
(2006) 12 DEL CK 0125
In the Delhi High Court
Case No : Criminal Appeal No. 768 of 2002

Vikram

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Penal Code, 1860 (IPC) — Section 302, 392, 397

Citation : (2007) 94 DRJ 318

Hon'ble Judges : Madan B. Lokur, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Sudershan Rajan, amices Curiae and Mohd. Qamar Ali, for the Appellant; Sunil Sharma, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Appellant is aggrieved by the judgment and order dated 31st July, 2002 passed by the learned Additional Sessions Judge in Sessions Case No. 24/1999. By the impugned judgment and order, the Appellant was convicted for offences punishable under Sections 302, 397 and 392 of the Indian Penal Code (for short the IPC). By a subsequent order dated 2nd August, 2002, the Appellant was sentenced to imprisonment for life for the offence punishable u/s 302 of the IPC and for different periods in respect of the other two offences.

2. At the outset, it may be stated that the Appellant was charged with having committed two murders, that is, of Ram Kumar and Ramjas with a dangerous weapon on the night of 16th October, 1998.

3. The case of the prosecution is that Dheeraj (PW-15) was working as a chaudhry/supervisor in a nursery maintained by the Municipal Corporation of Delhi in Ram Leela Grounds. On 17th October, 1998, he went to the nursery at about 10.00 am and found the gate locked from inside. He called the gardener Ramjas who used to stay in the nursery but there was no response forthcoming. Dheeraj (PW-15) then went to one side of the nursery and peeped through the

grill and found that Ramjas was lying on a cot and it appeared to him that he was dead. Under these circumstances, Dheeraj went to the police station and lodged a complaint. On the basis of his complaint, a police party was deputed to go to the nursery.

4. When the police party reached the nursery and went inside, after breaking open the lock, they found that Ramjas was in fact lying dead on the cot and another person, later on identified as Ram Kumar, was lying dead on the ground. Both the deceased had injuries on their head and face. Nearby, a suitcase and bag were lying on a table and a small tin box whose bolt was broken was also lying there. The police took necessary photographs and collected evidence from the spot for investigation purposes. The dead bodies were sent for post-mortem examination.

5. During investigations, the police recorded the statement of Ram Milan (PW-19) son of the deceased Ramjas, who stated that on 16th October, 1998 he had gone to the nursery to visit his father. At that time, the Appellant also came there. He stated that the Appellant had visited Ramjas on earlier occasions also and sometimes he even used to sleep in the nursery. On that occasion (on 16th October, 1998) Ram Kumar was also present in the nursery and he kept an amount of Rs. 18,000/- in a tin box in the presence of the Appellant. Ram Milan (PW-19) informed the police that Ramjas told Vikram that he was leaving Delhi on 17th October, 1998 by Kashi Vishwanath Express. Ram Milan (PW-19) also told the police that Ramjas had Rs. 900/- in cash. At that time Ramjas was wearing an HMT wristwatch and Ram Kumar was also wearing an HMT wristwatch. According to Ram Milan (PW-19), when he left the nursery, the Appellant, Ramjas and Ram Kumar were still there.

6. On 19th October, 1998, Madan Lal (PW-9), a gardener in the nursery joined the investigations and he pointed out the Appellant to the police at New Delhi Railway Station. The Appellant was then apprehended and he made a disclosure statement.

7. As per the disclosure statement, the Appellant used to visit the nursery quite often to meet Ramjas and sometimes he would sleep in the nursery as well. Ram Kumar, who also belonged to the same village as Ramjas, also used to reside in the nursery. As per the disclosure statement, both Ramjas and Ram Kumar were going to Rai Bareilly on 17th October, 1998. The Appellant stated that he had seen Ram Kumar keeping an amount of Rs. 18,000/- in a tin box. He further disclosed that after Ram Milan (PW-19) left the nursery and when Ramjas and Ram Kumar went off to sleep, the Appellant removed the handle of a hand pump and used that for killing both Ramjas and Ram Kumar. Thereafter, according to the Appellant, he broke open the tin box and took the cash of Rs. 18,000/-. He also took both the HMT watches as well as the purse of Ramjas which contained Rs. 900/-, railway tickets and identity card. As per the disclosure statement, the handle of the hand pump broke when he was trying to open the tin box and he threw both the pieces of the handle in the drain near Zakir Hussain College; the

money, purse, watches, tickets, etc. were kept in a heap of cow-dung in Hamdard Chowk, Shastri Park; the blood stained clothes that he was wearing at that time were concealed in some bushes in Yamuna Pushta in front of ISBT.

