

Chet Ram Vs. the State

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Court : Delhi

Decided On : Aug-09-1996

Reported in : 1997CriLJ1029

Judge : Arun Kumar and; K.S Gupta, JJ.

Acts : Indian Panel Code, 1860 - Sections 34, 201, 302 and 304; [Evidence Act, 1872](#) - Sections 27

Appeal No. : Crl.A. No. 18 of 1989

Appellant : Chet Ram

Respondent : The State

Advocate for Def. : Pawan Behl, Adv.

Advocate for Pet/Ap. : L.K. Upadhyay, Adv

Judgement :

Arun Kumar, J.

1. The appellant was convicted by the Addl., Sessions Judge, Delhi under Sections 302/201 IPC read with Section 34 IPC, for the murder of Deepu, son of Ram Khilawan and causing disappearance of evidence of offence. In fact four persons were accused for the murder of Deepu. One of them Duli Chand was a

minor and was tried separately by the Children Court. Shanti, another accused was declared a lunatic and her trial was separated. The remaining two, i.e. Chet Ram, the appellant herein and Ramesh were tried together. By the impugned judgment Ramesh was acquitted while Chet Ram was convicted. Charge against the appellant and co-accused Ramesh was that along with Duli Chand and Shanti aforesaid on the night intervening 27th and 28th August 1986 in between the latrine of house Nos. K-61 and K-63, B. K. Dutta Colony, they intentionally caused the death of Deepu by strangulation and caused the evidence to disappear with intention to save themselves from the charge of murder of Deepu and thus also committed the offence punishable under Sections 201/34 IPC.

2. Vide Ex.PA & Ex.PW23/A which are the copies of DD No. 4-A dated 31st August, 1986 recorded at 9.39 a.m. at Police Station Lodhi Colony, New Delhi, information was received through telephone from Police Control Room from SI Madan Lal that one N. K. Mitra informed from the public call to the effect that a dead body was lying in the gutter near block K-62, B. K. Dutta Colony which is in front of Karbla Masjid. On receipt of the telephonic information ASI Daya Nand was deputed to visit the place of occurrence. He left along with constable Bal Kishan. FIR No. 206 was registered at Police Station Lodhi Colony under Sections 302/201/34 IPC at 12.35 p.m. on 31-8-86 and the same is Ex.PB. SI R. B. Singh also reached the spot in the course of his patrolling duty and found ASI Daya Nand along with constable Bal Kishan already there. Foul smell was noticed coming from the gutter. The lid of the gutter was removed and a dead body of a man was found lying therein. The crime team was sent for. The dead body was photographed. PWs. 1 and 2, the local sweepers look out the dead body from the gutter. The dead body was identified by Sevak Lal as that of Deepu son of Ram Khilawan.

3. From the evidence it appears that the appellant as well as said Shanti and Duli Chand belong to the same Village as deceased Deepu. In fact appellant Chet Ram is the real brother of Shanti. They have two other brothers who have appeared as witnesses in this case. They are PW-3 Sham Lal and PW-5 Sevak Lal. The accused family is a family of washermen. Deepu had come from the village and was residing with Sevak Lal, PW-5. On the Janamashtami day in the year 1986,

i.e., the night between 27th and 28th August, 1986, the four accused along with Deepu deceased were seen at the house of Shanti at 8 P.M. by PW15 Brij Lal, another resident of the native village of these persons. Brij Lal is also a washerman by profession. As per the prosecution case, Deepu was strangled on that night by the four accused and his dead body was thrown in the gutter. The post mortem was conducted by Dr. R. K. Sharma of the All India Institute of Medical Sciences. Dr. R. K. Sharma appeared as PW-6 and proved the post-mortem report as PW-6/A. As per the doctor, the following injuries were present on the body of the deceased :-

1. Multiple contused abrasion present in the middle of neck total area about 10 x 8 cms. underline tissues showing signs of blood suffused; Thyroid and cricoids cartilages fractured. Hyoid bone fractured. Tearing of intima of carotid arteries seen.

2. Testicles swelling present due to testicles haematoma both sides approximately 20 ml. of blood.

The post-mortem was conducted on 2/9/86 and according to the doctor, the death took place 5/6 days prior to that. Cause of death was given as Asphyxia as a result of strangulation.

4. It is a case of circumstantial evidence. There are no ocular witnesses of the crime. On the basis of evidence of last seen, previous enmity and motive coupled with abscondence the learned Addl. Sessions Judge convicted the appellant while co-accused Ramesh was acquitted. Learned counsel for the appellant has urged before us that the evidence against both the accused is common in the present case. It is a case of joint trial of the two accused. On the same evidence accused Ramesh has been acquitted while the appellant has been convicted. This is one of the main arguments of the learned counsel for the appellant for challenging the impugned judgment.

