

State Vs. Tika Ram

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Court : Delhi

Decided On : Mar-04-2005

Reported in : 118(2005)DLT353; 2005(81)DRJ73

Judge : D.K. Jain and; A.K. Sikri, JJ.

Acts : Indian Penal Code (IPC) - Sections 302, 394 and 411; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 82, 83, 161, 313, 342, 354(3) and 366; [Evidence Act, 1872](#) - Sections 5, 8, 11, 25 and 27; [Identification of Prisoners Act, 1920](#) - Sections 4 and 5; Juvenile Justice (Care and Protection of Children) Act, 2000

Appeal No. : Murder Reference No. 2 of 2003 and Crl. Appeal No. 146 of 2003

Appellant : State

Respondent : Tika Ram

Advocate for Def. : Mukta Gupta and ; Rajdipa Behura, Adv. in Crl. A. No. 146/2003 and ;

Advocate for Pet/Ap. : Mukta Gupta and; Rajdipa Behura, Adv. in M.R. No. 2/2003 and;

Judgement :

A.K. Sikri, J.

1. Lohri is a famous festival of Hindus. It is celebrated every year on 13th January. Like many other Hindu festivals, it also has religious fervour and traces to Hindu mythology. On 13th January, 1996, people in Delhi celebrated Lohri in the traditional way by burning heaps of woods and putting flames. However, before these flames could even die down, it became pyre (symbolically) of innocent family of Sharmas who were living in C-1/1396, Vasant Kunj, New Delhi. Same night, all four members of this family along with their servant were brutally murdered. The family consisted of Sh. S.P. Sharma, his wife Mrs. Shobha, two young children in their youth, namely, daughter Ms. Charu, aged 20 years and son Punit, aged about 15 years. The servant Dinesh was an adolescent boy aged about 9-10 years. In fact the family was having two servants. The name of other servant is Tika Ram. When the gruesome killings were discovered after breaking open the flat of Sharmas, Tika Ram was nowhere to be seen. The needle of suspicion, therefore, naturally, pointed towards Tika Ram and the police started investigating the crime with this focus in mind. Ultimately, Tika Ram was apprehended; put to trial of having committed five murders and found guilty by the learned Additional Sessions Judge, New Delhi in Sessions Case No. 330/96. Terming it as the rarest of rare cases, the learned Additional Sessions Judge held the view that nothing less than death sentence would meet the ends of justice. Thus while convicting Tika Ram vide impugned judgment dated 21st November, 2002, of the charge under Sections 302/394/411 of the Indian Penal Code (IPC), sentence dated 15th January, 2003 is pronounced by the Trial Court imposing death penalty under Section 302, IPC and directing that he be hanged by neck till he is dead.

2. Section 366 of the Code of Criminal Procedure, 1973 (Cr.P.C.) provides that where the Court of Sessions passes a sentence of death, the proceedings are to be submitted to the High Court and the sentence is not to be executed, unless it is confirmed by the High Court. Having regard to this provision, present reference is sent to this Court and in the meantime the accused is committed to jail custody through warrant where he is cooling his heels waiting, anxiously and desperately, for the outcome of the present reference.

3. The accused-Tika Ram is also not satisfied about his conviction by the learned Additional Sessions Judge. therefore, he has filed appeal being CrI. A. No. 146/2003 against the finding recorded in judgment dated 21st November, 2002 holding him guilty of murder of five persons as well as theft of property of the deceased persons and convicting him under Section 302, IPC reading Section 411, IPC. The challenge takes within its sweep, in the appeal filed by him, the order dated 15th January, 2003 as well, on the sentence passed by the learned Additional Sessions Judge inflicting death penalty. This is how we are called upon to decide the legality, validity and propriety of the aforesaid conviction and sentence in the reference as well as in the appeal. Obviously, as the reference and the appeal are inter-connected, they were heard together.

