PW-12 ASI Ajit Singh, Investigating Officer, deposed regarding investigation conducted by him in the present case. PW-13 Head Constable Zile Singh mainly deposed regarding recording of formal FIR Ex.PE. PW-14 SI Rameshwar Dayal, CIA Rewari, mainly deposed that he recorded statement of MHC Naval Kishore and Constable Bhim Singh and obtained site plan etc. and proved the challan against the accused. PW-15 Inspector Jogender Nath (Retd.) mainly deposed regarding verification of the investigation conducted by ASI Ajit Singh and he also deposed regarding arrest of the accused and recording of statements of some of the witnesses. Learned Public Prosecutor tendered into evidence report of FSL Ex.PAA and closed the prosecution evidence.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent. He pleaded that he has been falsely implicated. He is an agriculturist by profession. On the intervening night of 2nd and 3rd December 2001, he was in his fields to irrigate wheat crop. In the morning of 03.12.2011, when he returned to his house from fields, he found the doors of his house were broken and almirahs of room were also found broken and his wife was lying dead on a cot in a pool of blood. He rushed to the Police Station Mahendergarh to report the matter. He further deposed

that he was asked to name the person whom he suspected but on his repeated replies that he is unable to express suspicion against any particular person, he was told that he would be treated as murderer. The accused-appellant also deposed that after some time, ASI Ajit Singh, dictated the report and he was forced to sign that report after giving beatings to him and he was falsely implicated in this case by the police and was not medically examined in order to suppress the injuries on his person which he sustained by police beatings.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

Aggrieved from the above-said judgment of conviction and order of sentence, present appeal has been filed.

At the time of arguments, learned counsel for the appellant argued that it is case of no evidence. No admissible evidence has been produced by the prosecution and prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Learned counsel for the appellant further argued that any statement given by the accused to the police, being confession by the accused before the police, is hit by Section 25 of the Evidence Act, 1872 and is inadmissible in evidence. He next argued that if the confessional statement of the accused given to the police is inadmissible in evidence, then there remains no evidence on the file. Learned counsel for the appellant, therefore, argued that there being merit in the present appeal, the same should be allowed and accused-appellant should be acquitted.

On the other hand, learned State counsel argued that prosecution has duly proved its case by leading cogent evidence. The

accused-appellant has murdered his wife. The weapon of offence was also

lying on the spot and accused and his wife were alone in the house. He next argued that circumstances show that the accused has murdered his wife with whom he has strained relations. Learned State counsel, therefore, argued that there being no merit in the present appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record minutely and carefully, we find that the main witness in the present case is Banwari Lal, complainant. As per FIR of this case, the accused made confessional statement before Banwari Lal, Data Ram, Ex-Sarpanch, and Sugan Singh, Namberdar and handed over the key of the house to them. But PW-2 Banwari Lal, complainant has not supported the prosecution version and turned hostile. He has not deposed regarding confession made by the accused to them nor he admitted the fact that key was handed over to him. As PW-2 Banwari Lal has not supported the prosecution version, therefore, the prosecution has failed to prove the extra judicial confession made by the accused to him and also failed to prove the facts as stated in the FIR. The other PWs Data Ram, Sugan Singh, Tara Chand and Murli Dhar have not been examined by the prosecution and have been given up being won over by the accused. The only evidence remains on the file is confessional statement made by the accused to the police while recording the DDR No.9, copy of which is Ex.PT. It is settled law that any confessional statement made by the accused confessing his guilt to the police, is hit by Section 25 of the Evidence Act.

Learned counsel for the appellant cited judgment passed by the

Gujarat, 1972 (3) SCC 671, wherein, it is held that confessional statement before the police is hit by Section 25 of the Evidence Act and only that portion of the statement is admissible in evidence which lead to discovery of the fact. The recording of the FIR by making confession by the accused is a confessional statement given by the accused to the police which is hit by Section 25 of the Evidence Act. Therefore, the confessional statement made by the police is inadmissible in evidence and if this confession is excluded, then, there remains no evidence against the accused.

Learned counsel for the appellant further cited judgment passed by the Hon'ble Supreme Court in **Aghnoo Nagesia vs. State of Bihar, AIR 1966 SC 119**, in which, it is held as under:-

“9. XXX XX XX XXX.
Section 25 provides: “No confession made to a police officer, shall be proved as against a person accused of an offence.” The terms of Section 25 are imperative. A confession made to a police officer under any circumstances is not admissible in evidence against the accused. It covers a confession made when he was free and not in police custody, as also a confession made before any investigation has begun. The expression “accused of any offence” covers a person accused of an offence at the trial whether or not he was accused of the offence when he made the confession. XXX XX XXX.”

Keeping in view the above law laid down by the Hon'ble Supreme Court, the confession made by the accused is inadmissible in evidence and if this evidence is ignored, then there is no cogent evidence on the record to prove the guilt of the accused. Furthermore, the accused has given the version that he was away at the fields and when he came back to his house, he found his wife murdered. He went to the Police Station to report the matter to the police and under pressure, his statement was got recorded. The explanation has been given by the accused regarding the

death of Rajpati in his house. Furthermore, the only evidence that at one stage, accused had strained relations with his wife, alone is insufficient to prove the case of the prosecution beyond doubt against the accused and reasonable doubt exists in the prosecution version.

In view of the above discussion, we find that learned trial Court has not appreciated the evidence in right perspective. The impugned judgment of conviction dated 11.12.2002 and order of sentence dated 14.12.2002, passed by the learned Sessions Judge, Narnaul, is not as per evidence and law and the same are set aside. The accused-appellant is acquitted of the charge levelled against him.

Therefore, finding merit in the present appeal, the same is allowed. Since, appellant Bajrang Lal is on bail, his bail/surety bonds stand discharged.

(A.B.CHAUDHARI)
JUDGE

(INDERJIT SINGH)
JUDGE

January 17, 2018
Vgulati

Whether speaking/reasoned
Whether reportable

Yes
No