

Rajinder Kumar Vs. State

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Court : Delhi

Decided On : Feb-24-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Appeal No. : CRL.A.114/1999

Appellant : Rajinder Kumar

Respondent : State

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.Rajesh Mahajan, Adv.

Judgement :

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

1. As recorded in DD No.31-A dated 28.10.1991 PS Prasad Nagar, Babu Lal (PW-14) reported as the police station at 6:10 PM and got his statement recorded that he was a resident of Flat No.B-190, DDA Flats, Raghubir Nagar where his family was residing with him and that his son Ramesh (PW-4) had a factory near Old Chowki, address whereof was not known to him. In the evening today a worker Devi Ram was lying drunk in the factory and since the factory had to be locked

and Devi Ram was not rising he was giving information of said fact.

2. SI Ghanshyam Dass PW-16 and as deposed to by him was patrolling in the area when Const.Mohd.Rashid handed over copy of DD No.31-A to him at 7:00 or 7:30 PM and he reached premises No.16/1450, Arya Samaj Road and found Devi Ram lying dead in a room on the ground floor and he found injury mark on the neck and hence suspected that Devi Ram was strangulated. In the meantime Insp.Ajit Singh (PW- 19) reached. He made an endorsement Ex.PW-16/A beneath DD No.31-A and through Const.Bahadur Singh got registered FIR Ex.PW-7/A and thereafter investigation was taken over by Insp.Ajit Singh.

3. Eschewing reference to his testimony pertaining to seizures effected at the spot, none of which acquired incriminating character, he deposed that the appellant was arrested on 13.11.1991 and made a disclosure statement pursuant whereto he led the police to premises No.16/597, Hardhyan Singh Road and got recovered a towel Ex.P-2 which was seized by the IO as recorded in the seizure memo Ex.PW-16/D.

4. How did the appellant become a suspect?

5. Before answering the question we may note that in view of the fact that the appellant and the deceased were co- workers; being the only two workers, at the single room, so called factory, where shoes were manufactured at the place where Devi Ram died i.e. 16/1450, Arya Samaj Road, there was a needle of suspicion upon the appellant, but nothing incriminating surface, in spite of the appellant being subjected to a lie detector test, a fact admitted by Insp.Ajit Singh.

6. To answer the question posed in para 4 above, as deposed to by Babu Lal PW-14, when he was sitting at the factory room of his elder son Mahesh at 16/597, Hardhyan Singh Road, at about 7:00 PM appellant came to him and made a confession that he had killed Devi Ram because he was not returning `300/- loaned by him and when he did the crime, both were in a drunken state. It is apparent that this so called admission of guilt at an extra judicial confession was the basis to arrest the appellant.

7. The post-mortem report Ex.PW-15/A has not been able to fix, even the rough time of the death of the deceased for the unfortunate reason the post-mortem was conducted after 3 days of the dead body being recovered, but relevant would it be to note that recorded under the caption 'Internal Examination', pertaining to the stomach contents it stands recorded that a small amount of digested food was found. It stands categorically recorded: 'No alcohol smell'.

8. Ramesh Chand PW-4 has deposed that their family was running a shoe making factory at two places. Whereas the factory at 16/1450, Arya Samaj Road was being looked after by him, the other at 16/597, Hardhyan Singh Road was being looked after by his elder brother Mahesh. That the appellant and the deceased were the two co-workers at the factory at Arya Samaj Road and due to the two frequently quarrelling, appellant was sent to his brother's factory at 16/597, Hardhyan Singh Road. At 3:00 PM on 28.10.1991 when he went to his brother's factory the appellant told him that Devi Ram was lying in his factory in a stiff position was not responding. He and his father went to the factory at Arya Samaj Road by which time workers had assembled. He deposed that Devi Ram used to have a key of his factory as he used to sleep there in the night.

9. Babu Lal PW-14 deposed in harmony with his son and in addition deposed that the appellant made a confession to him, which fact he told the investigating officer on the same day.

10. We may note that Ashok Kumar PW-2, the landlord of the factory at 16/1450, Arya Samaj Road has deposed that at 3:00 PM on 28.10.1991 he had seen the appellant stealthily (dabe paon) walk away from the factory.

11. While convicting the appellant for the offence of having murdered Devi Ram, the learned Trial Judge has relied upon the conduct of the appellant walking away stealthily, as deposed to by PW-2, he and the deceased quarrelling in the past, he and the deceased being the only two co-workers in the factory and appellant's extra judicial confession as good evidence to convict the appellant.

12. We may note that the appellant has consistently taken the stand, evidenced by the line of cross examination on which Babu Lal PW-14 and his son Ramesh

Chand PW-4 were cross examined, that it was Mahesh or Ramesh who had killed the deceased and they being men with money and he i.e. the appellant being a poor person, the Investigating Officer had connived with them for illegal gains.

13. It is unfortunate that the learned Trial Judge has gullibly eaten whatever has been offered to him by the prosecution and has not bothered to rationally understand the facts brought before him.

