

State Vs. Chotey Lal and Others

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Court : Delhi

Decided On : May-25-1999

Reported in : 1999IVAD(Delhi)560; 1999CriLJ3411; 80(1999)DLT339; 1999(50)DRJ513; ILR1999Delhi455

Judge : Anil Dev Singh and; A.K. Srivastava, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 392 and 411

Appeal No. : Murder Reference No. 4 of 1998with Crl. Appeal Nos.452/98, 508/98, 560/98, 73/99, 85/99

Appellant : State

Respondent : Chotey Lal and Others

Advocate for Pet/Ap. : Mr. K.B. Andley,;Mr. Roopesh Sharma; Mr. Vikas Sharma, Adv. for accused;

Judgement :

ORDER

Anil Dev Singh, J.

1.By our order dated March 19, 1999, for the reasons which were to follow, Criminal Appeal Nos. 452/98 (Pawan Kumar v. State of Delhi), No. 508/98 (Ashok Kumar Singh v. The State), No. 560/98 (Vimal Singh v. The State), and No. 73/99

(Chotey Lal v. The State) were accepted and conviction and sentence of the appellants were set aside and the Murder Reference No. 4 of 1998 (State v. Chotey Lal & others) was answered accordingly. The appellants in the above appeals were directed to be released forthwith unless required in connection with any other case. By this order we give our reasons for not confirming the death sentence awarded to Pawan Kumar @ Shankar, Ashok Kumar Singh, Vimal Singh and Chotey Lal @ Shambhu by Shri H.P. Sharma, Additional Sessions Judge, Shahdara, Delhi, on September 25, 1998 in Sessions Case No. 336/94 under section 302 Indian Penal Code in FIR No. 247/90, P.S. Trilok Puri, Delhi, and for accepting the appeals of the appellants against their convictions on various counts and the award of the sentences imposed on them as per the following details:-

1. Appellants Chotey Lal @ Shambu, Pawan Kumar @ Shankar, Vimal Singh and Ashok Kumar Singh were convicted under section 302 IPC read with section 34 IPC and sentenced to death with fine of Rs. 10,000/- each, in default thereof to suffer rigorous imprisonment for two years each.

2. Appellants Chotey Lal @ Shambu, Pawan Kumar, @ Shankar, Vimal Singh and Ashok Kumar Singh were also convicted under section 392/34 I.P.C. and sentenced to rigorous imprisonment for ten years with a fine of Rs. 10,000/- each in default of payment of fine to suffer rigorous imprisonment for one year each.

3. Appellants Pawan Kumar @ Shankar, Vimal Singh and Ashok Kumar Singh were convicted under section 411 I.P.C. and sentenced to undergo two years rigorous imprisonment each and to pay a fine of Rs. 2,000/- each, in default thereof to suffer further rigorous imprisonment for three months.

4. Appellants Vimal Singh and Ashok Kumar Singh were convicted under section 27 of the Arms Act and sentenced to rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each, in default to undergo 1-1/2 months rigorous imprisonment.

2. By this order we shall also dispose of the connected Criminal Appeal No. 85/99 filed by Ramala who was convicted by the learned Additional Sessions Judge under section 411 I.P.C. and sentenced to one year rigorous imprisonment and to

pay a fine of Rs. 2,000/- and in default to suffer rigorous imprisonment for three months.

