SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Tarseem Kumar Vs. the Delhi Administration

Tarseem Kumar Vs. the Delhi Administration

SooperKanoon Citation : sooperkanoon.com/660446

Court : Supreme Court of India

Decided On : Aug-18-1994

Reported in : AIR1994SC2585; 1995CriLJ470; 1994(3)Crimes181(SC); JT1994(5)SC264; 1994(3)SCALE806; 1994Supp(3)SCC367; [1994]Supp2SCR740; 1994(2)LC527(SC)

Judge : G.N. Ray and; N.P. Singh, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Criminal Appeal No. 212 of 1981 with Review Petn. (Cri.) No. 241 of 1981.

Appellant : Tarseem Kumar

Respondent : The Delhi Administration

Advocate for Def. : N.N. goswami and ; Ashok Bhan, Advs.

Advocate for Pet/Ap. : R.K. Jain,; R.K. Khanna,; Ajay Bhalla,;

Judgement :
ORDER

N.P. Singh, J.

1 The appellant was held guilty for having committed the murder of Gulshan Rai, by the Trial Court. He was sentenced to undergo imprisonment for life under Section 302 of the Penal Code. The appeal filed on behalf of the appellant was dismissed by the High Court. This appeal has been entertained on leave being granted by this Court.

2. It is the case of the prosecution that the appellant on 10.9.1974 took three rooms which were situated in the rear of the house bearing No. 30 on rent from Shri Lal (PW 19), the owner of the house, for storing garments in connection with the readymade garment export business. Later the appellant approached PW19 for other two rooms, which were then in occupation of tenant Kamla Parshad (PW 1). These two rooms were on the front side of the house. It is said that possession of those two rooms were given to the appellant on 13.10.1974 after Kamla Parshad (PW 1) vacated them. It is further the case of the prosecution that the next day i.e. 14.10.1974, the appellant came to PW 19 in the evening and sought his permission for digging the earth in the compound for plantation. For that purpose, the appellant is alleged to have engaged Gopal Singh (PW 2) and Jai Gopal (PW 3). They were shown the place in question on 16.10.1974 by the appellant. They agreed to do the work in the evening only, as they were busy during the day time. They promised to come on 17.10.1974 in the evening. On 17.10.1974, PW 2 and PW 3 went to the house at about 5.00 P.M. when the appellant was present there. They started digging the earth in the compound of the house. The appellant was sitting on one of the steps of the staircase. The work of digging could not be completed that evening. PW2 and PW 3 again came on 18.10.1974 at 5.00 P.M. for completing the digging. The appellant was present at the gate. According to PW2 and PW3, some foul smell was coming. They reported the same to the appellant. The appellant asked them to come after 10/15 minutes. The appellant assured them that foul smell shall be cleaned. When they returned after some time they found the house locked. The appellant was not there. They informed about the foul smell emanating from the house to PW19. He came to the portion of the house from where foul smell was coming along with PW2 and PW3.

3. At about 9.30 P.M., a person named Vinod informed the Police Control Room from public call office, that some incident had taken place near Dharma Singh's

house. Sub-Inspector Jagtar Singh (PW 31) left the police station along with constable Sohan Lal. Sub-Inspector (PW 31) reached the aforesaid house No.30. PW19 stated that he was the owner of the house but it had been rented out to the appellant. The lock was broken. They further found that two rooms inside the house were locked. The lock of one of the rooms falling on the right side was broken. PW31 found a trial of blood from that room. Other articles like iron rod, pieces of cloth stained with blood and marks of dragging were found. In the courtyard some hair were lying. PW31 found the face of a human being, covered with earth. After some earth was removed a dead body with tied hands was kept there. PW 31 recorded the statement of PW 19 at 10.00 P.M. and sent the same to the Police State for registration of the First Information Report. PW31 recorded the statement of PW1, PW2 and PW3 aforesaid. Later the investigation of the case was entrusted to Sub-Inspector Om Parkash (PW 37). PW37 reached the place of occurrence next morning i.e. 19.10.1974 at about 10.00 A.M. He prepared the inquest report and seizure list, of articles lying there. He found that the hands of the victim were tied with the chest and by that very rope the feet of the deceased were also tied with the neck. The dead body was under advanced stage of decomposition. The dead body was covered with a 'Tripal and over the Tripal' mud had been kept. He sent the dead body for port mortem examination.

4. It is further the case of the prosecution that during investigation appellant was arrested and PW37 interrogated the appellant. The appellant made a disclosure statement and took the police party to his house and from behind the trunks, he produced one 'Banyan' and one shirt stained with blood, which were taken into possession. It is the case of the prosecution that those clothes belonged to the appellant and were stained with human blood.

