

**Basant Ram Vs. State**

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**Court :** Delhi

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

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

**Acts :** Indian Penal Code (IPC) - Sections 201 and 302

**Appeal No. :** Crl. Appeal No. 282/2010

**Appellant :** Basant Ram

**Respondent :** State

**Advocate for Def. :** M.N. Dudeja, APP

**Advocate for Pet/Ap. :** K.B. Andley, Sr. Adv. and; M.L. Yadav, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Pradeep Nandrajog, J.**

1. In a prolix and repetitive judgment spanning 47 pages, the learned Trial Judge has returned a verdict of guilt against the appellant and has convicted him for the offences punishable under Section 302 IPC and Section 201 IPC. Not only is the decision prolix and repetitive, but points of consideration which arose with respect to the evidence led have not even been discussed. Further, the cursory manner in

which the evidence led has been noted has compelled us to paraphrase the instant decision for guidance of the learned Trial Judges that given the situation in which we all Judges find ourselves i.e. hard pressed for time, it is desirable that the Courts of Original Trial pen decisions as briefly as possible without compromising on noting the evidence led and after highlighting the issues, discuss the principles of law applicable with reference to precedents if any and straightaway proceed to give reasons for their decision. If on the same point 20 judgments are cited, it is enough to cite the principle of law and simply record that it was so held in the decisions cited. It is useless wastage of paper to reproduce 20 different paragraphs from 20 different decisions; all holding to the same.

2. We highlight one issue which arose for consideration before the learned Trial Judge, which has been most conveniently (unfortunately) circumvented by the learned Trial Judge. The said issue was as to what is the effect of incriminating evidence in the form of blood of the same group of the deceased being lifted from different places inside a room when the prosecution has not been able to prove that the said room was in the exclusive possession of the accused. Needless to state, the other issue was to the credibility of the testimony of the father of the deceased on the issue of last seen evidence as also to the credibility of the witnesses who proved the recoveries at the instance of the appellant. Obviously, said issue relates to appreciation of the testimony of the witnesses.

3. We shall be dealing with the said two issues, but before noting the relevant evidence giving birth to the said two issues as also other relevant evidence, we propose to pen a few lines for the benefit of the learned Trial Judges as to the desirability of the manner in which reports by serologists have to be reflected in the decision.

4. In the instant case, various blood stained exhibits were lifted from different places and on different dates by different officers. Needless to state, as and when a blood stained exhibit was lifted, it was converted into a parcel and seal of the concerned officer was affixed thereon, to maintain the purity of the seizure. All these exhibits were sent for serological examination. Record shows that the exhibits were as per 5 memos having seal of 3 different persons for the reason 3

memos pertaining to exhibits lifted from 3 different places were by the same officers. Seal of 'AS', 'AJ' and 'NK' were affixed on these parcels which were 15 in number containing 15 exhibits. The FSL report Ex.PW-16/C and Ex.PW-16/D is by the serologist and the same refers to the seal on 15 different parcels containing 15 exhibits which were received in the laboratory and thereafter records the findings of the serologist after subjecting each exhibit to a serological examination. Pertaining to 6 exhibits which were seized on 20.4.2006 by Shri Naresh Kumar, a serologist from the Forensic Science Laboratory, from a room on the ground floor of House No. H-499 Mangolpuri as recorded in the seizure memo Ex.PW-15/A having a corresponding confirmation in the form Ex.PW-16/A penned by Shri Naresh Kumar, the same have been assigned parcel No. 8 to 13 by the serologist in the report Ex.PW-16/C evidenced by the fact that against parcels 8 to 13 and the exhibits retrieved from the said 6 parcels, it has been recorded that seal of 'NK' was found affixed on said 6 parcels. The report Ex.PW-16/D records that only human blood could be detected on Ex.8 and Ex.13 retrieved from parcel No. 8 and 13 and that on the other exhibits being Ex.9 to Ex.12 retrieved from parcels 9 to 12, human blood of group 'A' was detected. With reference to the clothes which were retrieved from the dead body of the deceased and handed over to the investigating officer by the doctor who conducted the postmortem as also the blood sample of the deceased taken on a gauge, it was recorded, with reference to the parcels received at the laboratory having seal of the investigating officer, that human blood of group 'A' was detected; meaning thereby that the blood group of the deceased was 'A'. Similarly, with respect to a knife and a pipe wrench which were received with the seal of 'AJ' affixed thereon to which parcel No. 14 and 15 was assigned at the laboratory and Ex.14 and Ex.15 to the contents thereof i.e. the pipe wrench and the knife respectively, it was indicated that only human blood could be detected on the pipe wrench and that human blood of the same group as that of the deceased was detected on the knife.