8. The police along with Madan Lal (PW-9) and Mohan Lal (PW-8) both gardeners in the nursery then went to the drain near Zakir Hussain College from where they recovered the two pieces of the handle of the hand pump. Thereafter, they left for some work. Ram Milan (PW-19) was then associated with the recovery process and in his presence, the police recovered the cash, railway tickets, identity card and watches from Hamdard Chowk, Shastri Park and the blood stained clothes from the bushes in Yamuna Pushta in front of ISBT.

9. After the post-mortem report was received and other investigations completed, a challan u/s 173 of the Code of Criminal Procedure was filed and on the basis thereof, the following charges were framed against the Appellant:

That on the night intervening between 16.10.98 and 17.10.98 at about 12 midnight at tin shed MCD nursery Ram Leela Ground within the jurisdiction of P.S. Kamla Market, you committed robbery of Rs. 18,000/-, one wrist watch belonging to the deceased Ram Kumar and Rs. 900/- I card and tickets belonging to deceased Ramdass and thus committed an offence punishable u/s 392 IPC and within my cognizance;

Secondly, on the said date, time and place, at the time of committing the said robbery you used a deadly weapon, i.e., handle of the hand pump in committing the said robbery against the said two deceased and thus committed an offence punishable u/s 397 IPC and within my cognizance;

Thirdly, on the said time and place, you committed murder of Ram Kumar and Ram Dass and thus committed an offence punishable u/s 302 IPC and within my cognizance.

The Appellant pleaded not guilty and claimed trial.

10. Although the prosecution examined 25 witnesses, only some of them are of importance for our purposes.

11. Dr. S.K. Khanna and Dr. Akash Jhanjee entered the witness box as PW-5 and PW-6 respectively. Dr. Khanna conducted the post-mortem examination on the dead body of Ramjas while Dr. Akash Jhanjee conducted the post-mortem examination on the dead body of Ram Kumar. Both the witnesses stated that death was due to cranio-cerebral damage consequent upon a blunt force impact on the head. The injuries were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. Both the doctors were shown the broken handle of the hand pump and they were of the opinion that that handle could have caused the injuries suffered by the deceased.

12. Mohan Lal (PW-8) and Madan Lal (PW-9) were both gardeners working in the nursery. The Appellant was arrested in their presence and he made a disclosure

statement in their presence. They identified him in court and stated that he was arrested from inside the railway station on a pedestrian parking area. They were both witnesses to the recovery of the broken pieces of the handle of the hand pump recovered from the drain near Zakir Hussain College.

13. Ram Milan (PW-19) is the son of Ramjas (deceased). Ram Milan (PW-19) had seen Ramjas, Ram Kumar and the Appellant in the nursery on 16th October, 1998 at about 5.45 or 6.00 p.m. He was a witness to the recovery of the cash, wristwatches, etc. from the cow-dung heap near Hamdard Chowk, Shastri Park. He was also a witness to the recovery of blood stained clothes of the Appellant from the bushes in Yamuna Pushta near ISBT.

14. Constable Rajesh Kumar (PW-4) was one of the police officers who had gone to the nursery and had discovered the two dead bodies. He had participated in the recovery, as per the disclosure statement of the Appellant on 19th October, 1998.

15. Dheeraj (PW-15) was a chaudhry/supervisor working in the nursery and was the first to see the dead body of Ramjas through the grill in the nursery in the morning of 17th October, 1998. He was the complainant and he stated that on the evening of 16th October, 1998 when he was leaving the nursery at about 5.00 pm, he saw the Appellant entering the nursery.

16. Inspector Ram Pal Singh (PW-25) was the last witness to be examined by the prosecution. He identified the various objects that were seized and confirmed the recoveries as per the disclosure statement given by the Appellant.

