

Sanjeev Puri Vs. State

Sanjeev Puri Vs. State

SooperKanoon Citation : sooperkanoon.com/696828

Court : Delhi

Decided On : Dec-02-1994

Reported in : 57(1995)DLT18

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Evidence Act, 1872](#); [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 124 of 1990

Appellant : Sanjeev Puri

Respondent : State

Advocate for Pet/Ap. : Kapil Sibal,; J.P. Soni,; Manmohan,;

Judgement :

S.D. Pandit, J.

(1) Sanjiv Puri, s/o Krishan Rai Puri resident of C-50, Panchsheel Enclave, New Delhi stands convicted by the Additional Sessions Judge of Delhi in Session's case No. 105/89 on 8th August, 1990 of the offence punishable under Section 302 of the Indian Penal Code and is sentenced to suffer " imprisonment for life and to pay a fine of Rs. 5,000 and in default to undergo R. I. for six months.

(2) The case of the prosecution could be stated as under: Deceased Narender Kumar Garg was a businessman dealing in Chemicals and was having shop bearing name Rajanish Chemical Company in Tilak Bazar of New Delhi. The present appellant Sanjiv Puri is also a dealer in Chemicals and is having his shop at house No. 93, Sector 15-A, Faridabad. It is the claim of the prosecution that the appellant and deceased Narender Kumar Garg were having business dealing. The appellant was a distributor for the Chemicals of Deepak Nitrite Company and therefore, deceased Narender Kumar had transaction with him as he was selling the said Chemical at a cheaper rate. It is a further claim of the prosecution that in February, 1988 there was a strike in the said Deepak Nitrite company and therefore Sanjiv Puri was purchasing some Chemicals from Narender Kumar Garg in order to resell the same to other customer's. It is also claimed that the present appellant was paying amounts of Rs. 75,000 to 80,000 at a time towards his dealing with deceased Narender Kumar Garg. It is further claimed that on 25th June, 1988 the present appellant had given a ring at the shop of the deceased in the evening and at that time witness P.W. 26 Sushal Kumar @ Kalu was present in the shop of the deceased and the exchange of talk on telephone between Narender Kumar and the present appellant was high tempered and there was talk regarding the payment of money.

(3) On 25th June, 1988 deceased Narender Kumar Garg had told inmates of his house that on the next morning he was going to Murad Nagar in order to bring his youngest daughter who had gone to her father's sister place. On 26th June, 1988 in the morning at about 5.30 A.M. there was telephone call at the house of deceased Narender Kumar Garg and that telephone was picked up by Public Witness 14 Manoj Kumar, son of the deceased. That telephone was from Sushil Kumar and he has asked as to whether Narender Kumar was awake. When he was replying in the negative his father got up and came there and thereafter he handed over the receiver to his father. According to him before handing over the receiver the caller had asked him to tell his father to come at Connaught Place instead of Dhaula Kuan. His father had told the said person that he was to go to Murad Nagar and he would go there i.e. at Murad Nagar via Connaught Place. Then on that day deceased Narender Kumar Garg had his lunch and he left the house at about 2.30 P.M. telling his wife that he was going to collect Rs. one lakh

at Connaught I Place from Sushil Kumar and that thereafter he would go to Murad Nagar and return with the daughter in the evening but there was also likelihood of his not returning on that night and they should not be worried. He also collected Rs. 8,000 from his wife and put the same in his brief case and left the house. About 10-15 minutes after he left the house there was again a ring from Sushil Kumar to find out as to whether Narender Kumar Garg left the house. That telephone was picked up by P.W. 15 Poonam, daughter of deceased and she had confirmed on the phone about his leaving the house.

(4) Narender Kumar Garg did not return to his house on the night on 26th June, 1988. He also did not turn up in the morning of 27th June, 1988 and as he did not turn up till noon his wife Public Witness 12 Krishna started making inquiries about her husband. She found that her husband had not gone to Murad Nagar. When she contacted the shop of Narender Kumar she was shocked to know that he had also not gone to his shop. Then she made inquiries with others but the whereabouts of her husband could not be found. therefore, she had called her brother Public Witness 27 Rakesh Kumar and ultimately in the evening of 27th June, 1988 Public Witness 14 Manoj Kumar lodged a complaint with the police regarding the missing of his father.

(5) It is a- case of the prosecution that on 25th June, 1988 at about 5.00 P.M. a ring was given by one Virender to Hotel Kanishka booking a room in the name of Sushil Oswal of Ludhiana with the instructions that said Sushil Oswal of Ludhiana was to reach the hotel in the evening and he would make them necessary payments regarding the booking of room and other things. An entry of the said. booking on telephone was made in the record of the hotel. Then on that evening at about 6.30 a young person of 30- -35 years of age middle' built and of the height of about 5'4' had come to the hotel. He gave his name as Sushil Oswal. He signed the necessary documents including customers card of the said hotel by filling in the same and room No. 411 was allotted to him. On the night of 25th. June 1988 only a glass of water was served to the said customer. On 26th June. 1988 in the late morning two bears, chicken tikka and a plate of potato finger was served in the same room. When the room boy had gone to serve the said things he had found in the said room in all three persons, two male persons and one lady. Then

at about 3.30 P.M. two limca's and a bowl containing ice were served in the said room by Public Witness 8, V. C. Ajayan At that time the door of the room was opened by the deceased and when Public Witness 8 V.C. Ajayan had gone inside he had found one person sited in the room and writing something. Then at about 5.00 P.M. he saw 2/3 persons proceeding towards the lift after coming out of the room No. 411 but as their backs. were towards him he could not see them.

