
(2010) 03 DEL CK 0144
In the Delhi High Court
Case No : Criminal Appeal No. 75 of 2004

Prithipal Singh	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 120B, 302, 365

Citation : (2010) 03 DEL CK 0144

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Anita Abraham, for the Appellant; Richa Kapoor, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—An error which is being repeatedly noticed by us in various decisions has occurred in the instant case. In criminal trials this can create problems as indeed, a few days ago it was brought to our notice that a typographic error by the Trial Court has resulted in a convict set free on his appeal being allowed gained his freedom a week later when it was brought to our notice that the Trial Judge had wrongly typed the name of the accused and had not bothered to cross-check the same with reference to the challan filed. In the instant case the memo of parties of the impugned decision types the name of accused No. 1 as Prithipal Singh, which name actually is "Prithvi Pal Singh". This is the name recorded by the investigating officer in the charge-sheet and indeed is the name signed by the accused on all the recovery memos signed by Prithvi Pal Singh as also his arrest memo and the disclosure statement.

2. We shall be issuing necessary directions in the concluding para so that in future such kind of mistakes do not occur. We would also highlight that while depositions are being recorded by learned Trial Judges, we are noting incorrect typing of the names of accused, victims and witnesses. The same is creating

problem in appreciating the facts.

3. Computerization does not mean that the Trial Judge has not to cross-check the nouns in the transcripts.

4. The instant decision shall set to rest the fate of Crl.Appeal No. 75/2004 filed by accused No. 1 Prithvi Pal Singh who has assailed the impugned judgment and order dated 13.12.2003 passed by the learned Trial Judge convicting him and other co-accused Kailash Singh Bist, Rajiv Kumar@ Raju and Sonu for various offences under Sections 365/302/120B IPC pertaining to the kidnapping and murder of Hemant Kumar (hereinafter referred to as the deceased). Vide order on sentence dated 22.12.2003, all the accused have been sentenced to undergo imprisonment for life and have been directed to pay a fine in sum of Rs. 5000/- each for the offence u/s 302 IPC. In default of payment of fine the accused have been directed to suffer rigorous imprisonment for a period of one year. For the offence punishable u/s 365 IPC, the accused have been sentenced to undergo rigorous imprisonment for four years and pay fine in sum of Rs. 1000/- each, in default of payment of fine to undergo simple imprisonment for four months. For the offence punishable u/s 120B the accused have been sentenced to undergo imprisonment for a period of seven years and pay fine in sum of Rs. 2,000/-, in default to undergo imprisonment for six months.

5. At the outset it may be noted that in view of the decision reported as 2009 (6) Scale 697 Hari Ram v. State of Rajasthan since co-accused Kailash Singh Bist, Rajiv Kumar and Sonu were less than 18 years of age when they committed the offence, appeals filed by them were disposed of setting aside the sentence imposed on them and releasing them from prison for the reason the three had remained in jail for a period in excess of three years, the maximum prescribed, for keeping a juvenile in custody. Thus, we have to decide the appeal filed by Prithvi Pal Singh who was aged 19 years when the crime was committed.

6. As per the prosecution the accused and the deceased were known to each other and residents of the same locality i.e. R.K. Puram. The accused entered into a conspiracy to kidnap the deceased and extract ransom from his father and in furtherance of the conspiracy they enticed the deceased on the pretext of discussing some important matter when they met the deceased in the market of Sector-6 R.K. Puram in the evening time of 27.10.1999. Prithvi Pal Singh took the deceased on his scooter to the playground of M.C. Primary School, Sector-6 R.K. Puram where all accused jointly brutally murdered the deceased inflicting 41 stab wounds on his body. They stripped the body of the clothes and after sprinkling salt and hydrochloric acid on the body, on a pit dug in the playground with a spade, they buried the body and walked away.

7. Probably being first timers, the accused did not muster any courage to demand ransom and let the crime rest as it is.

8. That Hemant Kumar was missing since the evening of 27.10.1999 was reported at PS R.K. Puram when on 28.10.1999 at 6:45 PM his father Veer

Kumar PW-1 got recorded his complaint vide DD No. 8-A, Ex.PW-17/DX, that his son had not reported back home since the evening of 27.10.1999. The complaint was marked to ASI Brahm Prakash PW-17 for necessary action.

