

Hari Kishore Vs. State

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)981; 1996CriLJ2540; 62(1996)DLT100

Judge : P.K. Bahri and; Mohd. Sharnim, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 96 of 1992

Appellant : Hari Kishore

Respondent : State

Advocate for Pet/Ap. : S.R. Goel and; H.S. Ahluwalia, Advs

Judgement :

P.K. Bahn, J.

(1) The appellant, Hari Kishore, has been convicted of an offence punishable under Section 302 I.P.C. of having committed the murder of one Babu Lal during the intervening night of March 15 and 16, 1987 in House No. CPA/14, New Seelam Pur, Delhi by an Additional Sessions Judge, Delhi vide his judgment dated February 25, 1992 and has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 500.00 and in default of payment of fine to undergo rigorous imprisonment for two months vide separate order of the even date. He

has filed this appeal challenging his conviction and the sentence.

(2) Babu Lal, deceased was employed as sweeper in Municipal Corporation of Delhi and so was his wife Shanti Devi, PW-1. They were living with their five children including son Prakash, PW-6 aged about 17 years in the aforesaid house. The house comprised of only one room and a Courtyard. The entrance to the house could be had easily even though the doors of the Courtyard and the room were to be bolted from inside. It has come out in evidence that the doors could be opened by pushing the hand from outside in between the gaps of the planks of the doors.

(3) It is the case of the prosecution that Babu Lal had been under suspension for quite a few years prior to the occurrence and was earning his livelihood by performing the work of a labourer somehow. Babu Lal was addicted to various vices including taking drugs. The appellant, who was living in the neighbourhood, was stated to be enjoying the drugs and drinks frequently in the company of Babu Lal at the house of Babu Lal.

(4) The prosecution story proceeds that it was a Holiday on 15th March, 1987 and a bon-fire had been lit by Babu Lal and his family outside their house and Holi reveries were being indulged in by the family members and Shanti Devi, who was also used to consuming liquor at least on festivals, had imbibed herself with liquor and was dancing around the bon-fire along with other ladies.

(5) Hari Kishore, appellant, is also stated to have joined in that dance which continued till midnight and thereafter Babu Lal and his family entered their house for sleeping. Babu Lal and his family slept on the floor. Babu Lal was sleeping 2 ft. away from the door of the room and thereafter his children were sleeping and at is stated to be kept on in the room in the night, she noticed appellant and objected to his coming in the room in this manner and meanwhile Babu Lal also awakened and in order to stop Babu Lal from saying anything, the appellant is stated to have gagged him with his one hand and with the other hand, the appellant had slit the throat of Babu Lal with a razor and in the process he also caused injury to the index finger of his own left hand with which he was gagging Babu Lal.

(6) It is the case of the prosecution that the appellant then held out threat to Shanti Devi and her son Prakash, who had also meanwhile awakened and had seen his father being killed by the appellant, uttering the words that he would stab to death if any noise was to be raised and thereafter the appellant is stated to have washed his blood stained hands in a bucket full of water lying nearby and after promising Shanti Devi that he would marry her and take care of her children if she were not to raise any alarm and implicate the appellant, the appellant is stated to have left the spot.

(7) The nephew of Babu Lai namely Virender Kumar, PW-9, residing in the neighbourhood, had seen the appellant coming out of the house of Babu Lal at about 2.30 a.m. and going towards his own house while Virender Kumar was returning after attending Holi celebration in the neighbouring area.

(8) It is only in the morning at about 7 a.m. that Shanti Devi informed PW-4, Sohan Lal, real brother of Babu Lal, who is also resident in the vicinity and Sohan Lal, PW-4, then got in touch with Pradhan Ishwar Singh and Virender Kumar and the Police Control Room was informed.

(9) The Police Control Room had given an information at 7.20 a.m. on the 16th March, 1987 to Police Station Seelam Pur, which was recorded at Daily Diary Seriall No. 3-A about a person being murdered in CPA/14, New Seelam Pur, Main Road. S.I. Chander Pal Singh, PW-2, accompanied by Constable Shiv Kumar, being deputed to inquire into the matter, had reached the place of occurrence. The statement of Virender Kumar was recorded which is Ex.PW-9/A, on the basis of which the case was registered vide F.I.R. No. 128/87 at Police Station Seelam Pur as per copy of the F.I.R, Ex.PW-3/A at 9.15 A.M. The copy of the F.I.R. shows that it was received by the Metropolitan Magistrate at 1 p.m. at his residence.

