

Preetam Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/704224

Court : Delhi

Decided On : Dec-03-1997

Reported in : 1998IAD(Delhi)468; 1998CriLJ1483; 71(1998)DLT230; 1998(44)DRJ222

Judge : Y.K. Sabharwal and; A.K. Srivastava, JJ.

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

Appeal No. : Criminal Appeal Nos. 67 and 75 of 1994

Appellant : Preetam Singh

Respondent : State

Advocate for Pet/Ap. : Sanjeev Kumar,; L.K. girl and; Akshay Bipin, Advs

Judgement :

Y.K. Sabharwal, J.

(1) The appellants in these two appeals have been convicted for offence punishable under Sections 302, 460 and 411 read with Section 34 Indian Penal Code for the murder of Sri Krishan Chaudhary (S.K.Chaudhary) and also for offence for house trespass etc. They have been sentenced to imprisonment for life for offence under Sections 460/302 Indian Penal Code and for offence under Section 411 for rigorous imprisonment for two years each. The appellant Lal Singh

has further been sentenced to one year rigorous imprisonment under Section 25 of the Arms Act. Briefly, the prosecution's case is as under :

(2) On 9th May 1989 S.K.Chaudhary was found lying in the bathroom of his house in a pool of blood with injuries on his neck and abdomen. It appeared that the injuries had been caused by sharp edged weapon. The F.I.R. was registered on the statement of the son of the deceased Vinit Krishan Chaudhary who, inter alia, stated that his father S.K.Chaudhary and mother Mrs.Ramesh Lata were residing at the house in question at Kashmiri Gate on the second floor and he was residing at a house in Punjabi Bagh. At the time of the incident his father was alone in the house because two days ago his mother had come to his house at Punjabi Bagh to meet him and his family. On 9th May, 1989 at about 10.30 A.M. someone informed him on telephone in his office that his father had been murdered; he rushed to the house of his father and found the dead body of his father lying in a pool of blood in the bathroom and blood was also spread outside the bathroom; the doors of the bed room were open and the articles of both the rooms scattered; he immediately informed the police that his father had been murdered with an intention to commit theft or dacoity. The police was told that he had not checked the goods and after checking the same he would inform the police regarding stolen articles. On this statement F.I.R. was registered and investigation commenced. The dead body of a dog was also found. Finger prints were also taken. Vinit Krishan Chaudhary told the police that one webley Scot revolver No. 36545 mark 4.32, a pair of kangan weighing about two toles, pair of earrings weighing about half tola and Rs.34,000.00 in cash were stolen. The appellants were arrested on 24th July, 1989. On the pointing out of Lal Singh on 26th July 1989 the revolver, blood stained dagger and blood stained clothes were recovered from his residential room. On the same day, from the room of Pritam Singh, one watch having blood stains and blood stained shoes were recovered. On 3rd August, 1989 a pair of gold earrings handed over by Pritam Singh and a pair of Kangans handed over by Lal Singh for repair and polish to jeweller at Kinari Bazar shop were recovered which were later identified by Vinit Krishan Chaudhary. Blood stained shoes, clothes and dagger were sent to Cfsi and also the finger and foot prints of the appellants. The same were also sent to Finger Print Bureau. The prosecution have proved the report of Cfsi and Finger Print Bureau.

(3) The prosecution has examined 19 witnesses. Three witnesses have examined by appellant Pritam Singh in defense. There is no eye witness of the incident. The case is based on the circumstantial evidence.

(4) During the course of hearing of the appeals one of the contentions urged by learned counsel for the appellants was that the testimony of Public Witness-17 Asi Sis Ram, cannot be looked into as the learned Additional Sessions Judge had committed serious illegality inasmuch as no opportunity was granted to the appellants to cross-examine the said witness. Another contention urged on behalf of Lal Singh was that the denial of opportunity to cross-examine Public Witness-18 Jai Bhagwan has resulted in gross mis-carriage of justice to him and, therefore, his conviction cannot be sustained. It was also contended that an application filed on behalf of Lal Singh for re-summoning Public Witness-18 for cross-examination was illegally dismissed by learned Additional Sessions Judge.

