

**Sukhdev Turi @ Samim Vs. State**

**Sukhdev Turi @ Samim Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/848785](http://sooperkanoon.com/848785)

**Court :** Delhi

**Decided On :** Apr-27-2010

**Judge :** Pradeep Nandrajog and; Suresh Kait, JJ.

**Acts :** Code of Criminal Procedure (CrPC) - Section 161

**Appeal No. :** Crl. Appeal No. 57/2004

**Appellant :** Sukhdev Turi @ Samim

**Respondent :** State

**Advocate for Def. :** Richa Kapoor, Adv.

**Advocate for Pet/Ap. :** Sumeet Verma, Adv. in Crl. Appeal No. 57/2004 and; Rajesh Mahajan, Adv. in Crl. Appeal No. 766/2006

**Disposition :** Appeal dismissed

**Judgement :**

**Pradeep Nandrajog, J.**

1. Inter alia, Krishan Lal Chhabra PW-7 has deposed as under:

My son Vikas used to live at 7/11 Jawala Nagar along with me and he was running a factory of a grill fancy items at 27/47 Main Road, Jawala Nagar. In the same premises I used to run Kiryana shop.

Accused Saddiq and Shamim both present in the court (correctly identified by the witness) used to work in the factory of son Vikas. Shamim was working in the capacity of helper and Saddiq was karigar. Both of them are the resident of Bihar and they used to live G-24, Jagat Puri in a rented room.

On 10.4.2000 both accused persons came to the factory of my son and after entering to the factory they started working there. They were having the key of the factory in their possession. At about 8:00 p.m. night on that day as there was no electricity both the accused persons came outside the factory and remained sitting there for about one hour and after that they went inside as the electricity resume in that area. I close my shop at 11:00 p.m. on that day and till that day both of them working inside the factory. When I left from my house I kept one katta (bori) having badarpur in the gallery and I informed Saddiq and Shamim that I am leaving to my house and after informing them I left for my house.

At about 12:00 p.m. (Night) my son returned from the temple as he was on fast and after having food he left to the factory for checking. We all slept after he left for the factory when we checked in the morning he was not found on his bed. In the morning when we did not find him in the house we went to the factory and saw the factory was locked from the outside. We made search for him here and there but we could not find him on 11.4.2000 at about 7:30 a.m. in the morning the factory worker Saddiq telephone me and he told that today is Tuesday and we are not coming to the factory and Vikas had gone to Tilak Nagar as one party from Hyderabad had arrived to supply and he had gone to take the order from that party. When I asked the phone number of the party Saddiq had told me that we have not having the phone number and disconnected the phone.' (Since the deposition has been reproduced verbatim hence the grammatical and syntax errors.)

2. He has further deposed that after missing person's report was lodged on 11.4.2000 at 4:00 PM attempt was made to search for his son Vikas and on 12.4.2000 at about 5:00 AM when along with Shunty and Jagdish he reached G-24, Jagatpuri, Kamrudin met them and informed that the appellants had gone to their village after telling him that they had a fight with their employer whom they

murdered and thereafter he went to the factory of his son and took along with him a master key and opened the same and on entry detected foul smell and that the dead body of his son was recovered from a loft inside the factory. The police came and seized the dead body vide memo Ex.PW-7/A and lifted blood stained control earth vide memo Ex.PW-7/B. On 27.4.2000 he saw the accused with the police party proceeding to the place of occurrence from where Samim got recovered a rod Ex.P-1, a hammer Ex.P-2 and a sua Ex.P-6 having blood stains which were seized vide memo Ex.PW-5/B. He further deposed that Sadik got recovered a T-shirt and a navy blue pant which was seized vide memo Ex.PW-5/A.

3. Kishan Lal has been subjected to cross-examination spanning 2 pages and the questions are directed at his testimony of what Kamrudin told him and further events which took place on 12.4.2000 and the recoveries which were effected on 27.4.2000. Not a single question has been put to him pertaining to the events of 10.4.2000 and his claim that on 11.4.2000 at 7:30 AM Sadik telephoned him and told him that his son had gone to Tilak Nagar where a party from Hyderabad had arrived. Not even a suggestion has been put to the witness that said part of his testimony is false. Thus, the deposition of Krishan Lal Chhabra as noted in para 1 above has gone unchallenged.

