

**Saeeduddin Vs. State**

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**Court :** Allahabad

**Decided On :** Mar-03-2011

**Judge :** Amar Saran; Naheed Ara Moonis, JJ.

**Acts :** Indian penal code (IPC) - Sections 176, 201, 302; Code of Criminal Procedure (CrPC) - Section 161, 313; Evidence Act - Sections 32(1), 134

**Appeal No. :** JAIL APPEAL No. - 5198 of 2005

**Appellant :** Saeeduddin

**Respondent :** State

**Advocate for Def. :** From Jail, Adv

**Advocate for Pet/Ap. :** A.G.A., Adv

**Judgement :**

1. This criminal jail appeal arises from a judgement and order dated 10.12.2003 passed by the Additional Sessions Judge/Fast Track Court No.1, Hamirpur convicting and sentencing the appellant Saeeduddin to imprisonment for life and a fine of Rs. 10,000/- under section 302 IPC, in case of default, the appellant was directed to further undergo two years simple imprisonment; ten years rigorous imprisonment and a fine of Rs. 5000/- under section 376 IPC and in default the appellant will have to further undergo one year simple imprisonment and five years rigorous imprisonment and a fine of Rs. 3000/- under section 201 IPC and in default, one year simple imprisonment. However, all the sentences were directed

to run concurrently.

2. Initially there were two accused persons, namely the appellant Saeeduddin and one Deepak alias Deepu, who were nominated in the FIR dated 20.1.2003 lodged at 12.30 PM at police station Kurara, district Hamirpur by Ram Khilawan, P.W. 1. However, the other accused Deepak alias Deepu was declared juvenile and his case has been separated and sent to the juvenile court.

3. As the earlier amicus curiae, appointed in this case Shri Suresh Pandey was not appearing, when the case was called out for hearing, Shri Syed Imran Ibrahim was appointed amicus curiae on 10.1.2011 and has been handed over the paper book and we have heard him on 11.1.2011.

4. In brief, the facts of the case are that Ram Khilawan, PW 1 lodged a report on 20.1.2003 at 12.30 PM mentioning that his daughter Urmila, aged about 12 years had gone on the previous day, i.e. 19.1.2003 at about 9.00 AM to the orchard of Lala Ram Singh for collecting guavas and tomatoes. On that day, the watchmen of the said orchard, the appellant Saeeduddin and Deepak alias Deepu had told Urmila that she should come the next day with some "daal" and they would give her guavas and tomatoes. Urmila left for the orchard, having taken 'dal' from her sister Saraswati, P.W. 3. When Urmila did not return back for a long time, then the informant and others went out looking for her. In the morning of 20.1.2003 at about 11.30 a.m. her body was discovered. On 19.1.2003 Tejwa, PW 3 and one Gore Lal, who had come for marketing to Kurara saw Urmila at the orchard along with the appellant and the co-accused Deepak. In the evening the informant's father Kuddhi Lal, P.W. 9 had seen the appellant and co-accused taking out a loaded sack from the room in the orchard and dragging it towards the sugarcane field. He then named the appellant of having committed the crime and having hidden the corpse in a sack in the sugarcane field.

5. Apart from the aforesaid four witnesses of facts, PW 1, Ram Khilawan, PW 2, Saraswati, PW 3, Tejwa, PW 9 Kuddhi Lal, Dr. Prem Kumar Gupta, PW 4, who conducted the post-mortem examination on the body of the deceased at 2.30 PM on 21.1.2003, Dr. Sundar Lal Sachan, P.W. 5, S.O. Aditya Kumar Dwivedi, P.W. 6, the investigating officer, PW 7, Constable Balbir Singh, PW 8, Rajesh Kumar have

been examined as the formal witnesses in this case.

6. The post-mortem examination on the body of the deceased Urmila disclosed the following ante-mortem injuries:

1. Incised wound 4 cm x 1 cm x bone deep on the left side skull, 3 cm above the left ear.

2. Incised wound 7 cm x 3 cm x brain deep on right side skull 7 cm above right ear. The membranes of the brain exposed and bone underlying the wound is absent.

3. Incised wound 7 cm x 2.5 cm x brain deep present on the frontal region of the skull 9 cm above the root of nose. The bone underlying the wound is absent and brain is exposed.

4. Incised wound 7 cm x 1 cm brain deep on the right side skull 5 cm above the right ear. Brain exposed and the underlying bone is absent.

5. Incised wound 8 cm x 1.5 cm x brain deep on the right side skull 2 cm above the right ear brain exposed and underlying bone is missing.

