

State Vs. Ram Kumar and ors

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Court : Delhi

Decided On : Dec-15-2011

Appellant : State

Respondent : Ram Kumar and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved On: 26th September, 2011 Pronounced On: 15th December, 2011 + CRL.A No.140/1998 STATE APPELLANT Through: Sanjay Lao, Additional PP Versus RAM KUMAR and ORSRESPONDENTS Through: Mr.R.N. Vatsa, Advocate for Respondent No.1. Mr.Puneet Ahluwalia, Advocate for Respondent No.2. Mr.Javed Hashmi, Advocate for respondents No.3. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G.P. MITTAL, J..

1. This appeal is directed against a judgment dated 19.10.1996 passed by the learned Additional Sessions Judge in case FIR No.139/94 P.S. Malviya Nagar whereby three accused (respondents herein) were acquitted of the charge for the offences punishable under Section 302/201/34 Indian Penal Code..

2. In brief, the prosecution case was that accused Ram Kumar was a friend of Jatinder (the deceased) as both of them were studying together in ITI Pusa. Fifteen/twenty days prior to the incident, accused Ram Kumar went to the house of Jatinder and made a grievance to his mother Smt. Vidya Devi(PW2) and father

Risal Singh(PW3) that Jatinder was having illicit relations with his wife. The accused (Ram Kumar) Crl.A No.140/1998 *Page 1 of 10* threatened that if Jatinder did not desist from continuing with the relations, he would kill him..

3. On 16.03.1994, Jatinder went to the house of his sister Suresh Bala (PW1) and Surender Kaur (PW6) in Shahpur Jat. At about 4:45 pm, accused Ram Kumar went to the house of PWs 1 and 6 where Ram Parkash (PW4) and Ram Kumar (PW8) were also present. Ram Kumar took Jatinder along with him. According to the prosecution version, at about 8:00 PM Pradeep Kumar (PW9) saw all the three accused persons with Jatinder (the deceased). When Pradeep Kumar inquired from Jatinder (the deceased), he informed Pradeep Kumar that they(the accused) were his friends and that they were going to Sector 5, Pushp Vihar where the motorcycle of one of their friends had gone out of order..

4. According to the prosecution, on that very day at about 8:30 pm SI Ramesh Kumar (PW18) along with Constable Dinesh Kumar (PW13) and Constable Darshan was on patrol duty in the area. When he reached near the temple in Sector 5, Pushp Vihar, they noticed some flames in the open space behind MCD Primary School. They also noticed three persons running from there. They chased and apprehended them. On interrogation, their names were disclosed as Ram Kumar, Shahid Khan and Sanjay. They confessed to having committed Jatinder's murder. At the time of their apprehension, accused Ram Kumar was found carrying a dagger (Ex.P1), accused Shahid was having a five litre petrol container (Ex.P6) and accused Sanjay was carrying a purse(Ex.P3) containing a diary and one match box (Ex.P5)..

5. PW11 Balbir Singh reached the spot at about 9:00 pm and identified the dead body. He also noticed various articles held by the accused persons. The blood-stained dagger and various other articles Crl.A No.140/1998 *Page 2 of 10* were seized from the accused. Blood-stained earth, earth control, the blood-stained clothes of all the three accused, which they were wearing at that time were seized. The photographs of the scene of occurrence were taken. After completion of investigation, a report under Section 173 of the Code of Criminal Procedure was filed against the accused. Rukka (Ex.PW18/A) was sent to the Police Station at

10:10 pm..

6. In order to establish its case, the prosecution examined 18 witnesses. The learned Trial Court by the impugned order found that the circumstances relied upon by the prosecution were not established and, therefore, giving them the benefit of doubt acquitted them..

7. The prosecution relied on the following circumstances to establish the guilt of the accused persons: - i) Threat extended by accused Ram Kumar to Vidya Devi (PW2) and Risal Singh (PW3); the deceased's parents that Jatinder would be killed if he did not desist from continuing the illicit relations with his (Ram Kumar's) wife. ii) Taking away of Jatinder by Ram Kumar on 16.03.1994 at 4:45 pm from the house of his sister's(PWs 1 and 6) in presence of their husbands(PWs 4 and 8). iii) Pradeep Kumar (PW9) saw the three accused persons with the deceased at 8:00 pm and a conversation took place between him and the deceased wherein he (PW9) was informed that the motorcycle of one of his friends was out of order in Sector 5, Pushp Vihar and they(the deceased and accused) were proceeding there. *CrI.A No.140/1998 Page 3 of 10* iv)(a) At about 8:30 pm, SI Ramesh Kumar (PW18), Constable Dinesh Kumar(PW13) and PW Darshan while on patrol duty in the area noticed flames in the open ground behind MCD Primary School and found the three accused running from there. They were chased and apprehended. b) Accused Ram Kumar was found in possession of a blood- stained dagger (Ex.P1), accused Shahid was carrying a five litre petrol container (Ex.P6) and accused Sanjay was carrying a purse (Ex.P3) containing a diary and a match box (Ex.P5), which were seized by PW18 at the spot. v) Presence of blood-stains of Blood Group "B" on accused Shahid Khan and Sanjay's clothes which matched with the blood group of the deceased..

