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Vijay Vs. the State

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Court : Delhi

Decided On : Apr-20-1979

Reported in : 1979CriLJ179; 16(1979)DLT267

Judge : Prithvi Raj and; 0.N. Vohra, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 223, 302 and 426; Code of Criminal Procedure (CrPC) , 1973 - Sections 161, 276(2) and 313

Appeal No. : Criminal Appeal No. 186 of 1976

Appellant : Vijay

Respondent : The State

Advocate for Pet/Ap. : H.R. Bhardwaj and;K.K. Sud Advs

Judgement :

O.N. Vohra J.

(1) This is an appeal by Vijay Siagh (25) son of Fateh Singh, teacher, resident of Kumera district Meerut, UttarPiadesh, who was convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment for having murdered his cousin. Bishamber, by judgment dated March 27, 1976, of the Additional Session' Judge, Delhi.

(2) Briefly the facts are that on January 27, 1975 at about 12 noon, Raghunath (Public Witness 14). resident of village Burari, Delhi, noticed a dead body lying naked in his field. He informed a number of persons including Hari Prakash (Public Witness l3), who advised him to apprise the police Raj Bal Tyagi (PW 16), on being approached by Raghunath, informed Police Control Room by making use of his telephone N0. 25372 that a dead body was lying in a field in village Burari. Sub Inspector Ranjit Singh (Public Witness 28) made entry in the daily diary (copy Ex. Public Witness Public Witness 28/A) and deputed Control Room van to the spot and informed Police Station, Civil Lines, Delhi, which in turn informed police post Timarpur. Thereupon, Asi jeet Singh (Public Witness 31) (now Sub Inspector) rushsd to the spot and found the dead body of a healthy youngman lying naked in the field of Raghunath. Interline was protruding out through a wound on abdomen and there were injuries on chest, neck, arm and waist at various places appearing to have been caused by a sharp edged weapon. Besides, there were marks of rampag in the field. Inspector Tarlochan Singh (Public Witness 40), Station House Officer, Police Station Civil Lines, Dehii, who happened to be on patrol duty in a. palice van received information through wireless message and reached the spot aid found Asi Jeet Singh along with a number of persons belonging to village Burari surrounding the dead body. Asi Jeet Singh prepared rukka (Ex. Public Witness Public Witness 2 /A) and dispatched it at 7.15 p.m. Head Constable Pritam Singh (Public Witness 29) who was functioning as Duty Officer recorded formal first information report, carbon copy of which is Ex. Public Witness PW29/B, on the basis of the said rukka and, in this way, case under section 302 of the Indian Penal Code cams to bs registered.

(3) Inspector Tarlochan Singh summoned the Crime Team which arrived soon along with the Dog Squad. Photographs of the scene were taken and blood stained earth was lifted from the place where the dead body was lying- Blood was also lifted from two other places. Sample earth, too, was lifted. Injury sheet (Ex. Public Witness Public Witness 40/B) and inquest report (Ex Public Witness Public Witness 40/C) were prepared. The dead body was placed in the pick-up and was taken around 40 to 50 villages in the neighborhood but nobody could identify the same. Eventually, Head Constable Parkash Singh (Public Witness 30) took the dead body to the mortuary in the afternoon of January 28, 1975. Dr. A.K. Acharya

(Public Witness 1) of the police Hospital, Delhi, conducted post mortem examination on January 29, 1975 at 12 noon. He observed the following external injuries:

1. One incised wound over occipital area placed anteropostriorly l'x1/4'x scalp deep.

2. One incised wound over the external occipital protuberance placed horizontally size I l/4'xl/4' x scalp deep.

3. Two incised wounds over right side parietal area size l'xl/4'x scalp deep each placed 1/4' apart.

4. One incised would over left eye brow obliquely placed size 3/4'x 2/10'xl/10'.

5. Multiple superficial incised wound over the left side of cheek placed in various directions. 269 6 One incised wound.over the front of neck at the level of thyroid cartilage sizi3'xl'x muscle deep. Thyroid Canilage is exposed but it is not cut. No major blood vessels are cut. Injury is placed horizontally. 7 One incised stab wound over the left side of neck, I' below the angle of mandible placed vertically size l'xl/4'xthewoundis going to the right side and was passing below the thyroid cartilage and had cut the oesophagus on its lateral and posterior wall, total depth is 3'.

