

Shailesh Kumar and ors Vs. State

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Court : Delhi

Decided On : Jul-13-2011

Judge : Badar Durrez Ahmed; Veena Birbal, Jj.

Acts : Indian Penal Code (IPC) - Sections 120-B, 302, 201; Code of Criminal Procedure (CrPC) - Sections 313, 161

Appeal No. : CRL.A. 613/2009

Appellant : Shailesh Kumar and ors

Respondent : State

Advocate for Def. : Ms Richa Kapur, Adv.

Advocate for Pet/Ap. : Mr Abhay Singh; Ms Yasmin Zafar, Adv.

Judgement :

1. The appellants Shailesh Kumar, Santosh and Alok Kumar are aggrieved by the judgment dated 26.05.2009 passed by the learned Additional Sessions Judge, Delhi, in sessions case no.72/2008 whereby they have been convicted under Section 120-B, Section 302 read with Section 120B and Section 201 read with Section 120B IPC. The said case arose out of FIR No. 168/2002 registered at Police Station Sarasvati Vihar.

2. The appellants are also aggrieved by the order on sentence dated 28.05.2009 whereby the learned Additional Sessions Judge, Rohini Courts, Delhi, sentenced the appellants to rigorous imprisonment for life insofar as the offence under Section 120B IPC is concerned along with a fine of ` 5000/- each. The appellants were also sentenced to rigorous imprisonment for life with a fine of ` 5000/- each in respect of the offence punishable under Section 302 read with Section 120B IPC. Finally, the appellants were also sentenced to rigorous imprisonment for seven years and a fine of ` 1000/- each in respect of the offence under Section 201 read with Section 120B IPC. All the sentences were directed to run concurrently.

3. In this case, a double murder of a father and son, namely, Ram Murat aged about 50 years and his son Chamki, aged about 15-16 years has been committed. The appellants have been convicted for the same as mentioned above.

4. It is through DD No.8A dated 28.02.2002 (Ex.PW1/G) that information was received at Police Station Sarasvati Vihar, Delhi, at about 9.45 am, that house no.A-151/152 J.J. Colony, Shakurpur, Delhi has been locked and that a foul smell is emanating from it. Thereupon, Inspector Jag Ram Singh along with SI Surjit Singh went to the spot. As per the ruqqa (Ex.PW17/A), at the spot, SI Surjit Singh also met the SHO and the Additional SHO and Constable Bharat Kumar and thereupon a hammer was taken out from the investigating officers kit and the lock of the house/room was broken. It was discovered that there were two rooms on the ground floor of the said house. In the rear room, there was an iron trunk from which the foul smell was emanating. Beneath the trunk there appeared to be leakage of a blood like liquid which had since dried up. When the trunk was opened, it was found that it contained a quilt and two highly decomposed dead bodies of males. These bodies were later on identified as that of Ram Murat and his son Chamki. No eye-witness was present at the spot. It is on the basis of the ruqqa that the FIR (Ex.PW1/A) was registered.

5. The investigating officer called the crime team and the photographer. The fingerprint expert PW-10 SI Subhash Chand examined the scene of crime but as per his report Ex.PW-10/A no chance prints could be developed from any of the articles. The photographer, Constable Chunni Lal was the person who took the

photographs which are Ex. PW11/13 to 24 and the negatives of the said photographs are Ex.PW11/1 to 12. The broken lock (Ex.P-1) the iron trunk (Ex.P-2) the quilt (Ex.P-3) and two dumb-bells (Ex.P-4/1 and Ex.P-4/2) along with samples of the blood on the floor were taken in the possession and were sealed with the seal of J.S.

6. It is the case of the prosecution that suspicion arose in respect of the appellants in view of the statements given by PW-3 Ram Avtar and PW-4 Insul Master who were tenants of the deceased Ram Murat in the said house. As per the statement of PW-4 Insul Master, suspicion was raised on Guddu (which is an alias of appellant Shailesh Kumar). It was suggested that deceased Ram Murat was seen in the company of the said Guddu and 2/3 persons. On the basis of the said statements, the appellants were arrested and thereupon their disclosure statements were recorded.