8. We have heard Mr. Sanjay Lao, Additional PP for the State and Mr. R.N. Vatsa, Advocate, Mr. Puneet Ahluwalia, Advocate and Mr. Javed Hashmi, Advocate for respondents No.1, 2 and 3 respectively and perused the record..

9. The circumstance no.(i) relates to the motive for commission of the crime by the accused. The prosecution did not lead any evidence to prove as to why accused Shahid and Sanjay were interested in helping accused Ram Kumar with whose

wife the deceased was having illicit relations..

10. PW2 Smt. Vidya Devi, the deceased's mother in her examination- in-chief deposed that she made inquiries from the deceased and the deceased informed her that there was no such relation. In the cross- examination, she deposed that she did not inquire from anyone whether Crl.A No.140/1998 *Page 4 of 10* accused Ram Kumar was married or not. Similarly, PW3 Risal Singh (the deceased's father) also deposed that he did not make any inquiry about Ram Kumar's marriage. He deposed that the deceased had informed him that accused Ram Kumar was married..

11. In his statement under Section 313 Cr.P.C., accused Ram Kumar denied that he knew Jatinder or that he was his friend. He denied that he was married and thus stated there was no question of extending any threat to the deceased on account of the alleged illicit relationship between the deceased and his (Ram Kumar's) wife..

12. On the basis of the evidence produced by the prosecution on the point of motive for commission of the offence, the Trial Court held that the motive with regard to the illicit relationship and the threat was not established. The prosecution did not collect any evidence as to when and to whom accused Ram Kumar was married. In view of Ram Kumar's denial that he was ever married, it cannot be said that the prosecution has established the motive for commission of the offence..

13. The circumstance no.(ii) and (iii) stated earlier relate to the last seen evidence. PW1 Suresh Bala and PW6 Surender Kaur are the deceased's sisters and PW4 Ram Parkash and PW8 Ram Kumar are their husbands. They all deposed that on 16.03.1994 at about 4:45 pm, accused Ram Kumar took Jatinder along with him. All of them testified that they received information about Jatinder's murder and went to the police post. None of those four witnesses or any other person told the Investigating Officer about Ram Kumar's visit till two days after the incident. PW18, SI Ramesh Kumar (Inspector at the time of recording the statement) deposed that on 17.03.1994, none of the relatives informed Crl.A No.140/1998 *Page 5 of 10* him that accused Ram Kumar had come to their house on 16.03.1994, in spite of the fact that PW4 and PW8 did meet him on 17.03.1994..

14. If the deceased was murdered in the evening of 16.03.1994 and the deceased's relations had reached the spot by late night, it was very natural for them to have disclosed to the Investigating Officer that accused Ram Kumar who had already been apprehended had taken Jatinder with him from the house of PWs

1. , 4, 6 and.

8. In view of this, the circumstance was rightly disbelieved by the Trial Court..

15. Pradeep Kumar(PW9) deposed that on 16.03.1994 at about 8:00 pm, he was returning from village Khirki to his house in Devli via Pushp Vihar. One Jatinder(who was known to him) met him on the pulia in between Sector 4 and 5, Pushp Vihar. He inquired from him as to how he was present there. He introduced the three accused persons(present in the court) to him. Jatinder informed him that the motorcycle of one of his friends went out of order in Sector 5, Pushp Vihar and they were proceeding there. This was another piece of last seen evidence relied on by the prosecution. In his examination-in-chief, PW9 deposed that at about 11:00 pm when he was going to the house of his uncle, he met Jatinder's father along with 4-5 persons and on inquiry, they informed him that Jatinder had been murdered and they were going to the police post. He deposed that he also accompanied them to the police post. It is very strange that although PW9 saw the deceased with the three accused persons, he did not inform about the same to the deceased's father (PW3). PW9 in his cross-examination tried to hide his relationship with the deceased although PW1, the deceased's sister was quite categorical that Pradeep Kumar (PW9) was their maternal uncle. In these CrI.A No.140/1998 *Page 6 of 10* circumstances, the Trial Court was justified in discarding PW9's testimony on the point of last seen evidence..

