

Raja Ram Vs. State

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Court : Delhi

Decided On : May-28-2013

Judge : V.P.Vaish

Appellant : Raja Ram

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

3. d May, 2013 Date of Decision:

28. h May, 2013 % + CRIMINAL APPEAL NO.1433/2012 RAJA RAM Through: Appellant Ms.Saahila Lamba, Advocate. Versus STATE Through: Respondent Ms.Richa Kapoor, APP. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE VED PRAKASH VAISH VED PRAKASH VAISH, J:

1. Appellant namely, Raja Ram was tried for the offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to IPC) for causing death of Draupadi aged about 50 years at about 5.00 p.m. on 20th June, 2010 at Jhuggi No.168, Masjid Wali Gali, Hastal, Uttam Nagar, New Delhi. Vide impugned judgment dated 28th July, 2012, the appellant has been convicted for the offence under Section 302 IPC and vide order on sentence dated 30th July, 2012, he has been sentenced to undergo imprisonment for life and fine of Rs.1,000/- in default of which to undergo SI for 15 days.

2. On 20th June, 2010, at 5.15 p.m., the Duty Officer, P.S. Uttam Nagar, recorded DD No.30A (Ex.PW16/A) that an information on wireless has been received that injury was caused on the head of mother of complainant and a piece of cloth was gauged in her mouth in Jhuggi No.168, Masjid Wali Gali, Hatsal, Uttam Nagar, New Delhi. The same was sent to SI Vinod Kumar, who along with Head Constable Harish Kumar went to the spot. Inspector J.K. Gautam made DD No.33A (Ex.PW19/A) and Inspector Sube Singh along with staff also reached at the spot where they came to know that injured had been removed to DDU Hospital by PCR. Inspector Sube Singh went to DDU Hospital and found that Draupadi was brought in casualty in unconscious condition, where, she was declared dead.

3. On 20.6.2010, the complainant Rajesh Kumar Gautam @ Bhola Nath, (PW-2) made a statement that at about 12.00 noon that he left the house for work, his sister Hem Lata and Parveen also left for work at about 9.30 a.m, Hem Lata used to work in Kothi at Fateh Nagar and Parveen was employed in a beauty parlour at Fateh Nagar. His mother was alone in the house. His neighbour Raja Ram who was working as Mason, was doing repair work in his jhuggi during evening time for the last 10 days and at the same time Raja Ram developed some relations with his mother. On this, wife of Raja Ram namely, Bhagwati used to quarrel with him but still Raja Ram used to come to meet his mother. On that day at about 5.00 p.m, when he reached near his jhuggi, he (complainant) saw appellant, Raja Ram in a perplexed condition, coming out from his jhuggi and after seeing him, he ran towards his jhuggi and he saw that there were blood stains on the pant and shirt of appellant. When he entered in his jhuggi, he saw that his mother was lying on the floor and blood was oozing from her head and there were blood stains on pillow and bag (katta) and cloth was gauged in the mouth of his mother. He took out the cloth from the mouth of his mother and found that his mother was not speaking. Volume of the speaker of TV was loud and a blood stained brick was lying near the head of his mother. He ran towards the STD booth of Laxmi Chand and called at number 100 and PCR van reached at the spot and removed his mother to hospital where doctor declared his mother dead. Appellant had killed his mother to pacify the anger of his wife. Inspector Sube Singh made endorsement Ex.PW19/B and FIR Ex.PW7/A was registered.

4. From the spot, blood stained chunni, saree, blood stained pillow, blood stained brick and blood lying near the pillow and earth control were seized vide memo Ex.PW2/C. The sketch of brick from both the sides (Ex.PW2/D) was prepared. Crime team visited at the spot and prepared the report Ex.PW19/J.

Rough site plan Ex.PW19/C and Ex.PW19/D were prepared.

5. On 21st June, 2010, at about 8.00 a.m., the appellant Raja Ram was apprehended and arrested by Constable Dharamvir (PW-13) vide memo Ex.PW13/A. At the time of arrest, he was wearing blood stained clothes which were seized and exhibited as memo Ex.PW13/C, he made disclosure statement (Ex.PW13/D) and pointed out the place of occurrence vide memo Ex.PW13/E.

