

Amarpal (Raj Pal) Vs. State

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Court : Delhi

Decided On : May-26-2010

Judge : Pradeep Nandrajog and; Suresh Kait, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 201 and 302; ;[Constitution of India](#) - Article 21

Appeal No. : Crl. A. No. 1021/2008

Appellant : Amarpal (Raj Pal)

Respondent : State

Advocate for Def. : Richa Kapoor, Adv.

Advocate for Pet/Ap. : Rajesh Mahajan and; Satsheel Sheokand, Adv.

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. We have repeatedly emphasized the evidentiary value and importance of memos prepared contemporaneously during investigation, while appreciating the testimony of those who claim to be eye witnesses. It is unfortunate that we are repeatedly noting that the learned Trial Judges are gullibly accepting, as gospel

truth, whatever is spoken of by those who claim to be eye witnesses. The instant case is a classic example of how people can manage to tell lie and unless a Judge is vigilant, gross injustice may result.

2. We beg the pardon of being a little prolix while writing this decision, for the reason we intend to carry out an academic exercise for the benefit of learned Trial Judges; so that they are guided, in future, as how should a Court approach the task of appreciating evidence in relation to ocular evidence and the contemporaneous memos containing record of investigation prepared by the police.

3. That a crime was committed within jurisdiction of PS Sarita Vihar finds a mention in the PCR form Ex.PW-13/A, when Const. Kishan Singh PW-13, noted at 23:55 Hrs. on 13.1.2002 of having received a telephone call from the telephone No. 6951267. The caller gave his name as Feroz and informed that in front of the house of Jai Prakash Pahlwan, in village Jasola, the head of a male human is lying. It may be noted that Feroz has been examined as PW-1.

4. Const. Kishan Singh, dutifully passed on the said information, through wireless, at PS Sarita Vihar where it was noted vide DD No. 24A, Ex.PW-23/A, recording the time as 12:05 in the intervening night of 13th and 14th January 2002.

5. As deposed to by SI Lokender Singh (who has been examined as PW-21 and also as PW-23) he was entrusted the job of conducting an inquiry/investigation and accompanied by Const. Baldev PW-9 he left for the spot. As deposed to by SI Lokender Singh when he reached village Jasola, in front of the house of Raghubir Singh Chauhan, in a garbage he found the head of a male human. He searched around for locating the headless body but could find none and hence, beneath Ex.PW-23/A he penned an endorsement Ex.PW-23/B and sent the same through Const. Baldev for FIR to be registered at the police station.

6. As noted in Ex.PW-23/B, the same was dispatched from the spot at 3:30 AM on 14.1.2002 i.e. a few hours before the dawn broke on 14.1.2002.

7. Vide DD No. 27A the FIR No. 35/2002 for an offence under Section 302/201 IPC was registered at 3:50 AM as recorded on the FIR Ex.PW-10/A, which facts have been deposed to and proved through the testimony of HC Pappu Ram Meena PW-10, the author of the FIR.

8. Relevant would it be to note that in the endorsement Ex.PW-23/B, which stands dispatched from the place where the head of a male human was found at 3:30 AM, it stands recorded by SI Lokender Singh that he has located a severed head of a male and in spite of searching around the area he could not find the headless dead body. He wrote that FIR for offence punishable under Section 302/201 IPC be registered and crime team with photographer be summoned. It is also relevant to note that he has not mentioned that any person or persons handed over to him any person claiming that the said person handed over was an accused.

9. The tehrir being dispatched at 3:30 AM and the FIR being registered at 3:50 AM, it is but apparent that the crime team and the photographer would proceed to the spot after 3:50 AM.

10. But what do we find?

11. SI Begh Ram PW-22 was incharge of the crime team in South District, a fact deposed to by him and Const.Brij Veer Singh PW-6 was the photographer attached to the crime team, a fact deposed to by him. Ex.PW-22/A, proved by SI Begh Ram, which has been prepared by him, being the report of the crime team, records that the report pertains to FIR No. 35/2002 for the offence punishable under Section 302/201 IPC. It further records that the date of inspection is 14.1.2002 and the time of inspection is between 2:00 AM to 3:00 AM.

12. Const. Brij Veer Singh deposed that he received information to proceed to the spot at around 12:30 in the middle of the night of 13th and 14th January 2002 and reached the place at around 1:45 AM. He took 14 photographs, Ex.PW-6/A1 to Ex.PW-6/A14, negatives whereof are Ex.PW-B1 to Ex.PW-B14. He claims, as deposed to by him, that he left the place at 2:45 AM since he had finished the job assigned to him at around 2:15 AM.

