

State Vs. Smt. Chameli Devi and ors.

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Court : Delhi

Decided On : Sep-19-1980

Reported in : 19(1981)DLT38

Judge : Avadh Behari Rohatgi and; Charanjit Talwar, JJ.

Appeal No. : Cr. A. No. 39 of 1980

Appellant : State

Respondent : Smt. Chameli Devi and ors.

Advocate for Pet/Ap. : J.C. Batra,; D.C. Mathur and; Naresh Parmar, Advs

Disposition : Appeal allowed

Judgement :

Avadh Behari Rohatgi, J.

1. Four persons were arraigned on an indictment of murder. They were Kamal Nain, Chameli Devi, Hari Kishan and Kishan Lal. They were charged with the murder of one Kundan. Kundan was a young man of about 30 years of age. He was a tea vendor at Nabi Karim, Pahar Ganj, New Delhi. He had set up a tea stall in partnership with one Sham Lal. Just behind the tea still he was living with his family consisting of his mother Manno, his wife Tara, and his widowed sister Bela.

2. On 1st January 1978, he was present at the tea stall. A customer Kishan Mohan came to him. He ordered tea. Kundan's servant fired an angithi to prepare tea for him. At about 5.30 p.m. Chameli Devi and Kamal Nain came to the shop. Chameli Devi asked Kundan to follow her. Sham Lal at that moment asked Kundan why and where he was going. To this he replied that he will be back in five minutes time. Kundan and Chameli then left the shop. The two other accused, namely, Hari Kishan and Kishan Lal were having fried fish at the shop of one Subhash near about Sham Lal's tea stall. All four then started for Nand Nagri, a place in Shahdara, where Chameli Devi lived. On way it appears they had tea at the shop of one Prem Lal.

Finally all four reached Nand Nagri round about 7.30 p.m. They went to a place where one Anil owned a grinding machine which he used to run with the help of his worker Jagdish. Kishan Lal approached Anil. He asked him to lend a cot. Anil agreed to the request. He told him that the cot was lying behind the grinding machine. The party of five persons sat there. There was a drinking bout. Kundan was made to drink to excess. He was soon dead drunk. The drinking party which started at 7.30 went on till 8.30. At the end of the party Kundan was bodily lifted by Kamal Nain. The three other accused accompanied Kamal Nain. They went to a D.D.A. park in Mandoli which is near about the place of the grinding machine. With the help of a gadasa which had been prepared at the request of Chameli Devi and Hari Kishan by a blacksmith, Khazan by name, for reward they killed Kundan. They left the dead body and came back.

4. When they were leaving Anil's place Jagdish enquired from them about the man they were carrying with them. To that Chameli Devi replied that they were carrying a drunken man with them. On way back the same Jagdish again saw them, now returning without the drunken man. After this they went to the shop of one Sayed and each of them had one egg at that place. Thereafter they dispersed.

5. Next morning January 2, 1978, a chowkidar in charge of the D.D.A. park went on his daily round. He found a dead body lying there. He reported the matter to the police. Investigation started.

6. Such in brief outline is the prosecution case. The four appellants were tried for the murder of Kundan. They were convicted and sentenced by the Additional Sessions Judge. From his decision the four accused have brought these four appeals.

7. On the evidence led before the trial judge he came to the following conclusions :

'(i) That Kundan Lal and Chameli Devi accused lived together as husband and wife.

(ii) That Chameli Devi gave birth to a son Raju for whom Kundan Lal had love and affection of a father.

(iii) That there used to be 'a quarrel between Kundan Lal and Smt. Chameli Devi over the custody of son Raju.

(iv) That Chameli Devi left Kundan Lal and started residing separately.

(v) That a few days before 1.1.1978 Smt. Chameli Devi and Hari Kishan accused approached Khazan PW 7 to whom they gave an iron piece of kamani and got prepared Gandasa Ex. PI from him after payment of Rs. 5/-.

(vi) That on 1.1.1978 Hari Kishan and Kishan Lal were together at the shop of Subhash Chander PW 11 at 5-30 p.m.

(vii) That on that day Chameli Devi, Kanwal Nain accused and another having a blanket took tea at the tea shop of Prem Lal PW 21.

(viii) That on that day Chameli Devi was present at the house of Kishan Lal in Sultanpuri.