6. On 21st June, 2010, dead body was sent to mortuary for post mortem. As per post mortem report (Ex.PW4/A) the cause of death was craniocerebral injury caused by hard blunt and forceful impact upon head. All injuries were antemortem in nature and of same duration. The external injury No.1 was sufficient to cause death in ordinary course of nature.

7. Statement of complainant Rajesh Kumar Gautam and Saleema Begum, who was neighbourer were recorded under Section 161 Cr. P.C. Scaled Site Plan (Ex.PW17/A) of the scene of crime was thereafter got prepared by SI Mahesh Kumar, Draftsman (PW-17). The prosecution, in support of his case examined as many as 19 witnesses. Thereafter statement of appellant under Section 313 Cr.P.C. was recorded. The appellant did not chose to lead any evidence.

8. We have heard the arguments advanced by learned counsel for the appellant as well as learned Additional Public Prosecutor for the State and carefully perused the records.

9. It is relevant to notice that the prosecution has not claimed that the murder of the deceased was witnessed by anyone and no direct evidence regarding the same is adduced before the court. Admittedly, the whole case against the appellant rests on circumstantial evidence. The law relating to circumstantial evidence is well settled. In dealing with circumstantial evidence, there is always a

danger that conjecture or suspicion lingering on mind may take place of proof. Suspicion howsoever strong cannot be allowed to take place of proof and, therefore, the Court has to judge watchfully and ensure that the conjectures and suspicions do not take place of legal proof. However, it is derogation of Law of Evidence to discard and reject the prosecution version on the ground that evidence relied upon is circumstantial. Humans may fault or fail in expressing the picturization of the actual incident but the circumstances often convey the true and correct picture. It is aptly said that men may tell lies, but circumstances do not. In cases where evidence is of circumstantial nature, at the first instance, each circumstance or the fact alleged/relied should be fully established. Every fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, i.e. whether in totality, each proved fact reinforces that conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though one or more of these facts individually, by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution succeeds in a case of circumstantial evidence, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. Practical and pragmatic approach is required. There must be a chain of evidence so complete, as not to leave any reasonable ground for 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. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. If the circumstances proved remain consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to the proof of basic or primary facts, the Court has to judge the evidence and decide whether that evidence proves a particular fact or not and if that fact is proved, question arises whether fact leads to the inference of guilt of the accused person or not. There should be no missing links in the case, yet it is not essential

that every one of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences or presumptions, the Court must have regard to the common course of natural events, and to human conduct and their relations to the facts of the particular case.

10. Now we will deal with all the incriminating circumstances one by one; A. Hostile witness 11. The prosecution case is primarily based upon the testimony of son of the deceased Rajesh Kumar Gautam (PW-2) who is the complainant in the present case. PW-2 deposed in his statement under Section 161 Cr. P.C. that on 20th June, 2010, he left for his job at 10.00 a.m. and his mother (deceased) was alone in the house. At about 4.35 p.m., when he came back he saw the appellant coming out from his jhuggi in perplexed condition and had also seen blood stains on his pant. On seeing this, he immediately entered his jhuggi and saw his mother lying on the floor with a cloth piece in her mouth. He then rushed to nearby STD booth and called the police. The deceased was declared dead by the doctors in the hospital. In his statement before the Court, he deposed that he was working as a Car Mechanic and used to leave for his job at 8.00 a.m. and come back at 8.00 p.m. His sisters and mother (deceased) were working as maid servants. On 20 th June, 2000, he left for his job at 10.00 a.m. and at that time his mother was alone at the house as both his sisters had also left for their work. At about 4.30/5.00 p.m., when he came back to his house, he saw his mother lying on the floor and cloth was there in the mouth of his mother (deceased), he also noticed injury on her back side of the head, hole over the cheek and bluish mark on her eyes which he supposes to be a fist blow, he then called his neighbourer Saleema Begum (PW-3) and made a call to the police from nearby STD booth. His mother was then shifted to DDU Hospital, there she was declared dead by the doctors. He refuted and denied factum of seeing the appellant coming out from his jhuggi with a blood stained pant, in a perplexed condition. He was declared hostile by the learned APP but did not support the prosecution version. Therefore, testimony of this witness is of no use to the prosecution as the witness turned hostile on the point which was mainly relied upon by the prosecution. PW-2 in his statement under Section 161 of the Code of Criminal Procedure or the complaint Ex.PW2/A mentions the appellants presence, but that cannot be used as an evidence against