(6) At about 5.30 P.M. Public Witness 8 found smoke in the corridor. He initially thought that it was coming from room No. 405. But on checking that room he found that it was not coming from there. Then he informed the security officer and after the arrival of the security officer and other officers room No. 411 was opened for which they had used master key and at that time it was found that the smoke was coming there from that room. On extinguishing the smoke they found that there was a dead body of a person with half of the body lying on the floor and the head portion of the body lying on the floor was burnt. Thereupon an information was given to the police by Randhir Singh. Dy. Security Officer of Kanishka Hotel. On the information given by the Deputy Security Officer the offence was registered but at that time the identity of the dead body was not found. There was an information of the finding of the said dead body in the local newspaper and then the Public Witness 16 Sushil Kumar Public Witness 27 Rakesh Kumar and Others went to see the dead body and they identified the same as that of Narender Kumar Garg.

(7) After the identification of the dead body the investigation started and the present appellant ^accused was suspected to be the person who had gone in the hotel Kanishka under the name of Sushil Oswal. The customer's card from Hotel Kanishka was seized Along with other article by the police, The appellant was kept. under surveillance from 28th June, 1988 and he was arrested on 29th June, 1988. It is the allegation of the prosecution that after the arrest of him at the time of his personal search a receipt for the payment of Rs. 2,000 issued by Hotel Kanishka was found in the pocket of the present appellant. The specimen hand writing of the appellant was taken and tallied with the hand writing on the customers card maintained by the Kanishka Hotel It was also found that Public Witness 18 Puran Chand son of Khazan Singh, a relation of deceased Narender Kumar Garg had found appellant with deceased's Ambassador car at Morta Bus

Stand on 26th June, 1988 at about 6.30 P.M. The ambassador car of deceased Narender Kumar Garg was also found in abandoned condition on Muradabad Road which was seized by the police of Muradabad by the night of 26th June, 1988. Then the appellant was said to have been identified by the room boy and other persons working in the Kanishka Hotel. P.W. 16 Sushil Kumar. Public Witness 26 Sushil Kumar @ Kalu had stated about the deceased having transactions with the appellant. The shop of the appellant was also searched and account books and Chemical items were also attached from his shop and on the completion of the necessary investigation a charge sheet was sent up against the present appellant for the offence punishable under Section 302 of Indian Penal Code.

(8) The appellant was committed to the court- of sessions as the offence punishable under Section 302 Indian Penal Code is exclusively triable by the court of sessions. A charge was framed against the present appellant on 14th December, 1988. The appellant had pleaded not guilty of the charge. His defense is of total denial and false implication.

(9) In order to prove its case against the present appellant the prosecution had examined 51 witnesses. There is no direct witness to connect the appellant with the offence punishable under Section 302 of the Indian Penal Code. But the learned Additional Sessions Judge found that the prosecution has proved cogent and sufficient circumstances against the present appellant so as to bring home the guilt under Section 302 of Indian Penal Code to the present appellant and therefore he held him guilty under Section 302 of Indian Penal Code and sentenced him to imprisonment for life and to pay a fine of Rs. 5,000 and in default to undergo further R.I. for six months.

(10) Having felt aggrieved by the said decision the appellant has come in appeal before ' us. It is submitted by the learned advocate for the appellant that there is neither circumstantial evidence nor direct evidence against the present appellant and the learned Additional Sessions Judge was not at all justified in holding the appellant guilty of the offence punishable under Section 302 of Indian Penal Code.

(11) There is no dispute of the fact that the present case is a case of circumstantial evidence and that there is no direct evidence against the present appellant to connect him with the offence against him. It is settled law that in a case of circumstantial evidence the circumstances from which the conclusion is to be drawn has not only to be fully established but also that all the circumstances so established should be of conclusive nature and consistent only with the hypothesis of the guilt of the accused though circumstances should not be capable of being explained by any other hypothesis except guilt of the accused and the chain of the offence must be so complete as not to leave any reasonable ground for being consistent with the innocence of the accused. The Supreme Court has considered all the previous judgments of the Supreme Court as well as of other courts in the case of Sharad v. State of Maharashtra : 1984 CriLJ1738 and has laid down the following principles :-

A close analysis of the decisions would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established. (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. (3) the circumstances should be of a conclusive nature and tendency. (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a claim of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. These five golden principles if we may say so constitute the panchsheel of the proof of a case based on circumstantial evidence.

...