9. Hemant Kumar could not be found and on 30.10.1999 Veer Kumar the father of Hemant Kumar reported back at the police station at around 10:00 AM and got recorded his statement Ex.PW-1/A as per which he informed that he got information that his son was seen in the evening of 27.10.1999 in the market of Sector-6, R.K. Puram in the company of his friend Prithvi Pal Singh and two other boys Kailash Singh Bist and Rajiv Kumar @Raju. He i.e. Veer Kumar made personal inquiries from the three but got no satisfactory reply from the three boys. He suspects that these three boys have a hand in his son being missing and that they have some ulterior motive.

10. Upon receipt of the statement Ex.PW-1/A an FIR Ex.PW-17/B was registered on 30.10.1999 for the offence punishable u/s 365 IPC.

11. ASI Brahm Prakash PW-17 accompanied by either Manoj Kumar Singh PW-2 or Veer Kumar PW-1 left the police station to contact Prithvi Pal Singh, Kailash Singh Bist and Rajiv Kumar so that he could make inquiry from them. There is some confusion as to who accompanied ASI Brahm Prakash, who while deposing in Court stated that Veer Kumar accompanied him so as to identify the three accused but Veer Kumar has deposed that he stayed back at the police station and Manoj Kumar Singh a friend of Veer Kumar accompanied ASI Brahm Prakash. Manoj Kumar Singh has also so stated.

12. The three accused Prithvi Pal Singh, Kailash Singh Bist and Rajiv Kumar were brought to the police station at around 4:00 PM and as recorded in the arrest memos of the three they were arrested at 4:40 PM.

13. Insp. Rajender Bakshi PW-15, the SHO of PS R.K. Puram interrogated the three and recorded their disclosure statements Ex.PW-1/B, Ex.PW-1/C and Ex.PW-1/D as per which all the three admitted having kidnapped the deceased and having murdered him. Each one of the three disclosed that they can lead the police to the spot where the dead body was buried. They disclosed that Kailash Singh Bist had inflicted stab wounds on the deceased who was held on to by Prithvi Pal Singh and Rajiv. They further disclosed that the body was stripped of the clothes before it was buried. They disclosed that Sonu had brought a spade (phaavda) using which a pit was dug in which the body was buried and when the three were burying the body, Sonu stood on watch. They further disclosed that Rajiv had brought Phenyl and Sonu had purchased salt, both of which were sprinkled on the body. They further disclosed that they could lead the police to the spot where the body was buried. All of them additionally disclosed that while committing the crime, the clothes of Kailash Singh Bist and Prithvi Pal Singh got stained with the blood of the deceased and the two changed their clothes. They disclosed that they can point out the spots where the knife, the empty bottle of phenyl and the clothes of the deceased were thrown. Additionally, Prithvi Pal

Singh stated that he can point out the spot where he threw his blood stained clothes and can also get recovered the scooter on which he and the deceased were seen. Kailash Singh Bist additionally stated that he can point out the spot where he threw his shirt which got stained with blood.

14. Thereafter Prithvi Pal Singh, Kailash Singh Bist and Rajiv led the investigating Officer and jointly pointed out the spot where the dead body was buried and as entered in the pointing out cum seizure memo Ex.PW-2/B the dead body of the deceased was recovered after removing the soil. The sample of the soil where the body was recovered was seized as recorded in the memo Ex.PW-2/A. Thereafter, as recorded in the memo Ex.PW-2/F which is a pointing out cum recovery memo the clothes (stated to be those of the deceased) and an empty bottle (not of phenyl but acid) was recovered at the instance of Prithvi Pal Singh. No knife could be recovered. Thereafter Prithvi Pal Singh took the Investigating Officer to his house and as recorded in the pointing out cum recovery memo Ex.PW-2/D got recovered a blood stained black pant. From outside his house, as recorded in the recovery memo Ex.PW-2/C he got recovered a scooter bearing No. DIZ 7022. Thereafter Kailash Singh Bist took the Investigating Officer to his house and got recovered a pant as recorded in the pointing out cum recovery memo Ex.PW-2/E.

15. Sonu was apprehended the same day and as recorded in his disclosure statement Ex.PW-1/E stated that he can lead the Investigating Officer to the spot where he hid the spade and can point out the shop from where he purchased salt.