4. Ramesh Kumar Kawatra PW-3 has deposed as under:

Deceased Vikas was my friend. He was having a factory in which grill was being manufactured. The factory was situated at main road Jwala Nagar. I do not know the number of the said factory but very well aware about the situation of the factory. We used to meet almost daily in his factory at evening time. Last time on 10.4.2000 I met with Vikas in the evening at the factory. On 11.4.2000 at about 4:00 a.m. I was going to Subzi Mandi, Shahdara I saw the accused Saddiq present in the court who was putting lock on the gate of the factory. Accused Shamim present in the court was also with him. Both the accused persons were known to me as I used to go the factory of Vikas and had seen them while working. I enquired from Saddiq as to why he was putting lock to the factory too early, he told that there was a shortage of work and had finished the work that is why he was going after closing the factory. I went to Shahdara Mandi on the next day i.e. on

12.4.2 000 I came to know that Vikas has been murdered and his dead body was found in his factory on the slab (Parchatti).

On the same day police met me and I had narrated the fact to the police as I have stated above.' (Since the deposition has been reproduced verbatim hence the grammatical and syntax errors.)

5. Cross-examination has been directed as to the events of 12.4.2 000 when dead body of Vikas was recovered. Not a single question has been directed to impinge upon Ramesh Kumar's testimony as aforementioned. Not even a suggestion has been put that said part of the testimony is false save and except an omnibus suggestion at the tail end of the cross-examination that the witness was deposing falsely, a suggestion which was denied.

6. Suffice would it be to state that as per the uncontroverted testimony of Krishan Lal Chhabra, the appellants who were the employees of the deceased were seen by him at the factory of the deceased till as late as 11:00 PM in the night when he left. His son i.e. the deceased left the house past 12:00 midnight to go to the factory. Further, next day morning at 7:30 AM Sadik told him over the telephone that his son had gone to Tilak Nagar to meet a party from Hyderabad. Further, as per the uncontroverted testimony of Ramesh Kumar Kawatra PW-3 at 4:00 AM on 11.4.2000, while he was on his way to Sabzi Mandi, accused Sadik was seen by him put a lock on the gate of the factory and Samim was by his side.

7. Deceased being missing was reported to the police on 11.4.2000 as deposed to by Krishan Lal Chhabra when DD No. 12A was recorded and dead body of the deceased was admittedly found inside the factory the next day i.e. on 12.4.2000.

8. Ignoring all other evidence against the appellants, learned Counsel for the appellants had conceded during argument of the two appeals that from the uncontroverted testimony of Ramesh Kumar PW-3 and Krishan Lal PW-7 what has emerged against the appellant is the conduct of Sadik who falsely informed PW-7 at 7:30 AM on 11.4.2000 that the deceased had gone to Tilak Nagar for work. Further incriminating evidence is of the appellants seen at the factory at 11:00 PM on 10.4.2000 as also seen leaving the factory after locking the same the

next day morning at 4:00 AM on 11.4.2000. The dead body being found inside the factory on 12.4.2000, proving the fact that the dead body was inside when the factory was locked, are sufficient evidence wherefrom the guilt of the appellants can be inferred who have chosen to deny even the fact of they being employed with the deceased notwithstanding no such suggestion given to PW-3 or PW-7.

9. The only issue urged was whether it is a case where the defence standard has fallen below acceptable limits rendering the trial an unequal fight between the prosecution and the accused and hence not producing a fair result. Needless to state at an adversarial trial the defence is expected to match the standard of the prosecution and where the defence falls below acceptable limits it cannot be said that the adversarial trial has produced a fair result.

10. Indeed, by not examining PW-3 and PW-7 and not even suggesting that their testimony as deposed to by the two as stands noted in para 1 and 4 above, none can argue that the defence standard is not acceptable. It is writ large that the defence has not apparently achieved the requisite standard required to be achieved to produce a fair result at an adversarial trial.

11. But, the question arises whether the same is a design or the low level of advocacy by the counsel for the accused?

12. Learned Counsel for the State had urged that it has become a common strategy to not cross-examine eye witnesses who support the case of the prosecution and somehow or the other linger on by seeking adjournments and utilizing said time to browbeat the witness into submission. Counsel highlighted that for said reason this Court and the Supreme Court had repeatedly advised the Trial Judges to expeditiously complete cross-examination of such witnesses who support the case of the prosecution. Counsel urged that instant case is not of a legal aid counsel being provided to the appellants. They had a private counsel. Learned Counsel referred to the cross-examination of the two witnesses on other aspects of the testimony and concluded his submission by drawing our attention to the fact that Jagdish Chhabra PW11, a relation of the deceased at whose instance the FIR was registered turned totally hostile by even denying his signatures on the statement Ex.PW-11/A dated 12.4.2000 which was recorded by the police. He

denied knowing Krishan Lal Chhabra or the deceased. He denied knowing the fact that the deceased was having a factory in the building in which the dead body was discovered. For that matter, he denied each and every statement recorded in Ex.PW-11/A. Counsel stated that if Jagdish Chhabra could be won over either by hook or by crook, it was apparent that non cross-examination of PW-3 and PW-7 on material points was a design.