(12) The learned advocate for the State Shri P. S. Sharma has cited before us the case of Prabhudayal & Ors. v. State of Maharashtra. : 1993 CriLJ2239 (2) wherein the earlier decision of Supreme Court in the case of State of U.P. v. Dr. Ravinder

Prakash Mittal JT 1992 (2) SC 114 was considered and the principles laid therein regarding the appreciation of circumstantial evidence were reaffirmed in para 34 for proving the guilt of an accused person by circumstantial evidence as under :--

'(1)The circumstances from. which the conclusion is drawn should be fully proved; (2) the circumstances should be conclusive in nature: (3) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence: (4) the circumstances should, to a moral certainty, exclude the possibility of guilt of any person other than. the accused."

(13) therefore, bearing the above principles in mind we proceed to consider the circumstances on which the prosecution is relying.

(14) The prosecution had put reliance on the following circumstances to' prove its case against the present appellant accused-

(1)Deceased Narender Kumar has met with homicidal death. (2) The room No. 411 of Kanishka Hotel where the dead body of deceased Narender Kumar was found on 26th June. 1988 was booked by the present appellant. (3) Deceased had a dealing with the accused. (4) On 26th June. 1988 appellant had given phone calls an the house of the deceased in the morning and in the noon and he had also given ring in the shop of the deceased on 25th June, 1988 in the evening. (5) There is a recovery of the receipt for the payment of the amount of Rs. 2.000 paid to Hotel Kanishka on 25th June, 1988 in the name of Sushil Oswal from the person of appellant accused. (6) The accused was seen driving deceased's ear at about 6.00/6.30 P.M. on 26th June, 1988. (7) Motive to commit the offence.

(15) There is no dispute of the first circumstance namely. deceased Narender Kumar Garg has met with homicidal death on 26th June. 1988.

(16) Evidence on record of Public Witness 31, Dr. Bharat Singh is not at all disputed before us and his opinion that the death of the deceased was homicidal one and it was not natural one is not at all. challenged before us. therefore, in the circumstances there is no difficulty in holding that the prosecution has proved the said circumstance.

(17) It is the claim of the prosecution that room No. 411 of Kanishka' Hotel was booked by the present appellant in the fictitious name of Sushil Oswal on 25th June, 1986 and he was occupying the said room from the Sate evening of 25th June, 1988 till about 5.00 P.M. of 26th June. 1988 In order to prove this circumstance the prosecution has examined the personnel from Kanishka Hotel. Public Witness 1 Hemant Kumar. Public Witness 2 Naresh Uchani, Public Witness 3 V. K. Saxena. Public Witness 4 Mrs. N Ved Kumar. Public Witness 5 Rakesh Bagga. Public Witness 6 Sanjay Kaushik. P.W. 7 N. Bhartan, Public Witness 8 V.C Ajavan. Public Witness 9 Akshay Kumar Sethi, Public Witness 10 Harsh Pal Singh. Public Witness 11 Vinod Kumar and P.W. 13 Randhir Singh. Out of these 12 witnesses the witnesses PW. 1 to Public Witness 5 are not at all material. They are the various office bearers of Kanishka Hotel and they speak about the attachment of certain documents by the police from their Hotel. P.W. 1 Hemant Kumar has testified that one Virender booked the room in the name of Sushil Oswal for three days from 25th June, 1988 to 28th June. 1988 with instructions that the billing would be made by person occupying that room at the time . of his arrival and that he was going to arrive in the evening. He has also deposed that a telephone number for contact was given and it was telephone numb of 32894. Then the evidence of other witnesses shows that on 25th June, 1988 in the evening one person came. He gave his name as Sushil Oswal. He filled in the customer's card and made a deposit of Rs. 2,000 for which a receipt was also handed over to him. But non of these witnesses are claiming or saying that 'bey had seen that person coming in the hotel and none of them is claiming that. the appellant before the court was the same person. Public Witness 7 is working as a room supervisor and he has deposed that on 26th June. 1988 a telephonic order was given to provide drinks. snacks and accordingly the waiter had provided them-

(18) Public Witness 8 V.C. Ajayan. Public Witness 10 Harsh Pal Singh are the room attendants. Public Witness ' 11 Vinod Kumar is a waiter and P.W 13 Randhir Singh is a Deputy Security Officer whereas Public Witness . 9 Akshay Kumar Sethi is a receptionist of Kanishka Hotel. If the evidence of all these witnesses is seen then it would be quite clear that all the witnesses have not identified the present appellant as the person who came in the .Hotel as Sushil Oswal. All of them were treated as hostile witnesses and they were cross examined. But even after their

cross examination except Public Witness 9 Akshay Kumar no other witness identified the accused. But even this Public Witness 9 Akshay Kumar Sethi had earlier refused to accept the claim of the prosecution and to identify (he appellant and only after he was recalled and farther cross examined he has tried to support the prosecution case. But the following material is brought out in his cross examination when he was recalled for his further cross examination :-

'ON the day when my last statement was recorded Along with three more employees of the Hotel had come to court to give evidence. It is correct that the other three employees V- C. Jain. Harsh Pal Singh and Vinod Kumar who had come Along with me on that day in the court were examined as witnesses and later on they were given beatings by the police against which there was a strike in the hotel. It is wrong to say that he identified the accused out of the fear of the police meted out to the above referred three persons. Today I am identifying accused person in the court, as the same guest who had come in the hotel representing himself as Sushil Oswal (The said witness Public Witness 9 Akshay Kumar had earlier deposed that the police had shown him the present appellant and he had clearly told the police that the appellant was not the same person who had come in their Hotel.)

