

Rajdev Kumar Yadav Vs. State

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Court : Delhi

Decided On : Apr-23-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Criminal Prodedure Code - Section 161

Appeal No. : Crl. Appeal No. 304/2010

Appellant : Rajdev Kumar Yadav

Respondent : State

Advocate for Def. : M.N. Dudeja, Adv.

Advocate for Pet/Ap. : Jitendra Kumar Singh, Adv.

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. Discussing the evidence led, concluding the decision in para 87 of the impugned judgment and order dated 10.9.2009, the learned Trial Judge has held as under:

87. Consequently, it is established from the evidence that the prosecution has successfully proved the chain of circumstances, i.e., last seen of accused in the

company of deceased Ambey; motive for the accused to commit the murder of the deceased; absconding of the accused from the spot after committing the murder of deceased Ambey and recovery of body of deceased Ambey from the spot; seizure of attendance registers of the employers of the deceased and the accused; arrest of accused from his native village, his disclosure statement and recovery of weapon of offence, i.e., Gandasa at the instance of the accused; post-mortem on the body of the deceased and the report of the autopsy surgeon and the FSL report, added by taking false defence by the accused, in which in all the probabilities, the accused committed the murder of deceased Ambey.

2. The witness to the evidence of last seen is Veer Singh Tiwari PW-1 the landlord of the building bearing Municipal No. E-189, New Ashok Nagar in a room whereof on the second floor the dead body of a lady named Ambey was found in the evening of 17.6.2006. As per Veer Singh Tiwari, Ambey and the appellant used to reside together in the said room and that at around 6 or 6:15 AM on 16.6.2006 he saw the appellant going somewhere after locking the said room. The motive for the crime has been held established through the testimony of Veer Singh Tiwari and his son Gajraj Singh PW-3 as per whom the appellant and Ambey used to quarrel. Proof of the fact that the appellant absconded is through the testimony of PW-1 and PW-3 as also the testimony of Hrishikesh Sinha PW-5 and the attendance register Ex.PW-5/A as per which the appellant who was an employee under Shore to Shore MIS Pvt. Ltd. did not report for duty after completing his night duty from 9:00 PM on 16.6.2006 till 5:30 AM the next day i.e. 17.6.2006. With reference to the police officers who investigated the offence the appellant was apprehended on 22.6.2006 from his native village Chhapra in Bihar. The learned Trial Judge has held that the testimony of the police officers established that pursuant to the disclosure statement made by the appellant he got recovered a dao (gandasa), which was detected with human blood of the same group as that of the deceased.

3. As deposed to by ASI Hanif PW-14 on 17.6.2006 at about 8:15 PM, when on duty as the duty officer at PS New Ashok Nagar on receiving information from the police control room he recorded DD No. 20A, Ex.PW-14/A that foul smell was emanating from House No. E-189 New Ashok Nagar which was locked. Inquiry was entrusted to SI Dharampal PW-17 who accompanied by Const.Rambir left the

police station and on reaching the spot, as deposed to by Insp.Gajender Singh PW-22 informed Insp.Gajender Singh about foul smell being emitted at the spot and thus Insp.Gajender Singh reached the spot which happened to be the second floor of the house in question. The landlord Veer Singh PW-1 and his son Gajraj PW-3 who resided 3 buildings away at E-186, New Ashok Nagar from where they also carried own business of a provision store were present. As deposed to by SI Dharampal the lock was broken and on entry a decomposed dead body of a lady with cut mark on the neck was recovered. SI Dharampal prepared the rukka Ex.PW-17/A and got the FIR registered. As deposed to by Insp.Gajender Yadav he prepared the site plan Ex.PW-22/A without scale and lifted various blood stained clothes as recorded in the memo Ex.PW-1/B. He seized the broken lock as recorded in the memo Ex.PW-1/E. Calendar Ex.P-1 on which 'Shore to Shore' was printed was seized vide memo Ex.PW-1/A and body was sent to the mortuary. He recorded the statement of Veer Singh Tiwari PW-1 and Gajraj Singh PW-3 who informed that the deceased Ambey and the appellant were residing as their tenants in the room in question and that since 16th of the month, the appellant was not to be seen.

4. As deposed to by Insp.Gajender Singh he learnt that deceased Ambey was working at a factory at E-25, Sector 6, Noida and that the appellant was employed with a company 'Shore to Shore Pvt. Ltd.', Okhla Industrial Area.

5. Inquest papers Ex.PW-22/C and Ex.PW-22/D were completed after relatives of Ambey identified her dead body on 21.6.2006 and post-mortem was conducted on said day as deposed to by Dr. Mukta Rani PW-20 who prepared the postmortem report Ex.PW-20/A recording 3 incised wounds at the neck and a deep incised wound on the neck. The deep incised wound proved to be fatal as the blood vessels were cut since the said injury had cut through the skin and the neck muscles.

