

Yog Raj Vs. State

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Court : Delhi

Decided On : May-14-1982

Reported in : 22(1982)DLT9

Judge : Rajindar Sachar and; M.L. Jain, JJ.

Acts : [Evidence Act, 1872](#) - Sections 24; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154

Appeal No. : Criminal Appeal No. 105 of 1979

Appellant : Yog Raj

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; P.S. Sharma, Advs

Judgement :

M.L. Jain, J.

(1) This is an appeal against the judgment of the learned Additional Sessions Judge convicting the appellant Yog Raj under Section 302 Indian Penal Code and sentencing him to imprisonment for life and further under Section 27 of the Arms Act to rigorous imprisonment for five years. Both the sentences were directed to run concurrently.

(2) The deceased Chander Kanta was the daughter of Phool Singh (Public Witness 1), a constable of the P.S. Original Road, Delhi and married to the accused on 8-3-1976. She had a baby of three months old at the time of her murder. The accused and his mother had strained relations with the deceased because she did not bring dowry in her marriage. On 11-10-1977 Chander Kanta lodged a report (Ex. Public Witness IO.I) at the police station Karol Bagh that she was beaten and turned out of the house on 24-9-1977. She went to her father's house but he brought her back and left her at her matrimonial home five/six days thereafter. She was again turned out but without her baby. She apprehended danger at their hands. From the statements of Asi Sis Ram (Public Witness 10) and Avtar Singh (Public Witness II), it appears that the matter was settled between the couple. Thereafter she went to her father's house and again returned to the matrimonial home. On 29-11-1977 she again lodged a report in the police post Tank Road, vide Ex. Public Witness 5)A, expressing the same grievance and same apprehensions, and came to the house of her parents at about 6 or 6.30 p.m. on that date. The accused Yog Raj with his brother Jugal Kisbore came in their car to the house of Phool Singh at 11.30 p.m. Upon persuasion of some neighbours, Phool Singh (Public Witness I) agreed to send Chander Kanta back with Yog Raj in their car. On 30-11-1977 after about 6.00'6.30 a.m. Phool Singh (Public Witness I) went to see Chander Kanta and to deliver a few clothes to her. But what he found that she was lying dead on a dhan spread on the floor of the room. He left the place and on way he chanced to meet Inspector Bhim Singh (Public Witness I 8) who was patrolling the area on foot. He recorded his statement (Ex. Public Witness 1/A) and sent it to P. S. Karol Bagh where Fir (Ex. Public Witness 12JA) was recorded at 7.15 a.m.

(3) The case of the prosecution is that the accused had slept with his wife in the preceding night and had awakened her at about 4 or 5 a.m. on 30-11-1977 and told her to attend to the domestic work which she declined to do. Thereupon, the accused attacked her with a knife and killed her. With the same knife still stained with blood, he proceeded to report the matter to the police. On way, he met Balak Ram (Public Witness 6) who was returning from his morning walk at 6.20 a.m. and told him that he had killed his wife with the knife and that he wanted to surrender at the Tank Road police post. Balak Ram (Public Witness 6) went with him to 'the

police post and Sultan Singh Asi (Public Witness 15) recorded the report (Ex. Public Witness 15U) in the daily diary and took the knife and blood stained bush shirt worn by the accused in his possession and telephoned the police station Karol Bagh. Sultan Singh sent S. 1. Nand Kishore with constables Pritam Singh (PW16) and Lakshmi Narain (Public Witness 4) to the house of the accused to guard the spot. He informed the duty officer of the police station, Karol Bagh. The duty officer, Balbir Singh S.I. (Public Witness 12) had in the meanwhile received a report (Ex. Public Witness 1/A) in writing and a case under Section 302 had already 'been registered on the ruqa sent by Bhim Singh (PW18).

