

Rattan Lal Vs. State

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Court : Delhi

Decided On : Sep-25-1996

Reported in : 64(1996)DLT727; 1996(39)DRJ421

Judge : Arun Kumar and; K.S. Gupta, JJ.

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

Appeal No. : Criminal Appeal No. 199 of 1993

Appellant : Rattan Lal

Respondent : State

Advocate for Pet/Ap. : Mukta Gupta,; J. Sethi and; H.J.S. Ahluwalia, Advs

Judgement :

Arun Kumar, J.

(1) Vide our order dated 25th September 1996 this appeal was allowed and the conviction and sentence of the appellant were set aside. The reasons in support of the said order follow hereinafter.

(2) Deceased Guddu was a rickshaw puller. He used to sleep in a car parking area near the Old Lajpat Rai Market, Red Fort, Delhi. Other rickshaw pullers also used to sleep in the same car parking. Devaria Pathak @ Chhotu and Rattan @ Kalu

were two said other rickshaw pullers. They belonged to the same native place as that of deceased Guddu. It is District Damoh in the State of Madhya Pradesh. Guddu was found dead in the morning of 4th May, 1990. The Fir was registered at 7.15 A.M. on 4th May, 1990 on the basis of a statement of one Ashwani, who owned a fleet of forty cycle rickshaws and who used to give cycle rickshaw on hire to the rickshaw pullers like Guddu, Devaria Pathak and Rattan etc. In his statement, i.e. Rukka Ex. Public Witness -4/A, Ashwani stated that Rattan @ Kalu, appellant herein, had brought Guddu to him saying that Guddu also belonged to his own native place. On the request of Rattan, Ashwani entrusted a rickshaw to Guddu also' for purpose of plying. Ashwani used to charge hire for his rickshaws from the rickshaw pullers. According to the statement of Ashwani, on 29th April, 1990 (which was Sunday) at 3 P.M. a quarrel ensued between Guddu, Devaria Pathak and Rattan while they were gambling. Guddu gave beating to Devaria Pathak and thereafter Pathak threatened him to take revenge from him at some other time as he was not in a position to quarrel at that time. Ashwani intervened and pacified them. On the previous night, the said three rickshaw pullers had slept in the car parking. On the day of the statement, Ashwani s going to his garage at about 7.00 A.M, and saw that a man was lying there covered with a blanket. He removed the blanket from the body of the person and found that it was Guddu lying there besmeared with blood. He stated that he made a search for Deveria Pathak and Rattan but they could not be found. According to him, he apprehended that Guddu had been murdered by them.

(3) The appellant Rattan Lal was charged with committing the murder of Guddu on the night intervening 3rd and 4th May, 1990 and was tried for the said offence punishable under section 302 IPC. The learned Addl. Sessions Judge vide impugned judgment dated 9th October, 1993 convicted the appellant for offence punishable under section 302 Indian Penal Code and sentenced him to R.I. for life and a fine of Rs.3,000.00 .

(4) The learned counsel for the appellant has tried to demonstrate before us that the prosecution has miserably failed to establish the guilt of. the appellant in .the present case. It is a case of circumstantial evidence. There is no eye witness of the crime. According to the learned counsel for the appellant none of the

ingredients which are required to be fulfilled to establish guilt of an accused in a case of circumstantial evidence stand proved in the present case.