3. The prosecution case in that Shri Ashok Kumar Gupta and his wife Smt. Asha were residing in Flat No. 291, Pocket E, Mayur Vihar Phase II, Delhi, with their son Deepanshu aged four years and the parents of Ashok Kumar Gupta, Shri Jai Prakash and Smt. Kamlawati. On June 2, 1990 Shri Ashok Kumar Gupta and Smt. Asha, both bank employees left their flat for their respective offices around 9 A. M. leaving behind Shri Jai Prakash, Smt. Kamlawati and Deepanshu in the flat. Around 10.30 A.M. accused Chotey Lal @ Shambhu, Pawan Kumar @ Shankar and Ashok Kumar Singh, who had earlier executed a painting job in the flat No. 291, Pocket E, Mayur Vihar Phase II, as workers of one Rambir contractor, and Vimal, relative of Ashok Kumar Singh, entered the said flat. They inflicted injuries on Shri Jai Prakash and strangled him. They also strangled Smt. Kamlawati and Master Deepanshu. At about 11.30 A.M. they came out of the flat No. 291 and locked the same from outside and decamped with the valuables removed from the flat. The factum of their entering the flat at 10.30 A.M., departing there from at 11.30 A.M. and locking it from outside, and then walking away with an attache case in Vimal's hand is said to have been noticed by Lakhinder Mehto, another worker engaged by PW-22 Rambir for effecting repairs in Flat No. 292, a flat above flat No. 291. In the evening at about 5.30 P.M. or 6.00 P.M. both Shri Ashok Kumar Gupta and Smt. Asha returned from work and found the main wooden gate of their flat locked from outside. They thought that Jai Prakash, Kamlawati and Deepanshu must have gone to the park nearby. They searched them for about 2-1/2 hours but without any success. Thereafter, with the help of their neighbour Ishwar Chand resident of Flat No. 257, Pocket E, Mayur Vihar Phase II, they broke open the lock of their flat. On entering the flat they found the articles lying scattered. In one of the rooms they discovered the dead bodies of Shri Jai Prakash and Smt. Kamlawati. They found marks of injury on the abdomen, chest and neck of Shri Jai Prakash. They also found clothes tied around the necks of Shri Jai Prakash and Smt. Kamlawati. The bodies were found lying in a pool of blood. They also discovered the body of Deepanshu in the bath room. His neck was found to be tied with a plastic pipe. The matter was reported to Police Station Trilok Puri on June 2, 1990 at 11.45 P.M. whereupon an FIR No. 247 of 1990 was

registered. The prosecution case is based upon the following circumstantial evidence :-

1. Accused Chotey Lal @ Shambhu, Pawan Kumar @ Shankar, Ashok Kumar Singh and Vimal Singh were seen by PW-1 Lakhinder Mehto on the fateful day at about 10.30 P.M. going to flat No. 291 belonging to Ashok Kumar Gupta.

2. Accused Chotey Lal, Pawan Kumar, Ashok Kumar Singh and Vimal Singh were seen again by Lakhinder Mehto coming out of flat No. 291 at 11.30 A.M. He also saw them locking the wooden door of the flat from outside and then all of them walking away with an attache case which was in the hand of Vimal Singh.

3. After accused Chotey Lal, Pawan Kumar, Ashok Kumar Singh and Vimal Singh came out of flat No. 291 at 11.30 A.M. the deceased were not seen alive thereafter.

4. Recovery of stolen property and weapons of offence, namely, chhuri and knife.

5. Recovery of part of stolen property from Ramala, mother of Chotey.

4. The trial court convicted the accused on various counts on the basis of the circumstantial evidence. We have gone through the judgment of the trial court as also the evidence on record. We have no hesitation in holding that the circumstances found against the accused do not establish a chain so complete as to lead to the inescapable conclusion that the crime in question had been committed by them and none else.

5. The main circumstances relied upon by the prosecution that PW-1 Lakhinder Mehto on the date of the incident had seen accused Chotey Lal, Pawan Kumar, Ashok Kumar Singh and Vimal Singh going to flat No. 291 at about 10.30 A.M. and also saw them coming out of the same at 11.30 A.M., is of a doubtful existence. It is highly unsafe to rely on the testimony of PW Lakhinder Mehto in view of the statement of PW-17 Dr. L.T. Rehmani, who had performed post mortem on the dead bodies of Jai Prakash, Kamlawati and Deepanshu. According to Dr. L.T. Rehmani, all the three died of asphyxia due to strangulation on June 2, 1996. As per his opinion, Jai Prakash died between 2.20 and 2.30 P.M., Kamlawati died