6. Incised wound 4 cm x 1 cm x brain deep present on the occipital region of the skull 9 cm behind the right ear.

7. Punctured wound 0.5 cm x 0.4 cm x 1.5 cm deep present on the right side neck 5 cm below right ear margins of the wound clean cut.

8. Punctured wound 2 cm x 1 cm x 4 cm deep present on the right side front of the neck 2.5 cm internal to the injury No. (7). Margins of the wounds are sharp cut.

9. Punctured wound 1.5 cm x 0.5 cm x 4 cm deep present on the left side front of the neck 5 cm below the left ear. The Margins of the wound clean cut.

10. Punctured wound 1 cm x 0.5 cm x 3 cm present on the left side neck 1.5 cm away from the injury No. (9). Margins of the wound are sharp.

11. Punctured wound 0.5 cm x 0.5 cm x 3 cm deep on the left side upper part of the neck 2.5 cm below the left ear. The margins of the wound are sharp cut.

12. Punctured wound 1.5 cm x 0.5 cm x 5 cm deep on the middle of the chest 10 cm above the umbilicus. The margin of the wound clean cut.

13. Incised wound 0.5 cm x 0.5 cm x skin deep on the left upper axillary area 7 cm above and outer to the left nipple.

14. Incised wound 0.5 cm x 0.5 cm x muscles deep on the palmer surface of the root of the right thumb, margins are clean cut.

15. Multiple contusion marks of various sizes and shapes present on the inner surface of the left thigh in an area of 24 cm x 16 cm. The size of large contusion 8 cm x 2.5 cm and small contusion 3 cm x 1.5 cm. Reddish in colour.

7. In his statement under section 313 Cr.P.C., the appellant denied the case against him and stated that he had been implicated on a false charge. The witnesses are of one family and that they have deposed at the instance of the police. He also produced two defence witnesses, DW 1 Dr. Nanku Ram and DW 2 Dr. Shiv Shastri, who proved that he received the injuries on 21.1.2003, (Ext. Kha-1) and that the appellant was not examined in jail.

8. PW 1 Ram Khilawan has affirmed his first information report in his evidence in Court. He has further stated that Urmila left home at 9.00 a.m. with some "daal" to go to the orchard and when she did not return home on the same day, then they had gone to the orchard looking for her. The appellant and co-accused Deepak were not present there. Then he learnt from Tejwa and Gore Lal that she was present in the orchard along with the accused persons. On the next day, at about 11.30 a.m. in the sugarcane field of Lala Ram Singh, her dead body was found in a sack. On the day of incident, his father Kuddhi Lal, P.W. 9 had seen Saeeduddin carrying a bag. He reiterated the rest of the allegations mentioned in the FIR that the appellant had committed rape on Urmila and then assaulted her with some sharp edged weapon.

9. P.W. 2, Saraswati, who was the elder sister of Urmila, deposed that the appellant and co-accused used to keep watch over Lala Ram Singh's orchard. Urmila had told her that Saeeduddin and Deepak alias Deepu had asked her for

some "daal". Urmila left her home at 9.00 a.m. and never returned. She had told her family members that Urmila had gone to the orchard. The family members had searched, but neither Urmila nor the appellant or co-accused Deepak were found. The next day, Urmila's corpse was found in a sack in the sugarcane field of Lala Ram Singh. Tejwa and Gore Lal had seen Urmila in the orchard with Saeeduddin and Deepak alias Deepu.

P.W. 3 Tejwa has stated that on the date of incident he had come to Kurara market along with Gore Lal. There were some financial transactions between him and Devendra, son of Lala Ram and he had to give money to Devendra, hence he had visited Lala Ram's orchard. He saw Saeeduddin, Deepak and Urmila breaking guavas under the guava trees. When he enquired from Saeeduddin about the whereabouts of Devendra, he was informed that he was not there, and he would either be at home or at the Bazaar. Then this witness and Gore Lal left for the market. The next day, he learnt that Urmila had been raped and murdered in that orchard and he was convinced that Saeeduddin and Deepak had committed the crime.

10. P.W. 8, Rajesh Kumar has deposed that he was the witness of inquest on the corpse of Urmila, which was held on 20.1.2003. He also stated that his clinic was at the tri-crossing and that Saeeduddin and Deepak confessed their guilt before the police. The Gupti, axe and condom on which some obscene photographs were printed were got discovered by the appellant and the co-accused from the sugarcane field of Lala Ram Singh. He had gone along with the police party, and Vijay Singh for having the discoveries made. Both the accused Saeeduddin and Deepak, walked ahead and from a pile of grass on the northern medh of the sugarcane field, they got recovered an axe, Gupti and empty packet of condoms on which some obscene photographs were printed were recovered at about 8-9 a.m., regarding which the recovery memo was prepared at the spot.

