

**Moti Ram and Others Vs. the State**

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**Court :** Delhi

**Decided On :** Aug-18-1989

**Reported in :** 1990CriLJ337

**Judge :** Charanjit Talwar and; V.B. Bansal, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 82, 83, 161, 164 and 173; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 170 of 1986

**Appellant :** Moti Ram and Others

**Respondent :** The State

**Judgement :**

**Charanjit Talwar, J.**

1. This is an unusual case. During its investigation, the prosecuting agency arrested two sets of persons unconnected with each other for the murder of Baij Nath. The crime is alleged to have taken place at F. 65, Shastri Nagar, Delhi at about 9.30 p.m. on 7th July, 1983. There were two different versions which were unearthed during investigation; one was that the appellants herein i.e., Moti Ram, Ashok Kumar and Ram Swarup had committed that murder and the other was that Mahabir, Chetan, Des Raj, Jagdish, Ashok, Sudesh Kumar and Prem Chand had

committed the same. The motive for committing the crime of one set i.e. the appellants was found to be different from the motive of the other set. The last mentioned persons have been shown in Column 2 of report under S. 173 of the Code of Criminal Procedure implying thereby that they were not being sent for trial. The Investigating Officer in his testimony admitted that the said persons had been named as the accused in this case after their involvement had been thoroughly investigated; statements under S. 161 of the Code of Criminal Procedure of number of persons were recorded, at least statements of two of the witnesses were recorded under S. 164 of the Code of Criminal Procedure. Yet, only the appellants herein were sent for trial as in the view of the investigating agency, the case against the seven persons mentioned in Column 2 of the said report had not been made out.

2. At the outset we may notice that the Investigating Officer in their statements before the Court had not given any reason whatsoever for discarding the theory of the case involving those seven persons.

3. The reason given in the report under S. 173 of the Code which is not affirmed on oath, is that those seven persons at 9.30 p.m. on 7th July, 1983 were drinking in the milk dairy known as Thakur Dairy of Udai Vir Singh and, therefore, could not have committed the crime at that very time Thus the prosecution case is based on the fact that the crime had been committed exactly at 9.30 p.m. on that day in the shop of one Sata Nand (P.W. 1), located in premises No. F-65, Shastri Nagar, Delhi.

4. The deceased Baij Nath was taken to Hindu Rao Hospital, Delhi by PW 12 Mewa Lal and Head Constable Sant Ram, PW 17 at 11.45 p.m. on 7th July, 1983, where he was declared 'brought dead'. It is recorded in the M.L.C. (Ex. PW 4/A) that the deceased was brought with the :-

'Alleged h/o (history of) being stabbed'.

The testimony of PW 17, Head Constable Sant Ram brings out that when he reached the spot with the ambulance after having been informed by the Police Control Room about the incident, he found 15-20 persons present there but no

one informed him as to who were the assailants. He admitted that Mewa Lal (PW 12) had accompanied him in the ambulance. Mewa Lal in his statement stated that on 7th July, 1983 he was informed at his house by Ram Lakhan PW 3 that his brother Baij Nath had been stabbed. On this information he came running to the spot and found Baij Nath lying in a pool of blood. He thereafter took Baij Nath in the police van to the hospital. It is from his cross-examination that an attempt can be made to pin point the time of the stabbing incident. According to him after 10-15 minutes of his reaching the spot, the police van had arrived. The record maintained by Police Station Sarai Rohilla shows that information was received at that station at 10.55 p.m. on 7th July, 1983 that some unknown persons after stabbing one betel shop keeper, had fled away. It seems that similar message was also given to the Police Control Room by Shiv Narain. That message was also recorded in the Daily Diary.

