

Om Pal Singh Vs. State

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Court : Delhi

Decided On : Sep-02-1987

Reported in : 33(1987)DLT176

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 226 of 1983

Appellant : Om Pal Singh

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; R.P. Lao and; M.K. Bakshi, Advs

Judgement :

M.K. Chawla, J.

(1) 'IT is trite law that when the evidence against an accused person, particularly, when he is charged with a grave offence like a murder, consists only of circumstances and not direct oral evidence, it must be qualitatively such that on every reasonable hypothesis, the conclusion must be that the accused is guilty, not fantastic possibilities nor freak inferences but rational deductions which reasonable m

(2) In the present case, it is a common ground that there is no direct evidence implicating the appellant. The prosecution case rests on circumstantial evidence. Ordinarily, circumstantial evidence means a combination of facts creating a net without there being any tear through which the accused can escape. Whether the circumstantial evidence establishes the guilt of accused is the question that requires going into.

(3) In order to dispose of the appeal, few facts need mentioning. PW-25 Rajinder Singh is working as a sepoy in the 6th Jat Battalion, Udhampur. In the month of July, 1978, he was on leave and was present in village Munirka. On 20th of July, 1978 at about 10 A.M. when he was going to the field for grazing the cattle, he came to know from a milkman (Gwala) that a dead body was lying in the nallah near the hostel of Jawaharlal Nehru University. On receipt of this information, he went there and found a dead body of a male person with face downward lying there. He immediately came to Priya cinema and gave an information to the Police on telephone.

(4) This information was recorded in the daily diary register of Police Station Vasant Vihar and a copy of this information was handed over to Public Witness . 28, S.I. Surat Singh for investigation, vide Dd No. 5A.

(5) Surat Singh Along with two constables reached the place of occurrence from where Rajinder Singh joined the investigation. First of all, the I.O. recorded the statement of Rajinder Singh, Ex. PW25/A, under-death which he made the endorsement Ex. PW28/A and sent the ruqua through Mohinder Kumar to the Police Station for registration of the case. In the meantime, he inspected the spot, prepared the site-plan and took into possession one iron rod, one pair of brown leather chappal, 7 human teeth lying near the mouth and one near the feet of the body. All these articles were converted into sealed parcels. The I.O. also took into possession the blood-stained earth, the control earth and the human hair which were found sticking on the iron rod and in the hand of the deceased. From the search of the dead body, three applications regarding the supply of cement, three tickets of U.P. Roadways and one chit were recovered and taken into possession, vide seizure memo. Ex. PW3/A. After sometime, the photographer and the crime

team also reached the spot. The scene of occurrence was got photographed from various angles and the crime team performed their duties. The dead body was sent to All India Institute of Medical Sciences for post-mortem with the request that the dead body be preserved for 72 hours.

(6) In order to fix the identity of the deceased, the I.O. visited village Ber Sarai, Munirka and other adjoining places. An officer was also deputed to visit Jalalabad address that was found on the applications.

(7) In the evening, the I.O. came to know that relations of the deceased had reached A.I.I.M.S. He went there and met one Gabdu, father of the deceased. Rajinder and Man Singh identified the dead body of Kishan Pal s/o Gabdu. Thereafter, the doctor conducted the post-mortem examination on 21st July, 1978.

(8) During the course of the investigation, the Investigating Officer traced and found out Harbir, and Om Pal Singh as the persons who had accompanied the deceased from village Jalalabad and had reached Delhi and thereafter Ber Sarai. The accused Om Pal Singh could not be apprehended. He was declared proclaimed offender. After completing the investigation, challan against Harbir Singh was filed and he was charged to stand trial for the commission of an offence punishable under Section 302 read with Section 34 I.P.C. on the allegations that in furtherance of their common intention, Harbir and Om Pal Singh caused the death of Kishan Pal Singh sometime between the evening of 19th July, 1978 after 5 P.M. and morning of 20th July, 1978, in the forest adjacent to Jawaharlal Nehru University, Munirka village. New Delhi. Harbir pleaded not guilty to the charge and claimed trial. After trial he was found guilty of the offence charged with and sentenced to undergo imprisonment for life. He preferred to file an appeal (Crl.A. 15/80), In the High Court which is still pending. Harbir Singh accused is reported to have escaped from jail.