between 3.00 and 3.30 P.M. and Deepanshu died between 2.00 and 2.30 P.M. In case the above said appellants had participated in the crime, the death of the deceased would have taken place any time after 10.30 A.M. and before or at 11.30 A.M. or a few minutes after 11.30 A.M. as according to PW-1 Lakhinder Mehto they remained in the flat between 10.30 A.M. and 11.30 A.M. In a case of asphyxia, death ordinarily takes place within a few minutes thereof. As per Modi's Medical Jurisprudence and Toxicology, (Twenty-first Edition) clinical features in case of asphyxia can be divided into the following three stages: '(1) The stage of inspiratory dyspnoea - In this stage consciousness is usually lost, at the end of this stage which lasts for one minute. (2) the stage of expiratory dyspnoea and convulsions. - During this stage, which lasts 1 to 2 minutes, effects of sympathetic and para sympathetic stimulation manifest, e.g., increased secretion of saliva, increased heart rate and increased gastrointestinal mobility, incontinence of bowels and bladder, etc., and (3) the stage of exhaustion and respiratory failure - In this stage, which lasts for 2 to 3 minutes, the respiratory and other nervous centres are paralysed, due to cerebral anoxia, which damages the brain permanently'. Thus, according to Modi the three stages last for about 3 to 5 minutes before death takes place. According to the celebrated author, some times these stages may be prolonged for two to three times than the usual time. Modi sums up the position thus :-

The three stages last for about three to five minutes before death takes place. They may be prolonged for two or three times as long, Occasionally asphyxia may bring about death almost instantly. Artificial respiration, if applied immediately, may revive the heart and reverse the viscious symptoms.

6. In Taylor's 'Principles and Practice of Medical Jurisprudence' (13th Edition) a similar view has been expressed. In this regard, it has been observed as follows:-

'Most people can hold their breath for a considerable period without distress. It is, therefore, remarkable that a sudden compression of the windpipe should so often render a person powerless to call for assistance and cause almost immediate insensibility and death...'

7. Thus, death due to asphyxia on account of strangulation and throttling is caused almost immediately. It seems to us that Shri Jai Prakash, Smt. Kamlawati and Deepanshu died immediately due to asphyxia otherwise their cries would have been heard by neighbours or persons present in or passing through the vicinity. Immediate death due to asphyxia must have taken place and that perhaps is the reason why neighbours including PW-2 Ishwar Chand or his family members or passersby have not come forward to say that they heard the shrieks or cries of the victims. Thus, the assumption that accused Chotey Lal, Pawan Kumar, Ashok Kumar Singh and Vimal Singh caused the death of Jai Prakash, Kamlawati and Deepanshu is open to serious doubt.

8. There are other factors as well which cast doubt on the testimony of PW Lakhinder Mehto. Lakhinder Mehto in his statement has not mentioned the date on which he saw the four accused going to flat No. 291 and locking the same after coming out of it. He also failed to mention in his statement that the clothes of Chotey, Pawan, Ashok and Vimal were stained with blood when they were seen departing from flat No. 291, even though the prosecution claims that their clothes were soiled with blood. The prosecution for this has relied upon the disclosure statements of said accused leading to the alleged recovery of their blood stained clothes. If their clothes were blood stained and if PW-1 Lakhinder Mehto had seen them on the fateful day after they had come out of the flat of Ashok Kumar Gupta, he would not have failed to notice the presence of blood stains on their clothes. Presence of blood stains would have aroused immediate suspicion in the mind of PW-1 Lakhinder Mehto. It would have also excited his curiosity to know the reason for their clothes being blood stained. Normally he would have enquired from them in this regard and would have immediately told others or at least would have informed his employer, PW-22 Rambir contractor, about it. But he did neither of these. On the contrary he remained incommunicado for two days and made a statement before the police only on June 4, 1990.