(10) PW-25 Surjeet Singh, then working as Inspector Seelam Pur, had also reached the spot soon after the information had been received at the Police Station along with A.S.I. Swam Singh, PW-8, accompanied by other staff and he had summoned the photographer as well as Dog Squad. The dog named 'Prince' had picked up the smell from the spot and had pointed out to the appellant, who was present in the crowd and was bleeding from his index finger.

(11) The appellant was interrogated and he made a disclosure statement, Ex.PW-9/B and in pursuance to the disclosure statement, he got recovered a blood stained blade of the razor from a drain after digging out the earth . After preparing appellant then is stated to have got recovered the wooden handle of the razor which stood concealed near a wheel of a cart, the same being Ex.P-9 which was again taken into possession after converting the same into sealed cover vide memo, Ex.PW-7/A.

(12) The appellant was stated to be wearing a Pyjama which also had some blood stains, although it appeared to have been washed, which is Ex.P-7 and the same was also taken into possession vide memo, Ex.PW-9/H. From the place of occurrence, blood stained mat, some Durries, Ex.P-1 to P-3, were taken into possession vide memo, Ex.PW-9/B. The bucket contained the water in which appellant is stated to have washed his hands was also taken into possession which is Ex.P-4. The said coloured water was also put into three bottles which were sealed and taken into possession vide memo, Ex.PW-9/C.

(13) The inquest report, Ex.PW-9/J was prepared along with brief facts, Ex.PW-25/C, the statements of the witnesses who identified the dead body were also recorded which are Ex.PW-25/D. An application for post-mortem, Ex.PW-22/B was also prepared and the dead body was sent for post mortem. The seized razor was also sent for opinion of the doctor who was to perform the post mortem. The appellant was having injury on his index finger of the left hand and he was sent for medical examination vide application, Ex.PW-25/F.

(14) Dr. L.T. Ramani, PW-22 had performed the post mortem on the 17th March, 1987 and he found an incised wound present transversely on the left cheek, margins being regular. He also found a cut throat injury present around upper part of the neck at the level of thyroid cartilage. He found all major blood vessels cut. He found semi-digested food material present and he opined that injuries were antemortem caused by sharp edged weapon and was possible by the razor sent by police. He found that time of death was about 36 hours. The clothes of the deceased and the sample blood of the deceased were sealed and were handed over to the police. The post-mortem report, Ex.PW-22/A was prepared by him.

(15) DR.A.K.VERMA, PW-23, had examined the appellant at about 4.35 p.m. on the 16th March, 1987 and had found a clean incised injury over the left index finger middle phalanx. He also took the sample blood of the appellant and duly sealed it and gave the report, Ex.PW-23/A and opined that the injury on person of the appellant was possible with a razor.

(16) Virender Kumar and Ramesh Kumar, PW-20, were present when the appellant was interrogated and had made the disclosure statement. They had also signed the disclosure statement. They also had witnessed the recovery memo, Ex.PW-9/B by which the blood stained articles were taken into possession from the place of occurrence. At the time the blade of the razor was got recovered by the appellant, another witness Mohd. Saleem, PW-19, besides Virender Kumar and Ramesh Kumar, was also present and had signed recovery memo, Ex.PW-9/E. They have also signed the sketch of the blade of the razor, Ex.PW-9/F. Mohd. Saleem, TejPal, PW-7, Virender Kumar and Ramesh Kumar were present at the time the handle of the razor was recovered. They had signed the recovery memo, Ex.PW- 7/A.

(17) MOHD. Saleem, Virender Kumar and Ramesh Kumar had witnessed the recovery of the blood stained shirt and had signed the recovery memo, Ex.PW-9/ G. Virender Kumar and Ramesh Kumar had signed the recovery memo, Ex.PW-9/ He regarding the taking into possession of the blood stained Pyjama of the appellant. They had also signed the recovery memo, Ex.PW-9/C by which the said bucket and the water contained in that bucket were taken into possession.

(18) The case property was sent to C.F.S.L. and the reports, Ex. Px and Py were received which indicate that human blood of 'o' group was found on the clothes of the deceased and also on the articles recovered from the place of occurrence like jute carpet and Durries and was also present on the handle and blade of the razor and also on the shirt and Pyjama of the appellant. The appellant's blood is of 'B' group.

