

Ram Kishore Vs. State

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Court : Delhi

Decided On : Feb-13-1990

Reported in : 41(1990)DLT86; 1990RLR154

Judge : Malik Sharief-ud-Din and; M.K. Chawla, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 100(4); [Evidence Act, 1872](#) - Sections 25

Appeal No. : Criminal Appeal Nos. 139 of 1985 and 182 of 1986

Appellant : Ram Kishore

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; M.S. Siddique, Advs

Judgement :

M.K. Chawla, J.

(1) (RULE DR) Shri Mangal Singh (Public Witness -1) is a resident of E-19/46, Jagjit Nagar, Seelampur, Delhi. On the morning of 22-11-80, at about 7.15 A.M. he was going to the house of his friend Shri Mohan Lal. On the way, he found a number of persons present outside the building bearing No. G-101, Gali Shiv Mandir, Jagjit Nagar, Delhi, owned by Shri Pyare Lal. He noticed some blood lying under the main gate of the house. The main door of the house was partially open.

He peeped through it and saw Shri Gopal Sharma lying dead in a pool of blood near the main gate. He knew him from before who along with his wife and children was residing there. He immediately rushed to the Police Station Seelampur and got recorded his statement, FW-1/A.

(2) The Duty Officer, H.C. Mahavir Singh recorded the First Information Report, Public Witness -37/B, as it disclosed the commission of an offence punishable under Sec. 302 Indian Penal Code . The investigation of the case was entrusted to S.I. Mam Chand, who Along with other constables and Mangal Singh left for the place of occurrence. On reaching there, they saw the dead body of Gopal and that of his wife Bimlesh Kumari lying near to each other. The Sub' Inspector prepared the Inquest Report Ex. Public Witness /1/F & F-I. The scene of occurrence was got photographed, the rough sketch plan was prepared and the dead bodies were sent to the mortuary through Constable Ikrar Hussain. From near the place of occurrence, the Sub Inspector took into possession, a broken mirror. Ex. P-1, a steel dhakkan. P-2, a butt of bidi P-3. a matchbox P-4, a wrapper of bidi bundle P-5, some P-6, screw driver P-7, a file/reti P-8, a caterpillar P-9, a nylon black colour Wrist watch strap P-10, bloodstained pantP-11 and a quilt cover P-12; vide memos. Ex. Public Witness -1/B to Public Witness -1/E. He also recorded the statement of Satish and. other witnesses present there.

(3) At this stage, we may note that the Investigating Officer had found fingerprints on P-1 and P-2, but he did not care to lift them for the purpose of comparison with the fingerprints of other criminals whose record is maintained in the Police Station, even though by that time crime team had also reached there. Moreover, Dr. L. T. Ramani, Public Witness -7 had recovered one strand of hair from the right hand of Bimlesh Kumari which had been sealed separately, Along with the sample scalp hair of Gopal Sharma and Bimlesh Kumari, deceased, and was handed, over to Constable Ram Bhagat (Public Witness -26) as case property, which was deposited in the Malkhana and later on sent to the office of the C.E.S.L. on 5-1-1981.

(4) Pyare Lal. Public Witness -22, the father of Gopal Sharma had gone to Aligarh Mukteshwar, Along with his son Davinder and daughter Shashi, to have a holy

bath in Ganga on 21-11-80. He was informed of the occurrence at about 8 P.M. on 22-11-80. He Along with his other family members reached Delhi at about 2.30 P.M. the same day. He was not able to suspect anybody for the crime except to name one Mehmood with whom his wife had eloped about 10 to 11 months prior to November, 1980 when he was residing as their tenant in this very house. Mehmood was interrogated but when nothing was found against him, he was allowed to go.