8. One incised stab wound over the front of chest just on the left side of xiphiplast ron placed obliquely size l/2'xl/4'x? 9 One incised stab wound just above the umblicus in mid-lins through which loops of small bowel is protruding out. Size of wound l'xl/2' abdominal cavity deep.- 10 Four stab incised wounds over the right shoulder blade placed in various directions. Size l'x4'x bore deep each.

11. Two stab incised wound on the back of right side chest lower part near the spins placed 1-1/2' apart. Size l'xl/4'x? each.

12. Three incised stab wounds over the right back of abdomen upper part placed vertically in an area of 3'x4'. Size l'xl/2'x?

13. One incised stab wound on Lt. lumber area near the spine. Size l-l/4'xl/2' vertically placed.

14. One incised stab wound on Lt. arm outer side of middle of arm l/2'xl/4' muscle deep.

15. One incised stab wound near the elbow Lt. side on the back l/2'x 1/4' muscle deep.

16. One incised stab wound on the back side of upper 1/4' of Lt. forearm. Size l/2'xl/4'x muscle deep.

17. Two incised wounds on the palmer aspect of left middle finger, muscle deep.

18. One incised wound on the tip of right ring finger muscle deep.

(4) On internal examination, the doctor found that injury No. 9 had entered abdominal wall and had cut the small intestine at one place and injury No. 12 had entered the abdominal cavity and had made cuts in the liver at three places half an inch deep. He also found that abdominal cavity was full of blood and stomach contained semi-digested food material. He further found that other organs were normal. In regard to the injuries, the doctor was of the opinion that those were ante-mortem and had been caused by sharp-edged weapon. InJury Nos. 9 and 12 separately were declared to be sufficient to cause death in the ordinary course of nature. The time of death was opined as 60 hours approximately indicating that death had taken place around 12 in the night intervening 26th and 27th January, 1975.

(5) While the dead body was lying at the spot, hundreds of persons belonging to village Burari and other neighbouring villages came up pursuant to proclamation by be.it of drum arranged by Sub Inspector Chander Has (PW19) but no one could identify the dead body. It was thereafter placed in the pick-up and was taken through 40 to 50 villages but no one came for ward to identify the same. A lot of publicity was given by distributing handbills carrying the picture of the dead body and information in regard to missing persons was called from all the police stations in the neighbour- hold but nothing happened and, eventually, the dead body was

disposed of as unclaimed and unidentified on February 7, 1975.