(19) It is an admitted fact that the present appellant is having moustaches and beard. He is also thin. thereforee, in view of these particular position of the appellant if at all the appellant was the person who had entered the Hotel on the evening of 25th June. 1988 then in the first information report of Exhibit P.W 13-A given by Randhir Singh after the police had come in the Hotel on finding the said dead body then in the said statement it would have been clearly mentioned that the customer who had come in the hotel under the name of Sushil Oswal and booked the room No. 411 and who was occupying the said room from the evening of 25th June. 1988 till 5.00 P.M. of 26th. June. 1988 was the person having a heard and moustache. That was the basic description of the person which could have been given in the first information report. But in the first version given about the person was that he was a person aged about 35- 40 years and was well built well built, and there is no mention that the said person was having moustache and beard. The appellant is having , and beard and he is also having a thin. body.

therefore, the said description of the appellant of being a person with thin body and having beard and moustache is not at all seen in the first information report the first version before the police. It is very pertinent to note that Public Witness 8 V.C. Ajayan, Public Witness K) Harsh Pal Singh were the room boys who served the things to said person and they have categorically denied title version of the prosecution that the appellant was the said person.

(20) We have already mentioned that at the time of the booking of the said hotel it was booked by one Shri Virender as deposed by Public Witness I Hemant Kumar The prosecution has not at all tried to find out who was that Virender Kumar and whose telephone number was 32.894. They have not tried to connect the said Virender Kumar and telephone number- with the present appellant. It has further come in the evidence of Public Witness 5 Rakesh Bagga, Front Office Cashier Hotel Kanishka that from the said room No. 411,10 local calls were booked. The Investigating agency had not at all tried or brought on record as to whom those local calls were made.

(21) At the cost of the repetition it must be said that title room attendants Public Witness 8 V. C. Ajayan. Public Witness 10 Harsh Pal Singh and Public Witness . 11 Vinod Kumar had categorically stated in their examination in chief that the appellant was not the person who was there in the hotel. They have also stated that the accused was shown to them by the police and police had asked them to identify him and they had clearly stated to the police that he was not that person. No doubt Public Witness 9, Akshay Kumar Sethi has identified the present accused when he was recalled and further cross examined by prosecutor but in his earlier examination in chief on 3rd March. 1989 he had not identified the present appellant. As per his evidence as well as as per the evidence of other witnesses the appellant was shown by the police and police had told them that he was Sushil Oswal. In the circumstances reliance can not be put on his identification of the appellant when he was recalled for further cross examination by the prosecution. No doubt it is settled law that merely because a witness is turned hostile or is declared hostile by the party calling him as a witness would not deface his evidence and it is open for the court to accept the portion of his evidence if it is supported by other material on record However, his identification of

the appellant as accused is not voluntary one and in view of the first information report given by the Deputy .Security Officer Public Witness 13 Randhir Singh his evidence could not be at all believed and accented 328

(22) The prosecution had attached the customer's card from Kanishka Hotel and the prosecution had also obtained the specimen hand writing from the present appellant. On. the said customer card the name of customer is written in capital letters Sushsil Oswal and there is also a signature. The specimen hand writing of the appellant in capital letters as Sushil Oswal and the signature as appearing in the said customer's card were obtained from the present appellant and the prosecution had sent the customer's card as well as the specimen hand writings to the hand writing expert Public Witness 34. Shri V. K. Khanna. The 'evidence of Public Witness 34 Shri V. K. Khanna shows that the word Sushil Oswal in the capital letters appearing on the said post card was having the common features with the specimen hand writing of those words obtained from the present appellant. But at the same time he has also opined that the signatures appearing en the said customer's card of Kanishka Hotel were not in the hand writing of the present appellant. The Investigating Officer had also attached the bills for payment of the articles served in the room signed by the customer and those signatures are also not proved to be those of the present appellant. thereforee. in the circumstances merely because the capital letter-. Sushil Oswal appearing in the said customer's post card are having common features in the writing of the present appellant, it is very difficult to come to a definite conclusion without any hesitation of mind that the appellant is the writer orf the said customer's card particularly when. the hand writing expert's evidence clearly shows that the signatures on that said card is not in the hand writing of the present appellant.

(23) It must also be mentioned here that the other circumstances on record also clearly indicate and show that the appellant was not the person who had filled in the said customers card. From the material on record it is not possible to hold that he was the customer of Kanishka Hotel who was occupying the room (HI 25th June. 1988. thereforee, these circumstances also do' not permit v.s to accept the hand wilting expert's opinion without any hesitation of mind. thereforee, in view of all the above .circumstances we are not prepared to believe. and accept the hand

writing expert's opinion regarding the common features in the writing of the capital letters in the name of Sushil Oswal and to hold that the appellant was the writer of the same.

