

Ghisa Lal Vs. State

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Court : Delhi

Decided On : Dec-01-1995

Reported in : 1995IVAD(Delhi)1021; 1995(35)DRJ692

Judge : P.K. Bahri and; J.B. Goel, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 61 of 1992

Appellant : Ghisa Lal

Respondent : State

Advocate for Pet/Ap. : Sunil Sethi and; O.P. Faizi, Advs

Judgement :

P.K. Bahri, J.

(1) Appellant, Ghisa Lal, S/o Hazari, r/o Village Sanod, Police Station Nasirabad, Distt.Ajmer, Rajasthan has been convicted of an offence punishable under Section 302 Indian Penal Code . for having committed the murder of Jeewan, resident of the same village some time on June 12, 1987 in a room in House No.TA/213, Tughlakabad Extension, within the jurisdiction of Police Station Kalkaji, New Delhi vide judgment dated January 13, 1992 of an Additional Sessions Judge, New

Delhi and vide subsequent order dated January 15, 1992, he has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.100.00 and in default of payment of fine, to further undergo simple imprisonment for two months. He has filed this appeal challenging his conviction and the sentence.

(2) The story of the prosecution, in brief, is that the deceased and the appellant, who were residents of the same village, had come over to Delhi so as to work as labourers in a quarry of stones some time on 10th June 1987 and deceased had been given Rs.3,000.00 by Ram Dan, PW-6 of the same village. Both of them had approached PW-1, Om Prakash Jain and his wife PW-4 Smt. Shakuntala Jain for hiring accommodation and they were given one room in their house No.TA-213/A, Tughlakabad Extension on the rental of Rs.100.00 per mensem. They were asked to pay advance of Rs.100.00 as rent which they did not pay on the ground that they would first earn some money and would take some allowance from the contractor and they shall then pay the advance rent.

(3) The story of the prosecution further proceeds that both of them were seen by PW-1 and PW-4 living in that room till the morning of June 13, 1987 when the appellant was seen leaving the house at 5.30 or 5.45 A.M. after he had locked the room where they were living as tenants. After a day or two, foul smell started emanating from the said room which was also brought to the notice of the landlord by the neighbours and at first no attention was paid by the landlord and his wife regarding the said foul smell as they thought that perhaps smell was coming as some animal might have died nearby. But the intensity of the smell increased and on June 16, 1987, Sh.Om Prakash Jain went to the Police Post Govind Puri and lodged a report which was recorded at Serial No.31, copy of which is Ex.PW1/F.

(4) S.I. Dalbir Singh, PW-20, who was working as in charge of the said Police Post, then had reached the spot along with Constables Raj Kumar and Shiv Charan and on finding the foul smell coming from the aforesaid room in the said house, the room was forcibly opened and dead body was found lying there which turned to be the dead body of Jeewan.

(5) It may be mentioned that deceased and appellant had introduced themselves in their fictitious names as Deva and Harji. The dead body was lying in a pool of

blood. The police lifted Ex.P-10, a blood stained hammer from the spot, which was converted into sealed parcel vide memo ex.PW1/E. The lock which was found on the door of the room which was pushed open was also taken into possession vide Memo, Ex.PW1/D after it was converted into a sealed parcel and Ex.P-9 being the said lock. A pair of chappals, Ex.PW18/1-2 and one blood stained kurta, P-1, one blood stained pant, P-2, one blood stained safari shirt, P-3, another blood stained nylon shirt, P-4 and a blood stained pant, P-5, were also converted into sealed parcel and taken into possession vide memo, Ex.PW1/A. One diary, P-7, in which a photograph P-6 was lying which was of appellant, were also taken into possession from that room. The blood sample and earth sample were also lifted from that spot.

(6) On the statement of Sh.Om Prakash Jain, Ex.PW-16/A, the case was registered vide F.I.R. No.288 at 10.20 A.M. on June 16, 1987. The dead body was got identified from the residents of the said village on 21st June 1987 when they were informed and they had come to Delhi. Those witnesses have been examined as PW-2 Pokhar, PW-6 Ram Dan and PW-7 Ram Dhan.

