

Naseem Ahmed

Vs

Delhi Administration

Criminal Appeal No. 80 of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

12.12.1973

JUDGMENT

CHANDRACHUD, J. -

1. This appeal by special leave is directed against a judgment of the High Court of Delhi confirming the conviction of the appellant under Section 302 of the Penal Code but reducing the sentence of death imposed on him by the learned Additional Sessions Judge, Delhi to life imprisonment. The charge against the appellant is that on the night between April. 17/18, 1968 he committed the murder of one Ram Kumar.

2. On April 11, 1968 Ram Kumar, his brother Shiv Kumar, their mother and the appellant left Kanpur for Moradnagar. On April 15, Ram Kumar, Shiv Kumar and the appellant left Moradnagar for Delhi for purchasing a second hand motor-cycle. Shiv Kumar went back to Moradnagar for catching a bus to Kanpur.

3. At about 7.15 p.m. on April 15, 1968 Ram Kumar and the appellant booked a room at Hindustan Hotel, Ballimaran, Delhi. They signed their names in the hotel register and entered therein their Kanpur address. On the 16th they were admittedly together and while in search of a motor-cycle they met Abdul Hafees, Babu Khan and Om Prakash. On the 17th morning Ram Kumar and the appellant struck a deal with Babu Khan and Om Prakash agreeing to purchase from them a motor-cycle for Rs. 1,000. Ram Kumar paid a sum of Rs. 25 by way of advance and the sellers agreed to deliver the motor-cycle in the evening.

4. At about 6 p.m. on the 17th evening Babu Khan and Om Prakash went to Hindustan Hotel with the motor-cycle and met Ram Kumar, who told them that he was short to money by three or four hundred rupees and that he had sent the appellant to get the amount from his (the appellant's) Ustad. Babu Khan and Om Prakash waited till about 9.30 p.m. but the appellant did not turn up and so they went away with the motor-cycle,

5. The case of the prosecution is that at about 12.30 a.m. on the night between the 17th and 18th the deceased Ram Kumar and the appellant were seen going to their hotel room by Lal Chand, a partner of the hotel. It is further alleged that at about 10 a.m. on the 18th morning, Lal Chand and his brother Tek Chand saw the appellant locking the room and leaving the hotel. On April 20th the hotel premises were full of a foul smell and there upon the lock of the room which was occupied by Ram Kumar and the appellant was broken open. Inside the room was found the dead body of Ram Kumar with two stab injuries, one near the right eye brow and the other near the right ear and nine contused lacerated wounds on the scalp, each injury being brain deep. According to medical evidence the stab

injuries were caused with a pointed, sharp-edged weapon while the other injuries were caused by a hard blunt substance.

6. Soon after the discovery of Ram Kumar's dead body Lal Chand lodged the First Information Report at the Lahori Gate police station stating that two persons who had entered their names as Nasim Mahazroo and Ram Kumar occupied a room in his hotel on April 15, that he had seen them entering the room at about 10.30 p.m. on the night between 17th and 18th April and that the younger of the two (namely Nasim, the appellant) had locked the room at about 10 a.m. on the 18th and had not returned since then. The First Information Report then refers to the circumstances in which the dead body of Ram Kumar was found in the room.

7. The appellant could not be found at Kanpur where he normally resides and it was on May 4, 1968 that he was arrested at Gaya (Bihar) in the house of his sister. On a search of that house an attache case containing clothes, a spanner set, an allenkey set and a connecting rod are said to have been recovered.

8. According to the prosecution, the appellant committed the murder of Ram Kumar with the motive of committing theft of about six or seven hundred rupees which he had kept with him for purchasing the motor-cycle. The appellant admitted that he was on friendly terms with Ram Kumar and that they had gone to Delhi for purchasing a motor-cycle. He also admitted that Ram Kumar agreed to purchase the motor-cycle. He also admitted that Ram Kumar agreed to purchase the motor-cycle from Babu Khan and Om Prakash, that a sum of Rs. 25 was given to Om Prakash by way of advance, that he, the appellant, was asked by Ram Kumar to raise some money from his Ustad to make up the price of the motor-cycle and that during his absence Om Prakash and Babu Khan had come to the hotel but had left before he reached the hotel.