(24) As per the evidence of Public Witness 1 Hemant Kumar receptionist of Hotel Kanishka the room No. 411 was boomed by one Shri Virender. It is very surprising to note that the prosecution has not at all tried to locate the said Virender. The investigating officer does not say that he had tried to locate the said Virender and his attempts to locate him had failed. The said 329 person had also given the telephone number and no attempt is made to find out whose that telephone number was. The person who had entered in the said room No. 411 on 25th June, 1988 at about 6.30 P.M. may be himself Virender or may be his servant and in that case by tracing out the said person as well as the telephone number the real person would have been brought to light. But no investigation was carried out on that line. Then it becomes doubtful to accept the claim of the prosecution.

(25) therefore, in all the above considerations we are unable to hold that the prosecution has proved beyond reasonable doubt that room No. 411 of Hotel Kanishka was booked by the present appellant and that he was occupying the same from 25th June, 1988 till the evening of 26th June, 1988.

(26) We take circumstance numbers three and seven for our consideration together as they are interlinked. It is the claim of the prosecution that the present appellant had dealings with the deceased Narender Kumar Garg. It is further claim of the prosecution that deceased Narender Kumar was to get an amount of Rs. One lakh on the day of incident from Sushil Kumar and that payment has motivated him to commit the offence in question. In order to prove the said claim the prosecution is relying on the evidence of Public Witness 12 Krishna, widow of the deceased, P.W. 14 Manoj Kumar, son of the deceased, Public Witness 15 Poonam, daughter of the deceased, Public Witness 16 Sushil Kumar son of Suraj, Bhan and Public Witness 26 Sushil Kumar @Kalu. According to all these witnesses deceased Narender Kumar Garg had dealing with one Sushil Kumar Pun and according to them the said Sushil Puri is the appellant before us. It has come in the evidence of Public Witness . 16 Sushil Kumar and Public Witness . 26

Sushil Kumar @ Kaiu that deceased was purchasing nitrite as appellant was the distributor of Deepak Nitrite at Delhi. It is the claim of the said witnesses that initially Narender Kumar Garg had purchased the said Chemical from Sushil Puri and subsequently as the said Deepak Nitrite Company had a strike Sushil Kumar was purchasing the same from Narender Kumar Garg. The investigating Officer had raided the shop of the present appellant and had seized from his shop his account books. Though the prosecution had seized his account books the prosecution has not pointed out any entries in the account books to show that the deceased had dealing with the present appellant. It must be remembered that it is the claim of the witness Public Witness . 16 Sushil Kumar that the turn overs and transaction between the parties were. running in thousands of rupees and according to him he had seen Sanjiv Puri paying Rs. 75,000 to 80,000 at a time. It is also the claim of the prosecution that on the day erf the incident Narender Kumar was to get Rs. One lakh from Sanjiv Puri. But in respect of this the prosecution is not in a position to point out any entry from the account book seized from the shop of the present appellant to show a dealing between the appellant and the deceased. Not only the prosecution has not proved any entries in the account books of the appellant but the prosecution had not also produced any entries in the account books of the. deceased to show that in fact deceased had dealings with the present appellant. It is very pertinent to note that Public Witness . 16 had dealing in purchasing Chemicals with the present appellant. According to him he had made purchases Along with Narender Garg and he was in a position to produce the cash memos of his own dealing. But it is really surprising that no documents regarding the dealings of the appellant with the deceased are coming forth.

(27) It is also very pertinent to note that about the dealing of the Narender Garg with the present appellant and about the accused having contacts with the deceased no facts were brought to the light till 28th June, 1988. Though the prosecution is now trying to say that the appellant was the Sushil Puri who was having dealing with Narender Garg, that claim of the prosecution could not be accepted in view of the material on record. It has come in the evidence of Public Witness . 14 Manoj Kumar that his father had a business dealings with one person of Ferozabad and one person of Ludhiana and the person from Ludhiana was

Sanjiv Puri. He had also further deposed in his examination in chief that he had seen the said person Sanjiv Puri of Ludhiana on 2-3 occasions and he would be in a position to point out the same. But he was not in a position to point out the present appellant as the same Sanjiv , who had dealings with his father. The learned Additional Sessions Judge has noted that the said witness has made the statement that the person from , Ludhiana who had dealing with his father was not present in court after seeing all the persons including the accused. It has further come in the evidence of said Manoj Kumar that. in his father's shop besides his father there were two other persons working. One was Mr. Tiwari and one was Ms. Rishi. In the i natural course of conduct if at all there were any dealings between the appellant Sanjiv Puri and deceased Narender Garg then the appellant Sanjiv Puri must be visiting his shop and he would have been known to his employees- Mr. Tiwari and Ms. Rishi. thereforee, they would have been the best persons to come forward and depose that appellant was the person who had dealing with deceased Narender Garg and that those dealings were worth thousands of rupees. But unfortunately for prosecution none of them is coming forth to say so.

