

Anil Kumar Vs. State

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Court : Delhi

Decided On : Feb-07-1996

Reported in : 1996IAD(Delhi)665; 1996CriLJ2491

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

Acts : Arms Act - Sections 27

Appeal No. : Criminal Appeal No. 17 of 1991

Appellant : Anil Kumar

Respondent : State

Advocate for Pet/Ap. : Meena Chaudhary and; S.K.Agarwal, Advs

Judgement :

Mohd. Shamim, J.

(1) This appeal has been preferred by one Anil Kumar against the judgment and order dated 10-12-90 and 12-12-90 passed by an Additional Sessions Judge Delhi whereby he sentenced him to undergo for life under section 302 of Indian Penal Code. He was further sentenced to undergo rigorous imprisonment for five years with a fine of Rs. 10,000.00 U/s 449 of the Indian Penal Code. In case of default of payment: of fine to RI for a period of two years. He was also sentenced to RI for two years under Section 27 of the Arms Act. All the sentences were to run

concurrently. The other two co-accused persons known as Prem Kumar and Kaushalya were acquitted of all the charges leveled against them.

(2) The case of the prosecution as adumbrated in the Fir, Ex. PW8/A statement of Public Witness Rajinder (Ex. Public Witness 8/B) and various other documents placed on record is under : that the deceased Amar Singh along with his wife and children was in occupation of House No. 2942, Street No. 17-A, Kailash Nagar, Gandhi Nagar, Delhi. One of the rooms of the said house was in possession of one Rajinder Public Witness / 8. During the intervening night of 25 /26th February, 1986. Sh. Rajinder was alone in his room as his wife had gone to see and meet one of her relations. The wife of Sh. Amar Singh (hereinafter referred to as the deceased), Public Witness 1 Smt. Ram Rati raised an alarm at near about 2.30 Sm. On hearing the same, he immediately came out of his room and found her standing at the door of a room 'A-I'. He saw a person, running from the room of Smt. Ram Rati Public Witness I towards the roof of the house through the stair case. On entering the room,he saw the deceased in a pool of blood. The deceased was wearing a banyan and underwear at that time. The same were soaked with blood. On being asked Pwi Ram Rati told him that the person, who had fled, was the assailant who stabbed her husband. He left Public Witness I Ram Rati at the aforesaid house and set out for the police station along with Rati Ram and Radhey Lal brothers of Ram Rati to lodge a report with the police station Gandhi Nagar The above statement of Public Witness 8 Rajinder was recorded at Seriall No. 25-A dated 25/26-2-86 of the daily diary vide Ex. Public Witness 8 IB. On the basis of the above statement of Public Witness Rajinder. a case U/s 302 Indian Penal Code was registered vide Fir Ex. PW8/A. '

(3) A copy of the F.I.R. was sent to Shri S. K. Rathi, FW18 through Constable Jagdish Lal, who was entrusted with the job of investigation. Consequently, he arrived at the spot. He prepared an inquest report vide Ex. Public Witness 18/A. He seized from the spot one guilt, a bed sheet, a carpet, two gunny bags and a muffler vide Ex. PW14/A. Blood was also lifted from the place of occurrence and was taken into possession vide Ex. Public Witness 14/B. A site plan of the place of incident was prepared vide Ex. Public Witness 13/C. The dead body was sent. for purposes of post mortem. Dr. L. T. Ramani, Public Witness 17, conducted the

autopsy on the dead body. His report is Ex. Public Witness 17/D. He recorded the statements of the prosecution witnesses. He arrested the accused Anil Kumar and Prem Kumar vide Ex. Public Witness 5/G and Ex. Public Witness 5'H. Smt. Kaushalya was arrested from her house vide Ex. PW15/A. All the articles were sent to Cfsi for Chemical analysis. The results of the said analysis are Ex. Public Witness 18/J & Public Witness 18/K. A site plan of the place of occurrence was got prepared vide Ex. Public Witness 7/F. After completing all the formalities a charge sheet was submitted before the concerned Magistrate against the accused persons including all mentioned herein. Since the learned Magistrate was of the view that the alleged offence under Section 302 of the Indian Penal Code was exclusively triable by the Court of Sessions, he thus committed all the accused persons to the Court of Sessions for trial.