5. Head Constable Sant Ram (PW 17) on receipt of instruction from the Police Control Room had reached the spot and after staying there for about 10-15 minutes, as stated by Mewa Lal, took the deceased to the hospital reaching there at 11.45 p.m. It can, therefore, be safely assumed that the Police Control Room ambulance reached the spot round about 11.15 p.m. It follows, therefore, that Mewa Lal, the brother of the deceased had reached the scene of occurrence at about 11.00 p.m. When he reached the spot, according to him; there were about 100-150 persons present but he had no conversation with anyone. Ram Lakhan, who was produced as PW 3 is silent about the aspect of going to Mewa Lal's house. But according to him he witnessed the incident of stabbing which was at about 9.30 p.m. It would be rather strange to believe that after seeing the occurrence, he (Ram Lakhan) waited for over an hour and then went to inform the brother of the deceased. It is more probable that immediately after witnessing it, he went to the house of Mewa Lal, assuming that he did go to inform him about the unfortunate happening. Mr. Sodhi, learned counsel for the prosecution during arguments agreed that most probably the incident occurred at about 10.30 p.m. and not at 9.30 p.m., as stated in the report under S. 173 of the Code of Criminal Procedure. It is his submission that the time recorded therein, i.e. 9.30 p.m. is a clerical mistake.

6. We, therefore, proceed on the basis that the incident occurred sometime between 10.30 p.m. and 10.45 p.m. Shiv Narain who had informed the Police Control Room and, it seems, also the Police Station at 10.55 p.m. would normally have done so as soon as he came to know of the incident. In his message the names of the assailants had not been given. In fact according to that message, it was Sata Nand who had been stabbed by unknown persons, who had fled away thereafter.

7. At this stage we highlight that the version involving the seven persons, who were not sent up for trial was rejected by the police solely on the firm belief that the incident took place at about 9.30 p.m. and according to Udai Vir Singh, those persons had been continuously drinking liquor from 8.30 p.m. to 11.30 p.m. in his milk dairy. It is useful to quote one paragraph of the report (at page 235 of the record) :

'The accused persons namely, Mahabir, Chetan, Des Raj, Ashok, Ramesh the witness, accused Sudesh, Guddu and Jagdish had drunk liquor at the Thakur Dairy the owners of which were Shri Nem Singh and his brother Shri Udai Vir Singh, residents of L-135, Shastri Nagar, who were also interrogated. During the course of interrogation Shri Udai Vir Singh stated that all the accused persons continued to drink liquor there itself from about 8.30 p.m. to 11.30 p.m. and did not go out from there. This version did not appear to be true because the incident occurred at 9.30 p.m. and the owner of the dairy stated that they were present at the dairy from 8.30 p.m. till 11.30 p.m. Two versions came out from the investigation of the case. As per the F.I.R. the accused Moti Ram Ashok and Ram Sarup were prudent persons. The evidence and the motive of murder are there against them. Their challans have been prepared in this case. The accused Des Raj, Chetan, Mahabir, Ashok, Sudesh, Jagdish Prem Chand alias Guddu, the P.O. disclosed their involvement in the commission of this incident. Their involvement in this case seems doubtful on account of their disclosure statement, the statement recorded later on, their refusal from taking part in the TIP and on account of interrogation from the owners of the Thakur Dairy. They were arrested on the disclosure statement of one accused only. Their statements did not appear to be so much trustworthy as it was of the accused persons mentioned in Column No. 4.

The names of these accused persons were put in column No. 2 of this challan so that the Court may give judicial verdict beyond any shadow of doubt.'

8. Thus apart from the fact that those persons were stated to be drinking at the time of incident which was fixed at 9.30 p.m., the statements of the present appellants made to the Police Officers during investigation presumably involving themselves were considered to be more 'trustworthy' than the statements made by those seven persons who had also involved themselves in this very crime and for the reasons which have been quoted above; those seven persons were not sent for trial.

9. Although it is clearly stated in the said report that there are two versions of the incident but the Investigating Officers viz., Inspector Shyam Singh and S.I. Chabi Lal, P.Ws. 15 and 19 respectively in Examination-in-Chief did not say a word about it. It was only in cross-examination that the defense was successful in bringing out the following facts :

(1) Almost two months after the occurrence, i.e., on 8th September, 1983, one Des Raj was arrested under the Arms Act case registered at Police Post Tank Road under Police Station, Karol Bagh;