(28) The investigating officer has attached and seized a diary belonging to the present appellant in which he had the names, addresses and telephone numbers of various persons. It is the claim of Public Witness . 12 Krishna. Public Witness . 14, Manoj Kumar and Public Witness . 15 Poonam that they used to receive telephonic call from the Sanjiv Puri at the residence of deceased Narender Garg. If the appellant Sanjiv Puri was the same Sanjiv Puri who according to the witnesses used to give telephonic call at the residence of Narender Garg then in his diary there would have been the name, address and telephone number of the deceased but the prosecution has not made such a claim during the trial.

(29) It must be further mentioned here that now it has been tried to develop by the prosecution that on the day i.e. on 26th June, 1988 when the deceased Narender Kumar Garg had left his house he had told his wife that he was going to meet Sanjiv Puri near Connaught Place and he was to get an amount of Rs. one lakh. Initially Public Witness . 12 Krishna, widow of Narender Garg had deposed that her husband had taken Rs. 8,000 from her while leaving the house. In the natural course of conduct if he was going to Connaught Place to collect the amount of Rs.

one lakh and when it was Sunday, a holiday she would have questioned her husband as to why he wanted Rs. 8,000 from her when he was to get Rs. one lakh from Sanjiv Puri at Connaught Place. It is not at all probable that he asked her to give him Rs. 8,000 and she would have also paid him Rs. 8,000 if in fact he was to get the amount of Rs one lakh after a few minutes as claimed by the prosecution.

(30) Narender Garg left the house telling his wife that he was going to Connaught Place to meet Sanjiv Puri and he was to get an amount, of Rs. one lakh and he would return home with his youngest daughter in the evening and in any case on the morning of 27th June, 1988. Admittedly Narender Garg did not return to his home on 26th June, 1988. He also did not turn up on the morning of 27th June, 1988. That worried P. W. 12 Krishna and his son and daughter and they started making inquiries about Narender Garg. After they have failed to trace him out Public Witness . 12 Krishna' had called her brother Public Witness . 27 Rakesh Kumar and with the help of Public Witness . 27 Rakesh Kumar P. W. 14 Manoj Kumar went to the police in the evening of 27th June. 1988 and lodged a complaint about missing of his father. In the said missing report there is no reference of the fact that appellant was to go to Connaught Place and there he was to contact Sanjiv Puri and to get an amount of Rs. one lakh. In the natural course of human conduct if this story that he was to go to Connaught Place to meet Sanjiv Puri and to get an amount of Rs. one lakh was true and genuine one then definitely that fact would have also been mentioned in the missing report. It is also very surprising to note that when deceased Narender Kumar Garg had left the house in. order to meet Sanjiv Puri and that as per their claim Sanjiv Pun had given rings in the house in the morning and in the noon of June 26, 1988 then they would have tried to contact Sanjiv Puri in order to trace the deceased but none of them is making a statement on oath that an attempt to that effect is made by any one of them. This is really surprising. It only indicates that no such event must have taken place. It is not at all believable and acceptable that Public Witness . 12 Krishn will forget to disclose this incident to her brother Public Witness . 27 Rakesh Kumar and the said incident could not be mentioned in the missing complaint. It seems that this claim is a- got up story created subsequently to suit the prosecution claim against the present appellant.

(31./32.) therefore, in view of all the above discussions we are unable to hold that the deceased Narender Garg had dealings with the present appellant and that the appellant was to pay him Rs. one lakh on the day of incident and the money dealing has motivated him to commit the offence in question.

(33) It is the claim of the prosecution that on 26th June, 1988 in the morning Sanjiv Puri had given a ring at the house of Narender Garg and he had asked Narender Garg to meet him at Connaught Place instead of Dhaula Kuan. The evidence regarding his telephone is that of Public Witness .14 Manoj Kumar and Public Witness . 15 Poonam but the evidence of both these witnesses is inconsistent. According to Manoj Kumar the telephone had come at 5.30 A.M. where according to Poonam it had come at 7.00 A.M. It is not probable that if at all said Sanjeev Pun wanted to finish Narender Garg he will give the telephonic calls at his residence in order to create an evidence against himself. As regards the second call the version is that the second call was given after Narender Kumar had left his house in order to Verify as to whether he had left the house or not. That claim does not seem to be probable and acceptable. As per the evidence of Public Witness . 26 he had contacted Garg in the previous evening, i.e. on 25th June. 1988. He had talked with Garg in the morning of 26th June, 1988. therefore, it is not at all probable that he would again try to contact him and verify as to whether he had left the house or not by giving ring at his residence. therefore, that claim of the prosecution could not be believed and accepted. Thus that circumstance on which the prosecution is relying could not also be believed and accepted.

(34) Next circumstance on which the. prosecution is relying is the recovery of the receipt for payment of Rs. 2,000/- issued by Kanishka Hotel on 25th June, 1988.

(35) The investigating officer PW51 has deposed in his examination in chief as under :-

'I arrested the accused Sajiv.v Puri present in court on 29th June. 1988. On taking his personal search I recovered a purse containing the receipt Ex. Public Witness 6/8 in the name of Sushil Oswal regarding deposit of ^s. 2,000.00 issued by Kanishka Hotel and some other documents i.e. cards etc. T separately seized receipt vide memo Public Witness .21/8.'