(5) After considering the rival submission we granted opportunity to both Lal Singh and Pritam Singh to cross-examine Public Witness-17 Sis Ram and granted opportunity to Lal Singh to cross-examine Public Witness-18 Jai Bhagwan. The cross-examination of these witnesses has been recorded by us in these appeals.

(6) We have to examine the evidence recorded in the Trial Court and also in this appeal with a view to find out whether chain of the circumstances is complete as to over-rule the possibility of the appellants being innocent of the crime attributed to them. The suspicion, howsoever, strong cannot be the basis of the appellants conviction. The murder came to light on 9th May 1989. Both the appellants were apprehended on 24th July, 1989. The first disclosure statements made by them on 25th July, 1989 did not result in any discovery. The gold ornaments alleged to have been stolen on 9th May, 1989 were allegedly recovered on the pointing out of appellants on 3rd August, 1989. Though, it appears, a dog had also been murdered, but none deposed during the trial regarding the killing of the dog. The Post-Mortem report of the dog was also not filed nor any report about the blood of the dog. The prosecution has also not explained as to what was the breed of the dog and what was the approximate size of the dog.

(7) The disclosure statement (Ex.Public Witness-10/C) made by Pritam Singh on 25th July, 1989 and that of Lal Singh (Ex.Public Witness-10/D) of the same day cannot be relied upon and are not admissible since nothing was admittedly recovered pursuant to these disclosure statements. For the purpose of deciding the appeal. thereforee, these disclosure statements have to be ignored.

(8) Pursuant to the aforesaid disclosure statements both the accused were taken to their respective villages but nothing was found from their houses in the villages. The accused were taken to their villages by Public Witness-17 Asi Sis Ram. According to testimony of Public Witness-17, he along with Si Satpal Singh and Constable Rajinder, Satish and Mukesh accompanied the accused to their villages in UP. They are deposed to first have gone to Police Station Hardua Ganj from where they went to village Kali and then to Police Station Pahasu. According to the examination-in-chief by Public Witness-17 when the accused were taken to Police Station Pahasu and near the Police Station the accused Lal Singh made a disclosure statement Ex.Public Witness.10/E that he can get the article recovered from Delhi. A similar disclosure statement was also made by accused Pritam Singh (Ex.Public Witness.10/F). For sake of convenience, we would refer to these documents as second disclosure statements. There are serious contradictions about the manner and the place of recording of the second disclosure statements. Somewhere it is stated that the same were recorded in the Police Station. At another place it is alleged to have been recorded before going to Police Station Pahasu. Elsewhere it is alleged to have been recorded after coming back from the Police Station Pahasu. There is also no independent witness to these disclosure statements.

(9) Pursuant to the second disclosure statement of Lal Singh, the articles alleged to have been recovered form the house of Lal Singh were revolver, dagger and his blood stained clothes. From the house of Pritam Singh the blood stained shoes, titan watch and a scooter purchased from the amount of his share were allegedly recovered. Regarding the jewellery allegedly having been given by the accused for polishing etc., to jewellery shop, they were taken to the said shop only on 3rd August 1989. The only Explanationn for delay offered by Public Witness-18 was that he was busy in meeting etc. as if the investigation of murder case was less

important than the alleged meeting. There is nothing on record to show what was the alleged meeting about. Be that as it may, there are serious discrepancies in the recovery of jewellery made from a jewellery shop at Kinari Bazar, Dariba Kalan. Admittedly, the shop is situated in a busy market. There could be no dearth of independent persons to witness the recovery of jewellery. The stock Explanationn, however, is that no witness was forthcoming to witness the recovery of the jewellery. There is nothing on the record as to who were asked to be the witness to the alleged recovery. Admittedly, no action was taken against those who may have declined to be the witnesses of recovery of jewellery. Further there is tampering in the original register Public Witness-9/C. Wherein entries are alleged to have been made regarding the receipt of jewellery for polishing etc. by the jeweller. The jewellery recovered was also not, identified by the wife of the deceased. It was identified by deceased's son (Public Witness-5). According to Public Witness-5 for about two years before the death of his father, he was living separately and his parents were living separately at the place of occurrence, Public Witness-5 gave details of about the missing jewellery a week after the incident. In its statement dated 9th May, 1989 he stated that he had not checked the goods as to what has been stolen and after checking the same he will inform the police. This information was given on 16th May, 1989. Public Witness-2 the wife of the deceased even while appearing before the Court stated that she did not know what articles were missing from her house at Kashmiri Gate and that his son may be able to state about the missing articles. The cumulative effect of all these circumstances results in serious doubts about the recovery of gold ornaments alleged to have been recovered on the pointing out of the appellants which is one of the important circumstance that has been taken against the appellants for their conviction.

