

Arvind Alias Pappu Vs. State

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Court : Delhi

Decided On : Sep-28-1990

Reported in : 1991CriLJ1004

Judge : Jaspal Singh and; Malik Shariff Ud Din, JJ.

Appeal No. : Crl. Appeal No. 149 of 1987

Appellant : Arvind Alias Pappu

Respondent : State

Advocate for Def. : Mr. M.S. Siddiqui and ; Mr. S.S. Dogra, Advs.

Advocate for Pet/Ap. : Mr. D.C. Mathur, Sr. Adv. and; Mr. Sushil Bajaj, Adv

Judgement :

Jaspal Singh, J.

1. Within the jurisdiction of police station Mangol Puri, there is a hamlet known as Sultanpur Majra. Within it was a tailoring firm in the name and style of Rajesh Enterprises. The appellant Arvind alias Pappu, Ram Parshad (PW-6) and Ram Parkash were the partners. On the intervening night of March 31, 1985 and April 1, 1985, the business premises of this firm were a witness to a murder. The prosecution alleged that the crime was committed by Arvind and that the victim was his co-villager Ajab Singh. The learned Additional Sessions Judge Mr. V. S.

Aggarwal found himself in agreement with the case set up by the prosecution and consequently convicted and sentenced him under section 302 of the Indian Penal Code. Needless to say Arvind has found the judgment and order of sentence unpalatable. Hence this appeal.

2. It is a case built entirely upon circumstantial evidence. Here is a resume of its essentials. Arvind and Ajab Singh being co-villagers, were known to each other. The prosecution claims that since the year 1978 there had been enmity between the two families and the cause was a state case against the deceased and his brothers under sections 147, 149, 307 of the Indian Penal Code instituted on the report lodged by the father of Arvind in the year 1978. The case, however, ended in an order of acquittal passed in the year 1982. It is also the case of the prosecution that Ajab Singh deceased was employed in a factory at Sahibabad where another co-villager Kamlesh Kumar (PW-8) also used to work and that on March 31, 1985 the appellant had visited the house of Kamlesh Kumar where Ajab Singh also used to live, and had taken him to Delhi to get him a job. Before leaving for Delhi they had seen off at the bus stand Vijay Ranjan (PW-9), a nephew of the deceased. The scene then shifts to the business premises of M/s. Rajesh Enterprises, Sultanpur Majra. What transpired there is given out by Jagpal, Anil Kumar, Suresh, Daulat Ram, Ram Prashad and Gaya Parshad (PWs. 1, 2, 3, 4, 6 and 18 respectively). Barring Ram Parshad, who was one of the partners, the others were the employees working for the firm. The sumo Bonus of their evidence is that on March 31, 1985 at about 9 p.m. the appellant came to the business premises of the firm on a rickshaw. He was accompanied by a friend. As that person was under the influence of liquor, the appellant told the employees to stop work and made him sleep on the table used for cutting clothes. Thereafter all the persons left to sleep leaving behind the appellant and his friend in that room. In the morning, at about 8 a.m. when Anil Kumar came into the room he found the appellant missing and the dead body of his friend lying in the room besmeared with blood. The police was informed, which recorded the statement of Anil Kumar Ex. PW-2/A). It was this report which formed the basis of formal FIR (Ex. PW 12/C) recorded at 10-10 a.m. The dead body was later sent for post-mortem which was conducted by Dr. Bharat Singh (PW-5). He found one irregular lacerated wound in the front middle area 1' x 1 1/4' which had cut the common carotid artery

and jugular vein on the left side. The injury, as per the doctor, was sufficient in the ordinary course of nature to cause death and could be caused by the scissors (Ex. P-1) found besmeared with blood at the scene of occurrence. As per him the death was caused at about 2 a.m. on April 1, 1985.

3. A few more things need be noticed before we proceed to examine the nuts and bolts of the case and the arguments advanced.

4. It appears from the record that as the appellant had not been traced (he surrendered after about one year and six months of the occurrence) and as the identity of the deceased was not known, Ram Parshad (PW-6) was interrogated and the photographs of the deceased were taken to the native village of Ajab Singh and shown to some of the villagers, but to no effect. However, on April 6, the brother of Ajab Singh (Jagdish Chander, PW-7) went to the house of Kamlesh Kumar (PW-8), recovered from the box of the deceased a visiting card (Ex. P-7), and a driving license (Ex. P-8). He thereafter contacted the police, handed it over the said two documents, and identified the dead body in the mortuary to be of his brother Ajab Singh. We may hasten to add that as per the prosecution the dead body was identified by Kamlesh Kumar also though he has neither supported the version regarding the visit of the appellant to his house on 30th and 31st March, 1985, nor the prosecution assertion that he had identified the dead body as of Ajab Singh. Rather, according to him, Jagdish Chander had stated at the mortuary that it was 'the opportunity to take revenge on the accused.' Needless to say, he was declared hostile by the prosecution.