(4) The learned Additional Sessions Judge was of the view that there was prima facie case against the accused persons under Sections 302/120B/449 of the Indian Penal Code. They thus, were charged under the said Sections of the Indian Penal Code. A separate charge under Section 27 of the Arms Act was framed against the appellant herein.

(5) The learned Sessions Judge after the appraisal of the evidence on record found accused Prem Kumar and Kaushalya not guilty of the offences with which they were charged and as such acquitted both of them. However, he was of the view that the prosecution has proved the guilt against the appellant beyond any shadow of doubt under Sections 302 and 449 of the Indian Penal Code and under Section 27 of the Arms Act. He thus sentenced him to various terms of imprisonment, alluded to above.

(6) Aggrieved and dissatisfied with the above judgment and order, the appellant has approached this Court.

(7) Learned counsel for the appellant M/s.Meena Chaudhary, while submitting evidence on the evidence led by the prosecution, has vehemently contended that there was absolutely no evidence worth the name on record to warrant a finding of conviction. It is all the more so, in view of the fact that two other co-accused persons namely, Prem Kumar and Kaushalya Devi have been acquitted vide the

impugned judgment and order. The only witness who has deposed to against the appellant is Smt. Ram Rati, Public Witness 1 Admittedly, she is the wife of the deceased and thus a highly interested witness in securing a finding of conviction against the appellant. Thus her testimony is not even worth the paper on which it has been recorded. She has further urged that there was absolutely no motive on the part of the appellant herein to kill the deceased. The appellant herein is completely a stranger. He is not inimically disposed towards the deceased. In any case, no motive has been shown by the prosecution as to why the appellant killed the deceased

(8) Learned Standing Counsel, Mr. S. K. Aggarwal has urged to the contrary..

(9) It is in the statement of Public Witness I Smt Ram Rati that she was sleeping during the intervening night of 25/26th February, 1986 Along with her husband on the same cot in her house The door of the room was open at that time. The appellant Anil, entered the room and stabbed the deceased on the chest with a knife. She raised an alarm whereupon Public Witness 2 Raider rushed to the room.

(10) The learned counsel has contended that. there was no other evidence except the above statement of Smt. Ram Rati who is admittedly the wife of the deceased and thus a highly interested witness. Hence there is absolutely no reason whatsoever, as to why her statement should be relied upon. This is all the more so when the other ocular witness i.e. Public Witness 2 Rajinder who is alleged to have seen the appellant has not at all supported the case of the prosecution on any point and has turned hostile.

(11) We are sorry we are unable to agree with the contention of the learned counsel for the appellant. This is not the correct position of the law. The statement of a witness cannot be discarded and ignored simply because he happens to be a relation of the deceased. The relations of the deceased are the most natural witnesses inasmuch as man is a gregarious being. He lives and is expected to live in the company of his relations and friends. Thus if some calamity befalls a man, naturally it would be his or her relations only who would witness the same. Admittedly, there is no dispute with regard to the fact that the deceased was

murdered during the intervening night of 25/26th February, 1986. The murder is alleged to have been committed at 2.00 a.m. in the night. Thus who could have been the other witness other than the wife of the deceased at such an odd hour of the night. Thus we are of the view that Public Witness 1 Smt. Ram Rati is the most natural witness in the circumstances of the case. Her testimony as such cannot be ignored and discarded simply because she happens to be the wife of the deceased.

(12) The above view which we are taking finds support from the observations of their Lordships of the Supreme Court as deposited in *State of Uttar Pradesh v. Ranjha Ram and Others*, : 1986 CriLJ1906 'The remaining three witnesses are no doubt the sons of the deceased, but it is needless to say that their evidence does not lose credibility on that score. Their evidence has only to be scrutinised with greater care in order to find out whether it suffers from embellishments or exaggerations due to interestedness. The high court has unfortunately failed to judge the evidence of Pws 1, 6 and 7 by this well accepted standard'.