(7) The post-mortem on the dead body was performed by Dr.M.S.Sagar, PW-10 who found a fracture on right temporal bone and found extradural hematoma over right temporal occipital, region of size 5 cms x 5 cms x 1 cm and he found the injury to be ante mortem and opined that the death was due to coma as a result of the head injury produced by blunt force and time since death was opined to be seven days. Ex.PW-10/A is post-mortem report. He has preserved the blood sample and viscera and clothes of the deceased.

(8) On 17th August 1987, S.I.Surgian Singh of Police Station Saudala in District Jaipur had found appellant and Amre quarreling between themselves near Kachhi Basti Saudala and on query, Amre had told him that the appellant had murdered his brother. He brought both of them to the police post and he recorded the daily diary report, copy of which is Ex.PW-19/B and he had sent the message to Police Station Kalkaji on telephone and on being told that appellant was wanted in this murder case, he arrested the appellant vide PW-19/A.

(9) It is the case of the prosecution that appellant was met by Amre, PW-18, brother of the deceased and in presence of Ramesh Chand, PW-16, another resident of the same village, the appellant had made an extra judicial confession of his having murdered Jeewan, brother of Amre, in Delhi.

(10) Si Dalbir Singh, on receiving the information about the arrest of the appellant, had reached Police Station Saudala on 18th August 1987 along with Sh.Om Prakash Jain, PW-1 and on interrogation, in presence of Amre, Ramesh Chand and Om Prakash Jain, the appellant is stated to have made a disclosure statement, Ex.PW-1/9 that he had kept the dhoti and the key of the lock of the said room in his house which he could point out and get recovered and thereafter the accused was arrested by him and produced before the Magistrate at Jaipur and a police remand was taken and on August 20, 1987, accused is stated to have led the police party along with the said witnesses and got recovered the dhoti from the 'tand' and a key from a awning (aala) in the wall of his room which are Ex.P-11 and P-12 which were converted into sealed parcel vide memo, Ex.PW-1/H. The case property was got sent to CfsI and the reports, Ex.PW20/H, J, & M were received to the effect that the said key could operate the said lock.

(11) The learned Additional sessions Judge has brought home the offence to the appellant on the basis of the following pieces of circumstantial evidence:-

i) THAT the deceased was advanced Rs.3000.00 on 9.6.87 by Ram Dan PW6 before he left Sanod for Delhi and that money was not found on the person of the deceased on 16.6.87 by S.I.Dalbir Singh, PW20; ii) That the accused and the deceased took on rent from Om Prakash Jain PW1 and Smt.Shakuntala Jain PW4 one room on a monthly rent of Rs.100.00 on 10.6.87; that both of them were seen together by PWs 1 and 4 up to 12.6.87 and further that PW1 saw the accused leaving all alone on the morning of 13.6.87 after locking the tenanted room and since then, he was absconding till he was arrested by Si Surgian Singh on 18.8.87; iii) That the passport size photograph Ex.P-6 of the accused was recovered from one of the pants lying inside the tenanted room on 16.6.87 by S.I.Dalbir Singh; iv) That the accused got recovered key Ex.P-12 from his house in Village Sanod with which lock placed on the tenanted room Ex.P-9 could be

operated as proved by CfsI report, Ex.PW-20/J; and v)Lastly that the accused made extra judicial confession of his having committed the murder of Jeewan before his brother Amre, PW8 at the jhuggi on 17.8.87.

(12) It is well settled that in case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused and should be of conclusive nature and tendency and they should be such as to exclude every hypothesis but that of guilt. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. (See Hanumant Govind Nargundkar Vs . State of Madhya Pradesh, : 1953 CriLJ129 ; Ram Avtar Vs . State, : 1985 CriLJ1865 and State of U.P. Vs . Dr.Ravindra Prakash Mittal, : 1992 CriLJ3693

(13) The Supreme Court has also, in case of State of U.P. Vs . Ashok Kumar Srivastava, : [1992]1SCR37 , has held that although the rule that cumulative effects of all facts established must be consistent only with the hypothesis of guilt. It does not mean that prosecution must meet any and every hypothesis put by accused.