the appellant to base his conviction. It can only be used for the purpose of contradiction. Further, PW-2 deposed that he left for work at 10.00 a.m. on 20.6.2010 whereas in his complaint Ex.PW2/A he stated that he left for work at 12 noon. If we observe post mortem report, the time of death itself come out to be 12 noon. PW-2 is the son of the deceased and he has exonerated and has not substantially supported the prosecution case. His statement to the police was the edifice of the prosecution case.

12. It is well settled law that evidence of a hostile witness would not be totally rejected if spoken in favour of prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of prosecution or defence can be relied upon. It is indeed necessary that Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and chaff are so inextricably mixed up that in the process of separation, the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.

13. Therefore, relying upon the above principles, testimony of PW-2, who turned hostile and did not support the case of prosecution on material aspects. His statement casts doubts about the prosecution story. B. Last seen 14. Prosecution has also relied upon the testimony of Saleema Begum (PW-3). PW-3 had not seen the appellant Raja Ram killing the deceased but the prosecution claims that she had seen him in the house of the deceased. She further testified that the appellant was residing in her neighbourhood jhuggi and he used to work as a Mason. On the date of incident, the door of the jhuggi belonging to the deceased was partly opened. The sound of the TV was on high volume. Learned APP declared this witness hostile as she resiled from her earlier statement that she saw the appellant and the deceased together soon before the incident while they were watching TV. Her examination-in-chief does not bring out or support the plea of last seen. In her cross-examination, in a suggestion put to her on behalf of the appellant, wherein she admitted that she saw the appellant Raja Ram watching TV with Draupadi

(deceased) but date and time of last seen was neither disclosed by PW-3 nor was it put to her in the form of suggestion by the Additional Public Prosecutor for the State. PW-3 deposition in Court is vague and ambiguous. It is difficult to pin point when she had last seen both of them. Last seen evidence relies upon proximity of time and place when the accused and the deceased were last seen together and the time and place of crime/offence. Possibility of a third person being or could be the perpetrator should be ruled out. In the present case place of occurrence was not the house/jhuggi of the accused.

15. The Supreme Court in Sahadevan and another v. State of Tamil Nadu, AIR 201.SC 2435.while referring to its earlier decisions in State of Karnataka v. M.V. Mahesh, (2003) 3 SCC 35.and State of U.P. v. Satish, (2005) 3 SCC 11.observed that with the development of law, the theory of last seen has become a definite tool in the hands of the prosecution to help in establishing the guilt of the accused. This principle has been accepted in various judgments of this Court. The principle is applied with care and caution as it has limitations. The fact that the accused and deceased were last seen together, may raise suspicion but this may not be individually or by itself sufficient to lead to a finding of guilt. In Arjun Marik vs. State of Bihar, 1994 Supp.(2) SCC 372.the appellant was alleged to had gone to the house of one Sitaram in the evening and had stayed in the night at the house of deceased Sitaram. It was observed that it would be shaky and inconclusive to convict the appellant solely on this evidence. Even if it was accepted that they were there, it would, at best, amount to be the evidence that appellant was seen together with the deceased. The circumstance of last seen by itself would not complete the chain of circumstances for recording a finding consistent with the hypothesis of guilt of the accused and, therefore, no conviction, on that basis alone, should be founded. We must rule out the possibility of a third person intervention or involvement.