(ix) That on 1.1.1978 at about 8.30/9.00 p.m. Jagdish PW 22 had seen the four accused taking with them another having a blanket around him when Chameli Devi had informed Jagdish that they were taking a drunkard.

(x) That about 10/15 minutes later Jagdish PW 22 had seen the four accused persons coming back when they were not accompanied by a man with blanket.

(xi) That on 3.1.1978 Chameli Devi and Hari Kishan accused were together at the house of Lachhman Dass PW 29 at Nangloi.

(xii) That Gandasa Ex. P1 which was got prepared by Chameli Devi and Hari Kishan from Khazan PW 7 was found lying near the dead body of Kundan Lal.

(xiii) That the blade of Gandasa Ex. P1 was stained with human blood of A-B group which was the blood group of Kundan Lal deceased.

(xiv) That Kishan Lal accused got recovered blanket Ex. P3 from his house which belonged to Kundan Lal and he was having around him on 1.1.1978 when he left his shop with ChameliDevi.

(xv) That on 1.1.1978 at about 9.30/10 p.m. all the four accused gathered at the shop of Sayed Ahmed PW 18 where they tookeggs.

(xvi) That according to Dr. L.T. Ramani death of Kundan Lal took place at about 9/9.30 p.m. of 1.1.1978.'

These conclusions give us a fair picture of the prosecution story. They also give us an idea of the evidence which was adduced in the case and on which the trial court arrived at these conclusions.

8. It is common ground that there is no direct evidence for the commission of the crime by the four appellants. The prosecution rests its case on circumstantial evidence alone. It is well established that in a case resting on circumstantial evidence all the circumstances brought out by the prosecution must inevitably and exclusively point to the guilt of the accused and there should be circumstance which may reasonably be considered consistent with the innocence of the accused. All the proved circumstances 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. Any missing link may be fatal to the prosecution case. (Umedbhai v. State of Gujarat, : 1978 CriLJ489 , Pohalya v. State of Maharashtra, : 1979 CriLJ1310).

9. The court will not convict on circumstantial evidence unless it is satisfied that the facts proved are (a) consistent with the guilt of the accused and (b) exclude every possible Explanation other than the guilt of the accused. It is also necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. (Taper v. R. (1952) AC 480).

10. The conclusions of the trial judge may broadly be divided into three categories. Firstly, conclusions (i) to (iv) are about the motive of the crime. Secondly, there are some conclusions which are innocuous. There is no element of criminality in them e.g. (viii) and (xi). Thirdly, there are conclusions which centre round two witnesses, Jagdish and Khazan. (ix) and (x) relate to Jagdish. (v), (xii) and (xiii) are concerning Khazan. It appears to us that Jagdish is the pivot of the prosecution case. Khazan is their another key witness. We will examine their testimony in detail.

11. We may notice here one other finding of trial judge. He came to the conclusion that there is no reliable evidence to show the presence of Kamal Nain with Chameli Devi on the evening of 1st January when she went to Kundan and asked him to accompany her. This is a conclusion which destroys the hypothesis of Kamal's guilt. Because if he did not accompany Chameli to the shop of Kundan it has not been established how and where Kamal Nain joined the other three accused to participate in the crime.

12. From the evidence it appears that Chameli Devi was at one time living with Kundan. She gave birth to a child called Raju. This was about 15 years back. It appears that Raju at the time of the trial was a young boy of about 15 or 16 years of age. Chameli Devi and Kundan were fighting for the custody of Raju. That this was the bone of contention between them is the prosecution case. It is said by the prosecution that the motive for Kundan's murder was that Chameli Devi wanted to do away with a rival claimant to the custody of Raju.

13. On the question whether there was a valid marriage between Kundan and Chameli and whether Raju was born from the lions of Kundan there is conflicting testimony. We need not dilate on the marriage or on birth of Raju. We will straight

go to the testimony of the two important witnesses on whom the trial court has based the conviction of the four accused.

14. The first witness is Jagdish (PW 22). The conclusion of the trial judge on his testimony are contained in his findings Nos. (ix) and (x). On 1st January 1978 at 8.30 he saw the four accused taking with them a person 'having a blanket around him' when Chameli Devi on enquiry informed Jagdish that they were taking a drunken person with them. 10 or 15. minutes later Jagdish saw the four accused persons coming back. But he did not find the 'man with blanket' with them who had earlier been carried away by them.