4. Mr. Rajesh Mahajan, Advocate argued for the convict-Tika Ram as amicus Curiae and was assisted by Mr. R.K. Sonkiya, another amicus who was the defense Counsel of the convict in the Trial Court as well. On behalf of the State, Standing Counsel, Ms. Mukta Gupta made the submissions.

5. With this brief introductory, let us first embark on the prosecution story as unfolded during trial and the manner in which the convict was implicated. This may be traced in the findings of fact, as recorded by the learned Additional Sessions Judge, in the following manner:

6. Family of Sharmas, after celebrating Lohri returned to sleep with their servants Dinesh and Tika Ram, the convict. When the whole family was asleep, Tika Ram got up and decided to wreck some personal vengeance, irked as he was with behavior of Mrs. Sharma and her son Punit on some small matter, as disclosed by the convict in his disclosure statement to the police. He attacked the family and other servant Dinesh, who was sleeping in the kitchen. The weapons used were hammer and other sharp objects like screw driver. With hammer he attacked all the deceased on their heads and also pierced their bodies by screw driver. After killing the family and the servant, he allegedly removed some bangles of Mrs. Sharma, put them in his pocket and later on changed his clothes with the clothes of Punit but he threw the clothes worn by him at the time of incident, on the roof of another house. He was forgetful of the bangles removed by him which he had kept

in the pant pocket, which he was wearing and which he changed and therefore, those bangles also remained in the pant which he had thrown on the roof of another house. He locked the room and made an escape throwing the key of the lock at some terrace. It may be mentioned at this stage that when the Sharmas and their servants were found murdered by the neighbours and the police was called since nobody was in the house and the convict had allegedly eloped, the aforesaid facts came to the knowledge of police only from the convict's own mouth and disclosure statement. The murders came to light only on the evening of next day i.e. 14th January, 1996 when Mr. Pradeep Sharma, the brother of Mr. S.P. Sharma came to the house on getting no response and the friends informed him that the house was locked since morning and newspapers were lying outside. On reaching the house and finding it locked and getting no response, a PCR was called. The police also reached the spot on receiving the said call vide DD No. 34A. The SHO of the concerned police station along with his staff came to the spot finding that the house was locked. In front of the witnesses and the complainant, namely, Mr. Pradeep Sharma, the grill door of the house was broken open and the entry was made. The police found all the four members of the family and servant-Dinesh in pool of blood. All dead bodies had injuries on their heads and faces. Statement of Mr. Pradeep Sharma was recorded and the case was registered vide Ex. PW 1/A. The police sprung into action and started investigation. It lifted chance prints from different articles in the house, from the broken almirah. Scene was got photographed. Bodies were sent for post mortem. The reports and samples were collected and articles seized. Recovery of blood stained hammer from the top of wood almirah was made. It had hair struck to it.

7. The statement/Rukka (Ex.I/A) made by Mr. Pradeep Sharma was recorded. Apart from other narration, already recorded above, he pointed out that Tika Ram, who was of Nepali origin, was employed as a domestic servant; he used to sleep in the house and was absconding from the house. On inquiry from the neighbours and others, the police was informed that Tika Ram was seen at the house on the night of 13th January, 1996. The police kept a watch for the culprits and suspecting the role of servant Tika Ram, the Commissioner of Police announced an award of Rs. 50,000/-. The Government of Nepal was also informed through Interpol. Three months passed. The investigation did not yield any results.

However, on 8th April, 1996, the convict Tika Ram was apprehended at Ruparia Bus Stand, near Nepal border. He was wearing a leather jacket and was in possession of a Kodak camera which were recovered from him as Ex.PW 19/8. After interrogation he allegedly confessed to the crime. His disclosure statement was recorded wherein he, inter alia, stated that the members of the Sharma family used to give beatings and abuses and any loss/damage in the household would be attributed to him. He had, therefore, avenged this humiliation by liquidating the entire family. He had used a hammer, a kitchen knife and a screw driver to accomplish this task. He also made confession of removing Rs. 25,000/- from the almirah, three gold bangles, leather jacket and a camera. He further stated that the pant and shirt of the deceased Punit, after committing the crime were left at his house in Nepal. His own clothes which he was wearing at the time of crime were put by him in a polythene bag and he threw them on the roof of a room between Flat No. 1403 and Flat No. 1396. He also disclosed that he threw the key of the house on the terrace of the stairs and he could point out the same.