(6) On February 21, 1975, Ram Saran Sharma (BW 2), foreman of M/s. Mahabir Export & Import Company Private Limited, Mohan Nagar, Ghaziabad Uttar Pradesh, saw a hardbill at the Mohan Nagar bus stop carrying the photograph of a dead body which he identified to be of Bishamber, an employee of his factory. He handed over this matter to some other factory workers who, too, went to the bus stop. They also identified the dead body to be of Bishamber. Around 3 p.m. Ram Saran Sharma along with Sukhbir Tyagi (Public Witness 8), Nirankar Tyagi (Public Witness 9) and Suresh not examined) went to Kumera, the known place of residence of Bishamber, and contacted Bishamber's wife and showed her the handbill (Ex. P/l). Savitri (PW 38), widow of Bishamber (now wife of Abe Ram), told them that Bishamber had gone to the in-laws of Vijay Singh with Babu. Khacheru, father of Bishamber, along with Vijay Singh and Raghunath and some other persons also came there. On being enquired as to how Bishamber had been murdered, Khacheru took Ram Saran Sharma aside and told him that Vijay Singh, Raghunath, Baba etc. had committed a blunder. Thereupon Vijay Singh disclosed that Bishamber used to say that his (Vijay's) mother had a hold on Bishamber's father who had turned in him and his mother out of the house and had no mind to give his land to him. Vijay Singh further stated that his mother was a woman of good character and inasmuch as Bishamber was defaming her for nothing he had decided to murder Bishamber and they actually murdered him. On being questioned as to how the murder had taken place, Vijay Singh disclosed that being inexperienced they joined one Jaipal and on January 26, 1975. Jaipal and Babu went to village Burari where his in-laws were living and he followed them along with Bishamber, reaching there in the evening. Around 2 a.m. he left Along with Bishamber by misrepresenting that it was 5 a. m. and on reaching the bundh, which was at a distance of about one mile from Burari, Babu and Jaipal came up and caught hold of Bishamber and asked him to walk straight or else he would be stabbed. After covering short distance they heard dogs barking and thought that they need not proceed further and there Babu and Jaipal inflicted knife blows while he himself gave hockey blows as a result of which Bishamber fell down dead. Thereafter, Jaipal pat off the clothes of Bishamber and threw his body in the field and burnt the clothes and the hockey stick.

(7) Sukhbir Tyagi along with some others contacted V. K. Sshgal (PW 5), factory manager, M/s. Mahabir Export & import Company Private Limited, Mohan Nagir, Ghaziabad, who prepared letter Ex. Public Witness Public Witness 5/A addressed to Inspector Tarlochan Singh informing him that on going throughthe handbill and looking at the photo therein most of the workers were of the opinion that the dead body which had been found on January 27, 1975 seemed to be that of Bishamber Tyagi son of Khacheru who was an employee of his factory since April Ii, 1969 and that as per record Bishamber had not attended the factory since January 27, 1975. This letter was taken to Inspector Tarlochan Singh by Sukhbir Tyagi who was accompanied by some factory workers and some residents of village Kumera. Inspector Tarlochan Singh recorded the statements of Sukhbir Tyagi, Nirankar Tyagi, Suresh Kumar and Mange Ram (Public Witness 20). On the following day, he went to village Kumera and joined Vijay Singh in the investigation and recorded statements of Dal Chand (Public Witness 21) and Jaswant Singh (Public Witness 22) and arrested Vijay Singh. Vijay Singh disclosed in the presence of Dal Chand, Jaswant Singh and Sukhbir Tyagi that he could point out the place where clothes of Bishamber were burnt by making a detailed statement in regard to particulars of the place and where half burnt pieces of hockey had been buried by him. On the following day. Inspector Tarlcchan Singh went to the place promised by Vijay Singh and in the presence of Khazan (Public Witness 32), recovered some ashes, half burnt threads, buttons etc. vide memo Ex.32/A. On the same day, Inspector Tarlochan Singh seized letter marked 'X' from Vidya (Public Witness 3) and lacing awl (Ex. P 7) from the house of Vidya and prepaied memos Ex. Public Witness Pw 40/E and Ex. Public Witness Public Witness 4Q/F. Raghunath was arrestid on March 3, 1975 and Babu surrendered himself incourt on March 20, 1975 while Jaipal could not bs apprehended. On receipt of reports Ex. Public Witness Public Witness 40/G and Ex. Public Witness Public Witness 40/H of the experts belonging to Central Forensic Science Laboratory to whom reference had been made for inviting opinion in regard to recovered articles believed to be incriminating and, on completion of the investigation, charge sheet was submitted against Vijay Singh, Raghunath and Babu.

(8) The learned Additional Sessions Judge discharged Raghunath and charged Vijay Singh and Babu Ram under Section 302 lead with section 34 of the Indian

Penal Code. As prosecution rested the appellant and Raghunath were examined under Section 313 of the Criminal Procedure Code. The appellant denied having made the extra-judicial confession and the other incriminating circumstances and pleaded innocence. Babu Ram took up the stand that it was a false case as he was at Bhilai from 24th January, 1975 onwards and was at his mill on 28th January, 1975 since 6 am.