(5) First we propose to deal with the element of motive. From the statement of Ashwani PW-4 the only motive that emerges is the alleged quarrel which took place between the deceased Guddu, Rattan Lal appellant and Deveria Pathak on 29th April, 1990. Ashwani stated that these rickshaw pullers belonging to District Damoh, Madhya Pradesh were gambling at about 2.30 P.M. They were drunk. They were all abusing each other and quarreling. He pacified them. Deceased Guddu was having a broken bottle in his hand. He advised them not to quarrel as they belonged to the same village and had been living together and sharing their meals. He got the dispute settled. In his statement made to the police on 4th May, 1990 which formed the basis of the Fir Ashwani had stated that Deveria Pathak threatened Guddu to take revenge. However, in his statement made in court he did not say so. Statement of Ashwani further shows that it was on the basis of request of the appellant that Ashwani gave a rickshaw on hire to Guddu for plying. Ashwani also stated that all these three rickshaw pullers used to sleep in the car parking area which is situated about 15 paces away from the rickshaw garage of Ashwani. He reiterated that on 4th May 1990 at about 7.00 A.M. when he was going to his rickshaw garage, he found a person lying covered with a blanket and after removing the blanket he saw that it was Guddu. On inquiries, he could not find Deveria Pathak and the appellant. Thus the quarrel which took place about six days back between three rickshaw pullers is the only evidence of motive. This evidence of motive cannot be relied upon. Firstly for the reason that in his earlier statement, i.e., Rukka Ex.PW- 4/A, Ashwani had stated that Deveria Pathak had told Guddu that he would take revenge at some other time whereas the appellant Rattan Lal was being prosecuted for the murder of Guddu. This means that if at all the challenge about the revenge was given by Deveria Pathak and not by Rattan Lal, the appellant. Secondly the distance of time between the two incidents, i.e., six days, renders the plausibility of motive very weak.

(6) Similarly on' the element of last seen together, there is hardly any evidence worth the name. The only thing stated is that the three rickshaw pullers named above including-the deceased used to sleep together in the car parking. The car

parking is an open place where not only these three rickshaw pullers but several other persons used to sleep. No one stated that on 3rd May, 1990 the three persons referred to above were seen sleeping together or just together.

(7) Not only there is no evidence of last seen together, there is discrepancy in the evidence about the place of occurrence. According to Ashwani PW-4 he found the dead body of Guddu at his rickshaw garage. His exact statement on the point is:-

'THE accused, deceased and Devaria Pathak @ Chhottu used to sleep in the car parking area which place is situated about 15 paces away from the rickshaw garrage. On 4.5.90 at about 7.00 A.M. when I came to my Rickshaw Garrage, I found some person lying covered with a blanket, I removed the blanket and I found that it was Guddu, the deceased.'

(8) Whereas according to PW-16 S.I. Anil Kumar, the place of occurrence was the car parking near Old Lajpat Rai Market, Subhash Marg, Delhi. He stated that a dead body was lying in a pool of blood at the said car parking. He was a police officer posted at Police Station Kotwali. He was the first to go to the place of occurrence along with Constable Gajender Singh and Balbir Singh.

(9) Next incriminating evidence against the appellant as per the prosecution case is the alleged recovery of the weapon of offence. The weapon of offence in this case is a big stone. The weight of the stone as per Inspector O.P.Sharma, PW-17 was about 15-20 Kgs. The witness further stated that on one side the stone was very sharp and on the other side it was pointed. The appellant is supposed to have made a disclosure statement Ex.PW-4/F on 9th May, 1990, in which the appellant referred to the blood stained stone. The recovery memo is Ex.PW-4/G, according to which the appellant voluntarily walked ahead under police custody and pointed about a stone lying on the western end of Subhash Marg wherefrom a service road turns towards Mor Sarai. The recovery memo is witnessed by Ashwani Kumar PW-4 apart from Head Constable Rajpal Singh. First thing to be noted about the disclosure statement is that as per Inspector O.P.Sharma, PW- 17 this was recorded immediately after the appellant was apprehended in a park in Subzi Mandi, Delhi. Whereas according to PW-4 Ashwani the alleged disclosure statement was recorded in the police station at Fountain, Delhi. Ashwani PW-4