8. The police remand of Tika Ram was procured and he was taken to the place of crime. He got recovered the blood stained clothes with three gold bangles in the pant as well as the key of the lock. The case property was got test identified judicially and after collecting all other evidence and report of finger chance prints, the police filed the challan in the Court. It was stated in the challan that the hammer, i.e. the weapon of offence had already been recovered; the pant and shirt of Punit could not be recovered as there was no treaty between India and Nepal.

9. After committing the case to the Court of Sessions, a charge was framed under Section 302, IPC implicating Tika Ram with the murder of five persons. He was also charged with the offence under Section 411, IPC for having been found in possession of stolen articles, namely, leather jacket, camera of Punit and three gold bangles. The convict-Tika Ram pleaded 'not guilty' to both the charges and claimed trial. The matter was accordingly set to trial and opened with the examination of prosecution witnesses. As many as 24 witnesses were examined by the prosecution who were extensively cross-examined by the Counsel for Tika Ram. Thereafter, the incriminating circumstances coming forth in the said

evidence were put to accused for his Explanation and on these questions his statement under Section 313, Cr.P.C. was recorded.

10. Before analysing the prosecution evidence, it would be proper to state at this stage itself, which is by now becoming clear from the narration of prosecution version, that there is no eye-witnesses to the crime. The entire case hinges on the circumstantial evidence. According to the prosecution all the circumstances, which have been revealed through evidence, unmistakably point accusing finger at Tika Ram and establish complete chain leading to irresistible conclusion that nobody else but only Tika Ram could have committed this crime. It may also be mentioned at this stage itself that the main defense of the accused is based on plea of alibi. Although not denying that he was employed with Sharmas as a domestic servant, he, however, pleads that he had left the house of Sharmas 4-5 days before the occurrence of crime by taking leave and was away in Nepal on the fateful night. Thus, he was not in Delhi and is falsely implicated. This is the thrust of his statement under Section 313, Cr.P.C. as well, although he has not produced any other independent witness to establish his plea of alibi. His case is that the prosecution has miserably failed to prove that he was in Delhi on the night of 13th/14th January, 1996 when Sharma family was murdered and, therefore, he cannot be convicted.

11. We may also, at this stage, point out the circumstantial evidence against Tika Ram which according to the prosecution is unflinching. Learned Additional Sessions Judge, in the impugned judgment, has enlisted this strong circumstantial evidence of the following facts:

(i) fact of accused being present in the house on the night of Lohri on 13.1.96, as a domestic servant;

(ii) the conduct of his absconding, as he was not found after the murder in the house;

(iii) the fact that he made a disclosure statement leading to recovery of blood stained clothes worn by the accused at the time of alleged murder.

(iv) the recovery of 3 bangles from the pocket of pant of the recovered pant belonging to accused. The recovery was allegedly made at his instance from the roof between H.Nos. 1403 and 1396;

(v) the recovery of the key of the lock, which he used for locking the house before escaping;

(vi) the recovery of hammer from the top of wood almirah, from the scene of crime;

(vii) the medical post mortem examination of the five deceased persons. The medical reports show death by head injuries by blunt force on head and face;

(viii) the finger prints of accused matching with the lifted chance finger prints.

12. What is stated by the 24 prosecution witnesses may be narrated how. Here again, since this task is also undertaken by the learned Additional Sessions Judge in the impugned judgment and inevitably so, summation of his analysis of the prosecution witnesses can be reproduced with no fear of mistake as it is not disputed that what these witnesses deposed is correctly reproduced by the learned Additional Sessions Judge (what is disputed is the inferences and conclusions on the analysis of the said evidence).

