

Ram Avtar Vs. State

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Court : Delhi

Decided On : Apr-30-2010

Judge : A.K. Sikri and; Ajit Bharihoke, JJ.

Acts : Code of Criminal Procedure (CrPC) - Section 41; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 404

Appeal No. : Criminal Appeal No. 165 of 1997

Appellant : Ram Avtar

Respondent : State

Advocate for Def. : Pawan Sharma, Standing Counsel for Govt. of NCT of Delhi

Advocate for Pet/Ap. : Anita Abraham, Adv.

Disposition : Appeal dismissed

Judgement :

A.K. Sikri, J.

1. This appeal arises out of the conviction of the appellant Ram Avtar under Sections 302 and 404 Indian Penal Code, 1860 vide judgment dated 10.01.97 passed by Ld. Additional Session Judge. Under Section 302 of Indian Penal Code, the appellant has been sentenced to undergo rigorous imprisonment for life and to

pay fine of Rs. 1000/-, and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. The sentence imposed under Section 404 IPC is to undergo rigorous imprisonment for a period of two years and to pay fine of Rs. 500/-, and in default of payment of fine, to further undergo rigorous imprisonment for a period of 15 days. Both the sentences are to run concurrently.

2. Succinctly stated, the prosecution's version of the story is that on 31.08.93 one PCR van received the information that one lady had committed suicide by hanging herself in Sonia Vihar. HC Subhash Kumar, the in-charge of the PCR van R-31, forwarded this information to the Police Station, Gokal Puri where it was received by the PW-6 Constable Jaswant Singh at 8:47 a.m. On receipt, this information was entered into Roznamcha vide DD No. 6 (Ex. PW-6/A). On the receipt of the copy of the same, the investigating officer SI Ram Chander (PW-19) along with Constable Naresh Kumar reached the spot at 1st Pushta, Sonia Vihar and found that the dead body of the Smt. Roopwati Devi was hanging from the iron grill fitted over the gate by a nylon rope. Both the hands and the feet of the dead body were tied with the help of a cloth and blood stained bricks and iron box were lying on the floor. One ear tops was found broken and it was appearing that someone had removed a Pajeb from the dead body as its impression was visible on the dead body. Meanwhile the crime team also reached the spot on being summoned and got the investigation done and photographed the place of occurrence.

3. Investigating officer Ram Chander recorded the statement (Ex. PW-9/A) of Sanjay Kumar Pandey (PW-9), minor son of the deceased, who was present on the spot. He disclosed in his statement that murder of his mother is committed by Ramu uncle (Ram Avatar), who usually visited their house. On the fateful day of 30th Aug 1993, some altercation took place between his mother and Ramu over the issue as to why he had not got her money returned from his sister. Thereafter, when he was on the terrace, he heard her mother shouting, as coming from downstairs 'go away from here you bastard' and subsequently he found that her mother's shouting had turned into a cry for help 'bachaao bachaao' as Ramu was tying her with the rope to kill her. He could not help her mother due to fear and in the morning, he found that her mother's dead body was hanging from the grill and

Ramu uncle had left the place in the previous night itself.

4. On the basis of this statement, investigating officer SI Ram Chander (PW-19) sent the rukka, through Constable Narest Kumar, to the Gokul Puri Police Station for the purpose of registration of an FIR. He also seized various pieces of evidence from the spot and prepared Site Plan (Ex. PW-19/B). Statements of other witnesses including Rakesh Kumar (PW-13), another minor son of the deceased, were also recorded and after the completion of inquest proceedings (PW-19/D) Constable Satya Kumar (PW-2) took the dead body to the GTB Hospital for the purpose postmortem. After the postmortem the same was handed over to her husband Shambhu Nath Pandey (PW-11).

5. During the investigation it transpired that the deceased had developed illicit relations with the accused while her husband, a CRPF employee, was posted in Madras. She was engaged in money lending business and the accused had borrowed some money from her for his sister. However, repayment of this money had become an issue between them as the same was not paid in spite of consistent demands.

