

Anand Sarup and anr. Vs. State

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Court : Delhi

Decided On : Nov-27-1987

Reported in : 1988(1)Crimes92; 34(1988)DLT155

Judge : Charanjit Talwar and; H.C. Goel, JJ.

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

Appeal No. : Criminal Appeal No. 58 of 1984

Appellant : Anand Sarup and anr.

Respondent : State

Advocate for Pet/Ap. : Shambhu Nath, Adv

Judgement :

Charanjit Talwar, J.

(1) The appellants herein Anand Sarup and Ram Kumar are challenging the legality of the judgment dated the 31st January, 1984 of Shri J.D. Kapoor, Additional Sessions Judge, Delhi, whereby they were convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They are also challenging the order dated the 3rd February, 1984 sentencing them to life imprisonment.

(2) Seema, the deceased wife of Anand Sarup, it is the prosecution case, was last seen with her husband Anand Sarup and his co-accused Ram Kumar some days prior to 21st November, 1982. Her dead-body was found in a field near Nasirpur village, Delhi Cantt. on the morning of 21st November, 1982. This was considered a blind murder till 14th January, 1983. Till that date, no clue whatsoever was found by the prosecution about the identity of the deceased or about the assailants.

(3) On 14th January, 1983, Public Witness . 6 Ram Parkash, a cousin of the deceased went to Police Station, Delhi Cantt. He narrated that he had received a letter from Anand Sarup, appellant No. 1 herein on 12th January, 1983. This letter, however, was dated the 3rd January, 1983. He stated that after the receipt of that letter, which was addressed to him at Village Chhanja, District Kanpur (U.P.), he visited Delhi and contacted Anand Sarup at his residence. He wanted to verify the contents of the letter in which it had been written that Seema had left her matrimonial home after a quarrel with her husband and had probably gone to her parents' house. The witness Ram Parkash knew that Seema had not visited her parents' village and was, therefore, worried. On meeting the appellant Anand Sarup, he enquired from him the whereabouts of Seema. To quote the witness's words: 'When I enquired from Anand Sarup as to where Seema was, he became angry and shouted that she might have eloped with somebody (Bhag Gai Hogi Sali Kisi Ke Saath).' The witness who is an Advocate at Ghatampur, District Kanpur, U.P. and was closely related to Seema being her first cousin, was not satisfied with the reply. He contacted a friend one Bishambar Nath Sharma and thereafter came to report the matter in his company to the Police Station, Delhi Cantt. The Duty Officer then showed the photographs of the deceased, which were taken on the spot of occurrence, to this witness. The witness identified those photographs to be that of Seema. The letter which the witness had produced was taken into possession by the Police and investigations were commenced. On that very day, Anand Sarup and his co-accused Ram Kumar were arrested from the house of Anand Sarup.

(4) There is no direct evidence in the present case. One of the circumstances, which according to the prosecution is proved, is that of Seema deceased having been last seen in the company of the appellants herein. Reliance is placed on the

testimony of Public Witness . 9 Vinay Kumar who established this circumstance. Vinay Kumar was a resident of House No. D-12, Kamal Park, Delhi Cantt. His statement under Section 161 of the Code of Criminal Procedure was recorded by the Investigating Officer on 14th January, 1983. In his testimony in Court, he stated that 'About 9 months back at about 6/7 P.M. I say both the accused persons Along with wife of accused Anand Sarup moving on a cycle. They were going towards the road. Thereafter I did not see the wife of accused Anand Sarup. I did not enquire from accused Anand Sarup as to where his wife had gone. I had been seeing the accused persons and the wife of accused Anand Sarup since about a month prior to that date when they were seen going on a cycle.'

(5) Public Witness . 9 Vinay Kumar was examined on 4th August, 1983. According to him he last saw the deceased and the appellants together somewhere about 4th November, 1982. The body as we have noticed above was found on 21st November, 1982. According to Public Witness . 19 Dr. Chander Kant, who conducted the post mortem examination on 25th November, 1982, the approximate time of death was about 5 to 7 days prior to the examination. The murder was thus committed somewhere between 18th and 20th November, 1982.