P.W. 9 Kuddhi Lal, who was the grand-father of the deceased had deposed that Urmila had gone to the orchard of Lala Ram Singh at about 9.00 a.m. carrying some "daal" with her, which she had taken from her mother and sister Saraswati. When Urmila had not returned from the orchard, then they searched for her in the

orchard, but she was not found and the accused persons were also not there. The next day at 11.30 a.m. the corpse was found in the sugarcane field of Lala Ram Singh. Tejwa and Gore Lal had come to Kurara on the date of incident and they had seen Urmila in the orchard. In the evening when he was going to ease himself, he had seen Saeeduddin and Deepak alias Deepu taking out a sack from the room in the orchard and dragging it towards the sugarcane field. At that time, he thought that either it was some fertilizer or cow dung. When he found the dead body in the sack, then he suspected that the appellants had been shifting the dead body in the sack on the previous evening.

11. PW 7 Constable Balbir Singh prepared the check report and G.D. on 20.1.2003 and registered the case at report No. 17 at 12.30 p.m. in the G.D.

12. P.W. 6, S.O. A.K. Dwivedi, was the investigating officer, who commenced the investigation in this case. He also recorded the statement of the informant Ram Khilawan and prepared inquest and other relevant papers and sent the corpse for autopsy. He investigated the spot, prepared site plan and arrested the accused persons at 8.55 p.m. on the same night. The accused confessed to their guilt and got discovered the Gupti, axe and some wrappers of condom, from the sugarcane field of Lala Ram Singh. On the pointing out of the accused, he got the blood stained axe, bloodstained Gupti and wrappers of condoms, which had obscene photographs recovered at 8.45 a.m. Recovery memo had been prepared at the spot and the recovered items were sealed and sent along with the blood stained and plain mud and the clothes of the deceased to the forensic laboratory. The recovery memo of the place where the said items were recovered was also prepared. After recording the statements of the witnesses and completing the investigation, the investigating officer submitted the charge sheet.

13. It was argued by the learned amicus curiae that the chain of circumstances in this case are not complete and it would not be safe to convict the appellants on the evidence collected. The evidence of PW 3 Tejwa, who claimed to have last seen the deceased Urmila with the appellant Saeeduddin and Deepak alias Deepu breaking guavas under the guava trees, cannot be relied on because he does not mention any time when he saw the deceased and the accused persons together in

the garden. P.W. 9 Kuddhi Lal was the grand-father of the deceased, who claimed to have seen the accused Saeeduddin and Deepak taking out the sack from a room in the orchard and carrying it to the sugarcane field and from the said sack the corpse of the deceased was discovered. His evidence was challenged on the ground that he admits that his eye sight is poor and he cannot see beyond 45 paces. As per the site plan the distance from which this witness is said to have seen the accused dragging the sack was at least 90 meters.

14. It was also submitted that according to P.W. 1 Ram Khilawan, Tejwa had come to the police station and the report was lodged at 7 or 8 p.m., but according to PW 3 Tejwa, he had come to Kurara at about 11 or 11.30 a.m. In his statement under section 161 Cr.P.C. he stated that he came two days after he had seen the incident, whereas in court he stated that he came the next day. Two witnesses of last seen were mentioned in the FIR, viz. Tejwa and Gore Lal, but only Tejwa has been examined by the prosecution, and Gore Lal has not been examined. As the place where the dead body and other incriminating items were recovered was accessible to all, hence the recovery from the said place was not reliable.

15. Learned Additional Government Advocate, however, controverted the contentions of the learned counsel for the appellants and submitted that it had wrongly been asserted that Tejwa did not mention the time when he came from his village Tikapur to Kurara market where he had the opportunity to see the deceased along with the appellant and the other accused. He has specifically mentioned in his evidence that he had come to the orchard at about 10 or 10.30 a.m. and he was there for about five minutes.

16. It was further submitted by the learned AGA that simply because PW 9 Kuddhi Lal's eye sight was not very good, there was no good reason for him not to see the accused persons from the point "B" where he was located because there were no obstructions to the point "A", which was the room in the hut in the orchard from where the accused was dragging the sack to point "C" where the dead body was eventually found.