9. According to PW-1 Lakhinder Mehto and PW-22 Rambir, the latter had employed the former to work in flat No. 292 which was situated on the floor above flat No. 291. PW-1 Lakhinder Mehto has admitted in his cross-examination that he had left the work of Rambir contractor four or five days prior to the occurrence. If

that was so why was he present at the place of work on the fateful day, viz., June 2, 1990, has not been explained by the prosecution. It is indeed difficult to guess the reason for his presence on the site. PW-22 Rambir has categorically stated that the work of flat No. 291 was over by May 26, 1990 and the accused persons Pawan @ Shankar, Chotey @ Shambhu and Ashok Kumar Singh did not come to work with him after that date. He also stated that no painting work was available with him after May 25, 1990 for them. Since the work in flat No. 291 was over and Lakhinder Mehto being workman of Rambir and known to Pawan @ Shankar, he would have been curious as to why Pawan @ Shanker, Chotey @ Shambhu and Ashok were going to flat No. 291 on June 2, 1990, and after coming out, why they were locking the premises from outside. In his curiosity Lakhinder Mehto ordinarily would have enquired from at least Pawan @ Shankar, who was known to him, regarding the nature of business which had brought them to Flat No. 291. His failure to enquire the reason of their visit to flat No. 291 on June 2, 1990 and locking the premises from outside as also the reason for spending one hour in the flat, especially when their clothes were blood stained, shows that his presence at the spot was doubtful. He also did not ask Vimal how he was carrying the attache case when he did not have one while going into flat No. 291. Even though PW-1 Lakhinder Metho claims that he had seen the four accused going to the flat of Ashok Kumar Gupta and returning with an attache case and locking the door of the flat from outside, still he did not make his statement to the police for two days especially when their clothes were allegedly smeared with blood and three persons had been done to death in the flat. The incident took place on June 2, 1990 and his statement was recorded by the police on June 4, 1990. There is no worthwhile Explanationn why Lakhinder Metho remained quiet for two days before making his statement to the police. The conduct of Lakhinder Metho does not inspire confidence.

10. Another significant factor which has weighed with us against the case of the prosecution is that while the blood stains found on the alleged weapons of offence, i.e., knife and chhuri, which were recovered from the area of Sanjay Jheel - one recovered from the bushes and the other recovered from the jheel itself at the instance of Ashok Kumar Singh and Vimal accused respectively, were of 'B' Group, the blood group of Jai Prakash and Smt. Kamlawati was of 'O' group. It

needs to be noted that injuries caused by the sharp edged weapon were only on the person of Jai Prakash. Blood had oozed out of his injuries smearing his clothes and the floor. Though Kamlawati had no cut injuries blood had oozed out from her mouth. Even the blood stains found on the clothes of Ashok, Vimal, Chotey @ Shambhu and Pawan @ Shankar are of blood group 'B'. thereforee, the question arises whose blood was found on the weapons of offence and on the clothes of the accused Ashok, Vimal and Chotey. Obviously, it was not the blood of Jai Prakash and Kamalawati deceased. This is clear from the following chart, which is based on the report of C.F.S.L. (Ext. PW 27/E) and other evidence on record:-