(9) The learned Additional Sessions Judge rejected the evidence as to discovery and recovery but held by relying upon the evidence of Ram Saran Sharma and Nirankar Tyagi that extra-judicial confession attributed to Vijay Singh stood proved. He also held that there was evidence of motive for the crime as well as evidencs in regard to Vijay Singh having been last seen along with Bishamber a short time before the death. On the view that the last two items of evidence afforded corroboration in the extra-judicial confession which was undoubtedly considered as a weak piece of evidence, it was held that it stood proved beyond doubt that Bishamber was murdered by Vijay Singh. In this way Vijay Singh was convicted and sentenced as already mentioned. As regards Babu, the learned Additional Sessions Judge observed that the prosecution had failed to connect Babu with the crime and it stood established that he was at Bhilai on Jan ary 28, 1975 and inasmuch as it took more than one day to reach Bhilai by train, the possibility of Babu having left Delhi some time on 26th January, 1975 so as to be present in the factory in the morning of 28th January, 1975 could not be ruled out. He was thus given the benefit of doubt and acquitted.

(10) Shri H.R. Bhadwaj, learned counsel for Vjay Singh, has assailed the conviction on two grounds. His first contention is that the so- called extra-judicial confession lacks in plausibility and spontaneity and there are indications that the investigating officer became suspicious that Vijay Singh and his brothers were the persons who could be responsible for (he murder of Bishamber on account of strained relations between the parties and in his zeal to show that he had succeeded,in working out an otherwise blind murder has fabricated the confession. His second contention is that there is no evidence at all to corroborate the extra-judicial confession and even on that score it would be most unsafe to sustain the conviction by relying upon the extra-judicial confession in the

circumstances of this case.

(11) We would take up the extra-judicial confession first. It is observed that according to Ram Saran Sharma, there were about 50 persons in whose presence the appellant made the confession. Out of these. Ram Saran Sharma and Nirankar Tyagi have spoken in favor of the confession having been made by the appellant and Sukhbir Tyagi (Public Witness 8), Manga Ram (PW 20) Dal Chand (Public Witness 21) and Jaswant Singh (Public Witness 22) have not and Suresh Kumar, another factory boy who had been cited, has not been examined and no reason for non-examination, is available from the record. It is further observed that confession is preceded by statement made by Khacheru, father of Bishamber, conveying that the appellant, Babu Ram and Raghunath had made a blunder and suggesting that the matter may not be raked up.. Khacheru has not been examined by the prosecution and, thereforee, what is alleged to have been stated by Khacheru is hit by the. rule of hearsay and is inadmissible in evidence. Another matter of somewhat importance is the extra-judicial confession stated to have been made by Raghunath shortly ' after the one made by the appellant. That confession is inculpatory to the extent that Raghunath told that he had engaged Jaipal and had contributed his share for procuring the services of Jaipal and is exculpatory to the extent that according to Raghunath he did not take any part in the killing and was, in fact, not there. It is true that there was no love lost between Khacheru and Bishamber as would appear from the report under Sections 223 and 426 of the Indian Penal Code made by Bishamber, against his father, Khacheru and his uncle Fateh, on March 28, 1974 at Police Station Murad Nagar, district Meerut, and what has been stated by Buria (Public Witness 23), mother of Bishamber, nevertheless the circumstances provided by the act of Khacheru in taking Ram Saran Sharma aside an I having separate talk and putting his turban on the feet of Ram Saran Sharma though not confirmed by Ram Saran Sharma himself is not only not determinative but also appears unworthy of credeace when it is not the prosecution case that Khacheru had entered into a conspiracy with the appellant and other persons for liquidating Bishamber and there is nothing at all to suggest from the record that Khacheru had been apprised of the murder of Bishamber with such details as to how it had been committed and who were the persons responsible for the same. Still more implausible appears to be the

