

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRIMINAL APPEAL No. 120/2000

MOHD. RASHID AND ANR. Appellants

Versus

Through: Mr. Varun Goswami, APP with
Inspector Ajab Singh P.S. Ambedkar Nagar.

R.K.GAUBA, J. (ORAL):

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appellant no.1 (A-1). It was further alleged in the case that during the course of investigation another knife (*chhuri*) was recovered from the possession of appellant no.2 (A-2).

2. By judgment dated 17.01.2000, the trial court held both the appellants guilty and convicted them for the offence under Section 302 read with Section 34 IPC, for the murder of Sohan Lal @ Pappu. The charge under Section 27, Arms Act, 1959 against A-1 about use of the knife (Ex.P-1) in committing murder was also held proved. Additionally, A-2 was held guilty for possession of knife (Ex.P-2) and, thus, convicted under Section 25 Arms Act. By order dated 10.02.2000, the appellants were sentenced to imprisonment for life under Section 302/34 IPC. Besides this, A-1 was awarded rigorous imprisonment for three years under Section 27 Arms Act while A-2 was sentenced to undergo rigorous imprisonment for three years under Section 25 Arms Act.

3. The report under Section 173 Cr.P.C. as submitted, leading to the sessions trial had indicated that no direct evidence could be mustered and conscripted. The case of the prosecution rested primarily on the evidence of Mewa Ram (PW6) and Jamuna Devi (PW9) to the effect that both of them had seen the deceased in the company of the two appellants in the market (*Subzi Mandi*) in the area of Tigri Camp around 08:00/09:00 PM on 17.06.1996. The prosecution also relied upon the evidence of the said witnesses and that of Ganga Devi (PW3) and Yaad Ram (PW7) to prove past enmity particularly between the deceased and A-1.

4. It needs to be noted here that the deceased was one of the six sons of Ganga Devi (PW3). She is the first informant of the case on whose statement (Ex.PW3/A), followed by endorsement Ex. PW22/A in the hand of SI Suresh Chand (PW22), the first information report (FIR)

(Ex.PW8/A-2-3) was recorded by the Duty Officer Sher Singh (PW10) at 09:30 AM on 18.06.1996. Besides the deceased, the sons of Ganga Devi (PW3) would include Puran Chand (PW2), Mewa Ram (PW6) and Yaad Ram (PW7). Jamuna Devi (PW9) is the wife of PW6. It has come in the evidence of the prosecution witnesses that another son Madan Lal and the deceased lived with Ganga Devi (PW3) in the same house while her other sons (who were married) were separately settled in different houses, though seemingly living in the same locality. It has also come as undisputed in the course of the trial that A-1 was resident of a house just opposite to that of Ganga Devi (PW3).

5. It had been alleged in the prosecution case that A-1 and the deceased were on inimical terms for quite some time past and there had been certain incidents involving both of them including one that statedly occurred on 12.06.1996. Nevertheless, during the trial, Ganga Devi (PW3) herself conceded that they were petty squabbles arising over insignificant issues such as collection of water.

6. The evidence of Ganga Devi (PW3) indicates that the deceased had gone from his house at about 06:00 PM on 17.06.1996 to the house of his elder brother Yaad Ram (PW7) *i.e.* A-29, J.J. Camp, Tigri, about 500 yards away, for using toilet (for defecation). This is confirmed by Yaad Ram (PW7) also though, according to him, after use of the washroom, the deceased had left his house in about ten minutes. It is in the evidence of Mewa Ram (PW6) and Jamuna Devi (PW9) that they had gone to the market (*subzi mandi*) at about 08:00/09:00 PM and it is there (in the market place) that they had come across the deceased who was then seen with A-1 and A-2.

7. According to the evidence led, the deceased, having left his house at about 06:00 PM and having gone first to the house of his brother Yaad Ram (PW7), did not return. His mother searched for him all around but to no avail. She waited till morning but with no clue coming her way as to the whereabouts of Sohan Lal @ Pappu.

8. The prosecution evidence proved that a dead body was sighted sometime before 07:00 AM on 18.06.1996 in rocky area (*Pahari*) behind Batra hospital, a place within the jurisdiction of police station Ambedkar Nagar. The information was relayed through PCR to the police station where the intimation was logged at 07:05 AM on 18.06.1996 vide DD No. 24A (Ex.PW18/A). It was passed on to SI Suresh Chand (PW22) who set out for the place with Ct. Chander Bir (PW12). The news about dead body soon spread to the nearby localities including in the area where Ganga Devi (PW3) was living. It is PW3's version that upon this information reaching her, she and her sons Mewa Ram (PW6) and Yaad Ram (PW7) had rushed to the place where the dead body had been found. They were joined there by Jamuna Devi (PW9), wife of Mewa Ram (PW6).