(14) It is also laid down by the Supreme Court in State (Delhi Admn.) Vs . Gulzarilal Tandon, : 1979 CriLJ1057 that in cases where the case of the prosecution rests purely on circumstantial evidence, motive undoubtedly plays an important role in order to tilt the scale against the accused and the accused can be convicted on circumstantial evidence only if the circumstances are wholly inconsistent with the innocence of the accused.

(15) We have to now, at first, see whether the Additional Sessions Judge was right in coming to the conclusion that the aforesaid circumstances relied upon by him for bringing home the offence to the appellant stood proved on the record or not.
Circumstance NO.(i)

(16) PW-6, Ram Dan, resident of the same village as the deceased and the appellant, had deposed that he had given the deceased Rs.3,000.00 in presence of villagers namely Ram Dhan, Ram Dev and Ram Kishan and deceased had told at time that he was now to go to Delhi to earn his livelihood. The witness had not supported the prosecution on some other points which found mention in his statement under Section 161 with which he was duly confronted, one of the points being that he had seen appellant and the deceased leaving together from the village on 9th June 1987. But his testimony that before the deceased left the village for coming to Delhi for earning his livelihood, he had given the deceased Rs.3,000.00 has not been challenged by the accused in cross- examination.

(17) May be that other persons named by this witness, in whose presence he had given Rs.3,000.00 to deceased, had also turned hostile on some of the points but PW-7, Ram Dhan did support the prosecution that after deceased had received Rs.3,000.00 from Ram Dan, deceased had left the village on 9th June 1987. He was hostile only in respect of the fact told by him to the police that even the appellant had left along with the deceased for coming to Delhi on that particular day. So, this fact amply stood proved that deceased had been given Rs.3,000.00 when he came to Delhi and this amount was not found on his person or in the room where he lived after coming to Delhi. So, this particular circumstance stands proved. Circumstances NO.(ii) & (iii)

(18) Om Prakash Jain, PW-1 and Smt.Shakuntala Jain, PW-4 have deposed that both the deceased and the appellant came together and hired the room from them at the rental of Rs.100.00 per mensem and despite demand no advance was given and both of them lived in that room from 10th June 1987 till June 13, 1987, although both of them had not given their real names but had given their assumed names. It is significant to mention that photograph of the appellant was also recovered from that room when dead body of the deceased was discovered. In cross-examination of Om Prakash Jain, at one place, it was suggested that the appellant and the deceased had not brought any hammer at the time of their first visit to them. This suggestion gives clear inference that the testimony of the witness that both of them had come and hired the room on rent on that particular day has not been challenged. Rather, no suggestion had been given in cross-

examination of PW-1 that in fact these two persons had not taken on rent the said room and had not lived there from June 10, 1987 till June 13, 1987.

(19) In Court, in his statement under Section 313, the appellant had denied all the facts appearing against him and has come up with the plea that he had been falsely implicated so that the police could solve the blind murder. It was suggested to Om Prakash Jain in cross-examination that in fact he and his wife had quarreled with the deceased and thereafter his wife had caught hold of the deceased and he had given hammer blow on the head of the deceased. This suggestion, of course, was denied by the witness and we have no material on the record to show that there could be any suspicion against PW-1 and his wife for the murder of Jeewan. Mere fact that PW-1 and his wife had not insisted upon having the advance rent before giving the possession of the room does not lead to any inference that there could be any serious quarrel about the payment of advance rent later on which could motivate PW-1 and his wife to kill Jeewan. It is pertinent to mention that it is Om Prakash Jain who had gone to the police station to lodge the report when the foul smell had increased in intensity on June 16, 1987.

(20) It has been urged before us that there were other tenants living in the said house, yet no other person had been examined to prove that in fact appellant and deceased had hired the room in that house of PW-1 and had lived together in that room for that relevant period. There is nothing to show that other tenants had given any statements to the police at any time that they had the knowledge about the facts of this case, so mere non-examination of the persons who had perhaps no knowledge of the facts is not fatal to the case of the prosecution.

(21) PW-4, Shakuntala Jain, has also given a convincing statement about the said room being let out to the deceased and the appellant and both of them living together in that room till June 13, 1987. Nothing came out from examination of these two witnesses which could show that they have any reason to falsely implicate the appellant by making out any false story.