(4) Meanwhile, Bhim Singh (Public Witness 18) accompanied by Mam Raj singh (Public Witness 17) came to the spot. He collected blood stained earth from the spot and blood stained clothes of the deceased and prepared the inquest memo (Ex.PW18/2). The dead body along with the knife was sent for post mortem examination. Next day on 1-12-1977 Dr. L. T. Ramani (Public Witness 2) of the police hospital conducted the autopsy at 10.00 a.m. and reported that the death was caused due to shock and haemorrhage as a result of injuries. inflicted by sharp edged weapon. His estimate was that the death occurred within the last 30 hours. The post mortem report (Ex. Public Witness 2[A) showed the following injuries : - (1) Linear irregular abrasion 2'x1/10' redish in colour over the rt. clavicular area (medial end)' placed obliquely. (2) An incised stab wound 3/4'X4/10' placed vertically on the front of chest in mid line 2' below the supra sternal notch, margins of the wound are regular with trailing upwards dried blood present around the margins. (3) An incised stab wound 3/4' x 3/10' on the lt. side of chest placed vertically oblique 2-1/2' below the it. clavicle 112^ lateral to mid clavicular line, margins are regular with trailing upwards, fatty tissues protruding out of the wound. (4) One incised stab wound 3/4'x4/10' placed vertically oblique on the left side of chest in mid auxiliary line 3' below the armpit with trailing downwards. (5) An incised stab wound 3/4'x3/10' placed obliquely on the lt. scapular region 1-1/2' right to the midline, 1' above the angle of scapula with trailing downwards and blood oozing out of the wound. (6) Incised stab wound 3/4'x4/10' . placed obliquely on the rt. scapula region 2-1/2' away from injury No. 5, with trailing downwards.

(5) The opinion of the medical officer was that the injuries at Nos. 2 to 6 were caused by the knife shown to him. The blood stained objects were sent to the Chemical examiner and serologist. He reported presence of human blood of B group on the earth picked up from near the dead body, clothes of the deceased and the knife and the bush shirt. After investigation, the cases were put up for trial under Section 302 Indian Penal Code and Section 27 of the Arms Act, which were consolidated with the aforesaid result.

(6) The defense of the accused was that he never demanded any dowry. He however, admitted that a report was lodged against him by his wife. He denied having murdered her. He stated that on 30-11-1977, he left his home for Akhara at about 4.00 a.m. when Chander Kanta was still asleep. When he came back, he saw his wife lying dead. He went to lodge a report. He signed the report in the daily diary. He admitted that Sultan Singh Asi (Public Witness 15) had removed the bush shirt from his body, but it had no blood on it. He denied to have produced any knife. He was arrested by Inspector Bhim Singh (Public Witness 18), was given beatings and his signatures were obtained on some blank papers. He was falsely implicated by his father-in-law Phool Singh. He examined five witnesses in defense.

(7) Mr. Sethi the learned counsel for the appellant submitted that casting aside the confessional statement (Ex Public Witness 15/1) of the accused, the case hinges solely upon circumstantial 'evidence.' Citing Hanumant Govind and another v. State of Madhya Pradesh, : 1953 CriLJ129 , and Raghav Prapanna Tripathi v. State of Uttar Pradesh, : [1963]3SCR239 , he urged that in a 'case of this kind, what the court has to see is whether, taking the totality of 'circumstances which are held to have been proved, it can be said that the facts established are inconsistent with the innocence of the accused and incapable of Explanation on any hypothesis other than of guilt. Any circumstances which destroys the' presumption of innocence, if properly established, can be taken into account to find out if the circumstances lead to no other inference but of guilt. The circumstantial evidence should be so cogent and compelling that upon no rational hypothesis other than that of murder can the facts be accounted for. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every,

hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as 'to show that within all human probability the act must have been done by the accused True; that is the light in which the case has to be adjudged.

(8) Now, Phool Singh (Public Witness 1) supported the prosecution version. There is absolutely no doubt that Chander Kanta was with the accused on the night between 29th and 30th November 1977. It is also true that the accused went to the police post and he too lodged a report of the crime. It is further true that the statement made by him to the police in so far as it amounts to a confession cannot be read into evidence. But, the confession made by him earlier to Balak Ram (Public Witness 6) cannot be ignored. The accused told him that he had murdered his wife and also showed him the knife with which he had done so and that he wanted to surrender to the police and asked him the way to the police post. Balak Ram (Public Witness 6) was also a witness to the seizure of the knife and of the blood stained bush 'shirt. In the backdrop of strained relations and the quarrel which, he admitted in his statement under section 313 Cr. P.C. to have taken place on the night of the murder between him and the deceased, his confession made to Balak Ram (Public Witness 6) cannot but be believed. It is further corroborated by the medical evidence and the report of the Chief Chemical Examiner that the blood on the knife and the 'bush shirt belonged to the same blood group as that of the deceased. The murder admittedly took place in his house between 4.00 and 6.00 a.m. when the accused reported the crime to the police post, The case of the accused was that he was out during the period crucial in the case. How worthless his evidence in this regard is, shall be examined a little later.

