

Mr. R.L. Arora Vs. State

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Court : Delhi

Decided On : Apr-18-2001

Reported in : 2001IVAD(Delhi)725; 90(2001)DLT671; 2001(59)DRJ202

Judge : Mr. Usha Mehra and; Mr. S.N. Kapoor, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Crl. A.No. 632 of 99

Appellant : Mr. R.L. Arora

Respondent : State

Advocate for Def. : Mr. Ravinder Chadha, Adv.

Advocate for Pet/Ap. : Mr. K.B. Andley, Adv

Judgement :

ORDER

Usha Mehra, J.

1. Appellant R.L.Arora has assailed the order of his conviction dated 13th September, 99 and of sentence dated 28th October, 99 passed under Section 302 IPC, inter-alia on the grounds, that he has been convicted without there being an iota of evidence linking him with the crime. That the weapon of offence alleged to

have been used in the commission of this crime proves prosecution's case to be false.

2. In order to appreciate the challenge raised in this appeal, we may have quick glance at the facts of this case. Briefly stated the case of prosecution as set up was that the appellant and the deceased were in joint occupation of room No.17 in the New Delhi Municipal Corporation, Sandhya Home (hereinafter called the Home). They were not on good terms and had been quarrelling with each other. 4 or 5 days before the incident appellant and deceased fought. He was so afraid of the appellant that he never wanted to sleep with him in the same room. therefore, with the permission of authorities deceased started sleeping at night on the first floor of the home.

3. On 24th September, 1996 the deceased came to the room of Smt.Pushpa PW-2 and enquired about the time. It was 5.00 A.M. at that time. At about 6.10 A.M. she heard the noise 'Mar Gaya Mar Gaya' from room No.17. On hearing this noise she called other occupants of the said Home namely s/Sh.Ghan Shyam Shasan PW and Mela Ram Dhawan PW. They all went to the room of the appellant and of the deceased. They knocked the door of room No.17. Mr.Dhawan PW asked the appellant to open the room, but he refused to do so. On being questioned as to where Mr.Khanna was, this appellant replied that he was in the bathroom taking bath. Appellant further told that no quarrel had taken place between them. At about 7.30 A.M. Mrs.Pushpa PW2 learnt from the Manager of the Home that Som Nath Khanna was lying dead in the bathroom. This information was conveyed to the police and on the basis of the statement of Mrs.Pushpa PW-2 FIR was recorded.

4. Post-mortem on the dead body of Mr.Khanna was conducted. According to the post mortem report he died due to vernacular fibrillation caused by discharge of electric current through the body. The doctor further opined that death was due to electrocution.

5. Prosecution examined nearly 20 witnesses, but the important witnesses for determination of this appeal are Mr. Pushpa Nayyar PW-2 the author of FIR. Dr.Alexander PW-3, Smt.Har Devi PW-5, Shri Ghan Shyam Shasan PW-6, Mela

Ram Dhawan PW-7, Mr.K.P.Roy PW-12, Inspector Kamlesh Kumari PW-19.

6. Ms.Pushpa PW-2 was occupying room No.16 of the said Home. She made statement to the police Ex.PW2/A. She testified that she heard cries 'Mar Gaya, Mar Gaya'. Hearing this she approached the occupants of room No.14 and 7 i.e. namely Mr.Shashan and Mr.Dhawan respectively. Those two persons went to find out the reason of cry coming from room No.17 and to ascertain the facts. She was declared 'hostile'. When subjected to cross-examination by APP she denied that she ever stated that Mr.Dhawan asked the accused about the whereabouts of Mr.Khanna the deceased or that the accused replied that Mr.Khanna was taking bath. She resoled from many facts stated in Ex.PW2/A. She, however, admitted that after the incident Mr.Arora had disappeared from Home. She denied having seen any quarrel taking place between the accused and the deceased nor was she aware that any compromise was arrived at between them. She stated that she never personally went to room No.17 on the date of incident.

7. Smt.Har Devi PW-5 is another occupant of the Home. She was also declared 'hostile' and was subjected to cross examination by the APP. She stated that since she was busy in her Bhajans. thereforee, she did not hear or saw what happened in room No.17. She showed ignorance about the whole episode. When subjected to cross-examination by APP she half-heartedly admitted that she heard cry of 'Mar Gaya Mar Gaya'. She was told that deceased was taking bath. Subsequently she was told by the Manager that the accused after the incident absconded. She admitted in the cross-examination by defense counsel that she was hard of hearing. She could only hear from close quarter. PW-5 being hard of hearing and her statement was based on hearsay hence no much reliance can be placed on the same.

8. Since both these witnesses resoled from their earlier statements not much reliance could be placed on their testimonies.