16. Resiling from earlier statement and conduct of PW-3 makes the statement of this witness unreliable. Moreover, mere last seen together cannot be itself a ground for forming an opinion that it was only the appellant who has committed the offence. The prosecution has to prove last seen together with other circumstances that except the appellant, no other person could have committed the offence. PW-

3 in her statement under Section 161 Cr.P.C. has stated that when at around 4.00 in the afternoon, she had come outside her house then she saw that the door of the deceaseds house was partly open through which she could see that both the deceased and the accused were watching TV and thereafter she went inside her jhuggi. However, in her statement in chief she remained silent about the time. In her cross-examination before the Court again she has not stated that the time and the place where she had seen the accused and deceased together. The Court deposition matters and is relevant. A vague statement of PW-3 without mentioning the time is rather sketchy and unreliable. She too has not fully supported the prosecution case.

17. Undoubtedly, the last seen theory is an important event in the chain of circumstances that could completely establish and/or could point to the guilt of the accused with some certainty. But this theory should be applied while taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.

18. In light of the abovementioned contradictions and the uncertainty of evidence, we are of the view that mere last seen circumstance is virtually not completely established and proved. The fact of last seen together is ambiguous, debatable and suffers from apparent deficiencies and discrepancies as well. C. Arrest and Recovery 19. As per the story of prosecution, the appellant was arrested on 21st June, 2010 i.e., the next day of incident at about 8.00 a.m. when he was sitting nearby his jhuggi. According to Constable Dharamvir (PW-13) who apprehended the appellant deposed that the appellant was arrested while he was wearing the blood-stained clothes which were seized vide memo Ex.PW13/C and appellant made disclosure statement Ex.PW13/D. It is highly unbelievable that after committing such a heinous and ghastly crime, the appellant would be sitting nearby the place of incident and that too with the blood stained clothes on his person also in such a situation when the police had searched for him the entire night after the incident and he was nowhere to be found. Furthermore, if appellant would have been sitting there, other neighbourers or son of the deceased who is complainant (PW-2) might have seen the appellant and informed the police but no such evidence is brought on record. Even if we believe that the appellant was

involved in the commission of crime and he was apprehended from nearby his jhuggi, prudence suffice that he could have gone to his jhuggi and changed his clothes instead of sitting there with the blood stained clothes. All these circumstances make the arrest and recovery of blood stained clothes of the appellant doubtful. Although blood stained found on the clothes of the appellant tallied with the blood group of the deceased but from the above circumstances, recovery of blood stained clothes of the appellant seems to be shrouded and nothing else. D. Motive 20. It is true that in a case relating to circumstantial evidence motive assumes importance unlike the cases of direct evidence but to say that absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and to use the cliché the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

21. In the present case, it is contended by learned Additional Public Prosecutor for the State that the appellant had developed intimate relations with the deceased, to which, wife of the appellant had objected. To pacify his wife, appellant killed the deceased. Rajesh Kumar Gautam (PW-2) deposed that the appellant had constructed the walls of the rear room in the jhuggi and laid floor there. He had white washed the walls of the said room but did not charge anything on account of repair work as he had developed intimate relations with the deceased (his mother). At best the statement shows that the deceased and the appellant were close and had relationship with her. But there is no evidence or material to show that they had fallen apart or the relationship had soured. In fact others including family members of the deceased would have surely protested and have had equal grievance. Even if appellant was having relations with the deceased, there is nothing to show that the same impelled the appellant to commit murder of the deceased.

22. All facts, if considered, in toto will make the implication of appellant in the present case doubtful and therefore benefit of doubt should be extended to the appellant. The entire evidence when examined in totality does not establish and prove the guilt/offence attributed to the appellant.

23. In view of the aforesaid facts and circumstances, we allow the appeal and set aside the impugned judgment dated 28 th July, 2012 and order on sentence dated 30th July, 2012. The appellant is in judicial custody, he be released forthwith, unless he is required to be detained in any other case in accordance with law. (VED PRAKASH VAISH) JUDGE (SANJIV KHANNA) JUDGE May 28, 2013/gm

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