5. Mr. D. C. Mathur, Senior Advocate appearing for the appellant was, as usual, thorough and incisive. He assaulted the prosecution bastion from all directions. This is how he built up his case. According to him, it was Ram Parshad who was the villain of the piece. It was he who was running the business and when he was detained by the police for interrogation in connection with the person found murdered in his business premises, he came out with the version that the appellant was his partner and that it was he who had brought the victim and murdered him and to lend support to his version he had introduced Jagpal, Anil Kumar, Suresh, Daulat Ram and Gaya Parshad (PWs 1, 2, 3, 4 and 18

respectively) who, as per Mr. Mathur, were in fact never working in the factory as employees. In support of the argument advanced our attention was drawn to the cross-examination of Jagpal and Daulat Ram wherein they have stated that Ram Parshad had forcibly obtained from them affidavits, Ex. DA and DB respectively. As per these affidavits the deponents had known and seen nothing. Our attention was also drawn to the fact that no documentary evidence had been produced to prove that the above noted persons were actually employed in the factory, and so also to the fact that neither in the rough site plan prepared by the Investigating Officer nor in the scale plan prepared later, the position of the witnesses, of the appellant and the deceased, had been shown. However, the main attack was confined to the identity of the deceased. It was argued that Kamlesh Kumar (PW-8) had not identified the dead body to be that of Ajab Singh and that the identification by Jagdish Chander (PW-7) on April 6 was tainted in as much as he was keen to implicate the appellant who happened to be an old enemy. It was further argued that the body of the deceased had been requested to be kept only for seventy two hours and that as there was nothing on the record to show that request had been made to keep the body for more days, it must be presumed that actually there was no dead body to be identified on April 6. He also wondered as to what had happened to the dead body as there was no material on the record to show as to how it was disposed of. The argument, in short, was that it was not proved that the deceased was actually Ajab Singh and none other. He also wondered as to how the Investigating Officer had gone to the native village of Ajab Singh along with the photographs of the dead body when till the time of his visit there was nothing to disclose the identity of the deceased.

6. We feel that there is cogent and convincing evidence on the record to prove that the appellant was at least connected with the business being run in the premises. The visiting card (Ex. P- 7) recovered from the box of the deceased shows that the appellant was the proprietor of M/s. Rajesh Enterprises. Jagpal (PW-1) says that the factory was 'of Pappu' and in cross-examination he states that the appellant was one of the three partners and had been seen by him visiting the factory on an earlier occasion also. To the same effect are the statements of Anil Kumar, Suresh, Daulat Ram and Gaya Parkash (PWs. 2, 3, 4 and 18 respectively). Ram Parshad, who has been examined as PW-6 too has stated in clear and

unambiguous terms that the appellant was a partner along with him and one Ram Parkash. It is also in the evidence of all these persons that on the fateful night when the appellant came with the deceased he had ordered all the workers to stop work and go to sleep and that consequent upon that command the work was stopped and everyone had left the room. This too shows that he was in a position of authority. We have absolutely no reason to disbelieve the prosecution evidence on this aspect of the matter and as such find no force in the contention that the appellant had nothing to do with the business or the premises in question. Similarly, in view of the evidence comprising of the statements of the above named persons we are inclined to hold as proved that they were all working in the factory. The mere fact that no documentary evidence has been led is to our mind, no ground in itself to discard their otherwise cogent and convincing evidence.

7. We also feel that the argument that the witnesses were introduced by Ram Parshad to save his own neck is, to say the least, far from convincing. Ram Parshad was not detained. He was only interrogated and that too only after Anil Kumar had lodged the report (Ex. PW 2/A) and the FIR on its basis had already been registered. What is of utmost significance is that Anil Kumar, in this report had clearly mentioned that the appellant was the 'owner' of the factory and that besides him Jagpal, Suresh, Daulat Ram, Ram Parshad and Gaya Prashad worked in the factory and that the appellant had come with his friend in the presence of all of them. To cut short, he not only gave the names of the workers, he also spoke about their presence and what had transpired. Thus the entire prosecution version and the name of the workers and witnesses had been given much before Ram Parshad was interrogated or allegedly detained. This, in itself, demolishes the defense argument. In any case, why should Ram Parshad implicate a person, who if the defense counsel is to be believed, had neither anything to do with the business nor was even known to Ram Parshad

8. It is true that there are affidavits of Jagpal and Daulat Ram. It is also true that both of them have stated that those were forcibly obtained by Ram Parshad. Does it go to prove that it was Ram Parshad who had obtained them to save his neck With all respect to the learned counsel for the appellant we feel that nothing more can be far from truth. Both the affidavits (Ex. DA and DB) are of August 4, 1986.