17. As can be seen from the above narration of facts, the prosecution case is really dependent upon circumstantial evidence and is based on the "last seen together" theory.

18. What is the "last seen together" theory? Recently, in *Yuvaraj Ambar Mohite v. State of Maharashtra* 2006 (10) Scale 369 this theory was explained in the following words:

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 possibility of any person other than the accused being the author of the crime becomes impossible.

Reliance was placed by the Supreme Court on *State of U.P. Vs. Satish, and Ramreddy Rajeshkhanna Reddy v. State of Andhra Pradesh* 2006 (3) Scale 452 wherein the same language was used to explain the theory.

19. With respect, we may venture to add, based on the existing case law, that "when the accused and the deceased were last seen alive and when the deceased is found dead" is only one aspect of the last seen together theory. It also includes a case where the accused and the deceased were last seen together and the crime was committed soon thereafter, even though the corpus delicti was

discovered much later. For example, in Deputy Commissioner of Agricultural Income Tax and Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Aluminium Industries Ltd., Kundara, , the accused and the victim were last seen together on 22nd/23rd August, 1970 and the corpse of the victim was found buried in a pit only on 25th August, 1970. Even though there was a gap of two or three days between the two crucial dates, the Supreme Court applied the last seen together theory to uphold the conviction.

20. Similarly, in Sudama Roy v. State of West Bengal 1998 SCC 391, the body of the deceased was exhumed about two or three months after she was last seen in the house of the accused. Despite the huge time lag, the Supreme Court invoked the last seen together theory to uphold the conviction.

21. In so far as the present appeal is concerned, we find that from the nature of injuries as well as the testimony of the doctors who conducted the post-mortem examination on the deceased, that is Dr. S.K. Khanna (PW-5) and Dr. Akash Jhanjee (PW-6) there can be no doubt that the cause of death of both the deceased was homicidal. The question that needs to be answered is who caused death - was it the Appellant who was last seen with the deceased or was it somebody else.

22. That the Appellant was the person last seen with both the deceased is stated not only by Dheeraj (PW-15), but also by Ram Milan (PW-19). Learned Counsel for the Appellant submitted that there is a difference in timing in as much as Dheeraj (PW-15) says that he saw the Appellant when he was leaving the nursery at about 5.00 pm while Ram Milan (PW-19) says that he saw the Appellant in the nursery at about 5.45 or 6.00 pm. We are of the view that the difference in timing is not that significant considering the fact that these witnesses were examined almost three years after the incident. A mistake in timing of about 45 minutes or 60 minutes is clearly not enough to demolish the prosecution case.

23. It was also submitted that had Dheeraj (PW-15) or Ram Milan (PW-19) seen the Appellant, they ought to have seen each other, but this is not reflected in their testimony. We do not see how this follows. It is not as if the nursery was one small room where everybody could see each other. There could be a difference of a few minutes in their presence. We do not find any merit in this contention at all.

24. It was contended that there is no mention about the Appellant in the rukka or information given by Dheeraj (PW-15) to the police on the morning of 17th October, 1998. We have gone through the rukka or information Exhibit PW-12/A and we find that it is only information given with regard to what Dheeraj (PW-15) had found that morning. Dheeraj (PW-15) does not indicate, nor was he required to, whom he suspected for the murder. All that he has stated was what he saw and which prompted him to make a complaint to the police.

25. On the basis of the available testimony, we have no hesitation in concluding

that the Appellant was the person who was last seen with the deceased by two persons, namely, Dheeraj (PW-15) and Ram Milan (PW-19).

26. Ram Milan (PW-19) goes on to state in his testimony that the deceased Ram Kumar kept an amount of Rs. 18,000/- in a tin box in the presence of the Appellant. The tin box was later on found to be broken and the cash was missing. Ram Milan (PW-19) had also stated that deceased Ramjas had Rs. 900/- in cash and that both deceased Ram Kumar and Ramjas were wearing HMT wristwatches. Since the Appellant was present in the nursery and had come to visit Ramjas, it can be safely presumed that he could see both the deceased persons wearing wristwatches.