(36) Before that he has deposed in his examination in chief as under :-

'I kept police team comprising of S. T. Roshan Lal. S. I. Subhash Tandon and Asi Mangev Ram for keeping watch over the house of Sanjiv Puri C-150 Panchsheel Enclave. I sent this team at about 7.30 P.M. on 28-6-1988. I myself went C.150 Panchsheel Enclave at about 8.00 p.m. and I found the staff sent by me present there and keeping watch over the friends of the house of accused. They told me that Sanjiv Puri was present in the house and I went inside the house and I interrogated accused Sanjiv Puri who was present inside the house regarding his movement on 25/26-6-1988 and that accused Sanjiv Puri is today present in the court.

(THE deposition is quoted by us in verbatim and grammatical mistakes may not be taken into consideration as they are existing in the original statement.)

(37) Thus the investigating officer's evidence clearly shows that he kept the accused under surveillance from 28th June, 1988. As a matter of fact it is the claim of the accused that he was taken away from his house on 28th June, 1988. Apart from it as per the evidence of the investigating officer he had interrogated the accused at about 8.00 P.M. on 28th June, 1988 and he wants us to believe that the accused had kept the document in question on his person till he was arrested on 29th June, 1988 in the late evening. It is not at all probable that when he was kept under surveillance and when he was interrogated by the investigating officer he would keep the said document in his custody and particularly on his person when he was arrested on 29th June, 1988.

(38) The above quoted testimony of the investigating officer shows that the said receipt was found by him in the leather purse of the appellant but the recovery panchnama prepared by the prosecution Ex. Public Witness 21 /A is mentioning and showing as under:-

IN the presence of the witnesses mentioned hereinafter, one receipt issued by Hotel Kanishka. bearing No. 129839, in the sum of Rupees Two thousand has been recovered from the upper pocket of the shirt of Shri Sanjeev Puri son of Shri K.R. Puri resident of C-150 Panchsheel Enclave, New Delhi. The said receipt has

been taken into police possession by ^ means of this memo. The memo has been prepared.'

(39) Then there is most surprising and shocking thing in this recovery memo is that for this recovery memo the panch witness PW21 is the police constable Jagat Singh of the-same police station which was investigating the said offence. We are repeatedly coming across panchnama prepared by the police, in Delhi by taking the panch witness from the constabulary working under the investigating officer. This preparation of the panchnama with the help of the notice constable as panch witness is totally improper. It must be remembered that the discovery panchnama and the panchnama for seizure of incriminating articles are most important pieces of evidence in a criminal investigation and if they go out of consideration because of lapses of the investigating officer then that act of investigating officer is highly condemnable. A senior police officer cannot be allowed to say that his act in preparing a discovery panchnama of the incriminating article with the help of taking a subordinate constable as a panch witness should be accepted by the court. To ensure fair investigation it is necessary that at the time of recovering any incriminating piece of evidence or arresting a particular accused, sincere efforts must be made to join some independent public person as witness. In the instant case though the investigating officer had deposed that the alleged receipt was in the leather purse which was in the pocket of his trouser, the recovery memo or panchnama is prepared to show that it was found in the pocket of his shirt and that could be done by him only by taking police constable as panch witness. The police must discontinue this improper practice of preparing panchnamas with the help of police constables only. In this case there is another memo of attaching the account books from the shops of the present appellant Ex. Public Witness 22/A which is also prepared by taking two police constables as panch witnesses. Those two police constables are of the same police station which is investigating the case and the panchnama was prepared at Faridabad without giving any information to the police of Faridabad and without taking any witness from the adjoining shops of the locality. It is ' most unfortunate that the learned counsel for the state tried to support these activities of the police in not joining any public person as a panch witnesses by saying that there is nothing improper in it. 'Therefore, we are constrained to make above observations deprecating this practice of the police.

Thus the claim - of the prosecution that there was a recovery of this receipt from the accused for depositing Rs. 2,000.00 with Kanishka Hotel also could not be believed or accepted.

(40) The last circumstance on which the prosecution is relying is that Public Witness . 18 Puran Chand son of Khazan Singh had seen the present accused at about 6.30 P.M. on 26th June, 1988 at Morta Bus Stand at Ghaziabad on Meerut Road. This witness Puran Chand had deposed that deceased Narender Kumar Garg was the son of his maternal uncle and Narender Kumar Garg used to visit his house frequently. He has further claimed that he was frequently visiting Tri Nagar at the residence of Narender Kumar Garg and he was visiting there at least 6-7 times in a year because of this he claims that he was knowing the deceased and the car of the deceased. He had seen the present appellant driving the same car on 26th June, 1988 at about 6.0016.30 P.M. It is very pertinent to note that he had identified the accused as the driver of the car for the first time in the court. It is his story that when he was standing at Morta Bus Stand the said ambassador car came on that road. The car stopped at a distance of 50 yards ahead of him. Then the person in the car got down and opened the dicky. He changed the tyre by taking out the stepney as it was punctured and then he came towards the bus stand in order to wash his hands and thereforee he could see him. It is a claim of the prosecution that the said car of the deceased was abandoned at that place only. If that was abandoned at that place it is not at all probable that the person abandoning the said car will try to change the punctured tyre and thereby make himself available for being identified and located by the persons passing by that road or near about that road. It is very pertinent to note that when the said car was seized it is nowhere mentioned that the stepney of the car was found in punctured condition.