(9) On 13.11.81, the present accused surrendered before the Police and a supplementary challan was filed. In support of their case against the present appellant, the prosecution examined as many as 28 witnesses out of which PW-4 Jagdish Prasad, PW-12 Om Pal Singh and PW-13, Harpal Singh are the witnesses who had last seen the accused and the deceased together. PW-19 Mangal Sain,

Junior booking clerk, Meerut, PW-20 Harpal Singh Booking Clerk, U.P. State Roadways Transport Corporation and PW-21 Gajinder Singh, the Conductor of bus no. Utg 8874, deposed about the issuance of three tickets for journey from Murad Nagar to Ghaziabad in bus no. Utg 8874 issued on 19-7-78 allegedly recovered from the kurta pocket of the deceased. Dr. T. D. Dogra of Aims conducted the post-mortem examination. He found as many as 28 injuries on the person of the deceased out of which 9 were found to have been caused by a sharp-edged weapon and the remaining could be the result of a use of blunt force. In the opinion of the doctor, the death was due to shock as a result of multiple injuries, which were sufficient to cause death in the ordinary course of nature. The time since death was about 40 hours. The remaining evidence is of formal nature. The accused in his statement u/s 313 Cr. P. C. denied his involvement in the murder of Kishan Pal. He also denied having travelled with the other co-accused and the deceased from Muradnagar to Ghaziabad or thereafter to Delhi and Ber Sarai. He claimed his false implication at the instance of Gabdu, father of the deceased. He, however, did not produce any witness in defense.

(10) After giving the consideration to the oral as well as documentary evidence led by the parties on record, the learned lower court came to the conclusion that the present accused in furtherance of his common intension Along with Harbir committed the murder of Kishan Pal and sentenced him to undergo imprisonment for life and a fine of Rs. 1000.00 . In default of payment of fine, the accused was directed to undergo S.I. for six months.

(11) The submission of the learned counsel for the appellant is that the principles governing the appreciation of evidence in a case dependent upon circumstantial evidence, as the present one, have not been adhered to inasmuch as, the circumstances relied upon by the prosecution have not been established by cogent, succinct and reliable evidence. In other words, the circumstances must be of incriminating character which must provide a complete chain, no link of which must be missing and they must unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence. According to him, the prosecution evidence has failed to come up to that expectation, inasmuch as. there is absolutely no link of the accused with the murder. His further submission

is that even if the prosecution case is taken on its face value, the presence of the accused at Ber Sarai is not established. In fact the prosecution has left many loose ends which have not been joined properly to bring home the charge against the accused. On that score the appellant deserves acquittal.

(12) The submission of the learned counsel for the state, on the other hand is that once it is proved by cogent evidence that the deceased travelled Along with the accused persons from Jalalabad to Delhi and thereafter left for Ber Sarai, the conclusion is obvious that he has a hand in the murder of Kishan Pal. His subsequent ascension lends full corroboration and proves his guilt.

(13) Now is the time to appreciate evidence. PW-4 Jagdish Prasad is a tea vendor. He has his shop near Octroi post Muradnagar. From before he knew Harbir, Om Pal and Kishan Pal, who used to supply milk to a dairy near his shop. According to him, about 4' years ago, at about 1 P.M., Harbir, Om Pal and Kishan Pal came to his shop for taking tea. They remained there till the rain stopped. thereforee, he saw them going towards the bus stand. Thereafter about 4-5 days, he came to know that Kishan Pal had been murdered. This part of his statement finds corroboration from the evidence of Mangal Sain, Junior Clerk, Harpal Singh, Booking Clerk, U.P. State Road Transport Corporation and the conductor Shri Gajinder Singh of bus no. Utg 8874. All of them indentified the tickets bearing no. 98137, 98138 and 98139 which have been issued on 19.7.78 to the passengers traveling from Muradnagar to Ghaziabad. These very tickets Exhibits P-6 to P-8 have been found from the person of the deceased. So far so good. Prima facie we accept this evidence which goes to show that the deceased Along with the present appellant and Harbir travelled in a bus from Muradnagar to Ghaziabad.