5. The learned Trial Judge has simply stated that blood was detected on the exhibits which were lifted from the room on the ground floor of House No. H-499 Mangolpuri and therefrom concluded that it was apparent that the crime was committed at the said place. Similarly, in respect of the recovery of the pipe wrench and the knife it has been opined that blood has been detected thereon and

hence they are incriminating articles qua the appellant since the recovery is pursuant to the disclosure statement of the appellant and at his instance.

6. This is not the way to refer to and render finding with reference to the report of the serologist. It is expected that with reference to the seizure memos recording purity of the seizure with reference to the seal affixed on the parcel and as recorded in the report be noted, followed by it being listed as to which parcel has been given what serial number in the laboratory and then in the context of each exhibit subjected to analysis, such of which becomes incriminating, it be clearly listed whether only blood was detected without origin of species being detected or both being detected with or without group thereof. Surely, it is commonsense that where on an exhibit, human blood of the same group as that of the deceased is detected said evidence is more incriminating than evidence of only human blood being detected and least incriminating would be evidence of only blood being detected without origin of species being detected.

7. A decision as afore-noted written leaves no scope for hypothesis and conjectures to be urged at the appellate stage and helps the Appellate Court in exactly pin-pointing the exact worth of a seizure memo and the report of the serologist with crystal clear linkages between the two.

8. Having said that, we proceed to note the incriminating evidence which has surfaced at the trial against the appellant.

9. As deposed to by Aas Mohd. PW-2 the father of the deceased Nazar, appellant nicknamed 'Goose' was a friend of his son and on 17.4.2006 had come to his house at 9:30 PM and called for his son who was then on the terrace and on being called by the appellant came down and left. This was the last time he saw his son. Next day morning on 18.4.2006 he learnt that a dead body was lying near a khatta (Municipal Garbage Dump) of Y-Block Mangolpuri. He reached the spot and identified the dead body as that of his son. The police came and recorded his statement Ex.PW-2/A.

10. The dead body was noticed near the Municipal Garbage Bin in Y-Block Mangolpuri at 6:00 AM by Shiv Narayan PW-7 as deposed to by him, who passed

on the information at the police station when DD entry Ex.PW-6/A was recorded at 6:55 AM as deposed to by SI Yograj PW-6 and Insp.Azad Singh PW-19 who reached the spot accompanied by Const. Jogender and Const. Sanjeev Kumar and saw the dead body and hence Insp.Azad Singh made an endorsement beneath DD entry Ex.PW-6/A as indeed they saw a dead body at the spot. FIR Ex.PW-10/B was got registered. Insp.Azad Singh lifted blood stained earth control and blood stained leaves from the spot as per memo Ex.PW-4/M and affixed the seal 'AS' on the parcel. He prepared the inquest papers and sent the body to the mortuary after getting the body identified from the father and the uncle of the deceased. Before that, the crime team was summoned which could detect nothing incriminating and hence photographs of the dead body were taken before removing the same.

11. Dr. Ashish Jain PW-20 conducted the post-mortem on 18.4.2006 noting following external injuries on the person of the deceased:

1. Multiple incised wound over palmer aspect of left hand fingers, proximal phalynx of medial two fingers, muscle deep and middle phalynx of lateral two fingers, subcutaneous deep and incised wound also present over distal phalynx of right thumb with clean cut margins and clotted blood.

2. Incised wound of size 4 cm x .3 cm over left side and mid of forehead subcutaneous deep with clean cut margins and clotted blood.

3. Incised wounds of size 4.5 cm x 0.4 cm, 6 cm x .5 cm and 3 cm x .2 cm over left side of chest, directed downwards and medially, subcutaneous deep with multiple old linear scar mark, 8 cm from mid line with clotted blood.

4. Stab incised wound of size 4 cm x 2 cm over epigastric region 1 cm right to midline and 12 cm from right and 15 cm from left nipple, going into left lobe of liver. One end acute and one blunt.

5. Stab incised wound of size 3 cm x 1 cm, 14 cm below and lateral to right nipple into seventh inter costal space going upwards and medial of right lung through and through after piercing pleura with one end acute and one blunt.