5. The dead body was identified by PW36 the father of the deceased as that of Gulshan Rai. PW36 informed the Investigating Officer that the deceased had left for his college on 16.10.1974 at about 8.30 A.M. When the deceased did not return from his college by the time when he normally used to return, he made a search for his son from his friends and came to know that the deceased had not gone to the college that day. A report was lodged at 3.10 A.M. at police station Defence Colony i.e. on 17.10.1974. During post mortem examination six injuries

were found on the person of the victim, all being lacerated wounds on the skull, parietal and occipital region of the head. According to the Doctor, those injuries had been caused by some blunt object.

6. The case of the prosecution solely rests on circumstantial evidences. As the case is based solely on the circumstantial evidence, the Court has to be satisfied that (i) The circumstances from which conclusion of guilt is to be drawn has been fully established. (ii) All the facts so established are consistent only with the hypothesis of guilt of the appellant and they do not exclude any other hypothesis except the one sought to be proved. (iii) The circumstances on which reliance has been placed are conclusive in nature. (iv) The chain of the evidence in the present case is such that there is no scope for any reasonable ground for a conclusion consistent with the innocence of the accused.

7. Where the prosecution purports to prove the charge against the accused on basis of direct evidence - oral or documentary, then the evidence so produced can be considered by the Court on the well recognised principles, including as to when the First Information Report of the occurrence was lodged; whether the accused was named therein and the version of the occurrence which is being disclosed in the Court, was disclosed in the First Information Report or not. The witnesses who have supported the case of the prosecution are trustworthy or not. But in a case which is based on circumstantial evidence neither the accused is known nor the manner of the occurrence is known to the persons connected with the victim. Even the First Information Report, in respect of such cases are lodged after a considerable delay in many cases, because an offence has been committed, itself is not known to anyone. In the present case itself, the murder was perhaps committed on 16th and the factum of murder was known in the night of 18th, when foul smell started coming out of the house in question. In this background, the circumstances discovered by the investigating officer during the course of investigation and proved by the prosecution during the trial have to be cautiously examined for purpose of recording a verdict of guilt or giving benefit of doubt to the accused.

8. Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the Court the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. In the present case, no motive on the part of the appellant to commit the murder of Gulshan, has been suggested or established on behalf of the prosecution.

9. However reliance has been placed on behalf of the persecution on the following circumstances :

(1) Recovery of the dead body of the victim on 18.10.1974 at about 10.00 P.M. from the house No. 30 belonging to PW19 but from portion in possession of the appellant.

(2) The deceased was seen with the petitioner riding on a motorcycle on 16.10.1974 at bus stop of village adchini by Jit Kumar (PW9).

(3) Recovery of several articles belonging to the appellant from the house which is the place of occurrence.

(4) Recovery of a glass tumbler with finger prints of the appellant from the place of occurrence.

(5) Signs of dragging of the body starting from door of the room the wall of the compound.

(6) Extra judicial confession made by the appellant before Uttam Singh (PW30) saying that the appellant had hit the victim with a 'Saria' at Adchini.

(7) On the basis of disclosure made by the appellant, the blood stained clothes containing the human blood of group 'O' belonging to the appellant were recovered from his house.

10. Before other links of the circumstantial evidence are examined to ascertain as to whether they have been proved beyond reasonable doubt, it will be proper first to examine, as to whether the appellant had come in exclusive possession of the portion of the house in question, from where the dead body of the victim was recovered. The house belonged to Shri Lal (PW 19). PW 19 had purchased that house on 29.4.1974. Two rooms of that house had been given on rent to Kamla Prasad (PW 1). The appellant is alleged to have approached PW 19 through his son Mange Ram (PW 29) who was a class-fellow of the appellant, for giving three rooms on rent, for storing garments for export. PW 29 asked his father PW 19 to give the three rooms to the appellant on rent. The appellant gave Rs. 50 to PW19 on 10.9.1974 as advance. According to PW 19, he gave possession of the three rooms to the appellant the same day. In September 1974 the appellant visited the said house from time to time, but did not store anything therein. Later he told PW 19 that he had lot of things to store and as such the space was not sufficient. It is the case of the prosecution that thereafter PW 19 asked PW 1 to vacate the two rooms in his possession so that those two rooms could also be given to the appellant. PW1 assured PW 19 that he would vacate the rooms within 5-10 days. He vacated the two rooms on 13.10.1974. On that very day PW19 gave possession of those two rooms to the appellant, who locked the same.