7. Thereafter, the investigation was completed and the charge-sheet was filed and the charges, as mentioned above, were framed against the appellants. In the course of trial, the prosecution examined as many as 31 witnesses and the defence also examined two witnesses. The statements of the accused were recorded under Section 313 Cr.P.C. After arguments were advanced by the counsel for the parties, the learned Additional Sessions Judge delivered the impugned judgment and passed the impugned order on sentence.

8. The learned counsel for the appellant submitted that the entire case of the prosecution rests on three aspects, they being - (1) motive; (2) last seen evidence; (3) recoveries. Insofar as the motive is concerned, the learned counsel for the appellant submitted that the case of the prosecution is that the deceased Ram Murat was to purchase agricultural land in the village Pagore, District Basti, U.P., which apparently belonged to Shailesh Kumar and his brother Alok Kumar. It was suggested by the prosecution that Shailesh Kumar had agreed to sell the said land in the village to Ram Murat who was working in Delhi as a contractor. Part payment (` 1.35 lakhs) had been made some time in August, 2001 and the remainder was to be made in February, 2002 and it is for this purpose that Shailesh Kumar and other appellants had come to Delhi to receive the balance. It

was contended that as per the prosecution, the appellants took a sum of ` 80,000/- representing a part of the balance amount from Ram Murat and did not execute any sale deed as their intention had turned dishonest. They killed Ram Murat and his son Chamki in the said room in the house itself with the dumb-bells Ex.P-4/1 and P-4/2 and a piece of wire Ex.P-6. The learned counsel for the appellants submitted that while this is the case of prosecution, insofar as the motive is concerned, the prosecution has not been able to establish the same by means of any cogent evidence inasmuch as there is no documentary evidence with regard to the agreement which is alleged to have taken place between Shailesh Kumar on the one hand and deceased Ram Murat on the other. There is no evidence of any receipt indicating that the appellants had received the amount of ` 1.35 lakhs or the amount of ` 80,000/- as alleged. In fact, according to the learned counsel for the appellant, the most crucial point is that there is no evidence on record to establish or indicate that the appellant Shailesh Kumar or his brother Alok owned any land in the said village.

9. It was further contended by the learned counsel for the appellants that the passbook entries of Shailesh Kumar and Alok Kumar of their joint account do show a deposit of ` 20,000/- on 26.02.2002 but there is no evidence to connect this money as being the money allegedly received from the deceased Ram Murat. He also submitted that Kissan Vikas Patras to the extent of ` 50,000/- were also purchased on the same day but once again there is nothing to connect the purchase of these Kissan Vikas Patras with the money allegedly received from deceased Ram Murat. The learned counsel for the appellants contended that the purchase of the Kissan Vikas Patras was nothing unusual inasmuch as the defence witness DW-2 Ikram Hussain, who is the Post Master, has stated that on several earlier occasions also the said appellants had been purchasing Kissan Vikas Patras on different dates and were also maintaining a recurring deposit account.

10. With regard to the „last seen evidence, the learned counsel for the appellant contended that the entire case of the prosecution rests on the testimonies of PW-3 Ram Avtar and PW-4 Insul Master. He submitted that it is a notable fact that PW-6 Smt. Malti, who is the wife of PW-3 Ram Avtar, did not support the prosecution

case and was declared hostile. PW-6 Smt. Malti and PW-3 Ram Avtar, allegedly resided in the same premises as tenants. He further contended that the testimonies of PW-3 Ram Avtar and PW-4 Insul Master did not inspire much confidence and it cannot even be concluded with certainty as to whether PW-3 Ram Avtar and PW-4 Insul Master were tenants or residents of the said house at all inasmuch as they were unable to give the name of any other tenant in the said house apart from giving the names of each other, although they had claimed to have been living there for a number of years. It is further contended by the learned counsel for the appellants that the testimonies of PW-3 Ram Avtar and PW-4 Insul Master are at variance insofar as the evidence with regard to "last seen" is concerned.