13. What did he do? As deposed to by him, after reaching the spot he spent 5 to 7 minutes in taking photographs of the severed head and thereafter he was taken by the police to a spot which was at a distance of around 100 meters to 200 meters away, where he took the remaining photographs of the headless dead body.

14. There is obviously a hiatus between the testimonies of PW-6 and PW-22 on the one hand vis--vis the tehrir Ex.PW-23/B and the FIR Ex.PW-10/A for the reason the tehrir was dispatched at 3:30 AM and the FIR was registered at 3:50 AM but PW-22 claims to have conducted proceedings at the spot pertaining to the FIR in question between 2:00 AM to 3:00 AM and PW-6 claims to have been summoned pursuant to the FIR being registered and completed the proceedings between 1:45 AM to 2:15 AM.

15. There is further contradiction inter se PW-6 and PW-22 for the reason the report of the crime team, Ex.PW-22/A, records that the rest of the body be recovered, but the photographer claims to have photographed the headless body.

16. The recovery memo pertaining to the headless body has not been filed and hence none has been proved. But, the pointing out memo Ex.PW-1/B, which we note does not bear the signatures of Amarpal, records that pertaining to the FIR No. 35/2002 dated 14.1.2002, for offences under Section 302/201 IPC, PS Sarita Vihar, Amarpal voluntarily led the police to a DDA park near Okhla Tank and pointed out the spot wherefrom the headless body was recovered and it was informed by Amarpal that this was the body of the deceased Radhey Shyam.

17. The arrest memo Ex.PW-23/D records that Amarpal was arrested at 5:00 AM on 14.1.2002. It records the arrest in FIR No. 35/2002 under Sections 302/201 IPC PS Sarita Vihar.

18. If the claim of the prosecution, as projected and sought to be proved, is that the headless body was recovered pursuant to the disclosure statement of Amarpal and at his pointing out, it has to be that Amarpal did so before the photographer Const. Brij Veer Singh took the photographs and this further means that Amarpal was in the clutches of the police before 1:45 AM in the night by which time Const.Brij Veer Singh had reached and if this be so this ought to have been

mentioned in the tehrir Ex.PW-23/B which was dispatched from the spot at 3:30 AM.

19. It is apparent that the boat of the prosecution is floating rudderless in turbulent waters and yet the rower desires the boat to be properly anchored.

20. We shall be referring to a few other memos a little later, for we feel that it is time to introduce the testimony of 3 persons who claim to be eye witnesses and who have been gullibly welcomed and accepted as gospel truth staters by the learned Trial Judge. They are Feroz PW-1, Pappu @ Saleem PW-4 and Parvash Rai PW-7.

21. Saleem @ Pappu PW-4 deposed that he has a shop in village Jasola which he closed around 11:30 in the night of 13.1.2002 and as usual, was preparing to sleep beneath the thatched roof in front of his shop. Amarpal whom he knew as residing in his neighbourhood arrived and asked him to get something from his shop to which he said that he could provide nothing. He saw Amarpal holding a green shawl kind of baggage on his shoulder from which blood was dropping. Since there was an electricity bulb lit he could see. He got terrified and raised a hue and cry. About 30-40 persons living around as tenants collected. Amarpal tried to run away. While running away he saw Amarpal throwing the green shawl baggage in a garbage lying by the side of Tikona Park which was near his shop. Parvash and Feroz were a part of the crowd which had gathered and chased Amarpal who was apprehended at a spot near the Tikona Park and was brought in front of his shop. Somebody saw that what was thrown by Amarpal in the garbage was a severed head of a human body. The police was called and arrived in good numbers. Amarpal was handed over to the police. Relevant would it be to note that during cross-examination he stated that the police arrived within 15-20 minutes of being informed of the crime and that it was around 12:00 midnight when the police came.

22. Feroz PW-1 stated that he was sleeping in his room in village Jasola in the intervening night of 13th and 14th January 2000 (should read 2002) and around 10:30 or 12:00 in the midnight heard shrieks of Saleem @ Pappu whom he knew prior to the occurrence. He came out and saw the severed head of a human being

which was wrapped in a green coloured shawl from which blood was dropping. He saw the same in the hand of accused Amarpal. The shawl containing the severed head fell out of the hands of Amarpal near a garbage and Amarpal started running away from the spot. He along with 3 or 4 persons chased Amarpal and caught him at some distance. He made a call to the police and when police arrived Amarpal was handed over to the police. He deposed that Amarpal was interrogated at the spot and made a disclosure statement Ex.PW-1/A informing that he can lead the police to the spot where dead body could be found and that he could also get recovered the weapon of offence. He deposed that thereafter Amarpal got recovered the knife Ex.P-1 as also a stone which was stained with blood and that he pointed out the spot wherefrom the headless body was recovered.