9. Ghan Shyam Shasan appearing as PW-6 admitted that he went to Room No.17. He was told by Ms.Pushpa Nayyar PW-2 that she heard cries from Room No.17. Mr.Dhawan PW-7 also went with him. They came to room No.17 and found accused present in that room. The deceased was not there. Mr.Dhawan PW-7

asked from the accused the whereabouts of the deceased to which he replied that the deceased was taking bath. According to Mr.Dhawan the deceased wanted not to play the transistor loudly, therefore, he had lowered the volume of transistor. Subsequently he learnt that Mr.Khanna died in the bathroom. When subjected to cross-examination he admitted that he did not see the accused and the deceased having physical fight on 19th September, 1999 nor heard cries from No.17. He admitted that bathroom in room No.17 had only one door. He further testified that the key of the room No.17 was taken possession of by police immediately after the incident. Thereafter the key remained in the custody of police. He further stated that he was not associated in the seizure of any article from the room by the police. He only heard that police had seized a walking stick on 4th October, 1999.

10. Mr.Mela Ram Dhawan PW-7 corroborated the case of the prosecution to the extent that the accused and the deceased used to quarrel and that the deceased was sleeping on the first floor at night. On the fateful day he was told by PW-2 Ms.Pushpa Nayyar that she heard 'Mar Gaya Mar Gaya' from room No.17. When he along with PW-6 Shri Ghanshyam Shashan reached room No.17, he asked the accused why was he fighting with the deceased. The accused informed him that there was no quarrel and that the deceased was taking bath in the bathroom. After this he returned to his room. Subsequently he learnt that deceased's body was found in the bathroom. The door of the bathroom was locked from inside. The door of bathroom when pushed then through the gap of the door, the fact of the dead body of the deceased could be seen. He also stated that police took into possession a stick from the room but it was not seized in his presence. The said stick had a wire. It was copper wire which was wrapped around half of the said stick. There was a nail which was nailed at one end of the stick. According to him the blue colour PVC wire was not there when he saw the stick at the time of its seizure by the police. He denied there being a quarrel between the deceased and the accused or that the accused ever gave any threat to the deceased. He denied that he ever told the police that the deceased was murdered by the accused. He denied that the accused took out the wooden stick from underneath the Divan lying in room No.17. He denied having stated that there was a blue colour PVC wire wrapped round the stick or the same was recovered by the police. He, however admitted that the wooden stick had a copper wire wrapped on one end of

it and the nail on the other end of it. He denied having signed any seizure memo containing reference to blue colour electric wire. The portion pertaining to the blue electric wire in the seizure memo was signed by him under protest or pressure from the police. According to him the blue colour insulated wire had never been recovered from room No.17 wrapped around the stick. According to him room was locked by the police and key of the same remained with the police till the end. It was police who took out the stick from the room. He was also declared 'hostile'.

11. From the testimonies of PW-6 & 7 it can be said that they did not support the case of the prosecution with regard to recovery of stick of the instance of the accused. According to them it was police who produced the stick and the wire on 4th October, 1999 and that the key of the room always remained in possession of police since 24th September, 1999 till end. Room was searched by police on 24th September, 1999 but no stick was recovered. Stick was allegedly discovered on 4th October, 1999. therefore, it cannot be said that PW-6 & 7 supported the case of the prosecution on material aspects.

12. Mr.K.P.Roy, PW-12 was working as Manager of the Home at the relevant time. He admitted that door of the bathroom was locked. He tried to push the door open leading to a gap between door plank and door frame and through that gap face of the deceased could be seen. He denied that accused absconded after the incident or that he killed the deceased. Bathroom had one door. He further admitted that power point in the bathroom was not operational nor any geyser was installed in the bathroom. Water heating was done through solar system. Power point was provided near the rack in the room. Distance between the said point and the place where the dead body was lying was approximately eight feet. There was no plug attached to wire hanging on the stick. There was no free end of the PVC wire which could be connected to a plug. The electricity switch board were at a height of five feet from floor level.

13. According to Const.Pramod Kumar PW-15 disclosure statement made by the accused was signed by Const.Nirmal Singh PW-14. But the disclosure statement does not bear signature of Const.Nirmal Singh PW-14. PW-16 Inspector Shakuntala had not recorded the statement of the Constable through whom case

probably was sent to CFSL and received back and then deposited in the Malkhana. SI Umesh Sharma, Security Unit, appearing as PW-17 stated that door of the bathroom was a little ajar i.e. it was partly opened and rest was bolted from inside. Head Constable Rajinder Kumar PW-18 admitted that Investigating Officer did not deposit the key of the room No.17 in the Malkhana nor the initials of the seal of CFSL Chandigarh had been mentioned in the Malkhana Register.