(9) It was contended on behalf of the defense that the whole prosecution case was concocted one. It was pointed out in the first instance that the alleged report of the deceased entry No. 24 (Ex. Public Witness 5/A) was falsely recorded by the constable Des Raj (Public Witness 5) in the daily diary at Tank Road police post. It was ante-dated as having been recorded on 29-11-1977 at 4.50.p.m. The signatures at two places therein purported to be that of Chander Kanta were not

her signatures. This fabrication was undertaken in order to provide an approximate provocation for the murder. The learned trial Judge also noticed that there appeared some overwriting and erasures in the entry Sr. No. 23/A in the column relating to Serial number and some overwriting in the figure of '9' of '29' on the page next to the page from where entry No. 24 started, yet the learned Judge did not agree that entry No. 24 was fictitiously recorded, because after entry No. 24, there were 21 further entries and all these could not be fictitiously recorded on 29-11-1977 just to cover entry No. 24. The learned Judge therefore, repelled the contention that entry No. 24 was not genuine, it was also contended that according to Sis Ram (Public Witness IO) and Avtar Singh (Public Witness II) the quarrel between the two having been pitched up, there could no more be any motive for the accused to attack his wife. The learned trial judge had rejected this submission too and rightly so, on the simple ground that the settlement was perhaps a short lived one. In fact, the evidence of the prosecution witnesses showed that the accused continued to harbour a grievance against the deceased. Moreover, in the circumstances of this case, even without the report of 29-11-1977, the prosecution has led good evidence to show especially of the father of the deceased that the couple was at loggerheads and the treatment of the husband towards the wife had been nothing but cruel and he could have had no hesitation in making the fatal assault.

(10) The next submission of the defense is that the deposition of Balak Ram. (Public Witness 6) does not at all inspire confidence because if he had happened to meet the accused with open knife in hand stained with blood and tell him that he had murdered his wife, he would, like any other ordinary person, get terrified rather than accompany the accused to the police post. It was further unlikely that the accused who was familiar with the situation of the Tank Road police post would ask him to lead him there. The learned counsel contended that Balak Ram has been planted by the police and that is the reason for the delay, in recording the report at the police station, because the police knew that without procuring the statement of a person like Balak Ram they could not obtain conviction of the appellant on the basis of his own statement. They delayed the report until they could get hold of Balak Ram who was known to the police and was seeking their assistance against his landlord. We do not see any force in these arguments.

There is nothing unnatural in the conduct of the witness and his testimony appears to us quite sincere and cannot be thrown out in the absence of any enmity or malice on his part towards the accused.

(11) It was then urged that the case was foisted upon the accused is evidenced by the fact that the accused had appeared in the police post with the weapon of offence, yet he was not arrested before 8.00 a.m. until Bhim Singh (PW 18) came with Phool Singh (Public Witness I). It was pointed out that it was most unlikely that the Inspector will be on patrol duty on foot in -place of a vehicle and his chance meeting has been shown to cover up the efforts to cook up a case which may ex facie seem natural. All this clearly indicates that the. appellant was falsely implicated at the instance of the constable Phool Singh with the assistance of his superior colleague Inspector Bhim Singh (Public Witness 18). Bhim Singh refuted the suggestion that the accused was falsely implicated at the instance of his father-in-law Phool Singh. The delay in the arrest of the accused was said to have occurred because Sultan Singh wanted to verify facts before making the arrest. There is nothing Wrong or sinister in doing so. We do not see anything unusual or suspicious in the circumstance that the Inspector was patrolling the area on foot in stead of in a jeep as the learned counsel for the appellant wants us to see.

(12) It was then contended that the Fir (Ex. Public Witness 1211) was recorded late at 7.15 a.m. after deliberation and fabrication. To support this contention the learned counsel pointed out that the S.I. Balbir Singh (Public Witness 12j in the daily diary entry No. 8 [A (Ex. Public Witness 1212) did not give a gist of the offence as given in the ruqa (Ex. Public Witness 1211) nor did he recorded the name of the complainant or the suspect which was required to do. No copy of the said Fir was ever received in the court of the concerned Magistrate. There was an unexplained delay in the preparation of the inquest report which was prepared as late as 1.00 p.m. It was a special report case and yet a copy of the special report was not sent to the Ilaqa Magistrate. The learned trial Judge however, was of the view that although the report was not traceable in the record of the court but from the other evidence it was clear that the special report was sent to the Magistrate and other concerned officers as is recorded in the Fir towards the end. There are elaborate rules and registers prescribed by the High Court under which the record

of FIRs are required to be maintained. Unfortunately, such records are not maintained giving rise to the situations and arguments such as were found and made in this case. But it cannot be inferred that since the Fir , is not available in the court of the-concerned Magistrate, the Fir was not sent to him or was a fabricated one.