EXHIBITS	BELONGING	SPECIES	ABO	GROUP	TO	OF	ORIGIN
REMARKS	Blood Stains	1. Blood Stained earth	Human	No Reaction	2. Blood Stained earth	Human	No Reaction
		3a. Banian	Jai Prakash	Human O Group	3b. Lungi	Jai Prakash	Human O Group
		3c. Underwear	Jai Prakash	Human O Group	3d. Thread (Tabiz)	Human O Group	4a. Blouse
		4a. Blouse	Kamlawati	Human O Group	4b. Brassiere	Kamlawati	Human O Group
		4c. Saree	Kamlawati	Human O Group	4d. Petticoat	Kamlawati	Human O Group
		5. Blood stained gauze	Containing Human O Group	blood sample	of Kamlawati	6. Blood stained gauze	Containing Human No Reaction
		blood sample	of Jai Prakash	7a. Pant	Pawan	Human B Group	7b. Banian
		7b. Banian	Pawan	Human B Group	7c. Pair of shoes	Pawan	Human B Group
		8a. Pant	Vimal	Human B Group	8b. Bush-shirt	Vimal	Human B Group
		9a. Pant	Ashok Singh	Human B Group	9b. Bush-shirt	Ashok Singh	Human B Group
		10. Chhuri	Vimal	Human B Group	(recovered from grass and bushes of Sanjay Park)	11. Knife	Ashok Singh
		11. Knife	Ashok Singh	Human B Group	(Recovered from Jheel)	12b. Bush-shirt	Chotey
		12b. Bush-shirt	Chotey	Human B Group	12c. Handkerchief	Chotey	Human B Group

Thus, the blood found on the clothes of the accused and the weapons of offence is not that of Shri Jai Prakash and Smt. Kamlawati. There is also no question of the blood of Deepanshu being on the weapons of offence or on the clothes of the accused as Deepanshu had no cut injuries on his person. his being so, the entire fabric of the prosecution story breaks and stands torn apart. In view of the above circumstances, the alleged recovery of blood stained chhuri and knife at the instance of Ashok and Vimal and the alleged recovery of blood stained clothes of the accused at their instance is of no consequence in this case.

11. Recovery of the weapons at the instance of the above said accused does not inspire confidence as there is no independent witness associated with their recovery. PW Rambir, the only other witness apart from the police witnesses associated with the recovery of these weapons, cannot be said to be an independent witness as at one stage he was also detained in connection with the investigation of the crime being a suspect. He appears to be a 'got up' witness as he is a party to the recovery of blood stained weapons which are obviously not connected with assault on the deceased. It appears that PW Rambir in order to secure his freedom made himself available for implicating the accused persons.

12. Another circumstance relied upon by the prosecution and accepted by the learned trial court is the recovery of stolen articles at the instance of the accused Pawan @ Shankar, Ashok and Vimal consequent to their disclosure statements. The dramatic way in which alleged recoveries were made from places not in exclusive possession of the accused and frequented by others does not inspire confidence and appears to be stage managed. No part of the prosecution case can be believed or relied upon including the alleged recovery of stolen articles at the instance of the accused in view of the effort made by the prosecution to involve the accused persons by hook or by crook. Though the principle of 'falsus in uno falsus in omnibus' does not apply in India the entire prosecution story must be discarded when the substratum of the prosecution case fails. Since the weapons of offence and the clothes have been foisted upon the aforesaid accused persons, the alleged recovery of stolen articles at their instance cannot be believed.

13. It is also significant to note that before the TIP of the stolen items no list thereof, giving their description and special features, was prepared and taken from PW-4 Smt. Asha or PW Ashok Kumar Gupta. There is no Explanation why such a list was not prepared before the TIP of the articles. Some of the items which were required to be identified were in a broken and smashed condition. PW-27 Inspector J.S. Joon in his cross-examination admitted that the ornaments brought for the purpose of being mixed up with the alleged stolen ornaments, required to be identified, were not similar. This being so, the TIP was a farcical affair especially in view of the fact that the articles appear to be common articles with no distinctive and special features.