(19) The learned Additional Sessions Judge has brought home the offence to the appellant on the basis of the evidence, as mentioned above. There are two eye witnesses to the occurrence namely Shanti Devi and her son Prakash.

(20) It is contended that the house where the alleged murder had taken place is located in a thickly populated area and it is highly improbable that no independent witnesses could be joined by the police who could have witnessed the occurrence. It is to be remembered that the murder had taken place in the midnight and most natural witnesses of the occurrence could be only the normal inhabitants of the house and obviously the close family members of the deceased namely Shanti Devi and Prakash, his widow and the son, could be the most natural witnesses in this case. It is evident that the evidence of relation witnesses could not be rejected merely on the basis of relationship. The Court is only put on its guard to make a deeper probe and scrutinize the evidence with more than ordinary care and precaution before accepting the eye witness account of relation witnesses. (See Arjun & Others v. State of Rajasthan, : 1995 CriLJ410).

(21) It has been urged that there has been unusual and unexplainable delay in recording the F.I.R. inasmuch as PW-1 Shanti Devi and PW-6 Prakash, who allegedly had witnessed the dastardly murder of their close relation, rather their bread winner, had remained inactive for about 4 to 5 hours which is not a normal human conduct.

(22) It is true that in the present case Shanti Devi and Prakash had not acted in a prompt manner by raising hue and cry at the time Babu Lal was being murdered and also not raising any alarm after the appellant had made his escape after committing the ghastly crime.

(23) It is to be also remembered that Shanti Devi had consumed liquor admittedly during the previous night and there is evidence of Virender Kumar, a close relation of deceased, which shows that perhaps Shanti Devi was having some sort of illicit relationship with the appellant. It may be due to this reason that Shanti' Devi did not immediately raise any alarm or it is also possible that out of fear of appellant or out of some hope for the future that appellant might look after her that Shanti Devi remained inactive for 3/4 hours and did not even allow her grown-up son Prakash to move out of the house till morning.

(24) It is evident that even the police was not very much sure about the position of Shanti Devi viz a viz the crime in question inasmuch as the police had not based

the F.I.R. on the statement of Shanti Devi but on the statement of Virender Kumar who actually was not an eye witness. Normally, the police would like to have the eye witness, if possible, as the author of the F.I.R. The police had some suspicion about Shanti Devi and thus later on police had got recorded the statement of Shanti Devi under Section 164 of the Criminal Procedure Code from a Magistrate as well. That conduct of the police indicates that police was not sure about the testimony of Shanti Devi at the initial stages.

(25) It is also evident from the sketch of the place of occurrence prepared by the Investigating Officer that in that sketch, Ex.PW-25/B, the Investigating Officer had not shown the position of the eye witnesses at the time the occurrence had allegedly taken place. Be as it may, Shanti Devi, PW-1 has, in Court, narrated the facts as have been noticed by us while mentioning about the prosecution case and in crossexamination, the suggestion given on behalf of the appellant is that Shanti Devi was of loose character and many persons were having some sort of illicit relations with her and have been visiting her even during nights and one of the said persons is Yusuf and she along with Yusuf had got killed Babu Lal and had falsely implicated the appellant. These suggestions have been controverted by Shanti Devi. There is no material or evidence available on record from which any inference could be drawn that Shanti Devi was of loose character and was having affairs with different persons. The only evidence which has come on the record is that this appellant was having illicit affairs with Shanti Devi and that has been affirmed by Virender Kumar, witness. The appellant has denied having any sort of relationship either with Babu Lal or Shanti Devi. He has denied that he used to have drinking sessions with Babu Lal and used to consume various drugs together.

(26) We do not think that there is any reason for Shanti Devi to falsely implicate the appellant when there was no enmity between the appellant and the family of Shanti Devi. It is not possible to believe that Shanti Devi has concocted this version of appellant visiting her house quite frequently for consuming drugs in company of her husband.

(27) We have gone through the statement of Shanti Devi and we find that her statement has a ring of truth and it is not possible to discredit her testimony solely on the ground that for three or four hours after the occurrence, she did not try to inform anyone. It was middle of the night when the occurrence took place and she and her son had been held out grave threats by the appellant and during the Holi evening, Shanti Devi had consumed liquor and may be she was in some stupor that she did not immediately react to the murder of her husband and in her wisdom did not ask even her son to go out of the house for informing the neighbours.