9. The version of the appellant is that he was unable to get the required amount from his Ustad and therefore on reaching the hotel at about 9 p.m. on the 17th he told Ram Kumar that he would go to Kanpur and bring the amount. He claims to have left for Kanpur by the 9.45 p.m. train reaching there at 6 a.m. on the 18th. He obtained a sum of Rs. 450 on April 19 from one Rafi and arrived in Delhi on the evening of April 20. He says that he went to Ballimaran where the Hindustan Hotel is situated and on hearing rumours that a person was murdered in the hotel and that his name was involved in it he fled to Gaya out of fear. He denied that any of the incriminating articles were recovered from his sister's house.

10. This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by clear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstance. Individual circumstances considered in isolation and divorced from the context of the over-all picture emerging from a consideration of the diverse circumstances and their conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect. If a person is seen running away on the heels of a murder, the explanation that he was fleeing in panic is apparently not irrational. Bloodstains on the clothes can be attributed plausibly to a bleeding nose. Even the possession of a weapon like a knife can be explained by citing a variety of acceptable answers. If a person is found running away from the scene of murder with blood-stained

clothes and a knife in his hand, it would in a proper context, be consistent with the rule of circumstantial evidence to hold that he had committed the murder.

11. The circumstances on which the High Court relies are these

- (1) that on April 15, 1968 the appellant and the deceased Ram Kumar arrived at Delhi for purchasing a motor-cycle;
- (2) that on the evening of the 15th they occupied Room No. 2 in the Hindustan Hotel, Delhi;
- (3) that on the 16th, the two were together and were looking out for a second hand motor-cycle;
- (3) that on the 16th, the two were together and were looking out for a second hand moter-cycle;
- (4) that on the 17th the deceased agreed to purchase a moter-cycle from Babu Khan and Om Prakash and paid a sum of Rs. 25 to Om Prakash by way of advance. The motor-cycle needed repairs and the sellers agreed to deliver it in the evening;
- (5) that the price of the motor-cycle was fixed at Rs. 1,000 but the deceased was short of money by about Rs. 400.
- (6) that on the evening of the 17th Babu Khan and Om Prakash went to the hotel to deliver the motor-cycle when the deceased told them that the appellant had gone to bring the money from his Ustad. Babu Khan and Om Prakash waited till about 9 p.m. and since the appellant had not returned till then they left with the motor-cycle.
- (7) that Lal Chand (P.W. 1), a partner of the hotel saw the appellant and the deceased coming to the hotel at about 12.30 a.m.
- (8) that at about 10 a.m. not he 18th Lal Chand and his brother Tek Chand (P.W. 2) who run the hotel in partnership saw the appellant locking Room No. 2 and leaving the hotel;
- (9) that the appellant went to Kanpur on the 18th and got new clothes stitched for himself from a tailor there on payment of Rs. 60 as tailoring charges. Appellant was generally in poor financial circumstances;
- (10) that during his stay at Kanpur the appellant stayed at 'Himachal Hotel' in an assumed name, 'S. N. Gander'. He booked a room in the hotel at 5.30 p.m. on the 18th and left the hotel at 4 p.m. on the 19th;
- (11) that the appellant was traced at Gaya, Bihar, on May 4, 1968 in the house of his sister. On a search of that house a 'connecting rod' having stains of human blood was recovered along with other articles.

12. There is clear and uncontroverted evidence to show that the deceased had a sum at least of about Rs. 700 with him, that he wanted to purchase a motor-cycle, that he and the appellant were

occupying Room No. 2 in the Hindustan Hotel, that it was agreed to purchase a motor-cycle for Rs. 1,000 from Babu Khan and Om Prakash and that the deceased had deputed the appellant on the 17th evening to get the deficit amount of about Rs. 300 from the latter's Ustad. These facts were never disputed and are not in dispute before us either.

13. The crucial point of time at which the prosecution and the defence part company is the mid-night between the 17th and the 18th. Lal Chand has stated in his evidence that at about 12.30 a.m. he saw the deceased and the appellant entering Room No.2. It was urged by the learned Counsel appearing on behalf of the appellant that Lal Chand may have made a mistake in identifying the companion of the deceased but we see no foundation for this submission. Lal Chand is a proprietor of the Hindustan Hotel and he was neither interested in the deceased nor did he have any grudge against a customer like the appellant. It is significant that in the First Information Report which Lal Chand lodged at the Lahori Gate police station not he evening of the 20th, he has specifically mentioned that he saw the deceased and the appellant entering the room at about 12.30 a.m. on the night between the 17th and the 18th. At the time when that Report was lodged no one had any clue to the murder and Lal Chand could not have started building up a theory of his own so as to implicate the appellant falsely. The evidence of Lal Chand shows that the appellant and the deceased spent the night in Room No.2.