14. According to PW-23 SI Shiv Shankar Lal, who was posted at Polices Station Sikohabad, District Firozabad, at the relevant time, the accused Pawan @ Shankar was arrested near a water tank at the pointing out of the secret informer. After his arrest his personal search was conducted which according to the prosecution resulted in recovery of a gold ring. It is claimed that accused Pawan on interrogation made a disclosure statement stating as to how he had obtained the gold ring. It is claimed that accused Pawan on interrogation made a disclosure statement stating as to how he had obtained the gold ring. First of all the disclosure statement did not lead to the discovery of the gold ring. thereforee the disclosure statement relating to the acquisition of gold ring by Pawan is not admissible in evidence. The prosecution sought to prove that Pawan had approached PW-11 Ram Chander, gold smith, resident of Karnal District, Manipuri, U.P. with the stolen property, namely, broken bangle pieces and a gold ring and asked him to make a new ring there from. According to he prosecution the ring which was recovered from him was the same as was made by PW Ram Chander from the gold articles stolen from the house of Ashok Kumar Gupta. PW Ram Chander in his testimony denied that accused Pawan came to his shop and he made a ring for him. thereforee, the theory of the prosecution that recovery of the ring from the person of Pawan was the one which he had got made from PW-11 Ram Chander, Goldsmith, by utilising the stolen gold from the flat of Ashok Kumar Gupta, has no legs to stand upon.

15. The prosecution has concealed the result of the examination of finger prints lifted from the scene of occurrence. PW-2 Ishwar Chand, PW-4 Asha Gupta and PW-5 HC Raj Singh in their testimonies have stated that finger prints were lifted from the handles, bolts, almirahs and main gate of flat No. 291. PW-5 HC Raj Singh from Finger Prints Bureau in his tatement before the trial court has admitted that he had lifted the finger prints from the scene of occurrence and after developing the same handed them to finger print expert. The prosecution, however, has suppressed the result of the examination of finger prints lifted by PW-5. It is possible that the result of this examination may have been contrary to the story set up by the prosecution.

16. Another significant piece of evidence which has been suppressed by the prosecution is the diary of PW-22 Rambir. In his testimony PW Rambir had stated that he was maintaining a diary in which he had recorded the particulars of the labour employed by him. This diary, according to Rambir, was handed over to the police during investigation. The diary however has not seen the light of the day and was not made part of the record of the trial court. The diary would have revealed as to whether or not PW Rambir had employed Chotey, Pawan, Ashok Singh and Lakhinder Metho.

17. It is well settled that in a case of circumstantial evidence each circumstance is required to be proved beyond reasonable doubt by independent evidence and the circumstances so proved must form a complete chain without leaving any room for any hypothesis inconsistent with the guilt of the accused (see Laxman Naik Vs . State of Orissa, : 1995 CriLJ2692 , A. Jayaram Vs . State of Andhra Pradesh, : [1995]2SCR420 , and Kundula Bala Subrahmanyam Vs . State of Andhra Pradesh, : 1993 CriLJ1635 .

18. In the instant case on careful scrutiny of the evidence on record it appears to us that the circumstances relied upon by the prosecution, from which it wants us to draw the conclusion of guilt of the accused, have not been proved beyond reasonable doubt. Besides, there are gaping holes in the case of the prosecution. In the circumstances, it cannot be held that the circumstantial evidence is consistent only with the hypothesis of the guilt of the accused and leads to the irresistible conclusion that it was the accused alone who had committed the crime.

19. In the circumstances, we have no hesitation in holding that the offence has not been brought home to the accused Chotey @ Shambu, Pawan @ Shankar, Ashok Singh and Vimal by the prosecution and it was for that reason we accepted their appeals by our order dated March 19, 1999 and answered the reference accordingly.

20. Insofar as Criminal Appeal No. 85/99 filed by Ramala is concerned, she has been convicted under section 411 I.P.C. Ramala is the mother of Chotey from whom a 'potlee' is alleged to have been recovered containing part of the stolen property. Since substratum of the prosecution case has failed, the recovery

alleged to have been made from Ramala loses all significance. We have not believed the theory of recovery of stolen property from the accused persons. We have also found fault with the test identification of the alleged stolen property. In the circumstances, therefore, the appeal of Ramala needs to be accepted. We order accordingly. The conviction and sentence of Ramala is, therefore, set aside. In case she is in custody she shall be released forthwith unless wanted in any other criminal case.

21. After the expiry of the period of appeal, if no appeal is filed, the material exhibits shall be disposed of according to law.

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