(28) At least Prakash, PW-6, son of the deceased has no reason whatsoever to toe the line of his mother for implicating the appellant for the murder of his father unless the occurrence had happened in the manner stated by him and Shanti Devi. He has denied that any other person had been visiting the house or was having any sort of illicit relations with his mother. He frankly admitted that his mother was addicted to having liquor frequently and appellant and his father used to consume drugs like 'charas' and 'ganja' and also used to take liquor frequently and appellant also some time along with his father took the meal together after consuming liquor and the drugs. He has also deposed that the appellant was almost coming daily to their house and some time after taking liquor he and his father used to quarrel. He also deposed that her mother used to ask the appellant not to visit her house but appellant continued to come to the house and enjoy the company of his father in taking drugs, etc. He deposed that the appellant had held out threat to his life and thus, he had not raised any alarm.

(29) It is urged before us that appellant's left hand was paralytic and thus the story given by PW-1 and PW-6 that he had gagged Babu Lal's mouth with his left hand is not credible. We do not find any evidence to show that left hand of the appellant is so much incapacitated that he could not use the same for gagging Babu Lal's mouth. We find that there was an injury on the index finger of the left hand of the appellant when appellant was arrested. He was questioned about the said injury under Section 313 of the Criminal Procedure Code, but he has completely denied even the existence of such injury which fact stands duly proved from the testimony of the doctor who had examined the appellant on the day the appellant was arrested. So, the statements of PW-1 and PW-6 that in the course of stabbing by

the appellant, the appellant himself also received injury on his left hand finger stands duly corroborated.

(30) Apart from these eye witnesses in the present case, we have enough evidence to show that it is the appellant who perpetrated this crime as it is the appellant who got recovered the weapon of offence and also blood stained clothes worn by him at the time of the occurrence which had the blood of deceased on them as per reports of the C.F.S.L.

(31) PW-4, Sohan Lal, brother of the deceased, corroborated the testimony of PW-I and PW-6 to this extent that at about 7 in the morning he was told about the occurrence by Shanti Devi and he immediately contacted Pradhan Ishwar Singh and also Virender Kumar and then the police was informed. Ishwar Singh, PW-5, has also made a similar statement.

(32) Asi Swam Singh, PW-8, was the handler of the dog 'Prince' who was brought on the spot and he deposed that after smelling at the spot, the dog took a round in the vicinity and appellant, who was present in the crowd collected in the lane, was picked up by the dog.

(33) It is not possible to believe the appellant that he had not been visiting the house of the deceased as at least the dog had picked up the smell of appellant and picked him up from the crowd which itself indicates that the appellant must have been present in the house of the deceased on some occasion. It gives support to the statement of PW-I and PW-6 that the appellant has been visiting their house which fact has not been admitted by the appellant when he was examined under Section 313 of the Criminal Procedure Code.

(34) PW-9, Virender Kumar, who is also residing in the vicinity and was related to the deceased in brotherhood, deposed that the appellant and Babu Lal used to consume drugs, etc. together and appellant has been visiting the house of Babu Lal in this connection frequently and he had objected to his visit and had told Babu Lal number of times not to allow appellant to come to his house as there was some suspicion that he was having illicit relations with Shanti Devi. He deposed that on the day of Holi, Shanti had taken liquor and she had danced around the

Holi bon fire and appellant had also joined in the said Holi revelries at that time and after Babu Lal had taken his wife Shanti inside the house, he himself had left to watch Holi celebrations at another place at some distance and when he was returning to his house at about 2/3 a.m. in the night, he saw appellant coming out of the house of Babu Lal and going away. He did not talk with him as he knew that appellant had been a frequent visitor to the house of Babu Lal earlier also and it is in the morning that he came to know about the murder of Babu Lal and then the police was informed. It is on his statement that F.I.R. was registered.

(35) He also deposed that in his presence, the appellant, who was apprehended by the police, was interrogated who made a disclosure statement and got recovered the incriminating articles. In cross-examination of this witness it was suggested to him that Babu Lal was in habit of taking drugs and liquor in company of some other persons as well which fact was denied by him. He denied that Shanti Devi was of loose character and was having any illicit affairs with any Nanhe, tea vendor, or any Yusuf. At least there is no enmity between this witness and the appellant. He had no reason to falsely implicate the appellant for the murder of his uncle. He has narrated the facts as were known to him. He does not claim to be an eye witness of the occurrence. He gives corroboration to the prosecution case only to this extent that appellant was in the habit of consuming drugs and liquor in the company Babu Lal at the house of Babu Lal and on the crucial day, the appellant had also danced around the Holi bon fire along with Shanti Devi till late night and had seen the appellant coming out of the house of deceased and then he has proved the disclosure statement made by the appellant and the recovery of incriminating articles affected at the instance of the appellant.