16. The next day Sonu led the Investigating Officer to a water tank behind his house and got recovered from the tank a spade which was seized as recorded in the memo Ex.PW-2/G. Thereafter Sonu led the Investigating Officer to Indira Market and pointed out the shop of K.L. Anthony PW-5 and stated that he had purchased salt from said shop. The Investigating Officer recorded the statement of K.L. Anthony confirming that Sonu had purchased salt from him. Rajiv led the Investigating Officer to the shop of Ram Kishan PW-6 and pointed out the same informing that he had purchased acid from said shop, a fact confirmed by Ram Kishan in his statement recorded by the Investigating Officer. The pointing out memos of Sonu and Rajiv which were drawn are Ex.PW-9/A and Ex.PW-6/A.

17. The dead body of the deceased was sent for postmortem. Dr. Chander Kant PW-14 conducted the post-mortem on 31.10.1999 and prepared the post-mortem report Ex.PW-14/A listing 41 stab wounds as the injuries noted by him. He recorded that the hair had soil and white fine salt. He opined that the death was 86 to 90 hours prior to the time when he conducted the post-mortem. He opined that all injuries were caused by a sharp edged weapon and were collectively sufficient in the ordinary course to cause death.

18. The various exhibits lifted during investigation and the blood sample of the deceased were sent for serological examination and as per report Ex.PW-16/A the blood group of the deceased was B. Human blood of the same group was

detected on the soil from where the dead body was recovered, the pant which was got recovered by appellant Prithvi Pal Singh from his house, the white full sleeve shirt stated to be that of the deceased which was got recovered by three accused. No blood was detected on the pant got recovered by Kailash Singh Bist.

19. At the trial the various police officers and Manoj Kumar PW-2 a private person but a friend of the father of the deceased had joined in the investigation and proved the disclosure statement made by the accused and the various recoveries pursuant thereto.

20. Mr. K.L. Anthony PW-5 confirmed that the police had brought to his shop a person who had purchased salt from him and at that time he had confirmed to the police that the boy they had brought had purchased salt from his shop but in court he could not verify the said boy. We note that PW-5 appeared in court on 04.07.2001 i.e. after nearly one year and nine months of the crime.

21. Ram Kishan PW-6 deposed that Rajiv had purchased a bottle of acid from his shop but he could not identify which bottle was purchased as the bottles did not have distinct identification marks.

22. ASI Brahm Prakash PW-17 deposed that on 28.10.1999 he received DD No. 8A of the deceased being missing and that on 30.10.1999 Veer Kumar the father of the deceased met him and told him that he had got information that his son was seen in the evening of 27.10.1999 in the company of Prithvi Pal Singh, Kailash Singh Bist and Rajiv which information he noted in the form of statement of Veer Kumar and accompanied by Veer Kumar went to the house of Prithvi Pal Singh, Kailash Singh Bist and then Rajiv and got them to the police station where the SHO interrogated them and recorded their disclosure statement. He deposed to the recoveries effected thereafter.

23. During cross-examination ASI Brahm Prakash admitted that before the SHO interrogated the accused they had told him about their involvement in the commission of the crime and that they had buried the body in a pit at a ground. Additionally, he admitted that Prithvi Pal Singh, Kailash Singh Bist and Rajiv informed him that even Sonu had acted in tandem with them.

24. Veer Kumar PW-1 the father of the deceased deposed that the missing persons complaint was lodged by him and that on 30.10.1999 he had informed the police that as told to him by his friend Rajeshwar Pandey PW-3 in the late evening of 29.10.1999, his son was seen in the company of Prithvi Pal Singh, Kailash Singh Bist and Rajiv. He stated that on 30.10.1999 when he went to the police station his friend Manoj Kumar PW-2 had accompanied him and that Manoj Kumar went with ASI Brahm Prakash to bring the said three boys to the police station. He deposed that in front of him, on being interrogated by the SHO the three admitted their guilt and their disclosure statements were recorded. He thereafter deposed to the recoveries made in his presence on 30.10.1999. He deposed that all accused were the friends of his son. But, stated that Rajiv never came to his house.

25. During cross-examination Veer Kumar admitted that in his statement Ex.PW-1/A which was recorded on 30.10.1999 he did not disclose that his friend Rajeshwar Pandey PW-3 had given him the information which he passed on to the Investigating Officer.