5. The other argument advanced by the learned counsel for the appellant is that the evidence of motive and past enmity is too weak and is even otherwise not sufficient to sustain a finding of conviction against the appellant. The trial Court

has also referred to the disclosure statements of the accused persons and has made reference to one such statement while convicting the appellant. According to the learned counsel for the appellant the so called disclosure statements are not such as can be saved by Section 27 of the Evidence Act. The statements have not led to any recovery. They at best merely point out the alleged scene of occurrence. In this context it is added that so far as the disclosure statement are concerned they have same impact for both the accused. Still co-accused Ramesh has been acquitted and the appellant has been convicted.

6. It is to be noted that the State has not appealed against the judgment of the trial Court acquitting the co-accused Ramesh in this case. To that extent the impugned judgment has become final.

7. The features for convicting the appellant appear to be :-

(a) Motive (including Ex.PW a letter allegedly written by the appellant to his father in August 1986);

(b) Post-mortem report according to which the death of Deepu should have occurred on the night of 27-28/8/86 which is, as per the prosecution case, the date of occurrence.

(c) Evidence of last seen together.

(d) Abscondence.

8. While discussing the case of the appellant the trial Court has specifically mentioned the aforesaid points. However, it will be observed that so far as points (b), (c) and (d), i.e., post-mortem report, last seen together and abscondence are concerned, the case against two accused, i.e., Ramesh who has been acquitted and the appellant who has been convicted cannot be said to be different. The evidence of last seen together has come forth from the statement of Brij Lal, PW-15. He stated that on 27-8-86, i.e., Janamashtami festival day at about 8 p.m., he went to the house of Shanti where Shanti, Duli Chand, Ramesh, Chet Ram and Deepu were present. They were sitting together and doing nothing. The witness returned back to his house thereafter. On 29-6-86, Sevak Lal, PW-5 informed Brij

Lal that Deepu was not there. On 30-8-86, Brij Lal went to Karbla where the accused persons were residing and working and could not find anyone, i.e., Deepu, Duli Chand, Shanti, Ramesh and Chet Ram. He left for his village and informed Ram Khilawan, father of Deepu that Sevak Lal had told him that the said five persons were not present at their residence and that they were not available at Karbla. Ram Khilawan came to Delhi from the village along with this witness. They both went to the house of Sevak Lal at Delhi. Ram Parsad PW-16 was also with them at that time. There they came to know that Deepu's dead body had been recovered from the gutter. They went to the mortuary and identified the dead body.

9. PW-16 Ram Prasad who also belongs to the same village as that of the accused and the deceased stated that Deepu deceased had come from the village and started living with Sevak Lal, PW-5, real brother of the appellant herein. On 29-8-86, Sevak Lal informed him that Deepu, Chet Ram, Duli Chand, Shanti and Ramesh were missing from their residence from Janamashtami day.

10. Ram Khilawan, PW-17 is the father of Deepu. He was in the village at the relevant time and came on the scene only after he was informed in the village by PW-15 and PW-16 about Deepu missing from his place. Thus so far as the question of last seen together is concerned, the case against the appellant Chet Ram as also against Ramesh co-accused is the same. Names of both of them are being mentioned as having been seen together along with Deepu, Shanti and Duli Chand. Law on circumstantial evidence is well settled and in the authority of *Dhananjay Chatterjee alias Dhana v. State of West Bengal*, : [1994]1SCR37 , it has been reiterated thus :-

'It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis, except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally

established circumstances and not merely indignation of the Court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinise the evidence lest suspicion takes the place of proof. Since, the instant case is based on circumstantial evidence and the sentence awarded by the trial Court and confirmed by the High Court is that of death, we have to consider the circumstances carefully bearing the principles noticed above in mind.'

11. Similarly so far as the post mortem report has been taken by the learned trial Court to deduce from it that the date of death of Deepu tallies with the prosecution case. It cannot be said that there is any special feature to distinguish cases against the two accused Chet Ram (appellant) and Ramesh who has been acquitted so far as this aspect is concerned.

12. About abscondence, we may note that all the four accused had absconded. Accused Shanti and Ramesh were arrested by the I.O. while Chet Ram appellant herein surrendered in Court after some time. This distinction between the case of Ramesh and the appellant, to our mind, is insignificant. In any case this alone cannot be a reason to acquit one and convict the other. The main point of distinction between cases of the appellant and co-accused Ramesh which emerges from the prosecution case and which is highlighted by the learned Addl. Sessions Judge is the element of motive. The prosecution has tried to show that Chet Ram has motive to kill Deepu. No evidence of motive was led so far as co-accused Ramesh is concerned.