6. On 06.10.93, an information vide DD No. 6A (Ex. PW16/A) was received at the Gokul Puri Police Station regarding arrest of the accused Ram Avtar at Town Hall Police Station, who had allegedly disclosed his involvement in the murder of Roopwati . On the basis of his pointing out and disclosure statement (Ex. Pw-16/B) one pair of Pajeb and one silver Pandal was recovered from Ram Kishan (PW-7), with whom he had pledged these articles, which had been identified by Sanjay Kumar Pandey as belonging to her mother. The same was seized vide memo Ex. PW 7/A. All the case property was deposited with the NHCM on the same day as and when it was seized however the CFSL refused to accepted the case property due to rush of work. On the completion of necessary formalities of investigation, the challan was filed in the court.

7. On the conclusion of the trial of the accused, Ld. Additional Session Judge recorded the finding that the prosecution, after examining 19 witnesses in its support, has proved its case beyond any reasonable doubt that the murder of Roopwati was committed by the accused Ram Avtar and it was he who had

removed, subsequent to the murder, the Pajeb and Pental from the dead body of Roopwati and consequently convicted and sentenced the accused under Sections 302 and 404 IPC.

8. Against the aforesaid order of the Ld. Additional Session Judge, this appeal has been preferred.

9. This appeal was admitted on 11th April, 1997. The appellant had also moved application for suspension of sentence which was taken up for consideration on 20th May, 1997 and orders were passed on that day granting bail to the appellant subject to his furnishing personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the Trial Court. This amount of personal and surety bond was reduced to Rs. 5000/- and thereafter to Rs. 2000/- on 25th March, 1998 subject to the further condition that during pendency of the appeal, the appellant will continue having his presence marked at Police Station Gokul Puri on 1st and 15th of every calendar month between 10.30 a.m. to 11.30 a.m. and will not leave the limits of Delhi without prior permission of the Trial Court. However, when the appeal came up for hearing, on its turn, on 30th July, 1990, nobody appeared on behalf of the appellant.ailable warrants were issued for 17th September, 2009. The appellant was, however, not found at the given address and, therefore, those warrants could not be executed. Non-ailable warrants were issued on 17th September, 2009. These warrants were executed, after great efforts, and the appellant was apprehended and reminded to the custody.

10. The appellant was provided with legal aid at State expense and Ms. Anita Abraham, Advocate (DHCLSC) argued the appeal on his behalf. Mr. Pawan Sharma, learned Standing Counsel for the State advanced his arguments on behalf of the State.

11. First and foremost submission of the learned Counsel for the appellant was that the information initially given to the PCR was that the deceased had committed suicide and, therefore, benefit of doubt must go to the accused/appellant. This information, she pointed out, is contained in D.D. No. 6. She also submitted that Constable Jaswant Singh (PW-6) had stated in his

testimony that at 8.47 a.m. on 31st August, 1993 he had received the information that one woman had committed suicide by hanging herself in Sonia Vihar which was recorded in DD No.-6.

12. This is hardly a convincing argument. If some unknown person had informed the police official that a lady had committed suicide, that would not mean that it is to be treated as a gospel truth. The identity of the person who gave such an information has not been established. It is possible that some person may try to mislead the police by showing it a case of suicide, more so, when the dead body was found with nylon rope around her neck. However, that would not mean that police is not to investigate the matter. If after investigation the police suspects murder and evidence collected by the police rules out the commission of suicide and points out towards murder, police is duty bound to file the challan on those lines alongwith evidence collected by it, to the court. It is ultimately for the Court to see as to whether the guilt against the accused has been proved beyond doubt or not. Thus, mere information received by the police, in the first instance, that a lady had committed 'suicide' would not mean that any benefit of doubt is to be given to the accused.