13. PW-1 is complainant, the brother of the deceased, who lodged the report after finding the dead bodies of family members, on opening the house. PW-2 is relative of deceased's servant Dinesh, who identified his dead body in mortuary. PW-3 is Avdesh Kumar, expert from the Finger Print Bureau. He was given 14 chance prints for comparison. He proved his report Ex. PW3/A. On comparison he found the chance prints mark Q-13, which identified with the right thumb mark, specimen S-1, belonging to accused Tika Ram. PW-4 is relative of the deceased members of the family. He identified the dead bodies of Shri S.P. Sharma, Smt. Shobha Sharma, Punit and Ms. Charu vide receipts Ex.PW 4/A to Ex.PW 4/D. PW-5, Ashok Khanduja, living in Flat No. C-II/ 2352, opposite to the flat of deceased C-1/1396. He identified the servant Tika Ram. PW-6 Vijay Kumar is a car repairer, known to the deceased S.P. Sharma, who found the house locked on 14.1.96, to return the car, which he had taken to repair. He noticed the newspapers of the day

unattended.

PW-7 is Dr. G.K. Chaubey of Safdarjung Hospital. He conducted the post mortem examination of Satya Prakash. He proved his report Ex.PW7/A, in his handwriting, showing different ante-mortem injuries and opined the death due to coma as a result of head injury sufficient to cause death in ordinary course of nature. PW-8 is formal witness who recorded FIR Ex.PW 8/A. PW-9 is another Finger Print Expert, who on 15.1.96 visited the scene of crime, along with ASI Nirmal Singh and police photographer Const. Suraj Mal. He developed 12 chance prints Q-1, Q-2 and Q-3 from outside the steel almirah. Q-4 and Q-5 from inside the locker of the almirah. Q-6a blood print on bed room wall, Q-7 on telephone, Q-8 and Q-9 on another steel almirah and Q-10, Q-11 and Q-12 from TV stabilizer. He proved his report Ex. PW 9/A. He deposed that since bulb of his Omni Print fused, he sent for other photographer of police. Mr. Amar Pal Verma came to the spot with Mini laser, he re-photographed chance prints mark Q-1 to Q-5 and Q-8 to Q-12. He also took photographs of chance prints Q-13 and Q-14. Mr. Amar Pal Verma, gave his report to SHO in his presence. PW-10 is public witness Paramjeet Singh, an interior decorator working in the area pf Vasant Kunj and known to deceased Satya Prakash. He had visited the house on 13.1.96 and on 14.1.96 when he learnt of the unfortunate happening. PW-11 is a formal witness of police, who prepared sketch of the scene of house vide report Ex.PW 11/A. PW-12 is Const. Dev Kumar, a formal witness, who took special report to the area Magistrate, and senior police officers.

PW-13 is Rameshwar Dayal, MHC(M) of P.S. Vasant Kunj on 15.1.96. He proved deposit of 16 sealed packets vide entry in register No. 19. On 18.1.96 he handed over the packets with seal of SKS to SI Diwan Chand vide RC No. 2821, for depositing in FSL, Malviya Nagar. PW 14 is Const. Om Prakash, who accompanied the IO of the case, the SHO, to the scene of crime on getting the message. He described how they entered in the house, by breaking open the door, and what was witnessed by him on the scene of the crime. PW-15, likewise is Head Const, who after receiving the message reached the flat on getting message. He proved the seizure of various belongings of the deceased vide memo Ex.PW 15/A including hammer. PW-16 is photographer of Crime team who

reached at the spot on the night of 14 and 15th January, 1996. He took 23 photographs vide photographs Ex.PW 1-23 with negatives Ex.PW16/24-46. PW-17 is Dr. Arvind Thergaonkar, CMO of Safdarjung Hospital. He proved the post mortem report of Mr. Punit, son of S.P. Sharma, vide report Ex.PW 17/A. He opined death due to carnio cerebral damage consequent upon blunt, sharp and penetrating weapon. He described various injuries observed by him. PW-18 is Dr. A.K. Sharma, CMO of Safdarjung Hospital. He proved the post mortem report of servant Dinesh Gupta, vide report Ex.PW 18/A. He opined death due to head injury by blunt and injuries by sharp weapon.