11. With regard to the alleged recoveries, the learned counsel for the appellant submitted, as already pointed out above, that the Kissan Vikas Patras, which were in the name of Shailesh Kumar and Alok Kumar, who are brothers, were nothing unusual and could not be linked up with the alleged transfer of money from Ram Murat to the appellants. Insofar as the recovery of three sarees, two pant pieces and two shirt pieces and two pairs of sandals from the appellant Santosh is concerned, the learned counsel submitted that there was nothing abnormal about this. He stated that Santosh was an employee of the other two appellants, who were running a welding shop in the said village and that these were personal items which could not be connected with any alleged receipt of money from the deceased Ram Murat.

12. The learned counsel for the appellant also submitted that even the funds for the purchase of Kissan Vikas Patras as well as deposit of ` 20,000/- in February, 2002 stands explained by the deposition of DW-1 Smt. Kaushalya Devi, who is the mother of appellants Shailesh Kumar and Alok Kumar, wherein she has stated that her husband has sold some lands by virtue of three sale deeds which are Ex.DW1/B, 1/C and 1/D, whereupon she had received certain funds and part of it had been given to her sons Shailesh Kumar and Alok Kumar.

13. Ms Richa Kapoor, appearing on behalf of the State, supported the judgment and order on sentence passed by the learned Additional Sessions Judge. She

submitted that insofar as the motive is concerned, the withdrawals from the bank account of the deceased Ram Murat do indicate that a sum of ` 1.30 lakhs had been withdrawn in July/August 2001. It also indicates that an amount of ` 80,000/- had been withdrawn by the deceased Ram Murat on 21.02.2002 and it is out of this sum of `80,000/- that, according to her, a sum of ` 10,000/- was given to the appellant Santosh with which he purchased the articles mentioned above and a sum of ` 70,000/- was retained by the appellants Shailesh Kumar and Alok Kumar, who deposited ` 20,000/- out of that in their joint account in the post office and purchased Kissan Vikas Patra of the balance ` 50,000/- in joint names. This, according to the learned counsel for the State is clinching evidence and cannot be regarded as a mere coincidence.

14. Insofar as the evidence that deceased Ram Murat was last seen alive in the company of the appellants, she submitted that the testimonies of PW-3 Ram Avtar and PW-4 Insul Master have clearly established the said fact. She submitted that the name of Guddu, which is an alias of Shailesh Kumar, was disclosed by PW-4 Insul Master in the first instance after the discovery of the dead body. She submitted that though there may be some approximation with regard to the date of the incident, but the testimonies of PW-3 Ram Avtar and PW-4 Insul Master corroborate each other and do indicate that it is in the company of the appellants that the deceased Ram Murat was last seen alive. Ms Richa Kapoor also points out that the wire Ex. P-6 was also recovered at the instance of the appellant Shailesh Kumar and Santosh Kumar.

15. It was, therefore, contended by the learned counsel for the State that the circumstances which are established on record, form a complete chain and that the learned Additional Sessions Judge has rightly concluded that the appellants were guilty of the offences they were charged with and they had been correctly sentenced.

16. Before we take up the case of the prosecution with regard to motive, it would be necessary to fix the time of death of the deceased Ram Murat and his son Chamki. As per PW5 Dr. Akash Jhanjee, who conducted the post mortem examination on the dead body of Ram Murat, the said Ram Murat died of asphyxia

which was a result of the combined effect of gagging and throttling. He was also injured by a very hard blunt object and a bed sheet had been stuffed into his mouth. The said doctor opined that the time since death was about 10-11 days prior to the date of the post mortem examination which was conducted on 04.03.2002. This would mean that Ram Murat died on 21/22.02.2002. PW23 Dr. Sarvesh Tandon is the doctor who conducted the post mortem examination on the deceased Chamki. He was also of the opinion that Chamki died due to asphyxia consequent upon ante-mortem throttling and that the time since death was 10/11 days. Since the post-mortem examination was conducted on 04.03.2002, the date of death of the said Chamki would also be on 21/22.02.2002. Thus, the opinions of both the doctors match on this aspect of the matter.

17. It is an admitted case that the dead bodies were found on 28.02.2002. This would mean that the dead bodies were discovered after 6-7 days of the deaths of Ram Murat and Chamki.