(13) The purpose of the Special report of the Fir required to be sent forth with to the Magistrate and other offices was explained in *Thulie Kali v. The State of Tamil Nadu*, : 1972 CriLJ1296 . It was held that

'FIRSTInformation Report in a criminal ease is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the stand-point of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the nances of eye witnesses present at the scene of occurrence. Delay in loding the first information report quite Often results in embellishment which is a creature of afterthought. On account of delay the report not only gets berett of the advantage of spontaheity, danger creeps of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, thereforee, essential that the delay in the lodine of the first information report should be satisfactory explained.'

(14) In *Datar Dinghy. The State of Punjab*, : 1974 CriLJ908 , a serious doubt was cast on the preparation of the Fir because it was So neatly Written and detailed an Fir that it could not have been written up so soon, claimed and because the column in the form in Which the Fir was taken down did not mention the time and date of the dispatch of the report from the Police Station to the Magistrate. The defense produced the Reader of the Magistrate but the court could discover neither the time nor the date or its receipt from the register brought by the Reader. No one was produced by the prosecution to show that happened to the copy of the report sen,t to the Magistrate. All that can be said was that the mystery

surrounding the very quick writing up and copying out of the Fir and the absence of any entry showing when it was sent to the Magistrate concerned, may be due to the fact that the Fir was lodged much later than claimed, and all this was considered quite significant in the light of other facts indicating that the Fir must have been drawn up much later than it was actually shown to have been. In *Ishwar Singh v. The State of Uttar Pradesh*. : 1976 CriLJ1883 . it was observed that the extraordinary and unexplained delay of two days in sending the Fir to the Magistrate is a circumstance which provides a legitimate basis for suspecting that the Fir was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. This suspicion hardens into a definite possibility when one finds that the case made in court differs in some very important particulars narrated in the FIR. In such a case. the evidence of the eye witnesses cannot be accepted on its face value. Thus, if there is a delay in making of the Fir or the Fir is not sent forthwith to the Magistrate or not sent at all, then it may lead to the suspicion that the Fir was prepared subsequently to fit in with the case which the prosecution wants to make out. But all said and done, it must firmly be grasped that the case has to be decoded on the basis of the evidence recorded before the court. Fir serves only the purpose of contradicting or supporting its author or to show his conduct. That object will be defeated if it is embellished and prepared subsequently. Its prompt dispatch to the Magistrate ensures that it cannot be manipulated after it has landed in the Hands of the Magistrate. Delay in lodging the Fir or in sending it to the Magistrate. may cast a doubt on its pristine purity and that it is a false document. If it is fabricated, then the defense is deprived of a valuable and genuine document to test the testimony of its author. It may further show that the investigation has not been fair and was not carried out in accordance with the provisions of the law, to which both sides, the complainant and the accused are entitled under a system in which the State has undertaken to bring the culprits to book. But if the evidence of the witnesses led before the court is reliable and has a ring of truth, such evidence in spite of a delayed Fir, can and should be acted upon by the court. Thus, Fir is an important document but its importance should not be blown out of proportion more so in cases of murder where the victim is no more available to give his version. The crime if otherwise

fully proved cannot be allowed to go unpunished because the police has omitted to send the report to the Magistrate or has sent it after delay. We do not find any evidence or proof that the Fir in this case was not dispatched forthwith to the Magistrate. It is no fault of the police if it is not available in the bunch of the FIRs kept by the court. The Fir in this case does not give certain details with which Phool Singh was confronted in his cross-examination but Fir need not contained all the details. We have gone through the evidence of Phool Singh and we see nothing which should make us sit up and doubt his evidence.

(15) Mr Sethi now referred to Khatri Hemraj Amulakh v. The State of Gujarat (1972) 78 Cri. LJ. 626, where conviction was set aside because the prosecution failed to prove the motive, that the accused was alone with the deceased at the time of the occurrence, was also not proved and the accused furnished a plausible Explanationn as to his subsequent conduct in running with the blood stained clothes to the police station. But this case can render little help to the accused. In our case there is no Explanationn given by the accused of the blood stains on his bush shirt. Nor has he offered any such Explanationn 'that these stains were received by his handing the dead body when he discovered that she was dead. He rather denied the presence of the blood on the bush shirt. Motive is some thing which is locked in the heart of the accused, yet here there is ample evidence to show that the relationship between the accused and the deceased were far from cordial and there appears little doubt that in the quarrel that took place between them in early hours of 30-11-1977, the accused attacked the helpless women several times with a knife until she was .dead. The intention to murder can clearly be seen and even an absence of motive had ceased to be relevant.