6. As deposed to by Raj Kumar Ahuja PW-4 Ambey was employed at his Garment Fabrication Unit as a thread cutter and as per attendance register Ex.P-5 she had last worked at the factory on 15.6.2006 from 9:00 AM to 6:00 PM. As deposed to by Insp.Gajender Singh he had seized the said register during investigation.

7. As deposed to by Hrishikesh Sinha PW-5 he was the Manager Administration of the company M/s. Shore to Shore MIS Pvt. Ltd. and that appellant was working in the said company and had last reported for duty in the night of 15.6.2006 and left next day morning at 5:30 AM and that thereafter the appellant did not report for duty. He deposed that he handed over the attendance register Ex.PW-5/A to the police and that the calendar Ex.P-1 was printed by their company. Insp.Gajender Singh Yadav deposed having seized the register Ex.PW-5/A on the same being handed over to him by the Manager Administration of the company.

8. As deposed to by Insp.Gajender Singh he learnt that the appellant and Ambey were from around the same area in Bihar. He deputed SI Dharampal to go to Motihari Bihar to try and find the whereabouts of the appellant as his native village was Chhapra where the family of Ambey also resided as per information available with the police.

9. As deposed to by Shaikh Mohd.Idris PW-7, the father of Ambey, Nooran Nisha PW-8, the mother of Ambey and Shaikh Abdul Rauf PW-10 the brother of Ambey, Ambey Khatoon was married to one Kamrudin and that no children were born to her. Kamrudin complained to them that Ambey did not have good character as she used to roam around with Rajdev Kumar Yadav. This information was given by the three to SI Gajender Singh.

10. As deposed to by SI Dharampal on 22.6.2006, accompanied by Const. Rana Pratap and Const. Sanjeev he went to Chhapra and with the assistance of the local police of PS Sungauli managed to get information of the whereabouts of the appellant whom he apprehended as recorded in the memo Ex.PW-9/C and on interrogation recorded the disclosure statement Ex.PW-9/A. The next day he obtained necessary orders from the Court of the Chief Judicial Magistrate and brought the appellant to Delhi and handed him over to Insp. Gajender Singh. As deposed to by Insp. Gajender Singh the appellant was produced before him on 24.6.2006 and he recorded his supplementary disclosure statement Ex.PW-21/A as per which he informed that the dao (Gandasa) with which he had slit the neck of the deceased had been thrown in some bushes at Hindon Canal and he could get the same recovered. The next day i.e. on 25.6.2006 he produced the appellant

before the duty Metropolitan Magistrate and obtained permission to take the appellant outside Delhi and the accused led him to Hindon Canal in front of Dharamshila Cancer Hospital and pointed out as recorded in the pointing out memo Ex.PW-6/A the bushes near Hindon Canal from where the dao Ex.P-6 was recovered as entered in the seizure memo Ex.PW-6/C. Sketch Ex.PW-6/B was drawn by him.

11. As deposed to by Insp.Gajender Singh PW-22 all the exhibits recovered at the spot on 17.6.2006 and the dao were sent for forensic examination and the FSL report Ex.PW-22/F and Ex.PW-22/G was received. The said FSL report shows that human blood of group 'A' i.e. that of the deceased was detected on the dao.

12. Veer Singh Tiwari PW-1 deposed that he was running a provision store at E-186, New Ashok Nagar and was also the owner of house bearing No. E-189 New Ashok Nagar consisting of 12 rooms. 4 to 5 months prior to the incident he let-out a room on the second floor of the house to the accused Rajdev Yadav and Ambey. On 15.6.2006 between 6:00 PM to 6:30 PM a quarrel took place between Rajdev Yadav and Ambey and when he intervened to get the matter sorted out the accused and Ambey told him not to interfere. Next morning when he was in his room at about 6:00 AM or 6:15 AM he saw accused Rajdev lock his room and go somewhere. By the evening of 17.6.2006, when he was at his shop, some other tenants in his house informed him about foul smell coming from the room occupied by Rajdev Yadav and Ambey. He went to the room and on finding it locked, peeped through a small hole in the window of the room and saw something lying under the bed. It appeared to be a body. He summoned the police who arrived and on breaking open the lock went inside the room and found the dead body of Ambey lying on the floor. The dead body had cut marks on its throat. In his presence, the police seized a calendar Ex.P-1, various blood stained clothes lying in the room and the bed-sheet Ex.P-3 with which the dead body was covered, as recorded in the memos Ex.PW-1/A, Ex.PW-1/B and Ex.PW-1/C. The broken lock was also seized in his presence as recorded in the memo Ex.PW-1/B. Thereafter the body was sent to the mortuary.