(22) It has been urged before us that in case deceased had Rs.3,000.00 with him, as is the case of the prosecution, there could be no reason for the deceased not to have shelled out Rs.100.00 as advance rent. It is apparent from the facts that

both, appellant and deceased, had taken the room jointly and they assured PW-1 and PW-4 that they would pay the advance rent after they take some employment with the contractor in the stone quarry and after they had received some advance from the said contractor. Many days had not passed that PW-1 and PW-4 could have pressed upon the appellant and the deceased to give advance rent of Rs.100.00 . The deceased might have thought of not making any payment from his Rs.3,000.00 if he could avoid making payment on behalf of the appellant till some amount could be obtained by both of them from their employer. So, mere fact that deceased had Rs.3,000.00 would not mean that the statement given by PW-1 and PW-4 that the advance rent was not paid is incredible in any manner. When we find that photograph of the appellant was also discovered from the room itself and the deceased was also found in that very room, these facts give corroboration to the statements of PW-1 and PW-4 that room was given on rent to both of them on 10th June 1987 at the rent of Rs.100.00 per mensem and both of them had lived there till the morning of June 13, 1987.

(23) It is stated by PW-1 that he had seen the appellant leaving the said room after locking it from outside on the morning of June 13, 1987. It has been urged before us that this fact has not been incorporated in the First Information Report given by the witness to the police. It is true that PW-1, who knew about this fact, had not disclosed the said fact in his First Information Report but law does not require that each and every fact pertaining to a particular occurrence should find mention in the F.I.R. It is not the case of the defense that soon after registration of the F.I.R, PW-1 had not disclosed this fact to the police in his supplementary statement recorded on that very day. So, the omission to mention this crucial fact in the F.I.R, in our view, is not sufficient to hold that this fact is not to be considered proved from the statement of PW-1. PW-1 and PW-4 are both independent witnesses. They have no axe of their own to grind for deposing any false facts. There is nothing unusual that PW-1 had seen appellant leaving the room after locking the same from outside on the morning of June 13, 1987. This would not have aroused any suspicion on the mind of PW-1 while lodging the F.I.R. but this fact assumed importance when the dead body of Jeewan, the companion of the appellant, was discovered from that room when that room was got opened by forcing the lock.

(24) It is also significant to mention that the appellant was not available till he was arrested on 18th August 1987 by S.I.Surgian Singh. He obviously absconded from June 13, 1987. We, hence, hold that Additional Sessions Judge was right in coming to the conclusion that these two circumstances also stood proved to the hilt. Circumstance NO.(iv)

(25) The appellant was arrested by S.I.Surgian Singh on 18th August 1987 when he had found Amre, PW-8, quarreling with the appellant and he had informed the Delhi Police which came and took custody of the appellant and after taking remand, the appellant was interrogated in presence of Amre, Ramesh and Om Prakash Jain and the appellant is stated to have made a disclosure statement that he could get recovered the key of the lock which he had kept at his house and in pursuance to the disclosure statement, he got recovered the key, P-12, from his house in Village Sanod and that key was found to be in good condition to operate the lock, P-9 which was the lock placed on the door of the room from which the dead body of Jeewan was recovered. The report of the C.F.S.L. in this connection is PW-20/J.

(26) It is true that one of the witnesses of recovery, Ramesh had turned hostile as he stated that after the disclosure statement had been made and they had proceeded to the village of the appellant, he himself did not go along with the police party and other witnesses and the appellant to the house of the appellant and he was told that the key had been got recovered by the appellant from his house. Ramesh had been declared hostile. It appears that he had tried to somehow give a defense to the appellant. There is no reason as to why the Court should not believe the statements of Om Prakash Jain and Amre that in fact the appellant had made the disclosure statement which led to the recovery of the crucial key. It has been pointed out before us that no police official of the said police station, particularly S.I.Surgian Singh, who had arrested the appellant, had been joined for effecting such recovery. It would have been better for the prosecution if the Investigating Officer had taken any such steps. But this lapse of the Investigating Officer would not, in our view, throw any doubt with regard to the said crucial recovery made at the instance of the appellant. No question has been put to the Investigating Officer S.I.Dalbir Singh as to reason for his not joining any

police officer of the police station concerned. It may be that if such question had been put, he might have given some good Explanationn. At any rate, there was no reason for S.I.Dalbir Singh or PW-1, Om Prakash Jain, to have planted the said key on the appellant.