(5) There was no progress in the investigation of the case for about 10 months. On the morning of 5-8-81, Shashi, daughter of Pyare Lal handed over a letter allegedly thrown by accused Vinod in her room, Pyare Lal immediately contacted Vinod and enquired about the writing of the said letter. At that time, Vinod is alleged to have threatened Pyare Lal with dire consequences. Pyare Lal then handed over the said letter Ex. PW-22/A to the Police which was taken into possession vide memo. Ex. Public Witness -22/B on 5-8-81. Vinod Kumar was not traceable. On 19-10-81, S.I. Pran Nath of Police Station Shakarpur, (PW-28) informed the S.I. Shri Ved Pal Singh (Public Witness -41), the I.O. of this case, of the arrest of Vinod Kumar in the case F. I. R. No. 402181 u/s 307 Indian Penal Code . wherein he is alleged to have made a disclosure regarding his involvement in this case. Ved Pal Singh immediately obtained the copy of the disclosure statement and submitted an application before the Metropolitan Magistrate to obtain the Police remand of the accused up to 22-10-81. During this period, the specimen handwriting and fingerprints of the accused were taken in the office of the A.C.P. Shahdara. The accused also got recovered two gold bangles from the drawer of the table lying inside the shop no. K-850. Jahangirpuri, Delhi, after unlocking the shutter with the key lying concealed nearby. These articles were taken possession of vide memo, Ex. Public Witness -17/A and B. Later on, accused Vinod Kumar also got recovered knife Ex. P-18 from an open plot Its rough sketch plan Ex. Public Witness -211C-1 was prepared and taken into possession vide Ex.Pw-21/C.

(6) During the course of investigation, S.I. Ved Pal Singh (PW-41) was able to apprehend Ram Kishore accused from near Muni Baba Mandir, Seelampur, on 5-10-81. At this stage, it will not be out of place to mention that we are not informed

nor is there any evidence to suggest as to how and through whom S.I. Ved Pal Singh came to know of the involvement of Ram Kishore in this case. His Henri Sandoz wrist watch Ex, P-14 was seized vide Memo. Public Witness -15/A. Thereafter on interrogation Ram Kishore accused disclosed and got recovered one gold ring Ex. P-21, ladies' wrist watch Ex. P-19, one gold ring Ex. P-20, one pant P-22, from his house in village Jagnair, which was taken into possession vide memo Ex. Public Witness -22/C. Later on. Ram Kishore led the Police party to the shop of Mahender Pal, Public Witness -40. a goldsmith of Hathras and got recovered the gold chain. Ex. P-15, a pair of silver Pajeb, P-16A and B from there. On return from Hathras, the specimen fingerprints of this accused were obtained in the office of A.C.P. Seelampur.

(7) The specimen handwriting and fingerprints of both the accused Along with the sealed Dhakkan and the broken piece of mirror were sent to the office of C.F.S.L. for comparison and opinion.

(8) After completing the investigation, both the accused were tried for the commission of an offence punishable u/s 302|460|34 Indian Penal Code . Both the accused were also charged for the offence punishable u/s 411 Indian Penal Code . for having been found in possession of the jewellery belonging to Bimlesh Kumari. The Additional District & Sessions Judge vide his Judgment dated 11-6-1985, and the order of conviction of the same day, convicted accused Vinod u/s 302 Indian Penal Code . and sentenced him to undergo imprisonment for life and a fine of Rs. 5000.00 . in default of payment of fine to undergo a further R.I. for 3 years. He was also convicted for the offence u/s 460 Indian Penal Code . and sentenced to undergo R.I. for 5 years and a fine of Rs. 2000.00 . For the offence u/s 411 Indian Penal Code ., both the accused were sentenced to R.I. for 3 years and a fine of Rs. 3000.00 each. Accused Vinod Kumar was also sentenced to R.I. for six months u/s 27 of the Arms Act.

(9) The present appeals are directed against the aforesaid order of conviction and sentence awarded to each of the accused) which are being disposed of by this Judgment.

(10) It was a blind murder and for that reason, the prosecution could not make any headway for about 10 months. It was only on 5-8-1981 when Pyare Lal handed over the letter (PW-22/A) alleged to have been written by Vinod Kumar to his daughter Kumari Shashi that set the ball rolling. As a consequence of that, accused Vinod was arrested by S.I. Ved Pal Singh on 19-10-1981 while Ram Kishore accused was apprehended on 5-10-1981 from near Muni Baba Mandir Seelampur.

(11) The prosecution has mainly based their case on the circumstantial evidence of the recovery of letter Public Witness -22/A and of various items of jewellery and other articles including the knife, on the basis of the disclosure statement of both the accused.