inculpatory part of the confession made by Raghunath and it is difficult to accept that Raghunath should come out with such information as he is stated to have given simultaneously with the appellant as if the two brothers were trying to vie with each other in providing all possible details in regard to the occurrence. So far as the confession attributed to the appellant h concerned, it is indeed remarkable that there was no previous history of association between the appellant and Ram Saran Sharma and other workers of M/s. Mahabir Export & Import Company Private Limited and there was thereforee, no occasion for opening out the mind to some one in whom he reposed utmost confidence. The fact that Ram Saran Sharrni and his companions went to village Kumera after about 28 days of the occurrence when investigation stood abandoned and the case closed as untraced makes the matter all the more improbable and the rational mind dies not stop questioning, 'why so?', 'what was the compulsion-outer on inner?'

(12) We may now take note of two circumstances of singular importance as hav.ing great bearing on the credibility of the story in regard to the making of the extra-judicial confession by the appellant. The first is that Savitri (Public Witness 38) has not spoken of any extrajudicial confession at all although she has stated that four persons from the factory, where Bishamber was employed, enquired of her about the whereabouts of Bishamber and showed the handbill bearing the photograph of Bishamber. Nirankar Tyagi has categorically stated that Vijay Singh gave his narration into the house of Savitri. To the same effect is the statement of Ram Saran Sharma with the only difference that he has used the word Gher instead of house where Savitri was contracted and where Vijay Singh and other persons had come up. It is suggested that Savitri was a young girl of 17 or 18 years and she must be observing purdah from men folk of village Kumera and it may be for that reason that she did not come to know of the extra-judicial confes-sion having been made by the appellant. It is not possible to accept this Explanationn. After having seen the photograph of the dead body of her husband, it is difficult to imagine that she should just withdraw or show indifference and fail to take interest in the circumstances which led to the death of her husband. The matter does not end here. According to Savitri, four persons who had come from the factory, took her to the police station at Delhi the same day after she had identified the photograph appearing in Ex. Pi to be of her husband. If she is to be

believed, and there appears no reason why she should not be believed, the fact that she does not speak about any extra-judicial confession having been made by the appellant, as is the prosecution case, would cut across the prosecution version in regard to the making of extra-judicial confession and make it unworthy of acceptance. Savitri's version that she went to the police station at Delhi along with the workers of the factory the same day she was shown the photograph appears to be natural and probable and the other version of Ram Saran Sharma that they left the village after telling the people who had gathered that they would inform the police and if any one wanted he could come along with them and it was on the following day that Suresh Kumar, Nirankar Tyagi, Mange Ram along with others went to Police Station Civil Lines does not appear to be plausible. Ram Saran Sharma and his colleagues took keen interest in the matter after identifying the dead body appearing in Ex. P I to be that of Bishamber, so much so, that after holding condolence meeting they stopped the work for the day and went to village Kumera. If it were true that Vijay Singh had made the confession, there appears no reason why they should not take Vijay Singh and Raghunath along with some of the members of the Panchayat, who had gathered, to the police station then and there or at least inform police station Civil Lines immediately without any loss of time. The second circumstance is that letter Ex. Public Witness PW5/A which was carried by Sukhbir Tyagi to Sho, Police Station Civil Lines, does not bear even a whisper in regard to the extra-judicial confession having been made by Vijay Singh. It is a simple letter which mentions that according to most of the workers, the dead body appeared to be that of Bishamber who was employed in the factory on April 11, 1969. V.K.Sehgal,(PW 5) has stated in cross-examination that Sukhbir Tyagi who had come along with others to him on February 22, 1975 around noon, simply told him thatVijay Singh bad murdered Bishamber and did not give any further details. It would be seen that according to the extra judicial confession, it were Babu and Jaipal who had inflicted knife blows which according to the opinion of the doctor who performed autopsy occasioned the death of Bishamber. Why was it that those two persons were not named and Vijay Singh alone was named when according to him he had given only hockey blows? Another consideration that arises is why Sukhbir Tyagi and his companions did not tell V.K. Sehgal that they had procured the confession from Vijay Singh and others