18. We now need to examine the testimonies of PW3 Ram Avtar and PW4 Insul Master with regard to their claim of being witnesses to the fact that they had last seen the deceased Ram Murat alive in the company of the appellants. As per PW3 Ram Avtar, "one day" at about "10 p.m.", he had seen the accused in the company of Ram Murat when Ram Murat told him (PW3 Ram Avtar) that the accused persons had come from his village and that he had to give some money to them. As pointed out by the learned counsel for the appellant, from the cross-examination of this witness it is clear that the time of "10 p.m." had not been mentioned by PW3 Ram Avtar in his statement under Section 161 Cr.P.C. (Ex. PW3/DA) and that the introduction of the time of 10 p.m. was an improvement. Furthermore, we also note that PW3 Ram Avtar has not given any date as to when he saw the deceased Ram Murat in the company of the appellants. He merely mentioned - "one day". However, PW3 stated that the next morning he found Ram Murats house locked. This statement was also not there in the statement under Section 161 Cr.P.C. and is also an improvement. PW3 Ram Avtar further stated that after about 4/5 days, a bad smell was emanating from the said house and thereupon the police was called and the dead bodies were recovered. If we take the statement of PW3 Ram Avtar at face value, this would mean that 4/5 days

prior to the discovery of the dead bodies, which were admittedly recovered on 28.02.2002, the house of Ram Murat was found locked. In other words, the house would have been found locked either on 23rd or 24th of February, 2002. Since this witness has stated that one day prior to the house being locked he had last seen Ram Murat alive in the company of the appellants, the date on which that would have happened would be either 22.02.2002 or 23.02.2002.

19. We now come to the testimony of PW4 Insul Master. He stated that 3/4 days prior to Id, Guddu i.e., appellant Shailesh had come to meet Ram Murat which would mean that appellant Shailesh met Ram Murat on 19/20.02.2002. PW4 Insul Master further stated that he saw a lock on the house of Ram Murat one day prior to Id. It has been ascertained by the trial court as well as by us that in the year 2002, Id-ul-Zuha had taken place on the 23.02.2002, which was also a Saturday. This means that if PW4 Insul Master is to be believed, the house of Ram Murat was locked one day prior to Id i.e., on 22.02.2002.

20. Thus, we find that as per PW4, the house of Ram Murat was locked on 22.02.2002, whereas according to PW3 Ram Avtar the house would have been locked on 23/24.02.2002. There is clearly a mismatch between the testimonies of PW3 and PW4. In a case of ocular evidence, a mismatch of this kind may not have had much significance but in a case which rests entirely on circumstantial evidence and, that too, on the category of evidence known as "last seen", the dates and time are critical. The reason being that the gap between the person being seen alive and his dead body being discovered must not be such which could enable a hypothesis that some other person could have intervened and committed the murder. In the present case, we find that not only the dates when the house of Ram Murat was found locked, do not match, there is also no clarity with regard to the date on which the actual death took place. There is, of course, no dispute with regard to the fact that the dead bodies were discovered on 28.02.2002. If the deaths have taken place as per the medical evidence on record, then Ram Murat and Chamki would have died on 21/22.02.2002 which would mean that their bodies were discovered 6/7 days later. If the incident with regard to locking of the house is not clear, the time gap between the time of death and the time when the bodies were discovered is too great to shut out any hypothesis of

any other person/persons committing the murder of Ram Murat and Chamki.

21. Apart from this, we find that PW3 Ram Avtar and PW4 Insul Master do not inspire much confidence because although they claim to be tenants who had been living in that house for the last several years, they have not been able to name any of the other tenants apart from each other. In fact, PW4 Insul Master in his cross-examination could not say how many persons were tenants in the said house and not even whether there were 10, 15 or 20 tenants. This, despite the fact that the house concerned is a small three storeyed building which has one toilet on the top floor which was used by all the persons living in the said house, as per the testimony of the said witness himself, and, this, when PW4 has clearly stated that he has been living there for the past 5 or 6 years. Furthermore, he did not even know who was living on the first floor. Thus, we are of the view that the testimonies of PW3 and PW4 cannot be relied upon.