(12) Admittedly, there is no direct evidence of eyewitness in this case. The law regarding circumstantial evidence is well settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests :-

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) These circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; The circumstantial evidence in order to sustain conviction must be complete and incapable of Explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

(13) The circumstantial evidence in the instant case may now be viewed in the background of the well settled principles of law laid down in the cases resting on circumstantial evidence. The letter, Public Witness -22/A, is seized by the Police vide memo PW-22/B dated 5-8-1981. This letter is unsigned and undated. It is simply a love letter. It does not suggest of any ill-will towards anybody or the preparation or participation in any crime individually or in the company of other persons. According to Pyare Lal, Public Witness -22, this letter was thrown by

Vinod accused in the room of his daughter Shashi and she handed it over to him. Shashi, Public Witness -35, has shown her complete ignorance about Vinod or the receipt of the letter in question. It is only through the testimony of handwriting experts that Vinod is proved to be the author of this letter. Even if it be so, we are of the opinion that this letter, by itself, is not an incriminating piece of evidence which can point an accusing finger towards Vinod, This is so as Pyare Lal was frank enough to admit that at no point of time, his deceased son and daughter-in-law or his daughter Shashi made any complaint of evil intention of Vinod even though he has been visiting their house for a long time. Vinod is also admitted to have attended the funeral of the deceased. Further more, the accused would not wait for one year to write this innocuous and purposeless letter.

(14) The next piece of evidence against accused Vinod is the recovery of two gold bangles Public Witness -17/A and 17/B in the envelope Ex. Public Witness -17/C from the drawer of a table lying in his shop. This recovery was affected in consequence of the disclosure statement Ex. Public Witness -27/A which was recorded by S. I. Pran Nath Malhotra (Public Witness -28) while interrogating a case u/s 307|34 Indian Penal Code . of Police Station Shakarpur Pyare Lal. Public Witness . had identified these two bangles as belonging to his daughter-in-law. According to Ved Pal Singh, the landlady Smt Kanta (PW-23), was joined at the time of the recovery of these articles but unfortunately she had not supported the prosecution case as according to her, Vinod accused was apprehended by the Police from the shop while he was sleeping 3 or 4 days prior to the date of the recovery. Admittedly, her statement was not recorded either before or after the alleged recovery of these articles nor any writing work was done by the Police in her presence. It is difficult to believe that Vinod will keep these bangles in the unlocked drawer of his table for more than a year. Even these bangles have neither been proved to be of Bimlesh Kumari nor is there any proper test identification parade before the Magistrate. We would like to discuss this aspect later on after the complicity of any recovery from other accused is discussed.

(15) Vinod Kumar accused is also alleged to have led the Police Party to Jagjit Nagar and got recovered a knife Ex. P-18 from the mud and water lying in an open plot. After cleaning the knife, it was converted into a sealed parcel and taken into

possession vide memo. Ex. Public Witness -21/C. The recovery is witnessed by Pyare Lal Sharma and not by any other independent witness of the area, even though according to Pyare Lal, the open plot was accessible to everyone and many residents of the Mohalla had gathered there at that time. No effort was made by the I.O. to join the respectable inhabitants of that area. It does not stand to reason that the knife will remain in such a place for about a year. There was a considerable time lag. This very knife was sent to the office of C.F.S.L. as it had some traces of blood-stains on it. In the opinion of the expert, there was no reaction and the result was inconclusive. In this view of the matter, it would be difficult for us to link the recovery with the murder. This is all the evidence against accused Vinod.

(16) Ram Kishore accused has been acquitted of the charge of murder but has been convicted u/s 411 Indian Penal Code . The circumstances leading to his arrest have not been explained by the prosecution. It is an admitted case of the prosecution that till 5-10-81, there was no incriminating evidence against him available with the Police for commission of this crime. He was not even a suspect. His only fault appears to be that he is the uncle of the accused Vinod.