13. Even otherwise, when we examined the testimony of witnesses and the evidence on record in the form of post-mortem report and the position in which the body of the deceased was lying and recovered, the case of suicide is totally ruled out. The general observations as well details of injuries contained in the post mortem report are to the following effect:

The body of young poorly built female wearing one cream colour gown with red print and light blue colour petticoat and one yellow colour printed sari wrapped around the body with blood stains at places. The dead body was having four toe rings, one golden colour ear ring of left side, four green colour glass bangles on right hand and two green colour bangles on left hand. Both the hands were tied at the level of elbows by green coloured shawl having two knots. The body was also tied at the level of both the knee joints by quilt which is white in colour at one side and red printed on the other, torn at one place and having blood stains on one side. Yellow coloured nylon rope with slipping knot after doubling present around

the neck which is moving having blood stains over it. Tattoo marks present over the front of right forearm. Rigor mortis present in the whole of body. Hypostasis is present over the back. Tongue protruded. Dribbling of blood from mouth and nose present. Eyes swollen and black.

Ante-mortem Injuries

1. Lacerated wound of 3.5 x 0.7 cm present over the inner middle back of right side of head.
2. Multiple abrasions covering an area of 5.5 x 2 cm present over the left side of nose and upper part of face.
3. An abrasion of 2 x 2 cm present over the front of middle of chin.
4. Multiple abrasions covering an area of 3 x 2 cm over the lower left side of face with a bruise around it.
5. Multiple abrasions covering an area of 8.5 x 2 cm present over the middle front of neck.
6. Multiple grazed abrasion covering an area of 2 x 7 cm present over the lower outer aspect of right side of chest vertically.
7. An abrasion of 2.5 x 2 cm present over the upper, middle and inner aspect of left side chest.
8. Multiple abrasions covering an area of 2.5 x 1 cm present on the middle front of left leg.
9. Multiple abrasions covering an area of 1.5 x 1.5 cm present over the upper, outer middle or right leg.
10. Abraded bruises present over both the elbows, lower part of forearm and both knee joints.
11. Ligature mark present all around the neck above the thyroid cartilage. The mark is 6 cm below the chin in middle and is 11 cm above the manurium sterni.

The mark is 8 cm below the right angle of mandible and right mastoid process. It is 2.5 cm below the occipital protuberance in the back. The mark is 2 cm below the left angle of mandible and 3 cm below the left mastoid process. The mark is faint on left side, width of mark is 1 cm in the middle front and is 1 cm at the level of right angle of mandible and is 1.2 cm at the level of left angle of mandible. Width of mark is 0.8 cm and at the level of occipital protuberance in the back. Circumference of neck is 30 cm. Extensive bruising of subcutaneous tissues and muscles underneath the mark present. Left corner of hyoid bone fractured.

These injuries cannot be sustained in the case of suicide.

14. Dr. N.K. Aggarwal, who conducted the post mortem on the body of the deceased appeared as PW-18. He opined that death occurred about 34 hours before the post mortem and the cause of death was due to asphyxia as a result of constrictions of neck by ligature. He has further stated that injury No. 1 is possible when the body was struck against the bricks. He further opined that the ligature mark on the neck of the deceased was possible with the rope/ligature when shown to the witness which is Ex. PW-18/A. The post mortem was conducted by him on 1.9.1993 at about 1.00 a.m. As per the aforesaid findings, death was occurred at about 1.00 a.m. which corroborates the version of PW-9 about the quarrel between the appellant and the deceased. His testimony further proves that the cause of death was by strangulation. The manner in which body of the deceased was found clearly rules out any possibility of suicide regarding which a fake attempt was made by learned Counsel for the appellant. It is a clear case of homicide.

15. Next contention of learned Counsel for the appellant was that the version of PW-9 in his complaint, that was registered as FIR, and his testimony in the Court was inconsistent with each other. PW-9 is Sanjay Kumar, child of the deceased. He was approximately nine years of age at the time of incident. Learned Counsel for the appellant submitted that in his complaint, registered as FIR, he had stated that fight between the accused and the deceased had ensued on the terrace. On the other hand, in his testimony before the Trial Court he had deposed that at around 1.00 a.m. the deceased and the accused went down to the room on the

ground floor when the quarrel broke out between them.