(6) Apart from the testimony of Public Witness . 6 Ram Parkash and Public Witness . 9 Vinay Kumar, the prosecution is also relying upon four letters, two of them alleged to have been written by appellant Anand Sarup and the other two by the deceased Seema. The letters have been exhibited as Ex. Public Witness . 6/A, that is the letter which was written by Anand Sarup on 3rd January, 1983 to Public Witness .6 Ram Parkash. The other letter is Ex. Public Witness . 6/E, said to have been written by the appellant Anand Sarup to his sister-in-law (wife's sister) on 31st December, 1982.

(7) In both these letters the appellant is complaining that his wife Seema had picked up a quarrel with him over the purchase of a shawl amounting to Rs. 150.00 and had thereafter left the house. In the letter written to Public Witness . 6, the date on which Seema left the matrimonial home is stated to be 30th November, 1982. In this letter it is stated that the quarrel was not so serious that one should leave the house. At the time of leaving the house Seema told him that

he could not take care of her and that she would do whatever she liked. The letter goes on, 'When Seema picked a quarrel, it was because of clothes. Although I spent Rs. 150.00 for the purchase of a sari for her at Deepawali, even then she picked a quarrel with me over shawl. And then she purchased a shawl for Rs. 150.00 of her choice without asking me. What was the necessity to purchase another shawl, when she already had one, Whereupon, I slapped her twice only. Whereupon she picked a quarrel and left the house.'

(8) 'YOU are requested to please persuade her and send here from the place wherever she is. I shall feel obliged.'

(9) In this very letter, the appellant Anand Sarup is also complaining that although he had written a letter in December but he (Ram Parkash) had not given any reply. He wanted to know from Ram Parkash whether that letter had been received by him.

(10) In the letter Ex. Public Witness . 6/E, Anand Sarup reiterated the complaint about Seema having left the matrimonial house. The date is not pin pointed but the month is given as 'November', 1982. It is written that 'Madhuriji, your sister after quarrelling with me had left the house in the month of November. Presently Seema should be either in Girsi or in Birhampur. You please inform me through letter as to whether she is in Girsi, Chhaja or Birhampur. Please inform me through letter as to where she is,' About the quarrel, he writes that the quarrel was regarding buying of clothes.

(11) The other two letters Ex. Public Witness . 6/C and Public Witness -6/D were written on 6th April, 1982 and 27th June, 1982 respectively by the deceased Seema to her younger sister Beena Devi. These letters were sent to village Girsi in District Kanpur. That is the village from which Seema hailed. Reading of those two letters does convey an impression that Seema was not very happy at her matrimonial home. It seems that because her husband i.e., the appellant Anand Sarup herein was not writing any letter to his in-laws, this fact was disturbing her. The Delhi address of Seema given in the letter of 6th April, 1982 is 5/1 Kabul Line, Sadar Bazar, Delhi Cantt. and the one given in the other letter is House No. 128/4K, East Sagarpur, P.O. Nangal Rai, New Delhi. In the second letter she says

that they had shifted to the house where they were earlier living. Till then it appears that they were living in a house where Seema had to prepare food for about 15 persons and to clean the utensils also. She was complaining that she used to remain very busy in that house. The indication is that she was staying in her brother-in-law's house, i.e., the house of the sister of the husband. As we have noticed above, the prosecution case rests entirely on circumstantial evidence. The learned trial Court has called out eight circumstances to come to the conclusion that the two appellants in furtherance of their common intention had murdered Seema on the night intervening 20th and 21st November, 1982 by strangulating her and also by causing her injuries with a knife, on her neck.

(12) The learned trial Judge in the discussion preceding his conclusion had discarded the theory that Seema had been raped before strangulation. This was necessitated as Public Witness . 19 Dr. Chander Kant had stated in his report Ex. Public Witness . 19/A) as well as in his testimony that his 'friends were suggestive of sexual inter-course before death.' At this stage we may notice that it was because of the examination of the blouse of the deceased, which was not buttoned properly that perhaps the Doctor came to that conclusion. We agree with the trial Court's initial finding that on the basis of the post mortem examination report it cannot be said that this was a case of rape prior to murder but the learned trial Judge's finding which is in fact inconsistent with his reasons given earlier) that 'to commit rape and then commit murder in such gruesome manner is also beyond comprehension' is not made out at all from the record of this case.