13. On motive PW-14 Ram Babu who is uncle of Ram Khilawan, father of deceased Deepu, has stated that cattle of Ram Khilawan used to go to the field of the appellant Chet Ram and Shanti co-accused for which they harboured a grudge and ill-feeling against Ram Khilawan and Deepu his son. On this account an altercation had taken place in the village between Chet Ram, the appellant and Deepu deceased. Both of them during those days used to reside in the village. Later Chet Ram shifted to Delhi followed by Deepu. In the altercation, both of them allegedly exchanged hot words including 'I will see you'. The other factor for motive was the sale of half portion of his house in the village by Ram Khilawan to Sevak Lal brother of Chet Ram for Rs. 1800/-. Sevak Lal later sold that portion of

the house to Ram Babu, PW-14 for Rs. 2800/-. Chet Ram allegedly harboured a grudge against Ram Khilawan and Deepu for not including the name of Chet Ram along with Sevak Lal in the sale of half portion of the house to Sevak Lal. Sevak Lal sold that half portion to Ram Babu. Because of non-inclusion of his name in the original sale transaction, Chet Ram could not share the profit with Sevak Lal.

14. This evidence of motive does not appear to be sufficient to show or make out a case for motive to kill somebody. Annoyance on account of cattle of one entering into fields of another is a common feature in villages. It is to be noted that Chet Ram and Shanti did not take this alleged annoyance seriously because it has been admitted by PW-14 Ram Babu who referred to this fact that no police report was lodged in this connection.

15. The alleged grudge which Chet Ram harboured on account of sale of half portion of the village house by Ram Khilawan, father of deceased Deepu to Sevak Lal also appears to be a very weak piece of evidence. Who should be shown as purchaser is to be decided by the purchaser's side and not by the vendor. Ram Khilawan was the vendor. The purchaser was the real brother of Chet Ram. If at all Chet Ram should have any grievance on this score, it should have been against his brother Sevak Lal and not against Ram Khilawan.

16. Another aspect of motive introduced in the cross-examination of Ram Khilawan PW-17 who is the father of deceased is that some case under Section 304 IPC was pending against Ram Khilawan in the local Courts in which the accused party herein were cited as witnesses against Ram Khilawan. For this, the grouse should have been with Ram Khilawan and not the other way.

17. Support of the theory of motive, the prosecution has also relied on a letter Ex.PW-9/A. This letter is allegedly written in the hand of Chet Ram appellant and is addressed to his father Devi Din in the village. The letter has been sent through post. It is written on an inland letter and contains postal markings. Chet Ram has denied having written this letter. The prosecution tried to prove this letter through the postman PW-9 Rohit Kumar who is alleged to have delivered the same to Devi Din. A hand writing expert, PW-29, Dr. S. C. Mittal was also examined to prove the hand writing of Chet Ram, appellant. The learned Addl. Sessions Judge has relied

on this letter. However, we are of the view that no reliance can be placed on this letter in view of the fact that identity of the person referred to as Bablua in the letter has not been established. In this letter the writer has hinted to the tension and fear prevailing between Chet Ram and Bablua. The main sentences in the letter to be referred to herein are 'I live with caution. If something happens to me, I will not spare Bablua if I remain alive. I myself shall take revenge. There is nothing to worry. He, sala himself is afraid'. One does not know who is Bablua referred to in this letter. The prosecution has not led any evidence to fix the identity of this person. thereforee, this letter cannot be of any help to the prosecution case.

18. While on motive we would like to emphasise that motive alone is not sufficient in a case of circumstantial evidence to convict a person. Along with motive, there should be some further corroborative evidence. There is none in the present case. The element of motive is the only point of difference between the case of the appellant and that of co-accused Ramesh. We find that the evidence of motive led by the prosecution is neither sufficient to support the theory of motive nor do we consider it safe to convict the appellant in the facts of the present case on the alleged theory of motive alone. In a case of circumstantial evidence motive helps in the process of presumptive reasoning. But by itself it is not sufficient to convict a person.

19. While dealing with the case of the appellant the trial Court also referred to the pointing out memo Ex.PW-25/A as per which appellant Chet Ram is said to have pointed towards the place of occurrence underneath staircase of quarter no. 25, K Block, Karbla where he used to work as well as to the gutter near house No. K-61 where the dead body of Deepu was found. The pointing out memo Ex.PW-25/A in our view cannot be relied upon in the facts and circumstances of the case. It is a document which is not saved by Section 27 of the Evidence Act. The statement has not lead to discovery of any object pertaining to the crime.

20. The result is that we do not find any cogent reason to differentiate between case of Ramesh, co-accused who has been acquitted by the trial Court and the case of the appellant who has been convicted for the same alleged offence. We are of the considered view that no case for convicting the appellant is made out.

The appeal is allowed and the finding of conviction of the appellant recorded by the trial Court is set aside. The appellant is acquitted of the charges under Sections 302/34 and Sections 201/34 IPC. The appellant is already on bail. His bail bond is ordered to be cancelled.

21. Appeal allowed.

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