(17) Immediately after his arrest on 5-10-81, his personal search memo was prepared. His watch Ex. P-14 was seized and taken into possession. On interrogation, and in the presence of Raj Singh Constable, the accused made a voluntary disclosure statement Ex. Public Witness -15/A. On 7-10-81, he led the Police party to village Jagnair, Aligarh and got recovered one gold ring P-21, ladies watch P-19, one gold .ring P-20, one pant P-22, from his house which were separately sealed and taken into possession, in the presence of Pyare Lal who identified these articles as belonging to his son and daughter-in-law. Thereafter the accused again led the Policy party to the shop of one Mahender Pal (PW-40) at Hathras and got recovered a gold chain Ex. P-15 and a pair of silver pajeb P-16A and 16B. Pyare Lal also identified these items as belonging to his family.

(18) At this stage, we may note that Pyare Lal (Public Witness -22) is the only witness of the recoveries of various articles at the instance of the accused. He identified all the articles as belonging to his family but unfortunately, he had not

given any description or a distinguishing feature of any of the jeweller or other items to the Police earlier. He has also not given any' proof of its ownership. This circumstance, by itself, is fatal to a conviction u/s 411 Indian Penal Code .

(19) Even otherwise, Pyare Lal has not been asked to identify any of these articles before the Metropolitan Magistrate except the Henri Sandoz watch (P-14) which was seized from accused Ram Kishore at the time of his arrest. If he was to identify the watch only, there was no reason for the prosecution not to put him for identification of other articles, particularly, when he alleges them to be of members of his family. Instead one Shri Vimal Kumar (Public Witness -18), a silver smith of Shahdara was made to identify the gold jewellery and a pair of pajebs made of silver before the Magistrate on -1-1-82. He claims himself to be a jeweller who used to repair or polish the. articles of jewellery of the family of Pyare Lal. In cross-examination, he made a mess of the identification proceedings. According to him, he does not maintain any account of the ornaments which are given to him for polishing or repairing-by any of his customers, including Pyare Lal. He was also not able to tell if the jewellery which he was asked to identify was of 22 or 24 carat. He further admitted, 'All the above-said chains were of different designs. 5-6 rings shown to him in the court of the learned Magistrate were also of different designs and I had identified one belonging to Pyare Lal from. out of them. The pajebs which belonged to Pyare Lal were heavy weighing about 200 grams and they were mixed up with some light weight pajebs weighing about 50 grams each. The gold bangles identified by me were having design on it. The other bangles were of different designs and sizes than the one identified by me a,s having got polished by Pyare Lal.' Even the learned Metropolitan Magistrate was not sure if the items brought by the Police and mixed up with the case property were newer old or they were of the same description. The evidence of these two witnesses can hardly be held to be a proper identification.

(20) The story of recovery of various items of jewellery from the shop of Mahender Pal, at Hathras is also an interesting one. At that time, the Investigating Officer had joined one Constable Lok Man Singh (Public Witness -20, who happened to be present at the chowk Sarafa Bazar, when this witness was asked to identify accused Ram Kishore, as the person who had led the Police party to the shop of

Mahender Pal and got recovered the articles of jewellery he pointed towards accused Vinod. He was again given an opportunity by the court and asked to touch the accused He even then went and touched accused Vinod by saying that he is Ram Kishore who was in the custody of the Delhi Police at that time. On the request of the Addl. Public Prosecutor, the witness was allowed to be cross-examined but even there, he confirmed his stand by pointing towards accused Vinod as the person who was in the custody of the Delhi Police. In cross-examination, he frankly admitted that the I.O. did not take into possession any documentary evidence showing the pawning, of these articles by the accused or any entry disclosing the weight or the identification mark on the jewellery. He also admitted that the shop of Mahender Pal is in the market and many members of the public were present but none was joined by the Investigating Officer at that time.

(21) The provisions of Section 100 of the Code of Criminal Procedure relates to searches. 'The object is to ensure confidence in neighbours and in the public generally that anything incriminating which may be found in the premises searched. was really found and was not planted. Sub-section (4) refers only to the search of place. It is obligatory on the part of the Police officer to call on and get two or more respectable inhabitants of the locality to be witness of the search. These witnesses must be called before the search-is started. In this case, this precaution has not been taken at any time of the recoveries effected from different places at the instance of any of the accused. Even though places were such where the respectable persons of the locality were available. The persons who have been joined on one or two occasions have not supported the prosecution case. This makes the. recovery and its. identification doubtful.