23. Relevant would it be to note that during cross-examination Feroz stated that Pappu was his brother and that Amarpal was caught within 5 minutes of Pappu shrieking and that the police arrived at the spot within 15-20 minutes of Amarpal being apprehended.

24. Parvash Rai PW-7 was led into answering the questions inasmuch as his examination-in-chief is in question and answer form. He has deposed in a very cryptic manner, but has substantially corroborated what has been stated to in Court by Saleem @ Pappu and Feroz. Relevant would it be to note that during cross-examination he stated that when SI Lokender reached the spot the public handed over accused Amarpal to him.

25. While narrating the contents of the tehrir we have noted that the contents thereof have been proved through the testimony of SI Lokender (PW-21 also examined as PW-23). It may be noted that as per SI Lokender nobody was handed over to him by public at the spot when he reached and that after he saw the severed head he looked around for the headless body and could find none and these facts he recorded in the teherir Ex.PW-23/B. His testimony appears to be truthful for the reason DD No. 24A was recorded at the police station at 5 minutes past 12 midnight and SI Lokender Singh could have possibly reached the place, at the earliest, around 12:15 or 12:20 in the middle of the night. He must have spent considerable time trying to locate the headless body in and around the area where

the head was lying and this explains the tehrir being dispatched from the spot after 3 hours of his arrival.

26. There is obviously a hiatus between what has been deposed to by the 3 stated eye witnesses and SI Lokender Singh and what has been deposed to by the 3 eye witnesses is also contrary to the tehrir Ex.PW-23/B.

27. Whereas SI Lokender and as recorded in the tehrir Ex.PW-23/B has clearly deposed that till 3:30 AM the accused was not in his custody, the 3 eye witnesses claimed that the accused i.e. Amarpal was apprehended by them at the spot and his custody was handed over to SI Lokender who reached the spot within 15-20 minutes of the call being made to the police.

28. Now, the call made to the police as per the PCR form is at 11:55 PM and SI Lokender had reached the spot somewhere around 12:30 in the middle of the night and if the eye-witnesses are correct custody of Amarpal had to be with SI Lokender by around 12:30 in the midnight.

29. We have confusion, not in small but in abundant measure, all around. The testimony of SI Lokender and the teherir Ex.PW-23/B show that till 3:30 AM the headless body was not recovered. It further shows that till 3:30 AM Amarpal was not handed over to SI Lokender. It shows that the tehrir being dispatched at 3:30 AM, the FIR was obviously registered sometimes thereafter. The FIR Ex.PW-10/A records that it was registered at 3:50 AM. The report of the crime team Ex.PW-22/A records that the crime team reached the scene of the crime at around 2:00 AM but surprisingly the particulars of the FIR have been noted by PW-22, the author of the report on the report. The report Ex.PW-22/A records that the crime team completed inspection by 3:00 AM and left. It records that the remaining part of the body is yet to be recovered and that the identification of the head is yet to be established. The 3 eyewitnesses, if they have deposed truthfully, have deposed facts totally contrary to what stands recorded in the report Ex.PW-22/A. The scene becomes more chaotic when we factor in the testimony of Const. Brij Veer Singh PW-6, the photographer who took 14 photographs Ex.PW-6/A-1 to Ex.PW-6/A-14. The photographs show the severed head as also the headless body. As per Const. Brij Veer Singh he reached the spot at around 1:45 AM and concluded the

proceedings by 2:15 AM and left at 2:45 AM. If Const. Brij Veer Singh is to be believed, the headless body was discovered prior to 2:15 AM.

30. It is apparent that the utter chaotic and confusing situation guides this Court towards no definite conclusion as to the time of the arrest of Amarpal, but we certainly note that as per the arrest memo, he is shown to have been arrested at 5:00 AM.

31. It is true that there is a time gap between when a person is apprehended and formally shown as arrested. But this takes us nowhere in the adjudication of the fact which we need to ascertain with certainty i.e. whether Amarpal was arrested in the manner as claimed by the 3 eye-witnesses or not. Further, we have to answer the question whether the headless dead body of the deceased was recovered after Amarpal made a disclosure statement and led the investigating officer to the spot wherefrom the headless body was recovered.