16. PW18, SI Ramesh Kumar conducted the initial investigation in the case. On 16.03.1994, he was on patrol duty along with Constable Dinesh Kumar (PW13) and Constable Darshan. PW18 stated that at about 8:30 pm, they reached opposite Devi Ka Mandir in Sector 5, Pushp Vihar. They noticed flames in the open space behind MCD Primary School. They found three persons running from there. They got suspicious, chased and apprehended them. He deposed that the

trio confessed having committed the deceased's murder and setting him ablaze. He deposed that accused Ram Kumar was holding a blood-stained dagger in his hand, accused Shahid was holding a five litre container of petrol and accused Sanjay had a purse in his hand. They noticed the deceased burning. They extinguished the fire by throwing sand. To the same effect is the testimony of Constable Dinesh Kumar (PW13). They were disbelieved by the Trial Court on the ground that it was highly improbable that when any person is being chased by the police, he would still carry the incriminating article with him. We do agree with the reasoning given by the Trial Court. It defies logic that a police party would chase the fleeing culprits, but they would continue to hold articles like dagger and an empty plastic container which was of little value..

17. On this very point, it would be relevant to refer to Balbir Singh's (PW11) testimony. He was the deceased's maternal uncle. He also claimed to have reached the spot at 9:00 PM by chance and found that a boy had been killed by burning. He deposed that he went to the place where the dead body was lying and he found the dead body to be that of his sister's son Jatinder. He deposed that the police seized a dagger from CrI.A No.140/1998 *Page 7 of 10* accused Ram Kumar's hand and a plastic container from accused Shahid's hand and a purse and a match box from accused Sanjay's hand. Again, it is highly improbable that these accused persons would continue to hold these articles in their respective hands even after half an hour of their apprehension. The Trial Court disbelieved the version regarding accused's apprehension on the ground of contradiction in the statements of PW18 and PW13. PW13 deposed that the accused persons were running towards the side of the flats, whereas PW18 deposed that the accused persons were running towards the north side of the temple and the DDA flats were constructed on the west side of the temple. Normally, such contradictions are inconsequential because the Court has to see the main substratum of the prosecution case. It, however, assumes importance in view of the fact that all the friends and the relations of the deceased have been cited as witnesses of last seen, apprehension and recovery and their testimonies were unbelievable. PW4 and PW8 did not disclose about the deceased being taken away by accused Ram Kumar on that very day in spite of meeting the Investigating Officer; PW9 did not disclose about meeting the accused and the

deceased together at 8:00 pm. On the basis of the evidence produced, it can be inferred that the accused persons were not arrested in the manner as alleged by the prosecution..

18. Though the prosecution claims to have found accused Shahid and Sanjay's clothes to be stained with "B" Group blood which matched with the deceased's blood, yet in view of the forgoing discussion, we are of the view that the investigation in this case was tainted and the presence of the blood-stains of "B" Group on the deceased's clothes simply leads to a suspicion that they might have been responsible for the deceased's murder. Cri.A No.140/1998 Page 8 of 10.

19. In *Dasari Siva Prasad Reddy Vs. Public Prosecutor*, AIR 2004 SC 4383, it was held as under: "25. A strong suspicion, no doubt, exists against the appellant but such suspicion cannot be the basis of conviction, going by the standard of proof required in a criminal case. The distance between 'may be true' and 'must be true' shall be fully covered by reliable evidence adduced by the prosecution. But, that has not been done in the instant case. If, coupled with the circumstance unfolded by the evidence of PW3, the evidence of PW4 had been believed, it would have gone a long way in substantiating the prosecution case. But, in the instant case, apart from the fact that the appellant was at his house on the morning of 20th April, 1996, there is no other circumstance whatsoever which connects the accused to the crime, though serious suspicion looms large about his involvement. The view taken by the trial Court that the prosecution could not establish the complete chain of circumstances incriminating the accused is a reasonably possible view and the High Court should not have disturbed the same. Having regard to the state of available evidence, the benefit of doubt given to the accused by the trial Court warranted no interference by the High Court."

20. While dealing with a case based on circumstantial evidence, the Supreme Court in *Ashish Batham v. State of M.P.*, AIR 2002 SC 3206 relied on *Hanumant Govind Nargundkar and Another v. State of Madhya Pradesh*, AIR 1952 SC 343 observed that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent

only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete, as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. In Para 8 of the report, it was observed as under: Crl.A No.140/1998 *Page 9 of 10* "8. Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

21. It is well-settled that the High Court interferes in an order of acquittal where there are substantial and compelling reasons to do so. When two views are possible, the High Court is slow to interfere in an order of acquittal. In this case, even if the accused's apprehension in the manner as alleged by the prosecution is believed, there can only be a suspicion that the accused might have been responsible for committing the deceased's murder. But suspicion however strong, cannot take place of proof..

22. We do not find any good reason to interfere in the order of acquittal..

23. The Appeal is accordingly dismissed. (G.P. MITTAL) JUDGE (S. RAVINDRA BHAT) JUDGE DECEMBER 15, 2011 pst CrI.A No.140/1998 Page 10 of 10

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