14. Counsel for the appellant also challenged the evidence of Lal Chand and Tek Chand that they saw the appellant locking the room at about 10 a.m. on the 18th and leaving the hotel. This fact is also specifically mentioned in the First Information Report which, in our opinion, is a highly significant circumstance. The case of the appellant is that he left Delhi at about 9.45 p.m. on the 17th and therefore he could not have been seen locking the room at 10 a.m. on the 18th. The evidence of Chhedi Lal, the Manage of Yasin Tailors, Kanpur, is relied upon as showing that the appellant was in Kanpur at least at about 2 p.m. on the 18th and therefore he could not have left Delhi as late as at 10 a.m. The train takes more than 8 hours to cover the distance between Delhi and Kanpur. Chhedi Lal was obviously trying to offer a helping hand to the appellant but even then his evidence does not show that the appellant had delivered the cloth to him at 2 p.m. on the 18th. In answer to a question put by the learned Sessions Judge, Chhedi Lal stated that he did not remember the exact time when the cloth was delivered to him by the appellant and that the cloth may have been delivered at any time between 12 noon and 8 p.m. on the 18th. The Sessions Court and the High Court were therefore right in accepting the evidence of Lal Chand and Tek Chand that the appellant locked the room at about 10 a.m. and left the hotel.

15. These two circumstances are by themselves sufficient to determine the guilt of the appellant. The appellant and the deceased occupied a room in the Hindustan Hotel. They were seen entering the room together at midnight between the 17th and the 18th and the appellant locked the room on the 18th morning and left the hotel. From that room was discovered the dead body of Ram Kumar not he 20th.

16. The sum of Rs. 700 which the deceased had on him was found missing and at the Kanpur end the appellant was indulging in what for a man of his means was a spree of extravagance. He obtained terylene cloth and paid a bill of Rs. 60 to the tailor while his friend was lying dead at Delhi. The appellant is supposed to have gone to Kanpur to obtain the deficit sum of Rs. 300 and if he was truly on such a bona fide mission it passes comprehension that he should have stayed in the Himachal Hotel, Kanpur in the false name of S. N. Gander.

17. The conduct of the appellant after his arrival at Kanpur on the 18th is a valuable link in the

chain of causation. He knew that the amount was required by his friend urgently and that his friend was waiting for him in Delhi. On his own showing, he had a merry time in Kanpur and according to him it was on the 20th that he went back to Delhi. And what should he have done ? He says that he went to Ballimaran locality where the Hindustan Hotel is situated and then to the hotel itself. Having come to know there that he was being involved in a murder which had taken place in the hotel, he claims to have fled to Gaya, out of sheer fear. This explanation is wholly irrational and is false. He and the deceased were on intimate terms and there is evidence showing that the deceased and his family used to treat him as of their own kin. If he were innocent, he would have inquired about his benefactor in a moment of sorrow and would not have run away under the magic spell of a strange sense of fear.

18. Added to the weight of these circumstances is the discovery of the blood-stained connecting rod from the house of the appellant's sister. That discovery was challenged before us because the two witnesses who acted as Panchas to the seizure memo turned hostile and the prosecution was left to depend on the testimony of two police officers to prove the discovery. That the two witnesses turned hostile was not surprising because both of them are closely related to the appellant. It would have been better if the prosecution had examined the other Panch, Sayyed Habib-ul-Rab, who is described as a retired Judge in the Memo of Seizure. The Investigating Officer however was not asked as to why he was not examined and we see no warrant for assuming that the witness though available was deliberately kept back.

19. The post-mortem report shows that on the person of the deceased were found two stab injuries and nine contused lacerated wounds. The nature of the injuries shows that two different weapons were used in the commission of Ram Kumar's murder. But in the light of the curious circumstances discussed above it is impossible to accept the inference pressed upon us on behalf of the appellant that not only were two different weapons used but at least two persons had participated in the commission of the murder. Even granting that there was more than one person, there is no doubt that the appellant had participated and was a key figure in the commission of the crime.

20. We therefore dismiss the appeal and confirm the order of conviction and sentence.

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