(2) That during investigation he disclosed that he along with few others who were also named, committed the crime in question. Those persons named were Chetan, Ramesh, Ashok, Mahabir, Guddu and Sudesh, S.I. Ram Singh of Police Post, Tank Road had interrogated Des Raj and gave the information gathered by him to the S.H.O. of Police Station, Sarai Rohilla, i.e., P.W. 15 Inspector Shyam Singh;

(3) The S.H.O. accompanied by P.W. 19 S.I. Chabi Lal reached the Police Post and also interrogated Des Raj, who repeated his earlier statement made to S.I. Ram Singh;

(4) Des Raj, on his pointing out, was taken to the spot by the S.H.O. on 8th September, 1983 itself. The pointing out memo was exhibited as P.W. 15/DB;

(5) Des Raj also pointed out the place where the knife with which Baij Nath had been stabbed was thrown;

(6) That Chetan, one of the persons named by Des Raj was arrested on 9th September, 1983. On interrogation he made a disclosure statement naming the seven persons as the assailants. That disclosure statement has also been exhibited as P.W. 15/DC. Chetan and Des Raj were asked to keep their faces muffled as they were to be put up in the TIP. They, however, refused to join the Test Identification Parade;

(7) Thereafter, other accused persons excepting for Prem Chand alias Guddu were arrested on various dates in the month of September, 1983.

10. It appears that some senior Police Officers were also of the view that the second version viz., the version brought out by Des Raj was the correct version and that the appellants had been falsely involved. The letter written by the Addl. Dy. Commissioner of Police, North District, Delhi to that effect to D.C.P. (Vigilance) is Ex. D.W. 6/A. That letter together with the other correspondence of various senior officers was got proved through D.W. 6 Yogendra Sharma, Record in charge, Office of the Commissioner of Police. The learned trial Court has taken note of that correspondence and also noticed the second theory in paragraphs 35 and 36 of the Judgment. It is useful to quote those paragraphs also :

'35. At this stage, it would also be appropriate to refer to the letters written on behalf of the Police Department to others and also exchanged with the Head Quarters. Yogender Sharma D.W. 6, Record in charge of the Office of Police Commissioner proved Ex. DW 6/A, the letter written by Maxwell Parera, Deputy Commissioner of Police to the Deputy Commissioner of Police (Vigilance). In this letter, reference has been made to certain complaints that have been made to the Police Department and that Sada Nand had falsely implicated the accused persons. The disclosure statements made by Des Raj and others were highlighted. In paragraph 5, it is of the said letter, it was mentioned :

'The remaining one accused person is absconding and efforts are afoot to apprehend him by initiating proceedings under Sections 82/83, Cr.P.C. The investigation has established that Des Raj and other accused persons are the real culprits. They have confessed their guilt and correctly narrated the sequence of the incident. The accused persons are P.Cs. of their areas and facing trial in

'several cases of knifing. They were produced for identification parade but they refused to join it.

The allegation leveled by Sata Nand are false as he kept quiet till the real culprits were arrested. He wants to save himself and his accomplices who had falsely implicated Moti Ram, Ashok Jain and Ram Sarup by naming in FIR.'

Similar is the copy of the letter proved by the witness which is Ex. DW 6/B dated 4-2-84 written by Sh. H. C. Jatav, Addl. Commissioner of Police addressed to Shri H. L. Aseri in the office of the Prime Minister. The contents are by and large the same as written by Sh. Maxwell Parera and it has been opined that allegations leveled by Sata Nand are false as he kept quiet till the real culprits were arrested. He wants to save himself and his accomplices who have falsely implicated Moto Ram and two others. He further opined that it was Des Raj and others who were the real culprits.'

'36. The subsequent correspondence has also been proved and Ex. DW 6/C is the letter of Deputy Commissioner of Police (Vigilance) to Deputy Commissioner of Police (North District) enquiring if Moto Ram and the other two accused have been discharged or not. The rest of the correspondence is Ex. DW 6/C to P and finally vide letter copy of which is Ex. DW 6/D, Deputy Commissioner of Police (North District) on 5-9-84 informed the counter-part in the Vigilance Department that case has since been filed in Court and is pending in the Court of Session.'