6. Incised wound of size 9 cm x .2 cm subcutaneous deep over lumbar region right side laterally with clotted blood.

7. Stab incised wound of size 3 cm x 1 cm at level of L 2 vertebra going into retroperitoneal space unto renal capsule 9 cm from mid line.

8. Lacerated wound of size 7 cm x 5 cm over mid occipital region with depressed fracture over occipital bone.

9. Stab penetrating injury triangular in shape of size 2 cm x 1.5 cm over right lateral side of neck going into trachea cutting right cornua hyoid bone.

10. Linear abrasion of size 5 cm x .2 cm to 2 cm x .1 cm over left scapular region.

12. He prepared the post-mortem report Ex.PW-20/A noting internal injuries in the form of sub scalp hematoma present over occipital region with fracture of occipital bone extending to left posterior cranial fossa to left middle crania fossa and over temporal region having contusions of brain matter. He opined that all injuries were ante mortem and were of fresh duration with time since death being 15 hours when post-mortem was conducted being in the afternoon. He preserved the clothes of the deceased and took a blood sample on a gauze piece which were handed over to Insp.Azad Singh PW-19 who affixed the seal 'AJ' thereon. With reference to the knife and the pipe wrench, as deposed to by him, he subsequently gave opinion Ex.PW-20/C opining that injury No. 1 to 7 could be possible with the knife or similar such weapon and injuries No. 8 to 10 were possible with the pipe wrench or such similar weapon.

13. As deposed to by Insp. Jogender Singh PW-15 he took over the investigation on 20.4.2006 and accompanied by Insp.Azad Singh PW-19, a fact corroborated by Insp.Azad Singh, they went searching for the appellant and reached House No. 499, H-Block Mangolpuri which was found locked. Aas Mohd. PW-2, as deposed to by him was also with them. Ratan, brother of the appellant opened the house as he possessed the key. All saw blood stains on the wall, floor and sofa which seemed to have been washed with water. Insp. Jogender Singh, as deposed to by him, a fact confirmed by Insp.Azad Singh, summoned FSL team and as deposed

to by Naresh Kumar PW16, Senior Scientific Assistant (Biology), FSL, Delhi he reached the house and from the ground floor thereof lifted 6 exhibits as he detected blood thereon i.e. scrapings from the door of the refrigerator, right side wall of the room, floor of the room, left side wall of the room, piece of sofa sheet and foam (which were cut from the sofa) and scrapings from a pair of sandals in the room which were seized by the investigating officer as recorded in the memo Ex.PW-15/A after Naresh Kumar affixed his seal 'NK' thereon.

14. Thereafter, as deposed to by Insp. Jogender Singh and Insp. Azad Singh, after the appellant was apprehended on 23.4.2006 and he made a disclosure statement Ex.PW-4/C confessing to the crime and stating that he had inflicted the incised wounds on the deceased with a knife and had hit him on the head with a pipe wrench which he could get recovered. He further informed that after committing the crime inside the room on the ground floor of House No. H-499, Mangolpuri he removed the dead body in a cycle rehri and dumped it at the garbage dump where it was recovered and that he hid the knife and the pipe wrench and that he could lead the police to the place where he had hid the two as also could point out the cycle rehri used by him to dispose of the dead body. Thereafter he led them to the first floor of House No. H-23 Mangolpuri and took them to the roof of the first floor and took out a polythene bag lying concealed under wood pieces, from which a knife Ex.P-3 and a pipe wrench Ex.P-2 were seized as recorded in the seizure memos Ex.PW-4/G and Ex.PW-4/F respectively followed by the sketch Ex.PW-4/E of the pipe wrench and the sketch Ex.PW-4/D of the knife being drawn by Insp. Azad Singh PW-19. The seal 'AS' was affixed on the two parcels. As deposed to by the police officers, thereafter, appellant led them to House No. H-393 and between the gali adjoining the house and a park pointed out a cycle rehri which was seized as per memo Ex.PW-4/H. A coloured cloth was tied on the rehri and the seal 'AS' was affixed thereon.