15. The evidence of Jagdish has been severely criticised by the defense. In our opinion it is full of inherent improbabilities. Jagdish was working at the grinding machine of Anil. He was serving there. He was also living there. The machine shop had no shutters. It was for all practical purposes an open plot. It is at this place that the party of five reached at 7.30 p.m. Kishan Lal asked for a cot. Anil gave him one. Then this drink party, as we have said, lasted till 8.30 according to the prosecution case. If this is so it is impossible to believe that Jagdish knew nothing about the drinking frolic on which these persons had started about an hour earlier. Jagdish saw them at 8.30 p.m. He saw them carrying the drunken person with them. It cannot be accepted that he knew nothing of the drinking spree where Kundan was being made to drink to excess. Though he may not have been invited to this party Jagdish could not have failed to notice what was going on around the place. Anil had left for his home leaving Jagdish in charge of the place.

16. At 8.30 p.m. Jagdish was going to ease himself 20 or 25 yards away from the grinding machine with a torch in hand. If his testimony is to be believed he ought to have known that there was a boisterous drinking party for an hour at the place of his work, that Kundan had drunk to excess and that Kamal Nain was carrying on his shoulders. About the consumption of liquor and the excessive drinking by Kundan there is absolutely no evidence. One would have expected Jagdish to tell us at least something about the drinking party. Did others partake of alcoholic drinks? Or was Kundan the centre of attention of all? This is an immediate event preceding the final act of murder. Jagdish's ignorance about it raises doubts in our

minds. This shows that he is not a reliable witness.

17. Nor did he act in a normal way. His behavior was strange. He knew about the lifting of Kundan on the first of January by the accused persons. Of murder he heard on 2nd January. But he did not bother to visit the place where the dead body of Kundan lay. He was totally indifferent to the death of a person who had drunk at his place and who was seen being carried by him on the 1st January. He remained quiet till 9th of January. On 9th January he disclosed to the Police when they came to enquire from him that he had seen the four accused bodily carrying with them Kundan who was described by Chameli as a 'drunkard'. He told the police that he saw them coming back after ten or fifteen minutes and the man 'with the blanket' was not there with them. His studied silence for as many as 9 days is inexplicable.

18. The learned judge has held that Jagdish saw the four accused persons carrying Kundan with them though he did not know the name of the deceased. He described him as 'a man with a blanket.' This was his insignia. We have scanned the evidence of Jagdish with care. He nowhere says that the man who was being bodily lifted was wearing a blanket. On the other hand, Jagdish said that he did not know anything about the clothes the drunken person was wearing. He did not use his flash light. This will establish that the evidence of Jagdish is full of infirmities and he cannot be accepted as a trustworthy witness.

19. The evidence of Jagdish is of vital importance to the prosecution case. We find that the learned judge has principally relied on his evidence and has based the conviction of all the four accused on his testimony. He found him an independent witness. But we disagree with him in this conclusion.

20. The other witness of importance to the prosecution case is Khazan (PW 7). It is the prosecution case that a few days before 1st January, 1978 Chameli and Hari Kishan went to Khazan and asked him to fabricate a gandas. Khazan agreed to do so. He was paid Rs. 5/- as his labour charges. Iron in the form of a kamani was supplied to him at about 10 in the morning. Khazan prepared the gandas and handed it over to the accused Chameli at about 4 p.m. on that very day. With this gandas the prosecution case is that fatal injuries were inflicted on the body of

Kundan. His neck was cut. His jaw was injured. His right index finger was wounded. This gandasa was found lying near the dead body by the police when they came for investigation.