(13) From the evidence produced by the prosecution, it can be said that Seema who had married Anand Sarup in the year 1979, was not leading a happy matrimonial life. We must point out that the letters written by Seema to her sister (Ex. Public Witness . 6/C & Public Witness . 6/D) were proved by Public Witness . 6 Ram Parkash although Beena was not called in the witness box. The defense, however, has not challenged the statement of Public Witness . 6 who had identified the handwriting of Seema and who had stated that these letters were written by her.

(14) The learned trial Court's conclusion that both the accused had been moving in their residential locality on a bicycle, is not borne out from the record as even according to Public Witness . 9 Vinay Kumar, he had seen the two coaccused only once. This circumstance taken to be a chain of evidence against the accused, cannot be made use of at all. The further circumstance that the accused, i.e., the appellants herein were last seen together by Vinay Kumar at about 6/7 P.M. about two days prior to the dead body being found, has also not been made out. As we have noticed above, according to the testimony of Public Witness . 9 Vinay Kumar, he had seen the two appellants Along with Seema on or about 4th November, 1982 and not on 18th or 19th November, 1982. We have gone through the testimony of Public Witness . 9 very carefully. We are not at all impressed by his statement. It is not even clear from that statement whether the appellant Anand Sarup was residing in the area of Kamal Park as alleged by him (the witness or was even known to him. According to P.W. 6 Ram Parkash, on receipt of the letter (Ex. Public Witness . 6/A) on 12th January, 1983, he visited Delhi the next day, i.e., 13th January, 1983 and went to the house of Anand Sarup. He says that on an earlier occasion he had stayed for the one night with Anand Sarup. On this visit, according to him, he had gone to the house of Anand Sarup situate in East Sagar Pur, New Delhi, where Anand Sarup was residing. In the letter (Ex. Public Witness . 6/D), Seema (deceased) while writing to her sister Beena Devi gives her address as House No. 128/4K East Sagar Pur, P.O. Nangal Rai, New Delhi. The appellant in his letter, however, gives his address as 6/4 Kabul Lines, Sadar Bazar, Delhi Cantt. The prosecution has not at all clarified whether the locality of Sagar Pur is near the house of Public Witness . 9 Vinay Kumar, who is a resident of House No. D-12, Kamal Park, Delhi Cantt. According to Investigating officer, Public Witness . 17, he had arrested both the appellants from the house of Anand Sarup situate in 'Indra Park'. The memo regarding personal search of Anand Sarup (Ex. Public Witness . 6/G), however, shows that the appellant was a resident of a plot near House No. 6-D, Indra Park, Delhi Cantt. It appears that because of the address given in the search memo, a question (question No, 2) was asked to the appellant whether he was residing Along with his wife Seema at House No. 6-D, Indra Park, Delhi Cantt. in November. 1982.

(15) As we have noticed, the prosecution has not in fact established as to where Anand Sarup was residing in November, 1982. According to Public Witness . 6 Ram Parkash, he had visited the house of Anand Sarup at East Sagar Pur. According to the Investigating Officer, the house was situate in Indra Park. According to Public Witness . 9 who is supposed to be a neighbour of the appellant, the house is situate at Kamal Park. This witness stated that 'Anand Sarup accused now present in Court resides a Kamal Park near my house across the Nala'. The case of appellant, however, is that he was living at Kabul Lines, Sadar Bazar, Delhi Cantt. In this view of the matter it cannot be said that reliance can be placed on the testimony of Public Witness . 9 Vinay Kumar. At any rate his saying that he had seen Seema Along with the appellants herein somewhere in early November, 1982, cannot be considered an evidence of the deceased having been last seen in the company of the appellants. His evidence even if accepted into to, is of no help to the prosecution. The other circumstances culled out by the learned Sessions Judge are on mere surmise and are not at all borne out from the record of the case. That Seema had left the matrimonial house and that the appellant Anand Sarup had written letters to Public Witness . 6 Ram Parkash and to her sister-in-law about her (seema) having left the house, has been brought on record. The factum of writing the letters by no stretch of imagination can be said, as has been done by the learned Sessions Judge, to be an attempt to conceal the crime.

(16) Applying the law laid by the Supreme Court in Bakshish Singh v. State of Punjab, 1971 Cr. L.J. 1452, we hold that the prosecution has not at all been able to prove that the appellant herein have committed the crime. The appeal is allowed. We hereby set aside the conviction and sentence imposed and acquit them of the charge. If not required in any other case, they be released forthwith.