15. It is apparent that the incriminating evidence against the appellant is of his being last seen in the company of the deceased when the deceased left his i.e. the house of the deceased, at around 9:30 PM on 17.4.2006, as deposed to by Aas Mohd. The dead body being found next day morning at around 6:00 AM on 18.4.2006 as deposed to by Shiv Narain PW-7, a rag picker. It is obvious that the

deceased was dead by 6:00 AM. The likely time of death of the deceased comes to around 11:30 PM in the intervening night of 17th and 18th April 2006 for the reason in the post-mortem report Ex.PW-20/A it has been recorded that the post-mortem commenced at 2:30 PM and the proximate time since death was 15 hours.

16. Suffice would it be to state that the last seen theory comes into play when the time gap of the deceased being last seen, when alive, in the company of the accused and the time of his death as also the place where the two were seen and the dead body was recovered are so proximate that unless the accused explains when and how he parted company with the deceased, the inference of guilt against the accused is plain.

17. Nothing has been shown to us to discredit the testimony of Aas Mohd. that his son left his house in the company of the accused at around 9:30 PM on 17.4.2006. Indeed, he had disclosed this fact at the very instant to the investigating officer when his statement Ex.PW-2/A was recorded on 18.4.2006 itself in the morning hours after the dead body of the deceased was discovered near the garbage municipal bin at Y-Block, Mangolpuri. It may be noted that Aas Mohd. resides at House No. 1597, Y Block, Mangolpuri i.e. the deceased was seen in the company of the accused in Y Block, Mangolpuri, in which block dead body of the deceased was recovered.

18. That a crime involving a human being the victim took place on the ground floor of House No. H-499, Mangolpuri is evidenced by the testimony of Insp. Jogender Singh PW-15, Sh. Naresh Kumar PW-16, Insp. Rajaq Singh PW-19 and Aas Mohd. PW-2 all of whom have proved, as recorded in the seizure memo Ex.PW-15/A and as entered in Ex.PW-16/A by Naresh Kumar PW-16, that notwithstanding the room being washed with water, blood could be detected at 6 spots in the room and blood scraping was lifted and sofa cloth was cut and taken into possession as noted in para 13 above. The report Ex.PW-16/C and Ex.PW-16/D proved by its author Sh. Naresh Kumar PW-16, Senior Scientific Assistant, establishes that human blood of the same group as that of the deceased was detected on 4 out of 6 exhibits lifted from the room and on 2 exhibits only human blood could be detected.

19. The legal question which we need to answer is whether this incriminating evidence links the appellant to the crime and can be used as a piece of circumstantial evidence against him?

20. It is true that the key to the ground floor of the house in the room whereof, afore-noted incriminating exhibits were lifted on 20.4.2006, was provided by the brother of the appellant and the appellant was no-where to be seen and the only evidence we have on record linking the appellant to the house in question i.e. ground of House No. H-499, Mangolpuri is the testimony of Rakesh PW-8 who has stated that the appellant used to reside in the said house. We note that he has not stated that 'only the appellant used to reside in the said house'. But that would only mean that apart from the appellant somebody else was also possibly in joint possession of the ground floor. It would only mean that the incriminating worth of said evidence would be reduced in weightage to be given and not that the same has to be excluded while considering the chain or web of incriminating evidence brought against the appellant. We may only note that a single suggestion given by way of cross-examination to Rakesh PW-8 is that he has deposed falsely. No suggestion has been given to him about anybody else residing with the appellant.

21. We had retained the police case diary to peruse the same and find that pertaining to the investigation conducted on 20.4.2006, Insp. Jogender Singh has written that on reaching House No. H-499 Mangolpuri and on finding the same locked the police party was informed that the brother of the appellant named Ratan resided two houses away and on Ratan being summoned he brought the key of House No. H-499 Mangolpuri and using the key, the house was opened.

22. It is unfortunate that the prosecution was not conscious of the fact that the key of the house was with Ratan and the prosecution was intending to link the incriminating evidence pertaining to the scene inside the house with the appellant and hence evidence had to be brought on record that the said place was in the exclusive possession of the appellant. Either Rakesh PW-8 could have been made to depose that the house in question was the exclusive residence of the appellant or the brother of the appellant could have been examined to prove said fact.

23. It is settled law that a case diary can be perused by a Court to satisfy itself qua the purity of the investigation and to remove doubts if any which creep into the judicial mind. Besides, in this connection we note that when the incriminating circumstances were put to the appellant, question No. 5 was: 'It is in evidence against you that after about 3 - 4 days of the incident, PW-2 Aas Mohd. along with IO went to your house and inside the house there were blood stains on the floor, walls and sofa which seemed to have been washed with water. What have you to say?' The appellant responded 'I do not know'. Now, the appellant did not deny that the house wherein blood stains on the floor, walls and sofa were seen was not his house. His response 'I do not know' obviously is to the claim of the prosecution as to what was seen in the house.