(13) The above view was again reiterated in *State of Uttar Pradesh v. Pheru Singh*. : AIR 1989 SC1205 We are tempted here to cite a few lines from the said judgment. 'These two witnesses are highly interested witnesses but nonetheless their testimony cannot be rejected on the ground of interestedness because if such an incident took place inside the house of Bhargava as spoken by PWs 2 and 8 only the inmates of the house i.e. Public Witnesses 2 and 8 would be the proper witnesses'.

(14) The learned counsel has been contended that appellant is an altogether stranger to the deceased It is not the case of the prosecution that the appellant was inimically disposed towards the deceased. He neither stood to gain anything by the murder of the deceased nor stood to lose anything if the deceased was allowed to live on this terra firma. The learned counsel has thus submitted that there was no motive whatsoever absolutely on the part of the appellant to have done away with the deceased. The argument of the learned counsel is an ingenious one but does not hold any water.

(15) Admittely, our penal law is a codified law. Each offence has been defined therein with meticulous care and caution. Thus if the Court comes to the conclusion that if a particular offence falls within the domain of a particular Section the Court need not look any further thereafter. It would be sheer wastage of time and an 'exercise in futility to search for a motive in such a case.

(16) The above view was given vent to by their Lordships of the Supreme Court as reported in *Rajinder Kumar and others v. State of Punjab*, : 1966 CriLJ960 ...'What motive Rajinder Kumar to commit this dastardly deed is not clear. The strained relations between Tonny's father Ravinder on the one hand and Rajinder on the other because the former had asked Rajinder to stop his visits as mentioned in the first circumstance specified above does not explain his action. Let us assume, however, that even this evidence of strained relations had not been given. That can be no reason for doubting the evidence, as regards the other circumstances that has been adduced or for hesitating to draw the inescapable conclusion from them. The motive behind a crime is a relevant fact of which evidence can be given. The absence of a motive is also a circumstance which is relevant for assessing the evidence. The circumstances which have been intentioned above as proving the guilt of the accused Rajinder are however not weakened at all by this fact that the motive has not been established. It often happens that only the culprit himself knows v. hat moved him to a certain course of action. This case appears to be one like that'.

(17) To the same effect are also the observations of the Hon'ble Supreme Court as reported in *Gurucharan Singh and another v. State of Punjab* : 1956 CriLJ827 . "Where the positive evidence against the aroused is clear, cogent and reliable, the question of motive is of no importance'.

(18) The next contention put forward by the learned counsel for the apnellant is that the weapon of offence ill the instant case is alleged to have been recovered at the instance of the appellant vide his disclosure statement dated February 27. 1986 (Ex. Public Witness 6/A), however there is no mention in the said disclosure statement as to where the dagger was hidden, thereMore, the disclosure statement. is conspicuously silent with regard to the place of recovery. Thus the

said disclosure statement is a suspicious sort of document and as such not worthy of placing reliance. To our mind, the appellant cannot be allowed to draw any benefit out of the same in view of the fact that the prosecution has placed on record a pointing out memo (vide EX. Public Witness 5/E) wherein it is clearly mentioned that the appellant hid the same near a pit in Ajit Nagar near Railway line. To the same effect is the statement of Public Witness 15 Hc Ramesh Chand who has stated in unequivocal terms that the appellant got the two daggers (Ex. P12 and Ex. P13) recovered from the above said place. The same were taken into police custody vide memo Ex. Public Witness 5/E.

(19) The learned counsel for the appellant has pointed out certain contradictions and inconsistencies in the statements of the prosecution witnesses. In this connection she has led us through the statement of Public Witness 5 ASa Ram Pat who has deposed to the fact that there was earth on the blade of the daggers Ex. P12 and Ex. P13 at the time of the recovery of the same at the instance of the appellant, whereas there is no such mention in the statement of Public Witness 5 Hc Ramesh Chand. The learned counsel on the basis of the said contradictions wants us to disbelieve and discard the prosecution version with regard to the recovery of the daggers at the instance of the appellant. We are unable to accept the contention of the learned counsel. Human memory admittedly is very short and fleeting. Every thing sinks into oblivion with the passage of time. Ergo as a corollary whereof recall becomes difficult or in any case selective. Every event as soon as it has happened soon starts fading in the memory. Thus such types of contradictions and inconsistencies are bound to screen in with the passage of time and as such much importance cannot be attached to them unless there are certain contradictions which go to the root of the matter.