13. A perusal of the Trial Court record shows that at the far end when most of the prosecution witnesses had been examined, on 1.3.2003 an application was filed to recall PW-2, PW-3 and PW-7. It was stated that said witnesses were not cross-examined on material points. The application was dismissed vide order dated 26.5.2003 which was never challenged.

14. When we peruse the testimony and cross- examination of PW-3 and PW-7 we find that on such issues as deposed to by the two witnesses on which they were cross- examined, the two have withstood their ground. With reference to their statements recorded under Section 161 Cr.P.C., we find no improvements made by them either with respect to facts as deposed by them on which they were cross-examined and even facts deposed by them on which they were not cross-examined. We find it strange that PW-11, a relation of the deceased and the maker of the statement which led to the FIR being registered has turned so hostile that he has just about denied everything. Thus, we find substance in the submissions made by learned Counsel for the State that it is a case not of an innocent mistake but one of failed strategy of contrivance and hence no sympathy needs to be extended to the appellants.

15. We are noticing a most unhealthy trend of witnesses being suborned. In the instant case we cannot close our eyes to the fact that either on being bribed or on account of being threatened into submission Jagdish Chhabra PW-11, the complainant at whose instance the FIR was registered has turned so completely hostile that he has even denied knowing the deceased and his father, a fact which we cannot just digest, much less accept. This gives credence to the possibility of the appellants and their counsel contriving a strategy, being aware that neither PW-3 nor PW-7 have been won over, to not cross-examine them on material

issues and then at a later stage seek their recall when conditions were perceived to be favourable, and if not, left with no choice to cross-examine the witnesses if the Court permitted their recall.

16. Having satisfied ourselves after perusing the statements of the two witnesses recorded under Section 161 Cr.P.C. that the two witnesses have deposed in sync with what they told the police and noting that on the issues on which the two witnesses were cross-examined they have successfully withstood the test of cross-examination and further noting the fact that order dated 26.5.2003 was never challenged, we are of the opinion that the peculiar facts of the instant case do not warrant any remand.

17. The decision reported as : 2009 Cri. LJ 4705 Abdul Rajaq v. State of Kerala is not applicable for the reason in said case a junior panel legal aid counsel was provided at a murder trial in the teeth of the rules framed in the State of Kerala to depute a lawyer of a higher standing. It was noted that there was practically no cross-examination of material witnesses. On these twin grounds it was held that the trial was vitiated and hence the matter was remanded with appropriate directions. In the instant case the appellants had a private counsel who cross-examined all the witnesses on material points save and except PW-3 and PW-7 whom he chose to cross-examine selectively. The possibility of the same being a strategy of contrivance cannot be ruled out.

18. Needless to state those who play ducks and drakes cannot complain if they are pecked by the duck or the drake and the peck proves fatal.

19. Similarly, the unreported decisions dated 26.3.2010 in Cri. A. No. 242/2010 Salamat Ali v. State penned by this very Bench is also not applicable for the reason there were no traces of the accused in said case and his counsel resorting to any strategy of contrivance. It was noted that important witnesses were not cross-examined on vital points with respect to their statements recorded during investigation which had a material bearing on the issue of whether the witnesses had made improvements while deposing in Court.

20. Needless to state the testimony of PW-3 and PW-7, as indeed conceded by learned Counsel for the appellants are sufficient wherefrom the guilt of the appellants can be inferred and thus it would be of no use to discuss further incriminating evidence brought on record against the appellants.

21. The appeals are dismissed.

22. Order sheet shows that both appellants were admitted to bail, but it is not clear whether the two managed to secure their freedom and hence we direct that if the appellants have been released on bail, the bail bond and surety bonds furnished by them are cancelled. If the appellants are still in jail, the question of the preceding direction being operative does not arise. In said eventuality we direct the Superintendent Central Jail Tihar to supply a copy of this decision to the appellants for which purpose the Registry is directed to forward a copy each of the instant decision in the two appeals to the Superintendent Central Jail Tihar.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**