22. We now come to the question of motive. Motive is sought to be established on the testimonies of PW13 Moidhar, who is the brother of the deceased Ram Murat and PW7 Sanjay who is the son of the deceased Ram Murat. If one were to examine their testimonies carefully, one would find that they are at variance. While PW13 Moidhar brings up a story of land grabbing, PW7 Sanjay suggests a story of sale of land belonging to the appellants and, in particular, Shailesh Kumar. PW13 Moidhar has stated that the appellants had grabbed the land belonging to Ram Murat and that they were demanding money for the release of the said land and it is in this connection that the moneys were being paid by Ram Murat to the appellants. On the other hand, PW7 Sanjay has stated that Ram Murat had agreed to purchase the land belonging to the appellants Shailesh Kumar and Alok Kumar and it is in this connection that part payment was made in August, 2001 and the balance was to be paid in February, 2002. We find it very strange that neither PW7 Sanjay nor PW13 Moidhar have given the description of the land in question. This is apart from the question that the stories of the two witnesses are entirely different. Even the prosecution has not been able to produce any evidence with regard to the description of the land, the extent of the land and the location of the land nor has the ownership of the land been established by the prosecution. This lacuna in the evidence is a very significant one and cannot be ignored.

23. Apart from the fact that the particulars and description of the land are not available and the fact that the testimonies of PW7 Sanjay and PW13 Moidhar are at variance, there is another important reason as to why the prosecution case with regard to motive cannot be believed. It has been suggested that a payment of ` 1.35 lakhs was made in August, 2001. To substantiate this, the prosecution has produced the pass book of deceased Ram Murat which shows that two amounts of ` 1 lakh and `30,000/- had been withdrawn by him on 20.07.2001 and 09.08.2001 and therefore it is this sum of ` 1.3 lakhs which formed part of ` 1.35 lakhs allegedly paid by Ram Murat to the appellants. There is no explanation as to why the sum of ` 1 lakh and a further sum of ` 30,000/- would have been withdrawn by Ram Murat 19 or 20 days earlier, when he knew that he had to make a payment of ` 1.3 lakhs in 2001.

24. We also find that while the prosecution has tried to draw a connection between the sum of ` 20,000/- deposited in the joint account of the appellants on 26.02.2002 as well as Kissan Vikas Patras of `50,000/- purchased on the same day and the alleged payment of `80,000/- said to have been made by Ram Murat to the appellants immediately prior to his death, there is no similar "investment/deposit" made by the appellants when a larger sum of money, that is, ` 1.35 lakhs is alleged to have been received by the appellants in August, 2001. We also find from the testimony of DW1 that the deposit of ` 20,000/- and the investment in Kissan Vikas Patras of ` 50,000/- could have been made out of funds provided by DW1 (the mother of Shailesh Kumar and Alok Kumar). DW2 the Post Master has also indicated that the appellants were purchasing Kissan Vikas Patras from time to time and were maintaining a Recurring Deposit Account for some time. Some of the earlier purchased Kissan Vikas Patras have also been placed on record. Therefore, it cannot be said definitely or with any degree of certainty that the Kissan Vikas Patras purchased on 26.02.2002 and the deposit of ` 20,000/- on that date in the joint account of the appellants Shailesh Kumar and Alok Kumar had a clear link with the withdrawal of ` 80,000/- by Ram Murat immediately prior to his death. Therefore, the question of motive is also left hanging in the air inasmuch as the prosecution has not been able to establish the same with any degree of conclusiveness.

25. Insofar as the recovery of the clothing articles at the instance of appellant Sanjay are concerned, we do not find anything unusual about them. As regards the recovery of the wire (Ex.P-6), we find that the recovery is alleged to have been made on 04.03.2002 from the shelf of the same room from which the dead bodies were recovered. This is not believable because when the dead bodies were discovered, the crime team had been called. They had examined the entire room and even chance prints were attempted to be taken from various articles. It is not believable that the wire would have been missed out. Therefore, we cannot draw any adverse inference against the appellants insofar as this alleged recovery is concerned.

26. In view of the foregoing circumstances, we find that the prosecution had not been able to establish its case beyond reasonable doubt. Giving the benefit of doubt to the appellants, their appeal is allowed and they are acquitted of all charges. The order of sentence is set aside and they are directed to be released forthwith. The appeal stands allowed as above.

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