(36) If in case the appellant was not involved in the dastardly murder of his uncle, this witness had no reason to falsely implicate this appellant because there has been no enmity between him and the appellant. No suggestion had been given even in cross-examination that this witness has any motive to falsely implicate the appellant. The suggestion given is that it is Shanti Devi who was having some illicit relations with some other persons which fact was brought to the notice of Babu Lal by the appellant and she had got rid of her husband and had falsely implicated the appellant which suggestion, of course, has been denied by this witness. In case

the appellant was not involved in the murder of Babu Lal, there was no reason for this witness to toe the line of Shanti Devi because he was related to Babu Lal and would be more concerned that the real culprit who committed the murder of Babu Lal should be brought to book than to help Shanti Devi in any fabrication of case against the appellant.

(37) MOHD.SALEEM,PW-19, who is also a resident of the same area deposed that appellant got recovered the blade of the razor which was blood stained, after came out of his cross-examination which would show that this witness had any motive to falsely hoist these incriminating articles on the appellant. As a journalist, he admits that he had been visiting the office of Dcp and Acp for collecting the news but we do not think that this professional activity of this witness would lead him to become a tool in the hands of the police. The witness is residing in the same locality and there is nothing unusual that he has come forward to become a witness when the recoveries were being affected by the police. We have no hesitation in relying upon his statement which is also duly corroborated by the statements of other witnesses namely Virender Kumar and Ramesh Kumar besides the police officials.

(38) PW-20, Ramesh Kumar also is a witness regarding the disclosure statement made by the appellant and the recoveries affected at the instance of the appellant. He is also resident of the same area. He has also no axe of his own to grind by becoming any false witness at the behest of the police. Admittedly, he has no animus against the appellant. No such suggestion has been given even in his cross- examination.

(39) PW-21, S.I.Prakash Chand and PW-25, Surjeet Singh, S.H.O, have also deposed regarding all these incriminating facts against the appellant. These police officers also appear to have no axe of their own to grind by falsely implicating the appellant. They have carried out the investigation promptly when the report was received regarding the murder. They have joined the public witnesses when the appellant was apprehended and was interrogated and then when the recoveries were affected at the instance of the appellant.

(40) The post-mortem report clearly shows that Babu Lal died on account of cut throat injury received by him which was possible by the use of the razor in question.

(41) The ocular testimony of PW-1 and PW-6 which stands duly corroborated with the evidence of recovery of incriminating articles at the instance of the appellant, in our view, clearly proves that it is the appellant alone who had committed the murder of Babu Lal during that night. The charge has been brought home to the appellant beyond any reasonable doubt.

(42) The learned Counsel for the appellant pointed out that in the present case the fine of Rs. 500.00 ought not to have been imposed in addition to the sentence of life imprisonment as appellant is a poor person and is not in a position to pay the fine. He has referred to Chandrawati v. State, : 60(1995)DLT573 where it was held that heavy sentence of fine is not called for along with the life sentence if the offender is not capable of paying the fine. In the said case, we find that fine of Rs. 10,000.00 had been imposed. In the present case, only a petty fine of Rs. 500.00 has been imposed. So, it cannot be said that any excessive heavy fine has been imposed on the appellant.

(43) Section 302 of the Indian Penal Code lays down as follows :-

'WHO EVER commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine.'

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This Section makes it clear that along with the sentence of death or imprisonment for life, the Court is legally bound to impose a fine as well. It is the settled law that the quantum of fine should be commensurate with the capacity of the accused to pay the same. So, we agree that no excessive fine should be imposed under Section 302 Indian Penal Code . while sentencing a particular accused for life imprisonment or imposing a death penalty. However, some fine has to be imposed which is mandatory to be imposed in view of the clear wording of Section 302. So, imposition of Rs. 500.00 as fine in the present case is in order as the amount is

not excessive. We maintain the conviction and the sentence of the appellant and dismiss the appeal.

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