9. Upon arrival at the place where the dead body had been found, Ganga Devi (PW3) identified it to be that of her son Sohan Lal @ Pappu who had been missing since the previous night. Thereupon, SI Suresh Chand (PW22) recorded her statement (Ex.PW3/A) which, besides narrating the sequence of events of the previous night, mentioned the suspicion of Ganga Devi (PW3) that her son Sohan Lal@ Pappu had been killed by "someone" on account of enmity. Noticeably in the FIR, thus registered at 09:30 AM on 18.06.1996, there was no reference made to the possible involvement by name of either of the two appellants.

10. It is the case of the prosecution that after the FIR had been registered, during the investigation, Mewa Ram (PW6) and Jamuna Devi (PW9) shared the information about they having seen the appellants in the company of the deceased in the market place in the area of Tigri Camp around 08:00/09:00 PM on the previous night. It is alleged that when searches were made for the two appellants at their respective houses, they could not be immediately located.

11. A-1 came to be arrested on 30.06.1996, as per personal search memo (Ex.PW22/B) while A-2 was arrested on 15.07.1996, as per personal search memo (Ex.PW13/E.) It is claimed that, upon interrogation, A-1 had made a disclosure which was reduced into writing vide memo Ex.PW13/A. It is also claimed that pursuant to the said disclosure of A-1, *inter alia*, knife (Ex.P-1) and his blood-stained clothes including shirt (Ex.P-3) and trousers (Ex.P-4) were recovered from the place of their concealment *i.e.* beneath a stone close to the wall in Jaffna Jungle behind Block-19, Dakshinpuri, vide seizure memo (Ex.PW13/B). It is also stated that, after his arrest, A-2 led the IO to a place near *Ganda Nala* (drain) close to Gali No.31, DDA Flats, Madangir and got recovered a knife (Ex.P-2) vide memo (Ex.PW13/J).

12. There is clear evidence available that Sohan Lal @ Pappu had suffered homicidal death on the intervening night of 17 and 18.06.1996. The evidence includes the oral testimonies about the discovery of the dead body, it being identified, followed by the seizure of various exhibits from the place in question, the inquest papers. The post-mortem examination report (Ex.PW5/A) issued by Dr. O.P.Murti (PW7) leaves no room for doubt that Sohan Lal @ Pappu had been inflicted, intentionally, as many as 38 injuries including sixteen incised stab wounds, two avulsed

incised wounds, ten incised wounds, one abrasion, two incised cut throat wounds, two abraded wounds, four multiple small scattered abrasions and one multiple grazed abrasion. This evidence unmistakably shows that assailant(s) intended to inflict these injuries with the objective of bringing about the death of Sohan Lal @ Pappu.

13. The prosecution claims that, upon their arrests on 30.06.1996 and 15.07.1996, A-1 and A-2 were found having injuries on their respective persons. Both were taken to AIIMS where they were medically examined on the request of the IO. The Medical Legal Report (MLC) of A-1 has been proved by Dr.S.K.Gupta (PW8) as document Ex.PW8/A while the MLC of A-2 has been proved against by Dr.S.K. Gupta (PW25) as Ex. PW25/A. It may be mentioned here that the MLC of A-2 was actually recorded by Dr. Ajit Jose who having left the services of the hospital, his presence could not be immediately procured. Thus, Dr.S.K.Gupta (now as PW25) was brought in again to prove the document, he being acquainted with the writing and signature of the author of MLC.

14. The MLC (Ex.PW8/A) of A-1 reflects that he had one lacerated wound with slough and pus measuring 3 cm x 2 cm bone deep and incised wound of 2 cm muscle deep showing healing. The MLC is not very legible as to the part of the body where the said injuries were noticed. Both the injuries were found to be simple in nature, injury no. 1 having been caused by blunt weapon and the other by sharp-edged weapon. The examining Medical Officer (PW8) also opined that both the injuries were about 12/13 days old. Similarly, when A-2 was examined on 15.07.1996, he was found having scars of the size 3 cm x 1 cm present on palmer aspect of proximal phalanges of right hand. The examining Medical Officer (Dr.Ajit Jose) also observed that said injuries were about

one month old and the scar type suggested the same to have possibly been caused by sharp edged weapon though he was not in position to give definite opinion on this aspect.