(22) The totality of the circumstances discussed above leave no doubt in our mind that the circumstantial evidence which is sought to be proved against the accused does not establish or complete the chain of evidence from which the conclusion of guilt is sought to be drawn. These circumstances are riot of conclusive nature and tendency so as to exclude every reasonable hypothesis consistent with his innocence.

(23) In this case, the prosecution has tried to buildup their case on the disclosure statements of the accused which to our mind are of confessional nature. Section 27 of the Evidence Act lays down an exception to the rule that a confession made by an accused person whilst he is in custody must be excluded from evidence and permits the admission of such a confession under the conditions prescribed by it. This section is by way of a proviso to both Section 25 and 26. That is why this proviso has to be strictly construed and any relaxation must be sparingly allowed. The Courts have to take care that the purpose and object of Sections 25 and 26 are not rendered nugatory by any lax interpretation. The difficulty, however, great of proving that a fact: discovered on information supplied by the accused is a relevant fact, can afford no justification for reading into the Section something that is not there and admitting in an evidence a confession barred by Section 25.

(24) If we exclude the confessional nature of admission from the disclosure statement of the accused, then, the prosecution was required to prove the recoveries of the incriminating articles by leading evidence of conclusive nature. As discussed earlier, the prosecution has miserably failed to come up to the expectation of proving the recoveries which might have some semblance of proving the guilt. The recoveries have been effected from places which are situated in a thickly populated areas. For reasons best known to the prosecution, no independent witness has been joined. Even the recoveries have not been got identified to the satisfaction of this Court. There being no other evidence against any of the the accused. It is just not possible to convict any of the accused of the offences charged.

(25) Strange are the ways of investigation by the prosecuting agency. Before the arrest of any of the accused, the Police was in possession of two pieces of evidence which could have clinched the matter. The first evidence was the presence of fingerprints on the broken mirror (F-1) and dhakkan (P.-2). Before these articles were taken into possession, the C.F.S.L. officials had reached there. For no rhyme or reason, any effort was made to lift those fingerprints and to preserve them for future use. These articles were also not sent to the office of the C.F.S.L. for determination as to whether there were the fingerprints of some known criminals nor got them compared with the rogue galley. The prosecution

also did not obtain the fingerprints of Mehmood, the first suspect for sending the same to the C.F.S.L. for comparison with the fingerprints on the dhakkan and the mirror. S.I. Ved Pal Singh (Public Witness -41) admits the cross-examination that he cannot assign any reason for not sending Ex. P-1 and P-2 to C.F.S.L. for lifting the fingerprints thereon and not sending them for comparison with the fingerprints of the known criminals till 12-10-81. According to S.I. Ved Pal, the specimen fingerprints of accused Vinod and Ram Kishore were taken either on 19-10-81 or thereafter and the same were sent to the office of the C.F.S.L. Along with P-1 and P-2 for comparison. The possibility of obtaining the fingerprints of the accused on P-1 and P-2 after their arrest under the circumstances cannot be ruled out. Even if they are said to have been opined to be of the same person, as per the report of the C.F.S.L. we do not propose to place any reliance on the same.

(26) The next important piece of evidence which had come in the possession of the prosecution was the recovery of one strand of hair from the right hand of Bimlesh Kumari by Dr. L. T. Ramani on 23-11-80. It was preserved obviously with a view to get it compared with the hair of the persons suspected of the murder. No investigation on this aspect was conducted. Even after the arrest of the accused persons, their sample hair were not taken or sent to the office of the C.F.S.L. for comparison with the strand of the hair recovered from the right hand of Bimlesh Kumari. This would have been to some extent a conclusive piece of evidence showing the complicity of the accused in causing the death of Bimlesh, during scuffle. On both. these aspects, the prosecution had failed to take advantage of the material piece of evidence to prove the involvement of the accused persons.

(27) No other point has been urged nor requires going into. In the result, we accept the appeals and set aside the conviction and sentence of both the accused as awarded by the Addl. District & Sessions Judge, Delhi. Accused Vinod be set at liberty if not required to be detained in any other case. The bail bond of Ram Kishore is hereby discharged.