when it was an exciting achievement, if true. When these considerations are borne in mind, it becomes difficult to disregard the submission of the learned defense counsel that the factory workers came to know about the strained relations existing between Bishamber on the one hand and Khacheru and his three nephews namely, Vijay Singh, Babu and Raghunath, on the other and the investigating officer took the view that suspects were the appellant and his brothers and prevailed upon the factory workers to tell the Court that the appellant and his brothers had committed the murder by spinning the story of extra-judicial confession. It would also be seen that Ram Saran Sharma was examined as late as February 25, 1976. He was working as foreman in the factory and as such more responsible than Sukhbir Tyagi and Nirankar Tyagi. The fact that he did not go along with others to Police Station, Civil Lines, and his statement was recorded after four days without valid excuse itself casts some doubt on his credibility.

(13) It would next be seen that there is significant disparity in the versions regarding extra-judicial confession given by Ram Saran Sharma and Nirankar Tyagi. The former has not spoken about Khacheru having put his turban on his feet as has been stated by the latter. Furthermore, according to Ram Saran Sharma, Vijay Singh stated that he sent Jaipal and Babu to his in-laws in village Burari and followed them along with Bishamber and reached the village in the evening while according to Nirankar Tyagi. Vijay Singh stated that Bishamber had gone along with Babu to village Burari. Furthermore, part of the confession which refers to hocky blows having been inflicted by Vijay Singh stands clearly belied by medical evidence inasmuch as all the injuries observed by the doctor, who performed the postmortem examination, were incised wounds caused by a sharp edged weapon. A still severer blow to the confession is rendered by the alibi of Babu. It is true that Sub Inspector Bir Singh who was deputed to Bhilai where Babu was employed to investigate in regard to his presence or otherwise on January 27 and 28, 1975, has not been examined, the fact remains that the investigating officer conceded and the learred Additional Sessions Judge accepted that Babu was present in his factory in the morning of January 28, 1975 and observed that inasmuch as Bhilai happens to be so far away from Delhi that it takes more than 24 hours to reach that place by train, he cannot he said to bepresent at village Burari on January 27, 1975 at 2 a.m., the time when the

occurrence is stated to have taken place. The absence of evidence in regard to hiring Jaipal by making case pay off and the discharge of Raghunath by the learned Additional Sessions Judge too, affect the veracity of the extra-judicial confession attributed to the appellant.

(14) The law in regard to the extra-judicial confession is well-settled. In Ram Singh vs. State of Uttar Pradesh : 1967 CriLJ9 , it was held that extra-judicial confessions are not usually considered with favor. in Rahim Beg and Mahadev vs The State of Uttar Predesh, : 1972 CriLJ1260 , it was held:

THEREwas no history of previous association between the witness and the two accused as may justify the inference that the accused could repose confidence in him. In the circumstances, it seems highly improbable that the two accused would go and blurt out a confession.' In Jagta vs. State of Haryana, : 1974 CriLJ1010 , it was held : 'The evidence about an extra-judicial confession is in the nature of things a weak piece of evidence. If the same is lacking in probability there would be no difficulty in rejecting it.

(15) For the foregoing reasons, we have no hesitation in our minds in coming to the conclusion that the extra-judicial confession in this case is implausible and thus unacceptable.

(16) Shri K.K. Sud, learned Standing Counsel, has submitted that there are circumstances which by themselves are sufficient for bringing home the guilt to the accused. These are enumerated as under;

(A)motive for the crime, (b) endeavor to establish good relations with the deceased to achieve the object, (e) existence of differences between the appellant and his in-laws, (d) the appellant having gone to village Burari on January 26, 1975, (e) the appellant having told Vidya not to cook food in the morning as he was to leave early, (f) the appellant having left his in-laws' house at 2 a.m. by misrepresenting to the deceased that it was 5 a.m.; and (g) absence of Explanationns as to what happened to Bishamber after the appellant left Burari.