(41) Apart from all these things the widow of deceased Narender Garg gives a fatal blow to the claim of this witness. P.W. 12 Krishna had deposed in her cross examination as under :-

'I do not know whether we have a relation by the name of Puran Chand at Murad Nagar. I do not know any one by the name of Puran Chand son of Shri Khazan

Singh r/o Kishan Mandi, Murad Nagar.'

(42) If the above evidence of the widow is taken into consideration then the claim of this witness that deceased Narender Kumar Garg was son of his material uncle and Narender Garg was visiting his house frequently and he was also frequently visiting Narender Garg's house in Tri Nagar could not be believed and accepted at all. It seems that the man is a got up witness and he come forward to give a false story about seeing the appellant with the said car on that evening. thereforee that circumstance alleged by the prosecution could not be believed and accepted.

(43) The learned trial court has observed that the prosecution has also proved that the accused had taken interest in the investigation and he was keeping a close watch on investigation through his friend Rajesh and that is also a circumstance going against the present accused that would be quite clear from para 78 (x-xviii) which runs as under :-

'THAT friend of accused named Rajesh met the Captain of Panorma Restaurant of Kanishka Hotel, Shri Rajesh Kumar (P.W. 50) on 28-6-88 to know about the progress of investigation. This shows the interest evinced by the accused in the murder of the deceased.'

(44) I however, it appears that the trial court has not all read the evidence of Public Witness . 50 Rakesh Kumar. It seems than trial court has taken into consideration the statement of the witnesses recorded under Section 161 as a part of evidence. The evidence of Public Witness . 50 Rakesh Kumar clearly shows that he has not a. ail supported the claim of the prosecution. In his examination in chief he has no where stated that his friend Rajesh was a friend of the present appellant or that appellant was known to him. No doubt he was cross examined by the Additional Public Prosecutor by declaring him hostile on the strength of the statement under Section 161 hut it is very pertinent to note that .none of the statements recorded under Section 161 are accepted by the said witness in his cross examination by the learned Additional Public Prosecutor. Thus his evidence does not show at all what the learned Additional Sessions Judge has found at the time of his judgment,

(45) The trial court has also taken into consideration one more circumstance as going against the present appellant and that circumstance is regarding the non participation of the present appellant in identification parade. But if the material on record is considered then it would be quite clear that no adverse inference could be drawn against the present appellant for non-participating in the identification parade. Prosecution has examined P.W. 43 Shri Brijesh Sethi. Metropolitan Magistrate. His evidence shows that accused was produced before him on 29th June, 1988 and on 29th June. 1988 accused did not participate in the identification parade and on 30-6-1988 i.e. on the next day when the accused was brought before him the accused had. refused to take part in the identification parade by saying as under :-

'THE accused had stated that on 28-6-1988 at about 5.15 P.M. some persons in civil dress had taken him to P. S. Connaught Place stating that his statement was to be recorded where number of people had come and they were told that he was Sanjiv Puri. He further stated that he was also taken to Kanishka Hotel and shown to number of waiters and that they had also photographed him and his face was covered only when he was brought to the police station yesterday.'

(46) Even if the statements of the prosecution witnesses recorded under Section 161 of the Code of Criminal Procedure of P W. 8 V. C. Ajayan. P. W. 9 Akshay Kumar Sethi. P. W. 10 Harsh Pal Singh , P. W. 11 Vinod Kumar and others are per used, who were cross examined by the learned Additional Public Prosecutor then it would be quite clear that the accused was shown to them by taking Sum to Kanishka Hotel on 28th June.1988. therefore, in the circumstances, the accused was quite justified in refusing to take part in identification parade as he was already shown to prosecution witnesses. Consequently no adverse inference could be drawn against the appellant for non participation in the identification parade.

(47) It has come in evidence that the finger prints were detected and taken by finger print experts from the Limca bottle and glasses found in room No. 411 of Hotel Kanishka and finger prints were also taken from the mirror of Ambassador car belonging to deceased and which was found abandoned. Investigating officer

Public Witness . 51 Si Virender has clearly stated that finger prints found on the car are not of the accused. He has not stated as what was the result of the finger prints found on Limca bottles and glasses. But one thing is quite clear that they are not found to be those of the accused. This circumstance regarding non finding of accused finger prints on car and on items in room No. 411 makes the prosecution against the accused unbelievable.

(48) Thus the above discussion clearly shows that the prosecution has failed to prove any of the circumstances against the present appellant. Thus there, is no circumstantial evidence against the present appellant to connect him with the offence alleged against him. The order of conviction and sentence passed by the trial court is -not at all justified as there is absolutely no evidence against the present appellant. We thereforee, hold that the present appeal will have to be allowed. The order of conviction and sentence passed by the trial court will have to be set aside.

(49) Thus we allow the present appeal. The order of conviction and sentence passed against the present appellant by the trial court is set aside. The appellant be set at liberty forthwith. His bail bond stands cancelled.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com