The challan had been filed in court in 1985. The date of committal is November 29, 1985. The challan obviously was only against the appellant. Thus, much before August 4, 1986 when the affidavits were signed, Ram Parshad knew that he had nothing to worry. Why should he then obtain the affidavits Not only this. The affidavits were filed in court not by Ram Parshad but by the appellant. If the affidavits had been obtained by Ram Parshad only to save his own neck, how did they come into possession of the appellant Lastly, the appellant has produced similar affidavit of Ram Parshad also. Why should Ram Parshad Swear his own affidavit. And then, how did it come into the possession of the appellant The truth seems to be that the appellant first absconded and then prowled around to obtain affidavits in his favor.

9. It is true that neither in the plan prepared by the Investigating Officer nor in the plan prepared later according to scale, the position of the witnesses, of the appellant, and the deceased is shown. But then, does it make any difference None. It is significant to note that the report Ex. PW 2/A was lodged by Anil Kumar and the formal FIR was recorded without any loss of time and significantly, a detailed description of the events finds mention therein and more significantly it was not alleged, even in the passing, that the report was not made and the FIR was not recorded at the given time. This further takes away the teeth (if at all it had any) from the argument advanced.

10. Time now to deal with the identity of the deceased. Undoubtedly, the prosecution has not explained as to how the Investigating Officer thought of going to the native village of Ajab Singh with the photographs of the dead body. There must have been some clue, some information. However, we have been kept in the dark about it. But then, does it really matter We feel the answer must be in the negative. We have on the record the clear and unambiguous statement of Jagdish Chander (PW-7) to the effect that the body shown to him in the mortuary was of his brother Ajab Singh. Even his statement to that effect was recorded and the same is Ex. PW 7/A. That Jagdish Chander had gone to the mortuary and had been shown a dead body finds support and corroboration even from the statement of Kamlesh Kumar (PW-8) who, otherwise, seems to have been won over by the appellant. Significantly Kamlesh Kumar admits having himself visited the mortuary

with Jagdish Chander and his having been shown a dead body on April 6, 1985. True, he has stated that he had not identified the deceased, but he stands falsified by the statement Ex. PW 8/B admittedly signed by him wherein he admits having identified the dead body to be of Ajab Singh. It is also true that in the cross-examination conducted on behalf of the appellant he has stated that Jagdish Chander on seeing the dead body had remarked that 'this is the opportunity to take revenge on the accused'. However, we are inclined to reject this part of his statement as false as no such suggestion was put to Jagdish Chander and as we feel that on this aspect of the matter he is out to help the appellant after having been won over by him. We have absolutely no reason to disbelieve Jagdish Chander more so as his statement that he had gone to the mortuary and had been shown a dead body finds support even from Kamlesh Kumar. We feel that in view of the statements of Jagdish Chander and Kamlesh Kumar, as referred to above, the fact that the prosecution has failed to prove any application for keeping the body for more than seventy two hours and its failure to prove how the dead body was finally disposed of would not be of any consequence.

11. The prosecution evidence is clear, cogent and convincing. The appellant was having interest in the business being run at the place of occurrence. He had been visiting the factory. On March 31, 1985 the appellant met Ajab Singh in the presence of Vijay Ranjan (PW-9) and asked him to come to Delhi. He assured him a job in Delhi. Both of them were last seen by Vijay Ranjan waiting for a bus. Thereafter the same day at about 9-00 p.m. the appellant brought Ajab Singh to his factory. Ajab Singh was drunk. The appellant made him lie on the cutter's table and asked all the workers to stop work and to go to sleep. All the workers left leaving behind only the appellant and the deceased in that room. That room had a shutter. Next morning at about 8 a.m. when Anil Kumar (PW-2) opened the shutter he found Ajab Singh lying dead in a pool of blood and the appellant missing. The murder had been committed at about 2 a.m. The appellant surrendered in court after about one year and six months. This is the chain of events. It comes from the evidence of Vijay Ranjan (PW-9) and from the evidence given by Jagpal, Anil Kumar, Suresh, Daulat Ram, Ram Parshad and Gaya Parshad and Dr. Bharat Singh. We have then the medical evidence and the evidence of identification of the dead body. This completes the story. We find the circumstances finally and

cogently established. We find them to be a definite pointer towards the guilt of the appellant. We find them in their totality leading unerringly to the conclusion that within all human probability, the offence was committed by the appellant and none else. These are the conclusions which were arrived at by the learned trial judge. These are the conclusions which are arrived at by us as well. As a result, we find no merit in the appeal. The same is hereby dismissed.

12. Appeal dismissed.

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