32. On the one hand we have the report of the crime team which shows that by 3:00 AM the headless dead body was not recovered and on the other hand we have the photographs and the testimony of the photographer as per which the headless dead body was recovered prior to 3:00 AM. On the one hand we have the testimony of the 3 eye-witnesses as per whom Amarpal was apprehended by them at the spot and custody handed over to the investigating officer within 20-25 minutes of the crime and Amarpal made a confession-cum-disclosure statement immediately to the investigating officer and getting the headless dead body recovered but the investigating officer deposing quite to the contrary by stating that after the FIR was registered and copy brought to him, the 3 eye-witnesses produced Amarpal and Amarpal confessed to have committed the crime and hence his having arrested Amarpal. Now, the facts as have emerged are irreconcilably opposites of each other. One set of evidence led by the prosecution destroys the other and vice versa.

33. The author of the inquest papers is SI Lokender who has addressed a communication to the Superintendent at AIIMS Mortuary being Ex.PW-23/F for the reason the dead body with the severed head was sent to the mortuary at AIIMS for post-mortem. This letter makes a request to the Superintendent at the mortuary

that the head and the body which is separated from the head be preserved, as it is the dead body of an unknown person whose identity has yet to be established. The said letter of request is dated 14.1.2002.

34. It assumes importance to note that in the disclosure statement Ex.PW-1/A made by the appellant it stands recorded, from the mouth of the appellant, that the dead body is that of Radhey Shyam. Indeed, if this be so, the investigating officer had with him the identity of the dead body. The request vide Ex.PW-23/F suggests to the contrary and this leads to an inference that in all probability, by the time Ex.PW-1/A was written, neither was the appellant in custody of SI Lokender nor was any disclosure statement made.

35. It is interesting to note that the caption of the confessional-cum-disclosure statement Ex.PW-1/A records that it pertains to FIR No. 35/2002 dated 14.1.2002 under Section 302/201/34 IPC. Another confusion. The offence for which the FIR was registered was under Section 302/201 IPC. The contours of Section 34 IPC emerged for the first time in the confessional-cum-disclosure statement when the appellant informed that he along with two other persons, namely, Idrish and Raju had acted in concert to kill Radhey Shyam. If this be so, Section 34 IPC had to be added in the FIR only after the disclosure-cum-confessional statement was recorded.

36. It appears to be a case where the disclosure statement has been prepared, not at the spot but after everything was over and the investigating officer lost sight of the fact that he could not caption the disclosure-cum-confessional statement by noting that the disclosure statement relate to an FIR attracting Section 302/201/34 IPC.

37. There are 8 recovery memos proved at the trial. It is time to note what they are. Recovery memo PW-1/D bearing the signatures of Amarpal record seizure of a stone Ex.P-3. The recovery memo Ex.PW-1/E again bearing the signatures of Amarpal record seizure of blood-stained earth from within the precincts of a DDA park in Village Jasola. Memo Ex.PW-1/F records lifting of earth control from the park in question and bears the signatures of Amarpal. The memo Ex.PW-1/G, bearing the signatures of Amarpal records the lifting of blood sample from the

same spot where from blood stained earth and control earth has been lifted. The memo Ex.PW-1/H, bearing the signatures of Amarpal, record the seizure of a rickshaw Ex.P-2 from near the park. The memo Ex.PW-1/J record the seizure of a blood stained shawl Ex.P-4. This memo also bears the signature of Amarpal. The memo Ex.PW-1/K, bearing the signatures of Amarpal records the seizure of the clothes which he was wearing at the time when he was apprehended. The memo Ex.PW-1/C, bearing the signatures of Amarpal records the recovery of a knife.

38. It is relevant to note that the memos Ex.PW-1/D, Ex.PW-1/E, Ex.PW-1/F, Ex.PW-1/G and Ex.PW-1/H did not record that they are at the instance of Amarpal.

39. The site plan to scale Ex.PW-5/B records that only the knife Ex.P-1 has been recovered at the instance of the appellant and in respect of spots where from other recoveries were effected, it simply records that these were the spots wherefrom recoveries were effected.

40. Another interpolation has surfaced for which learned Counsel for the State has rendered no explanation. Indeed none can be rendered. In the PCR form Ex.PW-13/A, as deposed to by Const. Krishan Singh PW-13, the recording contained in writing at the second part of the PCR form is not in his handwriting. The writing in question is to the effect that a boy named Amarpal son of Harpal tenant of Raghubir Pradhan but a native of village Budayun, U.P. has been caught by the public with blood stains on his hand and has been beaten by the public. The timing of said recording noted is 12:39 in the midnight. Who has done this fudging? We do not know. But, Const.Krishan Singh PW-13, the author of the PCR form has totally disclaimed said recording. Ex facie somebody has acted over smart while making said interpolation forgetting that the same dents the facts recorded in the tehrir Ex.PW-23/B and the FIR Ex.PW-10/A which were recorded at 3:30 AM and 3:50 AM respectively and make no mention of Amarpal being handed over by the public with blood stains on his hands. It is also important to note that the investigating officer has not taken any imprints of the blood stained hands, which he would have so done, if indeed Amarpal was handed over to him with his hands stained with blood.