(14) The prosecution has not produced any evidence to show as to what happened after the trio reached Ghaziabad. There is no evidence to suggest that they either boarded the bus or travelled by any other mode of transportation for reaching Delhi. PW-12 Om Pal Singh s/o Gurdev Singh and PW-13 Harpal Singh are the two witnesses who happened to have seen them at 5 P.M. at the bus stand of I.S.B.T. Both these PWs were waiting for taking bus for their village Jalalabad. Public Witness Om Pal Singh did not support the prosecution version so

far as the present appellant is concerned. According to him, he only saw Harbir and Kishan Pal, deceased at the bus stand. For that omission, this witness was declared hostile and cross-examined by the learned A.P.P. There also, he stuck to his guns, and did not name the present appellant, being in the company of Harbir and Kishan Pal, deceased.

(15) This leaves us to the evidence of PW-13, Harpal Singh. He no doubt named all the three. He had seen them together getting down from a bus at the sit stand. On enquiry from Om Pal Singh, the witness came to know that the trio intend to visit the house of Harbir's sister at Ber Sarai. Thereafter, both the PWs boarded the bus and came to their village Jalalabad.

(16) From the evidence of this witness, the prosecution wants this Court to conclude-that the deceased Along with the present appellant and Harbir must have travelled together to Ber Sarai and in furtherance of their common intention caused the death of Kishan Pal in the forest adjacent to Jawaharlal Mehru University on the same day. To say the least, this is-just not permissible in law. In fact, Harpal Singh is the witness on whose testimony, no reliance can be placed. He is a resident of village Jalalabad. His father Shri Bnanwar Singh is the real brother of Public Witness Gabdu whose son Kishan Pal has been murdered. The dead body of Kishan Pal Singh was brought to the village on 22.7.78. On that very day, Harpal Singh came to know of this fact. He did not participate in the funeral procession of Kishan Pal Singh. His plea is that his family was on litigation with Gabdu. This excuse to our mind is without any basis. He may not be on visiting terms with the family of his uncle but in the unfortunate and sudden incident of murder of his cousin brother, such small differences do not come in the way of attending the ceremonies connected with the untimely death of a young man.

(17) Even assuming for the sake of arguments that on 22nd July, 1978, he did not attend the funeral procession but what prevented him from disclosing the fact of his having seen the deceased in the company of Harpal Singh and Om Pal Singh at I.S.B.T. to the members of his family or the relations of Gabdu or even to the Police which came to the village on 23.7.78, has not been satisfactorily explained. Further more, he kept quiet for almost 7 days. For the first time, he made the

statement before the Police on 28.7.78 when Gabdu, Chaman and Om Pal were present. It is not a case that in between 22nd and 28th, he. was away from his village or that he had not met any person related to the deceased. Even he did not tell this fact to the Pradhan or any other respectable person of the village. His conduct is not worth while and for that matter we do not propose to place any reliance on his testimony.

(18) Even if we brush aside the criticism brought out during his cross- examination, and believe his version as given in his examination in Chief, the prosecution cannot advance their case beyond the evidence of last seen together at I.S.B.T. From thenceforth, there is a complete darkness. Nobody takes us from I.S.B.T. to Ber Sarai and then to the house of the sister of Harbir and then to the place from where the dead body of the- deceased was recovered. Nobody throws light on the actual occurrence. We do not know nor is there and suggestion as to who caused the injuries and with what weapon on the person of the deceased. In the absence of such a material evidence, connecting the accused with the commission of the crime, the chain of circumstances stands broken. This big gap remains unplugged. There are' many tears in the net of circumstantial evidence through which the accused can easily slip and in fact has slipped.