26. Rajeshwar Pandey PW-3 deposed that he was residing in Qrt. No. 415, Sector-6, R.K. Puram for about one and a half year prior to the year 1997 and had shifted to Chatterpur in the year 1997. That Veer Kumar was his friend and he knew his son and had seen Prithvi Pal Singh, Kailash Singh Bist and Rajiv with the son of Veer Kumar. Thus, he knew them. Just as friends do, he rang up Veer Kumar on 29.10.1999 to enquire about his well being and when Veer Kumar told him that his son was missing since 27.10.1999 he told Veer Kumar that he had seen his son in the company of the three accused at around 7:30 PM in the market at Sector-6 R.K. Puram and that he saw Pritivi Pal Singh drive a scooter on the pillion seat whereof the deceased was sitting. He saw Rajiv and Kailash Singh Bist move in the same direction on foot.

27. During cross-examination he stated that he had seen the three accused in the house of the deceased.

28. Insp. Rajinder Bakshi PW-15, the SHO of the police station deposed that after interrogating the accused he recorded their disclosure statements and got effected various recoveries.

29. It is apparent that the learned trial Judge has convicted Prithvi Pal Singh, Kailash Singh Bist and Rajiv on the testimony of Rajeshwar Pandey PW-3 by holding that his testimony establishes that the deceased was last seen in their company on 27.10.1999 in the late evening, which was the time when the deceased was last seen alive. The post-mortem report of the deceased probablilizes the time of death to be late evening or early night of 27.10.1999. The dead body being got recovered at the instance of the accused has been held to be further incriminating evidence. Sonu being identified as the person who purchased salt and got recovered the spade has been used as incriminating evidence. Salt being detected on the body of the deceased by Dr. Chander Kant and human blood of the same group as that of the deceased being detected on the white shirt of the deceased got recovered by the accused as also human blood of the same group as that of the deceased being detected on the pant got recovered by Prithvi Pal Singh have been used as further incriminating evidence.

30. The impugned judgment proceeds as if even Sonu was the person who jointly participated in the recovery of the dead body and further recoveries which were made on 30.10.1999. This is incorrect. But, we need not deal with the said issue since Sonu has already earned his freedom being a juvenile and his appeal is not before us.

31. As noted in para 5 above, Kailash Singh Bist, Rajiv Kumar and Sonu were less than 18 years of age when the crime was committed and hence were set free since they remained in jail for a period in excess of three years the

maximum prescribed for keeping a juvenile in custody.

32. Thus, we will be dealing with the case only against Prithvi Pal Singh.

33. Joint pointing out memos and recoveries have been held to be legal and valid as per the decision reported as State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru,

34. It was urged that ASI Brahm Prakash PW-17 admitted that before the SHO interrogated Kailash Singh Bist, Pritivi Pal Singh and Rajiv the three had confessed their guilt to him and had told him that Sonu was their accomplice and that after murdering the deceased they had buried him in a pit in a ground. Thus, counsel submitted that since there cannot be a re-discovery of a fact, nothing becomes admissible against Prithvi Pal Singh pursuant to his disclosure statement recorded by the SHO. Learned Counsel relied upon the decision reported as State of Haryana Vs. Jagbir Singh and Another,

35. The argument has to be rejected for the simple reason ASI Brahm Prakash has simply stated that before the SHO interrogated the three accused they admitted their guilt to him and further told him that even Sonu had participated in the crime and that they had only told him that after digging a pit in a ground they had buried the dead body therein. Relevant would it be to note that the place where the crime was committed, the place where the dead body was buried, the manner in which death was caused, that the dead body was stripped and salt as also phenyl sprinkled thereon were facts not told to the said police officer. Further, other details of the disclosure statements pertaining to the spot where the knife, the clothes of the deceased and the bottle were thrown were not disclosed. It was not disclosed that the clothes of the appellant and Kailash Singh Bist got stained with the blood of the deceased. It was not disclosed that the same could be got recovered.

36. Thus, the facts which were disclosed for the first time were in the disclosure statements, the same related to that the pit was dug in the playground of a municipal school, that the death was caused by stabbing, that the dead body was stripped of the clothes, that salt and phenyl was thrown in the soil where the dead body was buried, that the spot where the clothes of the deceased and the knife was thrown were known to the accused, that two accused could get recovered their clothes which were stained with the blood of the deceased.