41. We need not pen any more. The testimony of the 3 eye-witnesses implicating Amarpal, in the manner stated by them, is totally contrary to the testimony of SI Lokender and the contemporaneous documents i.e. the tehrir Ex.PW-23/B and the FIR Ex.PW-10/A. The recovery memos prepared by the police appear to be prepared at random and at the police station. None of them appear to be contemporaneously prepared.

42. The FIR stands registered at 3:50 AM but its number and the crime to which it relates stand recorded in the report of the crime team, Ex.PW-22/A. The crime team proceedings were over by 3:00 AM. The photographer claims to have taken the photographs of the dead body i.e. the head separated and the remaining part separated by 2:15 AM, but the other documents show that at that time the dead body was not recovered. Only the head was recovered.

43. It appears to be a case where the headless body was detected and its information was available to the police and the police did not have the accused in its hand. At around 5:00 AM the appellant who resides in Village Jasola was picked up and thereafter documents were fabricated to show as if the recoveries are at his instance but the investigating officer forgot that the crime team had left with a report which recorded facts otherwise. It appears to be a case where at the police station the serial number of the entry register where FIRs have to be registered were kept blank, but number known and this is the reason why the crime team could write the FIR number even prior to the FIR being registered.

44. The 3 eye-witnesses, if they have to be believed, would require the custody of the appellant to be entrusted to SI Lokender well before 1:00 AM in the night, a fact positively disputed by SI Lokender and further refuted from the tehrir Ex.PW-23/B.

45. It is extremely unfortunate that the learned Trial Judge has mechanically noted the evidence without discussing the same.

46. With so much of confusion around, the appellant would certainly be entitled to a benefit of doubt, if not more.

47. Noting the fact that co-accused Foorkan and Idrish have been acquitted for the reason nothing stood proved against them, we hold that nothing stands proved against the appellant Amarpal. That blood of the same group as that of the deceased was detected on the clothes of the appellant which were seized as per the memo Ex.PW-1/K as per the report of the serologist is too insignificant incriminating evidence. Such kind of recoveries have been held to be extremely weak evidence as per the decisions reported as AIR 1963 SC 113 Prabhoo v. State of U.P., : AIR 1994 SC 110 Surjit Singh v. State of Punjab, AIR 1977 SC 1753 Narsinbhai Haribhai Prajapati etc. v. Chhatrasinh and Ors. and : JT 2008 (1) SC 191 Mani v. State of Tamilnadu.

48. Before concluding we re-emphasize what we had stated in a decision penned by us a few months ago that at a criminal trial the best assurance of guarantee of justice to an accused that his rights under Article 21 of the [Constitution of India](#) are protected are the warm and living hands and the hawk's eye of a vigilant Judge through whose hands or eyes no piece of evidence worthy of being noted escapes attention of. When either these hands become cold or the eyes cease to watch carefully, the life and liberty of the accused becomes a casualty. Unfortunately, this has happened in the instant case.

49. We re-emphasize for the benefit of the learned Trial Judges that it is their duty to see with microscopic eyes, all evidence and then test the veracity of eye-witness account.

50. In the instant case, it assumes importance that the investigating officer has admitted to the fact that the person who triggered the finger of accusation to be pointing against the appellant is an accused in various crimes registered at PS Sarita Vihar. The said person is Salim @ Pappu. Feroz is admittedly a brother of Salim @ Pappu. The other stated eyewitness Parvash Rai is their neighbour. The learned Trial Judge was bound to consider, whether an unsolved crime has attempted to be solved taking help of persons who are likely to be under police pressure or whether Feroz and Pappu have contrived to settle some scores with appellant Amarpal. The only way in which the learned Trial Judge could have unearthed the actual reason was to juxtapose the various sets of evidence as has

been done by us. Had it been done, it would have dawned upon the learned Trial Judge that the prosecution has inflicted sufficient wounds on its own case and that the effect of these wounds is that the case of the prosecution led itself to self-destruction.

51. The appeal is allowed. The impugned judgment and order dated 24.7.2007 convicting the appellant for the offence punishable under Section 302/201 IPC is set aside.

52. The appellant is acquitted of the charges framed against him.

53. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar, who is directed to release the appellant forthwith if he is not required in custody in any other case.

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