(19) The learned lower court has tried to consolidate the prosecution version by taking recourse to the evidence of one Chaman who appeared as a prosecution witness in the case against Harbir and happened to have corroborated the evidence of last seen together. Unfortunately, the evidence of Chaman was not brought on the file of this case. We are surprised as to how and under what circumstances the evidence of a witness recorded in one case can be taken on the record of another case without complying with the legal requirements. The' present appellant was not a party to the proceedings in the case of Harbir. He had no opportunity to cross-examine Chaman. His evidence under no circumstances can have a binding force on the case of the appellant. Even in the impugned Judgment, it is not shown as to what was his evidence and in which sequence the name of the present appellant came to be mentioned. Under the circumstances, the evidence of Chaman is of no avail to the prosecution and cannot be considered or taken note of.

(20) The second submission of the learned counsel for the State is that an adverse inference against the accused should be drawn for his having absconded immediately after the murder of Kishan Pal. According to the learned counsel, the accused has not furnished any valid Explanation of his conduct and this omission to a large extent completes the chain of circumstances supporting the sole inference that the appellant is guilty of the crime charged.

(21) We do not subscribe to the view of the learned counsel for the State. Even the learned Addl. Sessions Judge did not think it proper to rely on this piece of evidence against the accused. His Explanation in the statement u/s 313 Cr.P.C. is that he was living with his maternal uncle Vir Pal Singh who had no child. In fact he was brought up by him. He is not a resident of village Jalalabad but he used to go there whenever he was to attend some function. He further stated that he was mostly engaged in transportation work. However, as and when he came to know about this false case, he immediately surrendered before the court. We are satisfied with this Explanation, particularly, when he has not been proved to be a resident of village Jalalabad. The transportation work must have kept him busy for sufficiently long time. Over and above, the act of absconding no doubt is relevant piece of evidence to be considered Along with other evidence but its value would always depend on the circumstances of each case. Generally, the courts consider it as a very small item in the evidence for sustaining conviction. It cannot certainly be held as a determining link in completing the chain of circumstantial evidence consistent only with the hypothesis of the guilt of the accused. As we have observed earlier the prosecution has not led any convincing evidence on any material link in the chain of circumstances leading to only one inference consistent with the guilt of the accused. Regard must be given to the totality of the circumstances. The mere absconding of the accused, by itself, does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime, such is the instinct of self-preservation. To this circumstance, we do not attach much importance.

(22) Regarding motive, the less said the better. Except the evidence of Gabdu, we do not find any worth while evidence to rely upon. Even the statement of Gabdu

leads us nowhere. The present appellant had nothing to do with the divorce of Sham Kaur from Ranbir, brother of Harbir accused and her re-marriage with Sansar Pal at the instance of Gabdu. Similarly, the theft of buffalo by Sansar Pal and the payment of compensation to the real owner is of no consequence. One cannot lose sight of the fact that Public Witness Gabdu is a very interested person in this case. Finding an information of the death his son, Gabdu could go to any extent to implicate the accused on the pretext of having some grudge at some point of time against the accused. The motive suggested by Gabdu may at best give rise only to a suspicion against the appellant but even suspicion, however, strong, cannot take the place of proof. Under the circumstance, we do not place any reliance on this piece of evidence.

(23) In the result, we find that the circumstances relied upon by the prosecution have not been established by clear and cogent evidence. They do not lead to the only inference consistent with the guilt of the accused. The individual circumstances even if considered in isolation, do not provide a complete chain pointing to the guilt of the accused or exclude any hypothesis consistent with his innocence.

(24) We, therefore, accept the appeal and set aside the conviction and sentence awarded by the learned Addl. Sessions Judge on 31.10.1983. The appellant be released forthwith unless required to be detained in any other case.