11. According to the prosecution, the appellant had continued in possession of three rooms from 10.9.1974 and five rooms since 13.10.1974 till 18.10.1974 when the dead body of Gulshan was recovered from the courtyard of the house aforesaid. PW 19 as well as his son PW29 asserted that during this period the appellant was in exclusive possession of the house. It is, however, surprising that

during this period even according to prosecution, no furniture or any other article except the odd articles found by the police in the morning of 19.10.1974 has been kept by the appellant. On behalf of the appellant, it was pointed out that in normal course of events, it was not expected that PW 1 who was in possession of the two rooms should have vacated those rooms in middle of the month and on the same day the possession of those rooms could have been handed over to the appellant. If the appellant was in such pressing necessity for those two rooms, in normal course it was expected that he would have stored the ready made garments in the other three rooms, which he had taken possession on 10.9.1974. But according to PW 19 and Ors. neither he had stored anything nor he used to remain in those rooms. The witnesses have stated that sometimes he used to come and stay in the house for few hours. None of the witnesses have stated that he was carrying any business from the said house. It has been rightly pointed out that normally any tenancy starts from beginning of a month. Even in the present case the arrangement was that the appellant will take the aforesaid two rooms w.e.f. Ist of November, 1974. But PW 19 has stated that he gave possession of the two rooms to appellant on 13.10.1974 itself. In normal course all these aspects are not of much consequence, but they assume importance, in view of the fact that PW 19 is the owner of the house and dead body was recovered from that house.

12. Apart from PW 19, the other 4 witnesses who have proved the involvement of the appellant are all connected with PW 19. PW29 is the son of PW 19. PW1 claims to be the tenant of those two rooms and said to have vacated those two room on 13.10.1974 when possession was taken by the appellant. The murder is alleged to have committed in one of those two rooms sometime on 16.10.1974. The two labourers PWs 2 and 3 who are alleged to have been engaged by the appellant for digging the flower pit, in the courtyard, are also connected with PW 19. According to the prosecution case, on 18th evening they had gone to dig the pit as asked by the appellant. When appellant was not there and they found foul smell coming, they went to PW 19 and reported about the foul smell coming from the house. It is not in dispute that PWs 2 and 3, the labourers were known to the owner of the house, PW19. In normal course, it was not expected of the appellant that for concealing a dead body, he would have engaged labourers PWs 2 and 3 who were connected with PW 19, the owner of the house.

13. We fail to appreciate as to why appellant would have got the digging work done only by PWs 2 and 3, who had no time during the day and could work only during the evening hours. For the digging, other labourers could have been engaged, who could have finished the work as early as possible. PWs 2 and 3, first visited the house on 16.10.1974 but no digging was done by them that evening. They are alleged to have done part of the digging in the evening of 17.10.1974. They came again on 18.10.1974 in the evening. By that time because of the decomposition of the dead body, foul smell was coming from the house. If the appellant was getting a portion of the courtyard dug to bury the dead body of the victim who had been murdered on 16.10.1974, the appellant would not have taken the risk, by delaying the digging of the pit for three days, only because PWs 2 and 3 could not do the digging work during the day time. Anyone in the position of the appellant, would have engaged labours who could have dug the pti in the evening of 16.10.1974 itself, so that appellant could have buried the dead body on 16.10.1974 itself and could have escaped from the house for ever. PW14 who held the post-mortem examination on 19.10.1974 at 4.00 P.M. stated that the death had taken place 64 to 80 hours before post-mortem examination. According to this opinion the murder was committed some time on 16.10.1974. It is difficult to believe that a person who had committed the murder and had left the dead body in one of the rooms, will be visiting the said house again and again for three days only to bury the dead body in the same house after getting a pit dug.

14. Why and how PWs 2 and 3 went to inform PW19, the owner of the house about the foul smell when the appellant was not there, has remained a mystery. The evidence of PW2 and PW3 cannot be accepted because they allege a highly improbable conduct on the part of the appellant. On behalf of the appellant, it was suggested that PW 19 took undue interest, no sooner dead body was discovered, to save his son PW 29, because the portion of the house till 16.10.1974, was not in exclusive possession of the appellant. It was pointed out that the PW 19 produced the main witnesses PW 1, PW 2 and PW 3, the same night before PW 31, the Sub-Inspector, which was unusual in the facts and circumstances of the case.

15. So far the next circumstantial evidence alleged against the appellant is that he was seen with the deceased on a motorcycle on 16.10.1974 at bus stop of village Adchini by Jit Kumar (PW 9). PW 9 has stated that he had seen the appellant with the victim on 16.10.1974 going on a motorcycle. But the Trial Court rejected his evidence saying that he was admittedly related to the deceased. The father and other relations of the deceased were searching him since 16.10.1974, but PW 9 never informed them that he had seen Gulshan Rai on 16.10.1974 going on a motorcycle along with the appellant. The Trial Court pointed out that he was a stock witness, as he had appeared in more than five cases for the prosecution, which fact was denied by him, but later proved. The High Court accepted the evidence saying that his evidence cannot be rejected merely on the ground that he was related to the victim. According to us, the Trial Court was justified in not placing reliance on the evidence of PW 9, for the reasons mentioned above. Any person related to the deceased in a small place like Adchini, in normal course would have informed, when search was being made for the victim, for three days, that he had seen him going with the appellant on a motorcycle. Apart from that in normal course no one is required to appear for five times, as a prosecution witness in different cases. This fact was denied by PW 9 for reasons best knows to him, but the Trial Court on basis of material on record found it to be correct.