21. Khazan appeared in the witness box. He was asked if he knew how to prepare a gandasa. He frankly admitted in cross-examination 'I do not how to prepare a gandasa'. This gandasa was the only one which he had prepared in his life time. He had not prepared any other gandasa either before or after this. He also stated that though he had prepared the gandasa he did not sharpen it. But from the evidence of the doctor it appears that the death of Kundan was caused by a sharp-edged weapon. The gandasa which was produced in evidence is a sharp instrument. But Khazan had prepared a blunt weapon. Who sharpened this instrument we do not know. There is no evidence on this point. The evidence of Khazan was accepted by the learned judge. On a careful examination we are unable to agree with him in this conclusion. We are of opinion of Khazan's evidence is worthless. It is clear that he did not know how to prepare a gandasa. If it is so how did he produce this well finished weapon which was shown to us. It cannot be the handiwork of a man who did not know the job and who tried his hand at this for the first and the last time in his life. We are satisfied that it was not the product of his workmanship. We are convinced that it was not fashioned in the fires of his smithy.

22. Khazan admitted in evidence that before entering the court room the police had shown him Chameli Devi and Hari Kishan sitting outside. There was no identification parade. Nor was the gandasa identified at any stage earlier than at the time of testimony of Khazan. We are not satisfied that the evidence of Khazan ought to be accepted. The shop of Khazan was pointed out to the police by Chameli Devi and Hari Kishan. First Chameli Devi pointed out the shop and then Hari Kishan pointed out. This is in evidence.

23. On the evidence it appears to us that there are vital links missing in the prosecution case. There is no evidence about the consumption of alcohol which we think is an essential part of the prosecution case. Nor is there any connecting link to connect the crime with the gandasa. On this weapon of offence there is no

satisfactory evidence to connect the accused persons with the crime. These missing links are fatal to the prosecution case.

24. The conviction of Kishan Lal is based on the recovery of blanket from him. In our opinion it is not established at all in evidence that the deceased Kundan was wearing a blanket on 1st January. His sister Bela in her evidence does not depose to any blanket. Nor does his wife Tara speak about it. Prem Lal's evidence is inconclusive. At his shop these persons had tea. But he was not sure whether one of these persons was wearing a blanket. He said 'perhaps he was wearing a blanket'. Only Kishan Mohan, the customer at the shop, and the mother of Kundan depose to the fact that Kundan was wearing a blanket on that wintry evening. On this conflicting testimony it cannot be conclusively held that Kundan was wearing a blanket. We have seen that Jagdish does not refer to this blanket in his testimony at all. But the learned judge has concluded that Jagdish saw a man with blanket being carried. There is not a word about the blanket in the testimony of Jagdish.

25. We are not disposed to believe the evidence of these two witnesses. They are the major links in the prosecution case. If the testimony of these witnesses is rejected as unreliable, as we do, this will take the wind out of the prosecution sails. In fact on the evidence of Jagdish and Khazan the edifice of the prosecution case has been raised. If we discard their testimony there is no evidence on which a conviction of these appellants can be grounded.

26. There was some argument about motive of the crime. There was some argument about the arrival of Chameli to the shop on 1st January to take Kundan with her. Counsel for the defense said that the prosecution has failed to establish the motive for murder. They argued that there was no evidence of any recent quarrel or heated debate between Kundan and Chameli on the custody of Raju which may have furnished the motive. The question of custody was not new. It was old, as old perhaps as the birth of Raju. Raju was soon to attain the age of majority in two or three years time. There is nothing to show that the dying embers of an old feud flared up.

27. On the question whether Chameli went to the shop of Kundan there is some mystery which surrounds this visit. This mystery is deepened by the fact that

though Kundan did not return to the house on the night of 1st nor on 2nd the relations of Kundan did not care to contact Chameli Devi. Chameli, it is said, had taken Kundan with her. If that was so the first thing anybody will think of will be to go to Chameli immediately to find from her as to what had happened to Kundan whom she had taken with her on the evening of 1st January. Instead of going to Chameli the mother, wife and sister went to Tis Hazari Courts to find out the whereabouts of Kundan. There they came to know that a dead body had been brought to the mortuary. They went to the mortality and identified the deceased as Kundan. We are much impressed by this defense argument. We will not dilate on the motive nor on the meeting of Chameli with Kundan because in our view it is enough to dispose of these four appeals on a critical assessment of the testimony of two witnesses - Jagdish and Khazan. Their testimony does not bring conviction to our minds that the prosecution has brought home the guilt of the accused persons. Both in evaluation and perception we differ from the trial judge and are unable to assent to his conclusions.

28. For these reasons we allow the appeals, set aside the sentences and convictions of all the four appellants. The bail bonds of Kamal Nain are hereby discharged.

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