15. The exhibits collected during investigation, including the two knives and clothes (shirt and trousers) allegedly recovered at the instance of A-1, were sent to Forensic Scientific Laboratory (FSL), Govt. of NCT of Delhi in due course. The report issued by FSL (Ex.PX) was tendered during the course of trial. It indicates that the blood group of the deceased was found to be “A” (this was on the basis of blood stains on his clothes which were taken off the body and the blood sample preserved during the autopsy). The FSL also found blood of human origin on knife (Ex.P-1), statedly recovered at the instance of A-1, though its group could not be established. Pertinently, the report also stated that the trousers of A-1 bore blood stains of “AB” group. Clearly, these blood stains were not of the deceased.

16. We have carefully gone through the evidence in the nature of “last seen” but we find it difficult to place implicit trust in it or accept it as intractably inculpatory. There are gaps and puzzling deviations. Though Mewa Ram (PW6) and Jamuna Devi (PW9) claimed that they had come across the deceased in the company of both appellants in *Subzi Mandi*, Tigri Camp at about 08:00/09:00 PM on 17.06.1996, the way evidence has been presented, gives rise to doubts about its authenticity. If both these witnesses had indeed seen the deceased and the appellants together and if they suspected the involvement of (against) A-1 and A-2 on account of past incidents of quarrel, they would have immediately brought up the fact to the knowledge of their mother Ganga Devi (PW3) and the then Investigating Officer, SI Suresh Chand (PW22). At least by

09:30 PM. of 18.06.1996, they had not spoken about the last sighting to any person. Ganga Devi (PW3) professes that she had searched till late at night looking for the deceased. Importantly, Ganga Devi (PW3) asserts that she had seen A-1, early morning, in his house in front of the house of Yaad Ram (PW7). Strangely, she (PW3) claimed in the Court that Mewa Ram (PW6) and his wife (PW9) had told her the said facts. Noticeably, Mewa Ram (PW6) negates this theory. He denied being the source of any such information to his mother.

17. Even if we were to accept the evidence of Mewa Ram (PW6) and Jamuna Devi (PW9) that they had actually seen the two appellants with the deceased in the market area around 08:00/09:00 PM on 17.06.1996, in the absence of additional information about the exclusivity of the company, it cannot take the case of the prosecution any further.

18. Yaad Ram (PW7), the elder brother of the deceased, to whose house the deceased had gone for using toilet, was claimed by the prosecution to be a witness in whom his brother Mewa Ram (PW6) had confided, in early hours of 18.06.1996, about he having seen the deceased with the two appellants near DSIDC Shed, Tigri at about 08.00/09:00 PM on 17.06.1996. However, Yaad Ram (PW7) denied being privy to any such information, that too upon it being shared with him by Mewa Ram (PW6).

19. Noticeably, Mewa Ram (PW6) does not claim to have engaged the deceased in any conversation at the time of their chance meeting in the market area. His wife Jamuna Devi (PW9), however, claimed that she had questioned the deceased from across the street. She added that she had been told by the deceased that he was going for some work with the appellants. This is a material improvement over the testimony of Mewa

Ram (PW6) who being with her could not have missed out on this exchange.

20. The evidence of Jamuna Devi (PW9) shows that the place where the deceased lived and the place where dead body had been found are at substantial distance from each other. She explained that if one were to reach the rocky area behind Batra Hospital, after covering 1 ½ to 2 km on foot, a bus journey had to be undertaken up to Batra Hospital from where the rocky area is further 2 or 2 ½ kms away. During the hearing, we were informed that the market (*Subzi Mandi*) where the chance meeting with the deceased is stated to have happened is on the other side of highway and, thus, would necessitate another long distance to be covered.

21. The evidence clearly shows that the localities involved are densely populated. People well known to the deceased lived and roamed in the said area. If the evidence in the nature of “last seen” is to clinch the issue of complicity of the appellants in favour of the prosecution, it would have to show that after the point in time when the suspects were lastly seen in the company of the deceased, the latter would not have been in any company other than that of the appellants till he met his death. Given the distances and time gap involved, this cannot be said with conviction in the case at hand.

22. The “last seen” theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that the possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases, to positively establish and apply the principle of last seen *per se* and/or as a weighty factor when there is a long gap and possibility of other person(s) coming in between

exists. In cases where positive evidence to conclude that the accused and the deceased were last seen together till the crucial moment is not coming forth, it would be hazardous to come to a conclusion of guilt. At best, it would indicate presence of the accused at the time and place so proved. [*State of U.P. vs. Shyam Behari and Anr.*, (2009) 15 SCC 548, *Bodhraj @ Bodha and Ors. vs. State of Jammu and Kashmir*, (2002) 8 SCC 45, *State of U.P. v. Satish*, (2005) 3 SCC 114, *Ramreddy Rajesh Khanna Reddy vs. State of A.P.*, (2006) 10 SCC 172, *Venkatesan vs. State of Tamilnadu*, (2008) 8 SCC 456].