(17) It would be seen that reliance on circumstance (g) makes it implicit that Bishamber went along with the appellant to village Burari and was there during the night or a part of the night. The prosecution depended upon the evidence of Vidya and Rajinder Singh for the purpose. It would be seen that Vidya stated categorically that the appellant did not disclose the name of his companion. It is, thereforee, not possible to say that Vidya establishes the presence of Bishamber in village Burari at any time what to talk of 26th January, 1975 as words used by her are as indefinite as 'in the last winter'. Towards the close of the examination-in-cheif appears the answer: 'ViJay and Bishamber never returned'. The learned Standing Counsel has laid great stress on this statement and has argued quite vehemently that this answer belies the earlier statement of the witness that the appellant had not disclosed the name of his companion. On careful consideration we are of the firm view that this contention must be repelled. It is unfortunate that the learned Additional Sessions Judge did not record the statement of the witness in the form of question and answer as should be the norm in accordance with the provision of Section 276(2) of the Criminal Procedure Code, 1973 Anyhow, there is no difficulty in imagining that the statement relied upon was answer to the question 'Did Vijay and Bishamber return (to her house)'? The occasion for this was provided by the mention in the statement under Section 161, Criminal Procedure Code, that the appellant and his companions had returned and had confessed that Bishamber had been murdered. This is clear from the questions in the nature oF crossexamination which were put by the Public Prosecutor after seeking permission of the Court immediately after the witness answered the question, 'whether Vijay and Bishamber returned to her house?' The other witness on the point is Rajinder Singh (Public Witness 7).

(18) According to him, he was called by Vidya through her daughter, Sunita, to serve meals to the guests on January 26, 1975. What has been stated by this witness is inconsistent with what has been stated by Vidya on the point. According to the latter, she sent Sunita to call her brother. Raju, to serve meals to the guests. No endeavor was made to falsify this statement in cross-examination. As the things stand, there are two versions which are contrary and the more natural version is that Vidya called her son to serve meals and not a person who was stranger. Even otherwise, it looks difficult to believe Rajinder Singh when he says

that the person shown dead in Ex. P-l was one of the guests to whom he served meals. In view of the fact that this witness did not come forth to identify the dead body of Bishamber, which was not only displayed in the village for a long time but was also taken round a number of villages and a wide publicity was made for seeking identification, it looks very improbable that this witness should not have come forth to identify the dead body if it were a fact that a stranger had visited the village and he had served him meals during the previous evening. There is thus no good evidence in regard to the appellant having been last seen along with the deceased. Accordingly, this circumstances loses its value in its entirety.

(19) As regards the remaining circumstances except notice, these have no independent existence because these are provided by nothing except the extra-judicial confession which has already been discussed. In regard to (a) endeavor was made to show that there was independent evidence by referring to the evidence of J. K. Tanwar (Public Witness 6) who has proved entry No. 33 dated January 24, 1975 in register, Ex. P 2 of M/s. Mahabir Export & lm- port Company Private Limited. The entry pertains to visit to Bishamber by Vijay of Ghaziabad. Neither the appellant is a resident of Ghaziabad nor any one has stated that it was the appellant who had visited Bishamber in January 24, 1975. In the circumstances the dumb entry fails to establish the fact even remotely. Coming to motive, all that has come on the record is that the deceased had strained relations with his father and fathers's brother. Even if the bad blood is believed to have involved the appellant and his brothers, this circumstance by itself would take us neither here nor there.

(20) For the foregoing reasons, the conviction of the appellant cannot be sustained. As a result, the appeal is accepted and the conviction and the sentence are set aside and the appellant is acquitted. The appellant be released forthwith, unless wanted in any other case.

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