37. Recoveries of objects and dead bodies lying hidden in the soil at the instance of a person have always been treated as highly incriminating evidence for the reason save and except a person telling the police its whereabouts, the police can never reach out to the same. The same has been reiterated in the decision of a Division Bench of this Court decided on 01.02.2010 in CrI.A. No. 385/2008 Dost. Mohd. and Anr. v. State. Thus, we hold that Section 27 of the Evidence Act stands attracted and makes admissible the disclosure statement of the appellant pertaining to the spot wherefrom the dead body of Hemant Kumar was recovered. Further, the part of his statement which gives the description of the

dead body i.e. that the same has stab wounds as also its condition i.e. being stripped of the clothes is also admissible as the dead body is a thing and the state of the thing is a matter of fact.

38. Whether Veer Kumar accompanied ASI Brahm Prakash or Manoj Kumar accompanied ASI Brahm Prakash to the house of the appellant, Kailash Singh Bist and Rajiv is immaterial for the reason what matters who pointed out the house of the three persons to ASI Brahm Prakash. That apart, while deposing in Court after nearly one and a half year of the crime if Veer Kumar thinks that not he but his friend Manoj Kumar accompanied ASI Brahm Prakash and the fact being otherwise is immaterial. Further, Veer Kumar who had his son missing since 27.10.1999 would obviously be very tense and this has to be factored. But, what we hold is that both Manoj Kumar and Veer Kumar speak in unison that it was Manoj Kumar who accompanied ASI Brahm Prakash and the greater probability is that ASI Brahm Prakash has mixed up the two.

39. The controversy that Veer Kumar, in his statement Ex.PW-1/A did not disclose the source of his information as to who saw his son in the company of Prithvi Pal Singh, Kailash Singh Bist and Rajiv Kumar is immaterial and irrelevant for the reason the need to pass on the information to ASI Brahm Prakash was to give a lead to ASI Brahm Prakash and no more. As held in the decision reported as Jaswant Singh Vs. State of Haryana, the informant remains satisfied with only giving such information as he thinks is relevant and further information volunteered by him i.e. the informant would depend upon the skill and the desire of the person receiving the information, whether the recipient desire further information.

40. The authority cited by the learned Counsel, namely Ram Kumar Pandey Vs. State of Madhya Pradesh, has no application inasmuch as the said decision relates to a material information not given by the informant and not finding mention in the FIR but later on, while deposing in Court the gaps being filled up.

41. We see no reason why Rajeshwar Pandey PW-3 would go about falsely implicating three innocent young boys against whom he has no ill will. Similarly, why would Veer Kumar PW-1 falsely implicate the friends of his son.

42. Holding in favour of the credibility of the testimony of the witnesses of the prosecution we find that the prosecution has successfully established that through the mouth of the appellant the police learnt that the deceased was stabbed to death, a fact which was confirmed subsequently when the dead body was recovered. Through his mouth the police learnt that the dead body would be without any clothes on it, a fact which was confirmed subsequently when the dead body was recovered. Through his mouth the police learnt that salt was sprinkled on the dead body, a fact which was subsequently confirmed when the dead body was recovered; Dr. Chanderkant has deposed that he saw fine salt on the dead body. Through his mouth the police learnt that the soil in the compound of a school was dug and in the pit the dead body was dumped and buried, a fact

which was subsequently confirmed when the appellant and two of his accomplices jointly pointed out a spot in the playground of a municipal school and after removing the top soil, the dead body was recovered. We note that the Headmaster of the School Raghbir Singh PW-4 has joined the recovery of the dead body and thus there is great credibility attaching to the evidence of said recovery. That the clothes stated to be those of the deceased were got recovered by the appellant on which the blood of human origin of the same group as that of the deceased was detected is further incriminating evidence. That the appellant was last seen in the company of the deceased on 27.10.1999 and the probable time of the death of the deceased is late evening or early night of 27.10.1999, a fact established through the post-mortem report, is additional incriminating evidence. All of which form a complete chain wherefrom guilt of the appellant can be inferred.

43. The appeal is dismissed.

44. Since the appellant is still in jail we direct that a copy of the decision be sent to the Superintendent Central Jail Tihar to be made available to the appellant.

45. As noted in para 2 above, we have to issue certain directions.

46. We direct that a copy of this decision would be sent to the District and Sessions Judge Delhi who would circulate the same to all Judges in the various District Courts highlighting that typographic errors in the names of the witnesses, accused or other persons should not occur with the frequency with which we are noticing the errors. It would be treated in future, if this happens that the Judge is callous, warranting an adverse remark or entry in the service record. Especially when the trial pertains to a criminal offence for the reason incorrect recording of names creates problems with the Jail Authorities on the issue of the identity of the accused.