14. The Investigating Officer Kamlesh Kumari appearing as PW-19 described the area of the room No.17 to be 12' x 12'. She admitted that after seeing the body the search of the room No.17 was conducted. The search of room No.17 was conducted by S.I. Umesh Sharma, the SHO and some Constables beside herself. At that time nothing was seized from the said room nor any incriminating thing was seen either by her or any other members of the search party who conducted the search on 24th September, 96. She admitted that she did not get the wire connected with the electrical switch to see if it could pass current and it was long enough to reach that bathroom and kill the deceased. She in fact did not measure the distance between the electric switch board in the room and the place where the dead body was lying in the bathroom. She admitted that no wire was projected from the blue insulated wire. She also could not say whether the current could pass through the wire in its present condition. No CFSL expert was called at the spot to ascertain what metal had been used in the electric rod, whether it was copper, tin or any other metal. No special report was sent to the senior officers or to the Magistrate. She admitted that the key of the room remained with her till the scaled site plan was prepared and that no entry was made in the malkhana regarding deposit of the key of room No.17. The scaled site plan was prepared when she visited the room second time. She visited in the room again with the accused on 4th October, 96. She could not deny that on 25th September, 96 she visited the room with Dr.Alexander for that no memo was prepared. She also admitted that no entry was made in the register No.19 to show that she had taken the key of room No.17 from the malkhana. She denied that she interrogated the accused when she met him in the hospital on 30th September, 96 and he told her that he had gone to Haridwar on account of his wife's death anniversary. She, however, admitted that when she first met the accused on 30th September, 96 in the hospital she did not record his statement. No reason has been given why she

did not record his statement. Why she waited till 3rd October, 96 to record his statement. She denied the suggestion that since the weapon of offence was with her she therefore did not take the accused to the spot on 3rd October, 96. She also denied the suggestion that she left the stick wrapped with the wire in the room in the intervening night of 3rd and 4th October, 96. She, however, admitted that on 3rd October, 96 she had the key with her and on 4th October, 96 she opened the room with the key which she was having. She admitted that no finger prints were lifted from the stick/cane nor the stick was sent to the finger print expert. Even in the site plan prepared by police neither the electric fittings had been shown nor the distance from the dead body to the electric switch had been shown.

15. From the perusal of the evidence discussed above only three following facts stood established namely;

- i) Death had taken place in the bathroom. Cause of death was electrocution;
- ii) The accused was room mate of the deceased in room No.17; and that
- iii) Nobody had witnessed the accused electrocuting the deceased. Except hearing the cry 'Mar Gaya Mar Gaya' nothing incriminating had been brought on record to link the accused with the crime.

16. Those three facts by themselves are not sufficient to establish guilt of the accused/appellant in absence of any other corroborative circumstances, coupled with defective investigation as would further be evident hereinafter.

17. From the testimony of the Investigating Officer PW-19 Inspector kamlesh Kumari, it is clear that the key of room No.17 w.e.f. 24th September, 1996 remained in possession of the police. It is also an admitted fact that the police party including the Investigating Officer conducted the search of the room on 24th September, 1996, but no incriminating evidence/material was found or seized from the search of the room. therefore, it is unimaginable that when the police searched the room on 24th September, 1996 no incriminating material was found, but then suddenly on 4th October stick and the wire were discovered underneath the 'diwan' of the same room. It is beyond imagination to believe that when police

party searched the room on 24th September, 1996, all of them could be so callous that they left searching the 'diwan' lying in that very room. If the stick and wire were there it ought to have been seized on 24th September, 1996. But that is not the case of the prosecution.

18. Now even if it is presumed that a stick and wire, were used to electrocute the deceased for that the prosecution miserably failed to point out the distance between the place where the electric switch board was installed in the room No.17 and where the dead body was lying in the bathroom and the stick/rod could be used with the aid of the wire attached thereto, to electrocute the deceased. It is not established that wire was long enough to cover the distance between the switch board/plug and the deceased moving in bathroom. Rather it has come in the testimony of the Manager of the Home that there was no working electric switch in the bathroom. We are, therefore, left to guess as to how the deceased was electrocuted. In order to ascertain the facts we called for the case property, that is the stick and the wire wrapped around it to find out whether it could cover the distance between the place where the dead body was found and the switch board. We were told that the case property has since been destroyed. We have been deprived of even ascertaining the correct facts. The Investigating Officer admitted that in the blue PVC wire there was no wire projecting out and in the absence of projected wire no current could pass to the body. Thus in the absence of case property it remains in the realm of imagination whether with that the alleged stick and the alleged wire the deceased could have been electrocuted. Nor even in the scaled site plan the place where electric switch board were there had been shown. There is nothing in the judgment of the learned trial court also to infer that these material exhibits were seen by the learned trial court in the light of the above said circumstances. It, therefore, cannot be said that the appellant through the stick and the wire electrocuted the deceased Mr.Khanna.

19. The recovery of the stick and wire on 4th October, 1996 at the instance of the accused is a matter of grave doubt for the reasons; firstly that room No.17 was thoroughly searched on 24th September, 1996 but nothing was found in the room; and secondly that the keys of this room remained with the I.O. and she did not deposit the key of the room with the Malkhana. therefore, the submission of

Mr.K.B.Andley that the stick and wire might have been planted by the police, cannot be rejected out of hand.

20. Taking the above factors into consideration we are of the opinion that the case of the prosecution has not been proved beyond reasonable doubt. The appeal is accordingly accepted and the order of conviction and sentence are set aside.

21. But before we part we would like to mention that loss or destruction of the case property cannot be treated lightly. Result could have been different for such loss is also responsible to some extent creating doubt in the prosecution case. The authority concerned should ensure that till such time appeal is decided case property should be kept intact. Those who are responsible for destroying the same be dealt with strictly. Action as per law be taken against them.

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