24. But, notwithstanding legal position being as aforesaid, we give benefit to the appellant of the fact that it stands only proved that the appellant was residing on the ground floor of House No. H-499 Mangolpuri and not the fact that only the appellant was residing there. Noting that the key of the ground floor of the house was provided by the brother of the appellant, on this issue we conclude by recording that the prosecution has successfully proved that a human being whose blood group was 'A' was fatally beaten in a room on the ground floor of the house resulting in his blood splashing on the walls of the room, the floor of the room, a refrigerator inside the room as also the sofa inside the room and since the room has not been proved to be in the exclusive possession of the appellant we hold that the incriminating value to be attached to said incriminating evidence is lower than the incriminating value to be attached had it been proved that the room was in the exclusive possession of the appellant. But noting the fact that the deceased was with the appellant when he i.e. the deceased left his house at 9:30 PM and the probable time of death of the deceased is 11:30 PM noting further that the deceased resided in Y-Block and the house in question is in H- Block Mangolpuri and the appellant has not explained when did he part company with the deceased, the incriminating worth of said evidence of crime being committed on the ground floor of House No. H-499 Mangolpuri is not minimal but somewhere in the middle segment.

25. That a knife and a pipe wrench which have been opined to be the possible weapons of offence with the knife having human blood of the same group as that of the deceased and the pipe wrench being detected only with human blood were recovered from a spot not accessible to the public and certainly not within the knowledge of the police till the appellant was apprehended and made a disclosure statement and led the police to the place wherefrom it was recovered is another piece of incriminating evidence against the appellant. Unfortunately, the learned Trial Judge has not put the incriminating circumstance of the appellant of his absconding till he was apprehended on 23.4.2006 and hence we eschew said incriminating conduct of absconding while considering the incriminating evidence against the appellant.

26. The submission that no motive for the crime was established and hence proves the innocence of the accused is noted and rejected for the reason so mundane are the reasons for 19 out of 20 crimes in Delhi that it is impossible to prove any motive. But, from that very fact we find credibility to the testimony of Aas Mohd. PW-2 who has deposed to the last-seen evidence, not only for the reason he stated said fact before the police immediately after the dead body of his son was found in the morning of 18.4.2006 but even the fact that Aas Mohd. has no possible motive to falsely implicate a friend of his deceased son against whom even he has no motive.

27. The trinity of circumstances; being (i) the appellant and the deceased having left the house of the deceased in Y Block, Mangolpuri at 9:30 PM on 17.4.2006 and the deceased dying the same night at around 11:30 PM as also the fact that a crime involving a human having blood group 'A' was committed in a house in Block H, Mangolpuri and dead body was found next day morning at 6:00 AM in Block Y Mangolpuri; (ii) the recovery of a pipe wrench and a knife on which human blood of group 'A' i.e. the same group as that of the deceased was detected (the recovery being at the instance of the appellant) which two objects were opined to be the possible weapons of offence and lastly (iii) crime involving a human having blood group 'A' i.e. the same as that of the deceased being committed in a house proved to be if not in the exclusive at least in the joint possession of the appellant are sufficient circumstances wherefrom the guilt of the appellant can be inferred.

28. With reference to the injuries caused on the deceased as per the post-mortem report Ex.PW-20/A there is hardly any scope for an argument that the intention of the assailant was not to murder the deceased.

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

30. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar for being made available to the appellant.

31. We direct the Registry to send a copy of this decision to the District & Session Judge, Delhi along with a covering letter containing a direction that the same be forwarded to the learned Trial Judge who has penned the impugned decision so that in future the learned Trial Judge is careful in not being prolix and writing a rolled-over judgment ignoring the legal issues which arise for consideration and finally not to be verbose on what is useless and ignore to pen down the essentials. As in the instant case the essentials pertaining to the various exhibits and their linkages as done by us have been totally ignored by the learned Trial Judge who has simply blogged the issue by stating that there was blood on various exhibits. We invite the attention of the learned Trial Judge to paragraphs 1 to 7 of the instant decision and hope that in future we shall be seeing better written decisions from the learned Judge.

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