(20) It has then been urged for and on behalf of the appellant that the appellant at no stage of the investigation was asked to keep his face muffled and was shown to the witnesses. Consequently the appellant refused to join the identification parade, and rightly so. The prosecution has not led any documentary or oral evidence to show and prove that the appellant was ever directed to keep his face covered.

(21) The contention of the learned counsel we fee¹ is without any merit. An application for identification Parade was moved by Public Witness -18 Inspector S. K. Rathi before the learned magistrate on February 28 1986 (vide Ex Public Witness -18/H) A nerusa¹ of the order on the margin of the said application reveals that the accused was produced before the learned Magistrate with his face muffled Thus it does not lie in the mouth of the learned counsel to argue that the appellant was not Kent with his face his face muffled till he refused to join the identification parade, Admittedly Public Witness -18 Inspector Ratni applied to the learned Magistrate for holding a test identification parade as is fully manifest from Ex. FW-18/H. The learned Magistrate thereupon fixed a date for test identification parole which was to be held on March 3, 1986. The accused for the best reasons known to him did not join the test identification parade and declined to join the same on the ground that he has been shown, to the witnesses in the police station. Thus an adverse inference is liable to be drawn against the appellant ill favor of the prosecution that had he joined the test identification parade he would have been identified by the prosecution witnesses. In the above circumstances we feel that the onus was on the appellant to substantiate his assertion that he did not join the test identification parade as he had been shown to the witnesses, However there is no such evidence on record to substantiate the contention of the appellant.

(22) It would be worthwhile over here to cite in extenso the observations of their Lordships of the Supreme Court as reported in Ramanathan v. The State of Tamil Nadu, : 1978 CriLJ1137 . . . 'Where there was satisfactory evidence to prove that at least two of the witnesses emphatically claimed from the very beginning of the incident that they had noticed the culprit and had in fact described him and had claimed that they could identify him, the holding of a test identification parade was absolutely necessary. The fact that such a parade was held within two days of the arrest of the appellant, and was held by a Judicial Magistrate with all the necessary precautions and arrangements could leave no room for doubt that the evidence of the test identification was of considerable importance. The appellant knew about that evidence from the date the parade was held, and if he wanted to demolish it, it was for him to do so by effective cross-examination of the witnesses and/or by examining his own witnesses in rebuttal. As the appellant had not

succeeded in doing so, it was futile to contend that this important piece of evidence should be rejected merely because the prosecution had not led any evidence to prove that the appellant was kept 'ba parda' .

(23) It is manifest from above that the two daggers alluded to above i.e. the weapons of offence were recovered at the instance of the appellant. The same were found stained with blood. Public Witness -18 Inspector S. K. Rathi has averred to that effect. He has further stated that he seized from the place of occurrence a quilt (Ex. P-1), a bad sheet (Ex. P-2). a pillow (Ex. P-3). two gunny bags (Ex. U-4) and (Ex. P-5), a small carpet (Ex. P-6) and a muffler (Ex. P-7) which is alleged to have been left by the appellant. The same were taken into police custody vide memo Ex. Public Witness -14/A. According to his statement the appellant at the time of his arrest was wearing a pant and a shirt which were stained with blood. The same were taken off from his person and were seized vide? Ex PW5/H. the same were sent to the CfsI for Chemical analysis. The report of the Serologist dated April 9, 1986 is Ex. Public Witness 18/K. The pant and the shirt were found to be stained with human blood of Group A. Admittedly, the blood of the deceased is of Group A. Thus, the shirt and the pant which the appellant was wearing were found to have been smeared with the said blood. Even the dagger was found to have stains of the above said Hood. There is absolutely no Explanation whatsoever as to under what circumstances the appellant got his clothes smeared with the blood of the deceased. In the aforesaid circumstances we find no merit in the present appeal. Consequently, the same is hereby dismissed.

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