13. What assumes importance is that on being cross-examined by the counsel for the accused, Veer Singh Tiwari PW-1 admitted that in his statement given to the police soon after the incident he did not mention that on 16.6.2006 at about 6:00 or 6:15 AM he saw the accused lock his room from outside and go somewhere else.

14. Gajraj Singh PW-3 deposed that along with his father he ran a grocery shop at E-186, New Ashok Nagar and they were the owners of another house bearing No. E-189, New Ashok Nagar having 3 floors and 12 rooms. On a room on the second floor appellant and Ambey resided as tenants and used to quarrel. On 17.6.2006 a tenant informed that foul smell was emanating from the room of the accused and police was informed. He deposed further facts of what happened when the police came as deposed to by his father.

15. On being cross-examined he stated that he used to open the shop at around 5:00 AM and did so, on 16.6.2006 as well. After the shop was opened his father left saying that he would bring milk and had to meet a tenant.

16. It is apparent that Veer Singh Tiwari and his son carried on business from a shop on the ground floor of E-186, New Ashok Nagar and resided on the upper floor thereof. Veer Singh Tiwari owned the building three plots away i.e. E-189, New Ashok Nagar let out to tenants and as per father and son, appellant and Ambey had taken a room on the second floor of said building on rent.

17. Having not told the police in his statement under Section 161 Cr.P.C. that he saw the accused lock the room and go somewhere at around 6:00 AM or 6:15 AM on 16.6.2006, it is apparent that Veer Singh Tiwari has made an improvement of a material nature while deposing in Court.

18. We proceed with the analysis of the evidence excluding the evidence used by the learned Trial Judge that the appellant was seen leaving the building after locking his room at around 6:00 AM or 6:15 AM on 16.6.2006.

19. Thus, we need not discuss the reasoning of the learned Trial Judge with reference to the fact brought on record by the prosecution that the appellant had left his factory at Okhla after completing duty at 5:00 AM on 16.6.2006 and could

possibly reach the scene of the crime and after committing the same ran away from the spot.

20. We need not also discuss the claim of the appellant that he did overtime on 16.6.2006, but we note that there is no evidence that the appellant worked overtime on 16.6.2006 and did not leave his factory at Okhla after completing the duty at 5:00 AM on 16.6.2006.

21. It is apparent that Veer Singh Tyagi has over stated the truth pertaining to having seen the appellant lock the room and leave the house at around 6:00 AM on 16.6.2006. It is not unknown for witnesses to exaggerate versions out of contempt against whom they perceive as evil men. Qua such witnesses, the duty of the Court is, to segregate the lies from the truth and be careful in evaluating remaining testimony of the witness.

22. We see no reason to disbelieve the testimony of Veer Singh Tyagi and his son that the appellant and Ambey used to reside in a room taken on rent in the building in question, in which room the dead body of Ambey was recovered. Through the testimony of the parents Shaikh Mohd.Idris and Mst.Nooran Nisha as also the brother Shaikh Abdul Rauf we find corroboration to the fact that the appellant and Ambey were staying together. Notwithstanding the denial by the appellant to the incriminating evidence of his knowing Ambey and residing with her in a room on the second floor of building bearing No. E-189, New Ashok Nagar, we hold that the prosecution has established that the appellant was residing with Ambey in the room in which Ambey's dead body was found. It requires to be noted that the appellant has not claimed that he was residing at a particular place. That the calendar Ex.P-1 printed by the company in which appellant was an employee was hanging on the wall of the room in question reconfirms our finding.

23. That the appellant absconded is proved not only through the testimony of the police officers but even through the testimony of PW-5 and the attendance register Ex.PW-5/A. Indisputably, without obtaining leave or even informing the employer that he would not be reporting to work after 16.6.2006, the appellant simply vanished and ran away to his village. No explanation has been rendered by the appellant as to why he did so. The act of the appellant absconding is a conduct of

a guilty mind.

24. That a dao on which human blood of the same group as that of the deceased was detected was got recovered by the appellant is also incriminating evidence against him, albeit of a very weak kind, but has to be put in the scales against the appellant.

25. The trinity of incriminating evidence being the appellant and Ambey residing together in the room in which dead body of Ambey was discovered, the appellant absconding and rendering no explanation for the same and the dao having blood of the same group as that of the deceased being got recovered by the appellant are sufficient wherefrom the guilt of the appellant can be inferred.

26. We find no merit in the appeal which is dismissed.

27. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar to be supplied to the appellant.

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