14. The first and the foremost rational fact which has been ignored by the learned Trial Judge is the apparent conflict in Babu Lal's statement on which DD No.31-A was recorded as per which Babu Lal went to the police station to give information of Devi Ram not responding and lying in his factory in a drunken condition and he i.e. Babu Lal wanting to lock the factory and the testimony of Babu Lal and his son as per which there was no occasion for the factory to be locked because the deceased had been handed over the key thereof inasmuch as during night the deceased used to sleep in the factory. Now, the word 'Factory' gives an impression of huge premises and we need to dispel the same in the instant case for the reason the site plan Ex.PW-10/A shows that it is a small room ad-measuring hardly 6 feet x 12 feet. This conflict should have raised the eyebrows of the learned Trial Judge compelling him to pose the question: Was it Babu Lal and his son taking defensive action? Suffice would it be to state that the said question does arise and needed to be answered. Answering the question it is apparent that the key of the room where the deceased died was with the deceased for the reason during the day shoes used to be manufactured in the room which was under the tenancy of Babu Lal and his sons and during the night the deceased used to sleep in the room. The question of the factory room being locked requiring Devi Ram to be removed from the room does not arise. Assuming Devi Ram was lying drunk in the room, it hardly mattered because this was the room Devi Ram used to sleep and anyone seeing him lying drunk in the room at 6:10 PM would hardly bother as the person would be assured that once Devi Ram got over the hangover of the alcohol, everything would be fine.

15. The second and also a foremost thing which stares us is the fact that the post-mortem report of the deceased completely rules out his having consumed any

alcohol. This also comes into conflict with what Babu Lal told when DD No.31-A was recorded that his worker Devi Lal was lying drunk in the factory and was not responding. Obviously, Babu Lal had contrived and had told a lie. Devi Lal was not drunk. He had been strangled to death. Does a question not arise: Why did the IO not interrogate Babu Lal with reference to an obviously false statement made by Babu Lal to the police? The question certainly arises and was required to be posed and answered by the learned Trial Judge.

16. The third thing, which again is foremost, and required to be considered was that the time by which Babu Lal informed the police was 6:10 PM and obviously Devi Ram had been murdered by then. As per PW-4, in view of the past quarrels between the two, the appellant had been shifted to work in the factory of Mahesh at Hardhyan Singh Road. Where was the question of the appellant being at the factory of Ramesh during the day time? The question which the learned Judge ought to have posed and answered was: Why did the Investigating Officer not investigate to find out whether the appellant was working at the factory at Hardhyan Singh Road? The question is relevant and required to be posed and answered.

17. No doubt, we have the testimony of Ashok Kumar PW-2 that he had seen the appellant walk away stealthily from the place where the crime took place but assumes importance that the contrivance in the testimony of the witness to overstate facts against the appellant is writ large. According to Ashok Kumar he had let out the room to the accused and the deceased and from the room in question the two used to make shoes and sell them to a Seth. This is in direct conflict with the testimony of Babu Lal and his son Ramesh. As per both of them, the family ran the business of manufacturing shoes from two premises (single room) one of them being the place where the crime took place.

18. Turning to the so called extra judicial confession, it is settled law that unless inspiring confidence, little weightage has to be given to extra judicial confessions. Pertaining to the so-called extra judicial confession made by the appellant to Babu Lal, the learned Trial Judge was obliged to pose a question and answer the same. The question was: What was the emotional bondage or a position of dominance

justifying appellant to make an extra judicial confession to Babu Lal? None at all.

19. That apart, in the context of the facts hereinabove noted, it is apparent that a crime which took place on 28.10.1991 and as admitted by the Investigating Officer Insp.Ajit Singh PW-19 it was a blind murder till 13.11.1991, when the appellant statedly made the extra judicial confession. In between, the appellant had been put through a lie detector test and had successfully cleared the test. The crime had taken place in the factory premises of Mahesh and there is every reason to doubt Mahesh being an accused and there was a grave apprehension in the mind of Babu Lal and his sons that unless the police resolved otherwise, Mahesh could face a problem. A clear motive of fabricating a concocted confession is emerging.

20. Before bringing the curtains down, we cannot but restrain ourselves from recording that in virtual 2 out of 4 appeals we are hearing, we are noticing a lack of critical evaluation of the evidence. We gain an impression that the learned Trial Judges are answering the issues as if a theorem has to be recited, ignoring that a theorem needs to be applied to a given problem and the problem solved and not the theorem recited. To be more explicit, the learned Trial Judges tend to cite the incriminating circumstances projected by the prosecution and with reference to the examination-in-chief of the witnesses hold that the circumstances have been established, in the process connecting link evidences demolishing, as in the instant case, the so called positive evidence are not being noted.

21. The appeal is allowed. Appellant Rajinder Kumar is acquitted of the charge of having murdered deceased Devi Ram. The judgment and order dated 28.9.1996 is set aside. The order dated 28.9.1996 imposing sentence is quashed. The bail bond and surety bond furnished by the appellant when he was admitted to bail shall stand discharged.

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