(16) The learned counsel Mr. Sethi then contended that the prosecution has not cared to dispel the doubt that the parcels of the recovered articles have not been tempered with by the police. Inspector Bhim Singh (Public Witness IS) deposed that he had placed a seal of the name of Mam Raj Ast (Public Witness 17) on the package and had delivered the seal to Mohar Singh for safe custody. But Mam Raj (Public Witness 17) and Mohar Singh (PW 13) have said nothing about it. Jiwan Ram (Public Witness 14) has only said that the seal was given to one police official after affixation on the parcels. The prosecution has thus failed to exclude

the possibility of the parcels of the case property having been tampered with by the police. The learned trial Judge had rejected a similar argument. In this case, it was the accused who produced the knife and has also admitted that the bush shirt was taken away by the police. It has also been brought in evidence that the articles were kept safe in the malkhana before they were taken to the Chemical examiner. The Inspector Bhim Singh (Public Witness IS) was not challenged on this aspect in cross-examination by giving any such type of suggestion or was any question put to Mam Raj or Mohar Singh Public Witness s, in his regard. Jiwan Ram (PW14) may not have known the name of the police official but his deposition does go to show that the seal was delivered to some other official for safe custody. We have not been able to find anything which even remotely suggests that the material exhibits that is the knife and the bush shirt or other articles were tampered with before they were sent for Chemical test.

(17) Let us now turn to the circumstances which the accused wants to bring before the court in order to show that he was away to an Akhara during the time when his wife was possibly murdered.. The learned trial Judge rejected this theory of alibi as worthless. Het Ram (DWI) stated that he was the khalifa of the Akhara, near Shamsan Bhumi, Sat Nagar, Karol Bagh. Accused Yog Raj used to come to his Akhara along with Tuisi (DW 2), both of whom lived in neighborhood. Tuisi even used to sleep at the Akhara in November, 1977. At about 3.30 a.m. he sent Tuisi to wake up Yog Raj to bring him to the Akhara. They both came within 10-15 minutes. Yog Raj left the Akhara at about 6.00 or 6.30 a.m. alone with Tuisi. Tuisi (DW 2) deposed that in November 1977 he used to sleep at the Akhara. He went to the house of Yog Raj and brought him with him at about 3.45 a.m. They went back at 6.00 or 6.15 a.m. When they returned to the house of the accused a number of persons had already gathered there and that the wife of the accused had been murdered. The accused went to the police post to lodge a report. Mohinder Singh (DW 4), initially a prosecution witness joined the hostile rank and deposed that at about 9.30 a.m. on 30-11-1977 two Sub-Inspectors came to the factory where he was working and asked the proprietor of the factory that they wanted a witness. The proprietor, sent him with the police. Within, minutes of his reaching there, he was asked to sign some papers. Balak Ram (TW 6) also came there 5-7 minutes after his arrival. He also signed those documents. The learned

trial Judge rejected the testimony of these witnesses. Mohinder Singh who turned hostile to the prosecution had to admit that he did sign certain documents. As a matter of fact if the story of the defense proved anything, then it is this that the accused went to the police post to lodge the report and that a murder in the house had taken place. It is not possible to believe at all that during these two hours someone else will enter the house in which other members of the family were also living, kill the wife of the accused and escape unnoticed. Even if this apparently unbelievable story is believed, it does not disprove that when Tulsi came to call the accused, the deed had already been done. The timings of events given by the witnesses are after all only approximations.

(18) After consideration of all the arguments and all the circumstances, including a false plea of alibi we are inclined to uphold the findings of the learned court below that it was the accused who was responsible for the brutal murder. The lethal knife was recovered from him. He has been therefore, rightly convicted and sentenced under section 302 Indian Penal Code and Section 27 of the Arms Act.

(19) We find no force in this appeal and it is hereby dismissed.

(20) Before parting with this case, we would like to invite attention of all the subordinate courts to the Register No. XXm and Xxiv relating to First Information Reports prescribed by the High Court Rules and Orders Vol. Vi, Part Biv and direct them to maintain such registers in compliance of the said rules.

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