27. Subsequently, during investigations, the cash of Rs. 18,000/- belonging to Ram Kumar as well as the cash of Rs. 900/- belonging to Ramjas and the two wristwatches and other miscellaneous items were recovered at the instance of the Appellant. Learned Counsel for the Appellant submitted that the recoveries made are extremely doubtful. It was pointed out that when the charges were framed against the Appellant, he signed the order sheet on 5th August, 1999, the suggestion being that the Appellant could read and write. However, on the disclosure statement given by the Appellant, Exhibit PW-8/B, the Appellant did not sign the document but merely affixed his left thumb impression. On the Personal Search Memo, Exhibit PW-8/A the Appellant affixed his left thumb impression, while on the seizure memos he neither affixed his signature nor his thumb impression. On this basis, it was submitted that these documents are fabricated.

28. We are of the view that merely because the Appellant signed the order sheet when charges were framed against him on 5th August, 1999 does not mean that the disclosure statement, Exhibit PW-8/B or the Personal Search Memo, Exhibit PW-8/A or the other documents are fabricated. The Appellant may have chosen not to sign these documents, but only affix his left thumb impression.

29. Learned Counsel for the Appellant submitted that the recovery was made from three different places and there is no reason why the Appellant should have hidden the cash, the wristwatches, etc. in one place, thrown the broken handle of the hand pump at yet another place and hidden the blood stained clothes in a third place. We cannot make any comment on this, one way or the other, as it is impossible for us to fathom what was going on in the mind of the Appellant. The fact remains that the broken handle of the hand pump and the stolen cash and goods belonging to the deceased and the blood stained clothes were recovered at the instance of the Appellant who was the person last seen with the deceased.

30. Ram Milan (PW-19) was the son of one of the deceased persons, that is Ramjas, and the Appellant was not unknown to him. We do not find any discrepancy in the evidence tendered by him, nor do we find any reason why he would want to frame the Appellant without any rhyme or reason. The statement given by him appears to be truthful and the material part with regard to the

presence of the Appellant with the deceased persons on the evening of 16th October, 1998 is, in any event, confirmed by Dheeraj (PW-15). The recoveries made in his presence are also not doubtful.

31. The final circumstance against the Appellant is the recovery of the blood stained clothes. It may be recalled that these were recovered from bushes in Yamuna Pushta in front of ISBT. The forensic examination of the clothes worn by the Appellant revealed blood stains of the blood group A, that is, the same as the blood group of Ramjas, one of the deceased.

32. The Appellant was not able to shake the testimony of any of the witnesses. All of them have supported the case of the prosecution. Recoveries were made in the presence of independent persons who have clearly stated their role.

33. On the basis of the above, we find that the following circumstances form a complete chain of events unerringly pointing towards the guilt of the Appellant. The circumstances are:

The Appellant was last seen with the deceased.

The Appellant saw deceased Ram Kumar putting a sum of Rs. 18,000/- in a tin box and was probably tempted to steal the amount along with the wristwatches worn by deceased Ram Kumar and deceased Ramjas.

Both the deceased had injuries on their head and face which was caused by blunt weapon, that is, the handle of the hand pump which was found at the instance of the Appellant. This handle could have caused the injuries, as opined by the doctors who conducted the post-mortem examination.

The cash of Rs. 18,000/- and wristwatches along with other items were recovered at the instance of the Appellant from a place where he had hidden them.

The blood stained clothes that the Appellant was wearing at that time were recovered at his instance from the bushes in Yamuna Pushta in front of ISBT and these clothes contained blood stains which were of blood group A, which is the same as the blood group of deceased Ramjas.

All recoveries were witnessed by independent persons who have withstood their cross-examination.

34. All these factors cumulatively point to only one possibility, that is, that the Appellant had killed both the deceased with the handle of the hand pump. No other theory has been put forward or is consistent with the facts as we have found them.

35. Consequently, we do not find any merit in this appeal and it is, accordingly, dismissed.

36. For the efforts put in by Mr. Sudershan Rajan, learned amicus Curiae, we direct the Delhi Legal Services Authority to pay him a sum of Rs. 3,300/- within a

period of six weeks from today.