16. When we read the initial statement recorded by the IO and the statement of PW-9 in the court in their entirety, we do not find any such contradiction as alleged. In his complaint, he categorically mentioned that on 30th August, 1993, at about 4.00 p.m., the appellant had come to their house and his mother asked the appellant that he should ensure that his sister returns her money. Thereafter, both of them went out of the house. At about 11.00 p.m., they came back to the house when PW-9 was still awake. They took meals and 'thereafter we went to the terrace for sleeping. My mother asked Ram Avtar as to why he had not got her money returned from her sister. On that an altercation took place between them and they both went down to stairs'. In his statement before the court he had deposed almost on the similar lines. He has categorically stated that at 1.00 a.m. appellant and deceased came down in the room on the ground floor and there was a quarrel between them and he heard cries of his mother. The utterances which he heard are narrated by him in the same manner as mentioned in his complaint. One cannot lose sight of the fact that at the time of incident, PW-9 was only nine years of age. He deposed in the court three years after the incident. He has been consistent with statement in the court which he had given in his complaint. The defence cannot be permitted to take undue advantage of certain minor variations which are not even contradictions.

17. Learned Trial Court has believed the testimony of PW-9 who had given ocular account of the events which he witnesses. The argument of the defence that his testimony is not worthy of credence was brushed aside by the learned Trial Court in the following manner:

I have also gone through the cross examination by the Ld. counsel for the accused of this witness but the counsel for the accused has not been able to impeach the credibility of this witness in the cross examination and nothing has come on record in the cross examination which can help the accused. This witness has also stated that he found pajeb and chain of his mother were missing from her person. I have also gone through the statement of PW13 Rakesh Kumar. He has fully corroborated the version given by PW9 Sanjay Kumar Pandey on all the material

particulars and in the cross examination of this witness also the Ld. counsel for the accused has failed to impeach the credibility of this witness. After going through the statement of these two witnesses it has become clear that both these witnesses saw the accused came to their house at about 4 p.m. and thereafter both the accused and the deceased again came at their house at 11 p.m. and all of them went to sleep on the roof of the house. It has also come in their evidence that after some time the accused brought the deceased down stairs in the room and an altercation had taken place between both of them and the deceased was asking the accused to get her money back from his sister which was borrowed by his sister from the deceased. It has also come in the evidence of both these witnesses that the witnesses heard the shrieks of their mother and they also heard their mother crying 'bacho-bacho'. Both these witnesses did not come down stairs out of fear. Their fear was genuine because firstly it was dead of the night and secondly both the witnesses were of very tender age at that time and they could not dare to come down and save their mother at the hands of the accused. It has also come in the statement of these two witnesses that both of them thereafter went to sleep and in the morning they found the dead body of their mother in the room down stairs. The evidence of both the witnesses is reliable and both these witnesses are natural and truthful witnesses and in my opinion such occurrence which has taken place inside the house in the late hours of the night cannot possibly be seen by anyone except the inmates of the house and the prosecution is not supposed to produce an eye witness of such an occurrence which has taken place inside the room at such an odd hours of the night and the evidence which has been produced by the prosecution is quite natural and truthful and there is no reason to disbelieve both the aforesaid witnesses. Their evidence is as good as that of an eye witness because they have vividly stated before the court the true account of the occurrence which has taken place in the room and they have also heard the shrieks of their mother and thereafter the shrieks stopped coming which means the accused killed Roopmati after a quarrel. In my opinion no other evidence is required against the accused and the evidence produced by the prosecution is sufficient against the accused and it is the accused and none else who has killed Roopmati.

18. The learned defence counsel, however, tried to demonstrate that versions of testimonies of PW-9 & PW-13 were inconsistent with each other and were not appreciated by the learned Trial Court, and on that basis, plea was raised that benefit of doubt should be given to the appellant owing to the said contradictions.