16. So far the recovery of articles from the house in question, including a glass with the finger prints of the appellant is concerned, it is not of much consequence. The appellant being a class friend of PW 29, the son of the owner of the house, was visiting off and on, the rooms which he had taken on rent. But the fact remains, that if the appellant had come in exclusive possession of those rooms, in normal course, he would have brought furnitures and other articles including the readymade garments for which he had taken the rooms from PW 19. We have already mentioned above that no explanation has been furnished on behalf of the prosecution that if the appellant was in such a pressing need, for the remaining two rooms, why the readymade garments had not been stored in the three rooms which the appellant had taken on 10.9.1974. Once the prosecution case, that five rooms were in exclusive possession of the appellant has been rejected, merely certain articles, belonging to the appellant were found in one of the rooms, shall not be an evidence of conclusive nature, on basis of which it can be held that the

appellant had committed the murder of Gulshan Rai.

17. The High Court has relied on the signs of dragging of the body starting from the room up to the wall of the compound. This circumstance does not directly connect the appellant with the murder of Gulshan Rai. Whosoever might have committed the murder of Gulshan Rai in the room, must have dragged him from the room to the courtyard in order to put the dead body, in the pit. Some body did that. But the question is whether it has been established that it was done by the appellant.

18. Then remains the extra judicial confession alleged to have been made by the appellant before PW 8, Hans Raj, a scooter driver and PW 30, Uttam Singh, that he had hit the victim with a 'Sarya' at Adchini. The Trial Court pointed out that PW30 did not support the prosecution story and was accordingly declared hostile. About PW8, Hans Raj, the Trial Court observed that his evidence did not inspire confidence because the defence had successfully proved on basis of records that he was a stock witness of police and had appeared in more than 15 cases. The Trial Court further pointed out that he had been confronted, with his statement recorded in the Court of Shri J.D. Jain, Additional Sessions Judge, Delhi, wherein he had admitted that he had been cited as prosecution witness in about 30 cases by the police. The Trial Court further said that admittedly this witness was not on visiting terms with the appellant. He knew the appellant casually, being a resident of Pahar Ganj where the appellant was living about 14 years earlier. In this background, it was highly improbable, that the appellant will make extra judicial confession before PW 8.

19. The only remaining circumstance to be dealt with is the alleged disclosure made by the appellant and recovery of blood stained clothes belonging to the appellant at his instance. In view of Section 27 of the Evidence Act, there was no difficulty in accepting this evidence and to consider the same along with other circumstances if proved beyond all reasonable doubt. But the unfortunate feature of the present case, which has also been noticed by the Trial Court, is that many witnesses who can be said to be the stock witnesses to the police, have been produced on behalf of the prosecution to prove important circumstances. In this

background the Court has to be very cautions about the investigation done by the police in this case. The circumstance regarding the recovery of the blood stained clothes belonging to the appellant, on the disclosure made by him, has to be examined in the background of the witnesses like PW9, PW8 and 30, PWs2 and 3, on whom it is difficult to place any reliance for the reasons mentioned above. It is not possible to hold that the vital links of the prosecution case which are necessary to be proved before a finding can be recorded, that the chain of evidence is complete, have been proved beyond reasonable doubt. If the evidence of PWs2 and 3 are rejected, then the main circumstantial evidence that the appellant was in exclusive possession of the room in question and he had got the pit dug by PWs2 and 3 in which the dead body of the victim was found in the night of 18.10.1974, shall be deemed to have not been proved.

20. Apart from that the other two important circumstances, which connection the appellant, with the murder of Gulshan Rai i.e. he was seen with Gulshan Rai on 16.10.1974 and that he made extra judicial confession before PW 8 and PW 30, having been rejected, his conviction cannot be sustained merely on recovery of some of the articles belonging to the appellant in one of the rooms in question and alleged recovery of his clothes with blood stained from the residence of the appellant.

21. For the reasons mentioned above, benefit of doubt has to be given to the appellant. Accordingly, the appeal is allowed. The conviction and sentence passed against the appellant are sat aside. We are informed that the appellant has remained in jail for about seven years. However, during the pendency of this appeal, he has been directed to be released on bail. His bail bonds are cancelled.

REVIEW PETITION (CRL.) NO. 241 OF 1981

22. The Review Petition (Crl.) No. 241 of 1981 is allowed and the order dated 12.10.1979 passed by this Court in Special Leave Petition (Criminal) No. 2123 of 1979 is recalled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com