(27) It has been then urged that it is not proved that the seal which was used by the Investigating Officer, while converting the various articles into sealed parcels, had been given to any independent person. The Investigating Officer had disclosed that he had given the seal to Om Prakash Jain but Om Prakash Jain, perhaps due to lapse of memory, had not recollected this fact in his testimony. So, nothing turns in favor of the appellant on this contention.

(28) Then, it was pointed out that there is a discrepancy in the statement of Ramesh viz. a viz. the statements of other witnesses as to in which vehicle the police party had gone to the village of the appellant. Ramesh had made reference to vehicle as a bus whereas other witnesses have referred the same as police vehicle or Ambassador car. So, it is urged that in view of such discrepancies, no credence should be given to this part of the story of the prosecution that appellant had got recovered the key. Ramesh is a hostile witness who perhaps wanted not to depose against the appellant on material facts. We do not think that on this discrepancy appearing in statement of this witness in view of his being a hostile witness, we could doubt the statements of other witnesses on material point of recovery of key at the instance of the appellant.

(29) It is urged before us that appellant would not have kept this incriminating article in his house for such a long period where it could be easily discovered. It is to be emphasised that appellant and so also deceased had given their wrong names to Om Prakash Jain and his wife. So, perhaps the appellant might be considering that this crime would go untraced but when heat was on, he remained absconding and might not have dared to come back to his house to do away with the crucial key.

(30) We, hence, hold that Additional Sessions Judge was right in coming to the conclusion that this particular circumstance also stands proved. Circumstance NO.(v)

(31) Amre, PW-8 had deposed that he had caught hold of appellant on 17th August 1987 and had taken him to his hut and he had made a confession of his having committed the murder of Jeewan. It is significant to mention that S.I.Surgian Singh, who had arrested the appellant when he found appellant quarreling with PW-8 Amre, had recorded a daily diary report in which there was no mention that Amre had disclosed that the appellant had made any confessional statement before him. If appellant had made such a confessional statement before Amre and S.I.Surgian Singh had come and arrested appellant in presence of Amre PW-8, then Amre would not have failed to disclose this material fact to S.I.Surgian Singh who would have then incorporated such a fact in the daily diary. For this reason, it is not possible to hold that appellant had made any extra judicial confession to PW-8, Amre. We, hence, hold that learned Additional Sessions Judge was not right in coming to the conclusion that any extra judicial confession had been made to Amre.

(32) Now, the question which arises for consideration is as to whether the circumstances (i) to (iv), which have been proved against the appellant, cumulatively lead to any irresistible conclusion or not that it was the appellant who perpetrated this ghastly crime.

(33) It is quite clear that appellant and deceased had taken the said room on rent on 10th June 1987 and both of them lived there till the morning of June 13, 1987 when appellant alone was found going away after locking the room from outside and thereafter the dead body of Jeewan was recovered from that room lying in pool of blood and the photograph of appellant was found also in that room. Thereafter the appellant had remained absconding till he was arrested on 18th August 1987 and it was he who got recovered the key with which the lock could be operated which lock was found from the door of the said room.

(34) It is also proved that Rs.3,000.00 which were brought by deceased from his village were not found on the person of the deceased or in the room. So, all these facts cumulatively show that it was the appellant alone who had committed this murder of Jeewan with a view to rob him of Rs.3,000.00 . Mere fact that no amount had been recovered from the appellant would not lead to the conclusion

that he had not taken away that amount. He had ample time to spend that amount within two months of the occurrence when he was arrested. There is no circumstance which points to any innocence of the appellant. So, even if the circumstance of extra-judicial confession has not been proved, even then the cumulative effect of the other circumstances which have been proved is that it is the appellant alone who had committed this murder and the chain of circumstances is complete by itself leaving no chinks from which it could be inferred that appellant is innocent in any manner.

(35) We, hence, hold that the conviction and the sentence of the appellant are well made out. We confirm the same and dismiss the appeal.

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