17. It was further submitted that the minor discrepancies between the 161 Cr.P.C. statement and the evidence as to when the witness Tejwa returned to the village

after the incident and other minor discrepancies on which nothing turns, will not significantly affect the prosecution case. As the dead body was found in the orchard and the incriminating materials, viz. bloodstained Gupti, axe, wrappers of condoms with obscene photographs, which were recovered at the instance of the appellant as well as the corpse was found in an enclosure, where the hut, orchard and the sugarcane field etc. were located and it was the duty of the appellant and the co-accused Deepak alias Deepu to keep a watch over the said field. Moreover, weapons and wrappers of condom were concealed under the babool sticks from where they were got discovered by the appellant and co-accused Deepak alias Deepu. Blood was also found in the Kothri, where the crime is said to have been committed.

18. Having considered the submissions of the learned counsel for the parties, we are of the view that the prosecution has successfully established its case against the appellant. Absolutely, no reasons were suggested why PW 3, Tejwa, PW 9, Kuddhi Lal or PW 1, Ram Khilawan, the father of the deceased would falsely implicate the appellant and the co-accused Deepak alias Deepu, against whom they nursed no enmity and spare the real offenders.

19. As pointed out by the learned AGA, 10.30 a.m. has been mentioned as the time in the evidence, when PW 3 Tejwa came to the orchard and saw the deceased along with the accused persons breaking guavas. So far as PW 9, Kuddhi Lal was concerned, it was pointed out that there were no obstructions from the point where he was located till the Kothari from where the accused persons were dragging out the sack and carrying it to the sugarcane field where it was found the next day and there was no reason why he would invent such a history. Being a person belonging to the same village, he would have little difficulty in identifying the accused persons. Moreover, PW 9, Kuddhi Lal's evidence is not the only piece of evidence for connecting the appellant and co-accused Deepak with this offence.

20. There is also a highly significant piece of evidence in this case, viz. disclosure of the deceased Urmila to her sister Saraswati that she had met the two accused persons one day earlier and they had asked her to come to the orchard the next

day with some "Daal" and they would give her some guavas, tomatoes and peas in return. These facts were corroborated by the evidence of PW 2, Saraswati, sister of the deceased, who also stated that the deceased had left her home at 9.00 a.m. after carrying some "Daal", but she never returned thereafter. In the night a search was made in the orchard for the deceased, but neither the deceased nor the appellant and co-accused Deepak alias Deepu were found. The next morning the corpse of the deceased was found in the sugarcane field of Lala Ram Singh. The orchard was located in the same enclosure.

21. Learned Additional Government Advocate also drew our attention to the site plan which shows that tomatoes, guavas and peas were grown in the said enclosure. The disclosure of Urmila to her sister that she had been invited by the accused persons to come to the orchard with some "Daal" on the date of incident, was a circumstance in the transaction, which provided an opportunity to the accused persons to commit her murder after raping her.

22. In this connection, it would be useful to extract section 32(1) of the Evidence Act, which reads as follows:

"32(1) When it relates to cause of death:- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

23. A reading of the aforesaid provisions shows that under the said provision not only the statement made by the person as to the cause of his death, but even the statement of the person as to any of the circumstances of the transaction, which resulted in his death are relevant. In a case in which the cause of death of the person becomes relevant, it is not material whether the person, who made the statement was under expectation of death at the time when he made the same.

24. In the Privy Council decision in the case of Pakala Narayana Swami v. Emperor, AIR 1939 Privy Council 47, where the dead body of the deceased man was found in a steel trunk in a third class compartment on 23.3.1937. In that case three days earlier on 20.3.1937 the deceased had received a letter, the contents of which was not actually proved, but which showed that he was invited to visit Berhampur. The deceased had told his wife that as the appellant's wife had written to him and told him to go and meet the appellant to receive his dues. The statement of the widow that on 20.2.1937 the deceased had made the disclosure to her that he was going to Berhampur as the accused's wife had written to him was objected to by the defence as being inadmissible. The Privy Council examined the decisions of the Indian Courts, some of which had suggested that the statement should be made after the transaction had taken place or when the person making it was near his death and that the circumstances could only include the acts done when and where the death was caused. The Privy Council repelled those contentions and stated that the natural meaning of words in section 32(1) of the Evidence Act admitted to no such limitation. It was observed thus in paragraph 8 by the Privy Council:

"..... The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction : general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. "Circumstances of the transaction" is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in "circumstantial evidence" which includes evidence of all relevant facts. It is on the other hand narrower than "res gestae." Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of

the actual fatal dose. It will be observed that "the circumstances" are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that "the cause of (the declarant's) death comes into question." In the present case the cause of the deceased's death comes into question. The transaction is one in which the deceased was murdered on 21st March or 22nd March : and his body was found in a trunk proved to be bought on behalf of the accused. The statement made by the deceased on 20th or 21st March that he was setting out to the place where the accused lived, and to meet a person, the wife of the accused, who lived in the accused's house, appears clearly to be a statement as to some of the circumstances of the transaction which resulted in his death. The statement was rightly admitted. ...." (Underlining by us)

No importance can be given to the other contentions raised by the learned counsel for the appellant about whether the witness PW 3 Tejwa had again come to Kurara two days after the incident or one day after the incident and the contradictions in his 161 Cr.P.C. statement and evidence in Court because these are minor discrepancies.

Also non-production of Gore Lal is not fatal for the prosecution because in view of section 134 of the Evidence Act no particular number of witnesses are required for proving a particular fact, and that evidence must be weighed and not counted, and thus there is no need to multiply the witnesses for proving the same fact. This issue has been felicitously examined by the Apex Court in paragraphs 16 and 17 in AIR 2003 SC 1164, "Amar Singh v. Balwinder Singh"

"16. Another reason given by the High Court for acquitting the accused-respondents is that two other injured witnesses, namely, Kashmira Singh and Pritam Singh and one Ramesh, whose name was mentioned in the FIR, were not examined. Shri Ashwani Kumar, learned senior counsel appearing for the accused-respondents has vehemently urged that the purpose of a criminal trial is not to support the prosecution theory but to investigate the offence and to determine the guilt or innocence of the accused and the duty of the public

prosecutor is to represent the administration of justice and therefore the testimony of all the available eye-witnesses should be before the Court and in support of this contention he has placed reliance on State of U.P. and another v. Jaggo alias Jagdish and others, AIR 1971 SC 1586. It is true that the witnesses essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution, whether effect of their testimony is for or against the case of the prosecution. However, that does not mean that everyone who has witnessed the occurrence, whatever their number be, must be examined as a witness. The prosecution in the present case had examined three eye-witnesses who were all injured witnesses. The mere fact that Kashmira Singh and Pritam Singh were not examined cannot lead to an inference that the prosecution case was not correct. The aforesaid two witnesses had been given up by the prosecution on the ground that they had been won over by the accused. These two persons are not family members of the first informant Amar Singh and it is quite likely that they did not want to get involved in any dispute between the first informant and his sons on the one hand and the accused on the other hand as they had no interest in the land belonging to Jangir Dass Sadh which was being earlier cultivated by Gurdial Singh, father of A-1 and A-2 but had been taken an year earlier by the first informant Amar Singh. the contention raised by learned counsel fails to take notice of Section 134 of the Evidence Act which provides that no particular number of witnesses shall in any case be required for the proof of any fact. A similar contention has been repelled by this Court in a very illustrating judgment in Vadivelu Thevar v. State of Madras, AIR 1957 SC 614 and it will be useful to take note of para 11 of the report, which reads as under :

".....The contention that in a murder case, the Court should insist upon plurality of witnesses, is much too broadly stated. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognised in S. 134, which by laying down that "no particular number of witnesses shall, in any case, be required for the proof of any fact" has enshrined the well recognised maxim that "Evidence has to be weighed and not counted." It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon

plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished....."

The above quoted principle was laid reiterated in Ramratan and others v. State of Rajasthan, AIR 1962 SC 424.

17. The prosecution having examined three eye-witnesses, in our opinion, there was no necessity of multiplying the number of witnesses and no adverse inference could be drawn against the prosecution merely on the ground that Kashmira Singh or Pritam Singh were not examined. If the incident had not taken place as suggested by the prosecution but had happened in a different manner, there was no impediment in the way of the accused-respondents to examine the aforesaid persons as defence witnesses, but they did not chose to do so."

25. No reason has been suggested why the witnesses have falsely deposed against the accused persons and if any one has committed the crime, why the evidence would point only to the complicity of the accused persons in this case.

26. There can be no denial of the fact that the place where the incident took place was in the exclusive control of the appellant, who was the watchman of the same. The recovery of bloodstained Gupti, axe and condom with obscene photographs at the instance of the appellant from under Babool sticks in the said enclosure are strong incriminating pieces of evidence to connect the accused with this offence.

27. In view of what has been indicated herein-above, we find no illegality in the order of Sessions Judge convicting and sentencing the appellant as above. The order of the Sessions Judge is upheld. The appeal accordingly fails and is dismissed.

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