11. The learned trial Court has held that correspondence and the other version which was unearthed by the prosecution during investigation are of no consequence. According to the learned trial Judge, the disclosure statements of Des Raj and others (the second set of accused) were probably made by them to take the investigating agency 'for a ride' implying thereby that disclosure statements by the second set of accused were made with the obvious purpose not only to mislead the investigation but to save the real culprits, who according to the prosecution, were the appellants herein.

12. As we have noticed above, in their testimony, the Investigating Officers have not given any reason for rejecting the theory which was propounded after the

arrest of Des Raj. On the prosecution's own showing, therefore, there were two versions of the 'murder of Baij Nath. There is no attempt, however, to negative the second version. As noticed above, it was not only the disclosure statements of those six persons, which supported the theory but the police had investigated the same and had in fact got recorded statements of two witnesses under S. 164 of the Code of Criminal Procedure. The names of those witnesses were Ramesh and Raj Kumar. The statements were got recorded by the Investigating Officer of this very case. What is surprising is that in spite of the opinion of the senior officers of the Police, no effort has been made to produce evidence in this case to demolish or disprove the other version brought out in the statements under S. 164 of the Code.

13. Mr. D. C. Mathur, learned Counsel on behalf of the appellant Moti Ram and Mr. B. B. Lal on behalf of the appellants Ashok and Ram Sarup submit that in view of the two rival theories propounded by the prosecution, their clients are entitled to acquittal without the case being examined against them on merits. There is merit in this submission.

14. With the assistance of counsel, we have gone through the complete record of the case. It seems to us that the case against Des Raj and others for the murder of Baij Nath was not based solely on the disclosure or the confessional statements of those six persons out of the seven (one of them having absconded) but on the statements of the witnesses. It was open to the prosecution to negative the rival or the parallel version about the incident, But as noticed above. in this case no evidence has been produced by the prosecution to do so. There is not even a suggestion by the Investigating Officers in their testimony to the effect that the other version is ill-founded or has been brought up to 'take the investigation for a ride'. It is our understanding that in such a situation, the prosecution has firstly to establish that the second version, which according to it is liable to be discredited, was false and that the version on which they are relying is the only one to be considered. In a case like the present, the accused are not required to prove their innocence; they are not obliged to prove by preponderance of probability or even that most probably they had not committed the crime. They are just to bring on record that the defense put forth is plausible.

15. In the present case, on the prosecution's own showing, it is safe to assume that the appellants herein may not have committed the crime, as alleged or at all.

16. In the beginning we noticed that it is no longer in dispute that the crime was committed at 10.30 p.m. on 7th July, 1983. We accept the testimony of Mewa Lal, P.W. 12 who is brother of the deceased, to the effect that at the place of occurrence, no one had told him about the identity of the assailants. Head Constable Sant Ram is also emphatic that no one had told him the names of the assailants. As noticed by us, according to Mewa Lal the police had stayed there at the spot for about 10-15 minutes before the body was taken to the hospital. The appellants herein were named for the first time by P.W. 1 Sata Nand who made the statement at about 0.30 hours on 8th July, 1983, i.e., after midnight. Sant Ram (P.W. 17) only named Mewa Lal (P.W. 12) who had accompanied the body in the police van to the hospital. In the M.L.C., the names of Head Constable Sant Ram and Mewa Lal (P.W. 12) have been noticed as having brought the body. We have scrutinised the evidence carefully on this aspect. We are of the view that if Sata Nand, who claims to be an eye-witness to the occurrence, was present at the spot when Head Constable Sant Ram reached there or had he accompanied the body to the hospital, he would have made the statement regarding the involvement of the appellant herein at the earliest opportunity and not after about 3 hours of the occurrence. We are of the opinion that Sata Nand had not witnessed the occurrence. Further it is not safe to rely upon the statement of P.W. 3 Ram Lakhan. In his testimony he did not support Mewa Lal to the effect that he had gone to the latter's house to inform him.

17. For the reasons stated above, the appeal is allowed. The conviction and sentence of the appellants herein for the offence under S. 302 of the Indian Penal Code are hereby set aside. The appellants are on bail. Their bail bonds are discharged.

18. Appeal allowed.