further stated that while interrogating the appellant the police gave two or three slaps to him 'in order to make him understand and tell the truth'. From this a question arises as to whether the alleged disclosure statement was voluntary? The alleged recovery of the stone which followed itself raises several questions. The recovery is from an open place which was accessible to all and sundry. It is a corner of a public street. There is no element of concealment or exclusive knowledge on the part of the accused who allegedly got the stone in question recovered. It is just like any other stone and does not have any distinguishing features. The recovery as noted earlier is witnessed only by Ashwani PW-4. No independent person was made to witness the recovery memo Ex.PW-4/F. It is also strange that the incident allegedly took place on the night between 4th and 5th May, 1990 whereas the recovery is stated to be on 9th May, 1990 and for 4-5 days nobody noticed the blood stained stone till the appellant allegedly got it recovered. All these facts render alleged disclosure statement as well as recovery memo highly doubtful. A most important fact in this connection which the prosecution fail to establish is that the stone was not even shown to the doctor so as to elicit his opinion whether the injuries on the body of the deceased could be caused by that stone. In other words the stone which is supposed to be the weapon of offence in this case was not got connected with the injuries found on the person of the deceased.

(10) Another interesting fact which needs to be pointed out is that as per the post mortem report Ex.PW-7/A, most of the injuries are stated to be on the left side of the body of the deceased. According to the opinion of Dr. L.T.Ramani who conducted the post mortem, injuries on the skull was sufficient to cause death in the ordinary course of nature. Besides some other injuries, these injuries are :-

'1.Echymosis over right upper eye lid. 2. A deep cut on the left ear and mastoib area. Size 2' X 3/4' X bone deep, completely dividing the external ear transversely. A linear cut mark was seen on the bone underneath. 3. A deep cut of 3' X 1-1/2' X bone deep placed antero posteriorly on the left frontal area.'

(11) On the other hand the photographs of the dead body which have been proved on record as Ex. PW.L-1 to L-5 show that all the injuries on the deceased are on

his right side. There is no Explanationn for this. The learned counsel appearing for the State submitted that the doctor's opinion is based on as to how he saw the body of the deceased from his side and is not in relation to the dead body. This Explanationn is preposterous to say the least. The medical opinion about the injuries on the body of an injured person or a deceased as the case may be, is always with reference to the body of the person concerned rather than with reference to how the doctor sees the body from his side.

(12) To sum up there are only three things against the appellant. First is the statement of Ashwani PW-4 which we have already discredited on account of the contradictions in his statement as compared to statements of other witnesses particularly the two investigating officers. Ashwani is not an eye witness of the crime because he reached the scene in the morning when the person concerned was already dead. Even the version of this witness about where the dead body was found is different from that of the 1.0. The second aspect is the alleged recovery of the stone which was supposed to have been used as a weapon of offence. First, the stone is so heavy (15-20 Kgs. as admitted by the 10 himself). It would not be easy to throw such a heavy stone. Even if such a heavy stone is thrown on somebody and it hits the target being the skull of the deceased in the present case would have been totally smashed.

(13) We have held that the alleged disclosure statement and the recovery memo are doubtful pieces of evidence. The third thing against the appellant is his alleged abscondance from the scene immediately after the crime is said to have been detected by PW-4 Ashwani. The abscondance is based purely on the statement of PW-4 Ashwani. We have already expressed doubts about the credibility of this witness. Moreover even if the appellant was absconding, he may be doing so on account of apprehension of being involved in the crime he being a poor illiterate person. Coming to the legal aspect of abscondance, we may note that abscondance alone is not sufficient to convict a person. There has to be something more. In the present case there is nothing else. Abscondance by itself is not a circumstance which may lead to the only hypothesis consistent with the guilt of the accused. *Dhananjay Chatterjee @ Dhana vs . State of West Bengal : [1994]1SCR37 .*

(14) The result of the above discussion is that we hold that the prosecution has miserably failed to prove its case against the appellant. The appeal is allowed. The judgment of the learned Addl. Sessions Judge convicting the appellant and the sentence awarded by him to the appellant are set aside. The appellant is ordered to be set at liberty unless required in connection with any other case.

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