19. We state at the cost of repetition that the so called contradictions pointed out by the learned Counsel for the appellant are immaterial and variations of trivial nature which do not shake the credibility of the testimony of the witnesses in so far as material aspects are concerned. We have also to bear in mind that the statement of PW-9 was recorded on the spot on 31.8.1993 and rukka was sent at 11.30 a.m. FIR on that basis was registered at 12.05 p.m. PW-9 was nine years of age at that time and there was hardly any time for tutoring him. Admittedly, there was no adult member in the house.

20. Learned Counsel for the appellant has also referred to the judgment of the Supreme Court in *Zafar v. State of U.P.* : AIR 2003 SC 931 in support of the proposition that rule of prudence and caution needs to be applied while appreciating the evidence of child witness. That exercise is undertaken by the learned Trial Court and it is found that the testimony of PW-9 is worthy of credence.

21. The learned Trial Court while holding the appellant guilty has rightly relied upon the following observations from the Supreme Court judgment in the case of *Appabhai and Anr. v. State of Gujarat* AIR 1988 SC 69:

The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception observation should not be given importance. The errors due to lapse of memory may be given due allowance. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggeration version by any witness. When a doubt arises in respect of certain facts alleged by such witnesses, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court.

The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

22. It is also relevant to point out that conviction is not based on the testimony of PW-9 and PW-13 alone. On the arrest of the appellant under Section 41 Cr.P.C., he made disclosure statement which led to recoveries. In view of this discussion, the judgment of Supreme Court in *State of U.P. v. Arun Kumar Gupta* : (2003) 2 SCC 202 would have no application to the facts of this case.

23. No doubt, learned Counsel for the appellant has challenged the said recoveries and tried to argue that neither the recovery/seizure of pajeb nor the pendal had been proved and, therefore, could not be used as incriminating circumstances against the accused. In this behalf, she argued out that the version of the prosecution that these recoveries were made pursuant to the disclosure statement of the appellant should not be believed, inasmuch as, PW-7 Ram Kishan has denied that pajeb and pendal was pawned with him against a loan of Rs. 500/- and has denied that one pair of pajeb was handed over to him by the accused or that he handed over the same to the police. We may however mention that PW-7 in his testimony had admitted that seizure memo contained his signatures. He has, however, tried to scuttle the issue by alleging that memo was not read over to him when police took his signatures. It is clear that PW-7 changed his version partly in the court in order to help the accused. Otherwise, he categorically stated in the court as well that the appellant had come to him about 10 1/2-11 months back and given him a pendal. He had also told PW-7 that he was in great difficult and needed some money. PW-7 had given him Rs. 150/- and kept the pendal. Only in respect of pawn of pajeb that PW-7 did not support the prosecution case. In these circumstances, that part of the testimony which supported the prosecution case could legitimately be relied upon by the learned Trial Court in view of the following law laid down by this Court in *Sanjay v. State* 1996 (2) CC Cases 196:

It is well-established principle of law that the mere fact that a witness has turned hostile and not supported the case of the prosecution is no reason to ignore his statement in entirety. Such statements can be used and relied upon, if they find

support from other evidence on record.

24. Even otherwise, disclosure of the appellant as well as recoveries are proved by the plethora of evidence. Apart from the testimony of PW-9 who stated that he found pajeb and chain of her mother missing from the dead body and identified the pajeb as Ex. P-2/1-2, SI Sukhdev Singh (PW-16) has also deposed that on 4.10.1993 the appellant made a disclosure statement in his presence that he had sold the pendal at Murad Nagar. He took the police to Murad Nagar at different places but he could not get the same recovered in Murad Nagar. Thereafter, he made another disclosure statement stating that he had pawned the pajeb and pendal of the deceased with Ram Kishan at Chara Mandi against a loan of Rs. 500/-. The appellant then led the police to Chara Mandi to the house of Ram Kishan and Ram Kishan produced one locket and pajeb of silver before the police. PW-19 has also corroborated this statement of PW-16. As pointed out above, PW-7 has also in substantial part corroborated the aforesaid statements and has turned hostile partly.