(10) The prosecution has relied upon the finger print report Ex.Public Witness.18/C, foot print Report Ex.Public Witness.18/D both dated 28th August, 1989 in support of its case that finger and foot prints of the accused were lifted from scene of occurrence. The accused had, however, made applications for summoning the experts who had given the report Public Witness-18/A and B, Witness-18/C and Public Witness-18/D as witnesses with a view to cross examine them. The applications were, rejected and thus the cross-examination of the expert witnesses was declined to the accused. In the absence of an opportunity to

cross-examine the expert witnesses, when specifically asked for by the accused, we find it difficult to allow prosecution to rely upon Ex.Public Witness-19/A and B (Reports regarding blood grouping on clothes etc.), Ex.Public Witness-18/C (report regarding Preetam Singh finger print) and Ex.Public Witness-18/D (Report regarding Lal Singh foot print). The accused were wrongly denied the opportunity to test the veracity of expert witnesses by cross-examining them. In *Shri Phool Kumar v. Delhi Administration* 1975 S C C CrI 336 the Supreme Court has held that the Court is bound to examine the expert witnesses when the application for the purpose is filed by the accused. This is another serious infirmity in the case. Further even the persons who had lifted the finger print compared in report (Ex.Public Witness-18/C) were not examined. No Explanationn was given for the non-examination of such a witness which is an important link to complete the chain of circumstantial evidence. On the aforesaid facts, the effect of non-production of the link and important witnesses, in the present case which is based on circumstantial evidence is fatal in the absence of any other evidence.

(11) Further the alleged recovery of blood stained clothes, shoes and titan watch from the house of Pritam Singh had taken place on 26th July, 1989 which would mean that for period about two and half months shoes and clothes remained in same condition without being washed. It has also come in evidence that house from where the recovery was made was open and not in the exclusive possession of Pritam Singh. There is no independent witness to the alleged recovery. Even this recovery becomes doubtful. The same is the position in respect of the recovery of clothes etc., from the house of Lal Singh on 26th July, 1989. The house of Lal Singh was known to the police earlier then even the arrest of Lal Singh on 24th July 1989. The police had earlier raided the house. It has not been explained why no search was conducted earlier. The keys of the lock of the room from which the goods were allegedly recovered had been kept nearby under a brick. Neither the sketch of the said house nor that of the room was prepared nor the keys and lock were seized. Again there was no independent witness to the recovery. The recovery from the house of Lal Singh, which is one of the circumstance relied upon for convicting Lal Singh itself become doubtful. From the manner of the recovery of the goods from the house of both the accused and also the manner of the recovery of the gold jewellery, we cannot rule out the possibility

of the planting of the recovered articles.

(12) We may also notice that neither Public Witness-5 Vineet Chaudhary nor any other witnesses deposed about lifting of prints inspire of the fact that various persons were present after the murder was detected. We may further note that learned Public Prosecutor on being asked could not give any Explanationn as to why those persons who had taken foot print and finger print were not examined inspire of the fact that they were cited as witnesses. It also deserves to be noticed that the accused persons were in custody though their applications for summoning expert witnesses were rejected on the ground that they were trying to delay the case. Further, though the case of the prosecution was various articles noticed hereinbefore containing blood stained were recovered from the accused or on their pointing out but the prosecution did not even bother to obtain and prove on record the blood group of the accused.

(13) Having examined the entire evidence, we are of the firm opinion that circumstantial evidence produced by the prosecution does not conclusively lead to the only irresistible conclusion that the appellants were the persons who committed the crime and none else. In our opinion the appellants are entitled to the benefit of doubt. In view of the above, we set-aside the impugned judgment and the conviction and sentence of the appellants and allow both the appeals. The appellants, if in custody, shall be released forthwith, if not required, in any other case. If the appellants are on bail, their bail bonds are cancelled.

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