23. In the present factual matrix, conviction cannot be based on the only circumstance of last seen together. The conduct of the accused and other circumstances, particularly about motive, also need to be looked into. [*Dharam Deo Yadav vs. State of U.P.*, (2014) 5 SCC 509, *Sahadevan @ Sagadevan vs. State rep. by Inspector of Police*, (2003) 1 SCC 534]. This is missing here.

24. The Knife, (Ex.P-2), allegedly recovered from the possession of A-2, has not been connected with the crime. The FSL report drew a blank in its regard. The other knife (Ex.P-1) allegedly recovered at the instance of A-1 also did not give any definite conclusion as the blood group would not match, the serologist simply stating 'no reaction'. Same is the story of blood-stained clothes alleged to be of A-1. Case against A-2 is even weaker.

25. The prosecution heavily relied upon the injuries noticed on the persons of A-1 and A-2 as documented vide their respective MLCs prepared after their respective arrests. But then, this material, grave indeed it seems to be, has been gathered in a manner which is highly questionable. We notice that the Investigating Officer while, seeking

medical examination on 01.07.1996, had stated in his formal request (at page 353 of the trial court record) to the Medical Officer in AIIMS that A-1 had “disclosed” that he had received injury on his finger during the scuffle when he alongwith his associate Yamin were about to “split” the throat of the deceased with *chhuri*. The Investigating Officer asked the Medical Officer to give opinion as to the duration of the said injury; its type (“whether sharp or blunt?”), whether sharp-edged weapon could be *chhuri*, also requesting that blood sample of the accused be preserved. We must take exception to the imprudent assertions in the request made by the investigating police. The manner in which request has been made to the medical officer was virtually indicating the lines on which the report was expected to be issued. This, to our mind, seriously affects the objectivity of the views given.

26. The injuries noticed on the persons of A-1 and A-2, on 01.07.1996 and 15.07.1996 respectively, even otherwise, were not fresh. They had been suffered/inflicted, (as per medical opinion) 12/13 days, or more than a month, earlier. Such injuries, in the given facts and circumstances and the time difference, are again a feeble and weak evidence also for the reason that the opinion was somewhat deliberately invited in the terms given. Secondly, the opinion is based on estimation and mere guesswork. Thirdly, the appellants are manual workers and could have otherwise suffered the injuries. The injury in the case A-2 was old and healed.

27. We are not impressed with the theory of abscondance either. As far as A-1 is concerned, the oral testimony of Ganga Devi (PW3) nails the lie in this regard. She stated that she had seen A-1 in his house in the early morning hours on 18.06.1996. This can hardly be described as conduct of guilty mind or of one who has absconded. A-2, even otherwise, was not a

resident of same locality. He lived in Madangir, separated by a distance of several kilometres.

28. The aforesaid incriminating factors, when taken and read together, do not form a complete and unequivocal chain against the two appellants. In fact, the case against the A-2 is rather debatable. The prosecution has failed to prove its case about the motive. It fails to convince us as to the “last seen” theory. The recoveries of knives and blood-stained clothes do not impress us. The story of abscondance is unreliable.

29. Before concluding, we must mention that during the course of investigation, the police had also engaged services of Chander Shekhar (PW19), incharge of the police department’s dog squad. His evidence indicates that one of the dogs under his control (named “Zim”) had led the police from the place of discovery of the dead body to some *jhuggies* (hutments) in the area of Sanjay Camp, Dakshinpuri. This would be a locality other than that where the deceased and A-1 were living. PW19 also testified that the police had found blood stains on the walls of the *jhuggies*, namely B-252, B-127, B-624 and B-424 (in that locality) occupied by Gauri Shankar, Sunderlal, Chander and Satpal respectively, indicating the trail of the assailants after the murder had been committed. But this clue did not lead the police anywhere. It certainly throws up possibility of involvement of other person(s).

30. In the above facts and circumstances, in our judgment, the prosecution has miserably failed on all fronts.

31. For foregoing reasons, we find it difficult to uphold the judgment rendered by the trial court returning findings of guilty against the appellants.

32. In the result, the appeal is allowed. Both the appellants are acquitted. The impugned judgment and order on sentence are vacated. Bail bonds stand discharged.

(R.K.GAUBA)
JUDGE

(SANJIV KHANNA)
JUDGE

SEPTEMBER 03, 2015

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