25. Last contention of the learned Counsel for the appellant was that no motive has been proved by the prosecution and hence, no case under Section 302 IPC was made out. According to her, the allegation of the prosecution that the appellant killed the deceased because of quarrel over money advanced by the deceased to the sister of the appellant, which deceased was demanding has not been proved. She submitted that Investigating Officer (PW-19) did not make any inquiry regarding the existence of sister of the appellant. This argument hardly convinces us. PW-9 and PW-13 categorically stated that quarrel had erupted between the appellant and the deceased when deceased had demanded money which she had advanced to the sister of the appellant through the appellant. It was not necessary, under these circumstances, to make inquiries regarding the existence of the sister of the accused. Obviously, sister would have helped her brother i.e. the appellant. If at all, it was for the appellant to produce her sister as defence witness, which he failed to do.

26. Learned Counsel for the appellant relied upon the Supreme Court judgment in the case of Sakharam v. State of Madhya Pradesh : AIR 1992 SC 758 in support

of the proposition that where there is no direct evidence against the accused and motive is also lacking, there has to be overwhelming finding to record the guilt. There is no quarrel about this proposition. However, we find that in the present case sufficient evidence has come on record to prove the charge of murder. No doubt, PW-9 and PW- 13 had not seen the actual occurrence directly. But they were present in the house at that time. Their testimony alongwith other evidence forms a complete chain to establish the guilt of the appellant.

27. The defence of the appellant is that of complete denial who has even denied having known Vijay Pandey. These two witnesses identified him in the court. It has been established on record that the appellant was known to the deceased; he used to visit the house of the deceased quite often; he was present in the house on that night when incident took place; the dead body of the deceased was found in the house in the early morning hours; the appellant had absconded and could be arrested after one month of the incident under Section 41 of the Code of Criminal Procedure. PW-10 has even deposed that the appellant was always representing that deceased was his wife.

28. At the end, it was sought to argue that the fight, if at all, which erupted between the appellant and the deceased was sudden occurrence and the case would fall within the meaning of Exception 4 of Section 300 IPC. In *Sukhbir Singh v. State of Haryana* : (2002) 3 SCC 327, The Supreme Court has interpreted the aforesaid provision in the following manner:

To avail the benefit of Exception 4, the defence is required to probabalise that the offence was committed without premeditation in a sudden fight, in the heat of passion upon a sudden quarrel and the offender had not taken any undue advantage and the offender had not acted in a cruel or unusual manner. The exception is based upon the principle that in the absence of premeditation and on account of total deprivation of self-control but on account of heat of passion, the offence was committed which, normally a man of sober urges would not resort to. Sudden fight, though not defined under the Act, implies mutual provocation. It has been held by the courts that a fight is such. The time gap between quarrel and the fight is an important consideration to decide the applicability of the incident. If there

intervenes a sufficient time for passion to subside, giving the accused time to come to normalcy and the fight takes place thereafter, the killing would be murder but if the time gap is not sufficient, the accused may be held entitled to the benefit of this exception.

29. When we apply the aforesaid principle in the backdrop of the present case, it is difficult to accept the submissions of the learned Counsel for the appellant. It has come in the testimony of witnesses that the deceased was persistently nagging the appellant for repaying of money advanced by her to the sister of the appellant. Even on the day of incident, fight had occurred because of this reason at about 4.00 p.m. It erupted again during night. The cruel manner in which the murder took place clearly belies the contention of the appellant which is discussed above taking note of postmortem report.

30. The result of the aforesaid discussion would be to hold that the appellant is rightly held guilty of the murder of deceased Roopwati and has rightly convicted him under Section 302 IPC. Finding no merit in the present appeal, we dismiss the same.

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