14. PW-19 is Const. Rupesh Kumar. He on 10.3.96 accompanied SHO Surender Sharma with SI Diwan Chand and Const. Subhash to Nepal border in U.P. for search of accused. He deposed that on 8.4.96, when they were near the Ruparia town near the border, they received secret information about the accused coming to bus stop Ruparia for going to India. He deposed that at about 5.00 p.m. he was apprehended with a red colour bag. He proved his arrest vide memo Ex. PW19/A. In the bag, a jean pant, a leather jacket, a Camera belonging to the deceased were taken into possession vide memo Ex.PW 19/B. He proved disclosure statement of accused as Ex.PW 19/C. They came to Delhi on 9.4.96. Accused led the police party to the common roof of the stairs of flat Nos. 1396 and 1403 and from there got recovered a polythene of white colour containing pant and shirt of green colour. Accused got recovered gold bangles placed in the pocket of the pant. A key was also recovered. These were seized vide memo Ex.PW 1/B and Ex.PW 1/C. The pointing out memo of almirah from the top of which hammer had already been found is proved as Ex.PW 9/B. The Camera is produced as Ex.P-19/1. The leather jacket is proved on production as Ex.PW 19/3. The key was produced as PW 19/4. Leather cover of Camera is Ex.PW 19/2. The three gold bangles recovered are Ex.PW 19/5-7. The shirt and pant are Ex.PW 19/8 and Ex.PW 19/9. PW-20 is Sub-Inspector Sushil Kumar, who was posted on 14.1.96 at P.S.Vasant Kunj. He received information in the P.S., which was recorded vide DD No. 34A. On getting information vide DD No. 35A and DD No. 34A, he accompanied SHO with other officials to the place of crime at C-1/1396, Vasant Kunj. He described the scene and how the blood stains were collected and jewellery of the deceased persons were taken into possession vide memo Ex.PW

15/A. He proved recovery of hammer vide Ex.PW 15/B. PW-21 is another Sub-Inspector Diwan Chand, who had accompanied the IO/SHO to Nepal border. He corroborated the testimony of PW-19. He deposed that on 18.6.96, he deposited 39 sealed parcels in FSL, Malviya Nagar, and on 27.6.96 produced one jacket, Kodak Camera and three gold bangles before Ms. Renu Bhatnagar, learned M.M. for TIP. There is no challenge to the TIP proceedings. PW-22 is Const. Maman Singh, who joined IO for the place of incident and got the post mortem conducted. PW-23 is Magistrate Mrs. Renu Bhatnagar. She proved the TIP proceedings conducted by her on 27.6.96. She deposed that witness Pradeep Kumar rightly identified three bangles, one leather jacket and camera. She proved proceedings Ex.PW 23/B. PW-24 is Insp. S.K. Sharma, who was working as SHO on 14.1.96. He deposed that at 10.30 p.m. a PCR call was received from one Pradeep Sharma that the house of his brother was lying closed. He with other staff reached the place and described how the police entered the house and saw the dead body of five persons. He found the iron almirah broken. He proved Rukka Ex. PW 24/A, sent for registration of FIR. He proved brief facts recorded by him as Ex.PW 24/E. He deposed that Pradeep Kumar informed that Tika Ram servant was found missing. He proved the disclosure statement Ex.PW 19/C. He proved that on 9.4.96, at his instance the key was recovered from the top of H.No. C-1/1396, seized vide Ex.PW 1/C. He proved all other facts.

15. In the statement under Section 313, Cr.P.C., Tika Ram denied most of the allegations made against him in the evidence. Further, as noted above, his case is that he was not in Delhi and was away to Nepal and, therefore, falsely implicated. He has also stated that he was arrested by Nepal police on 28th January, 1996; remained in their custody till 6th March, 1996; was brought to Delhi in the custody on 8th April, 1996.

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