

State of Delhi

Vs

Vijay Pal

Criminal Appeal No. 86 of 1973

(R.S. Sarkaria, P.N. Shinghal, O. Chinnappa Reddy JJ)

27.07.1979

JUDGMENT

SARKARIA, J. -

1. We have heard Mr. B. D. Sharma, counsel for the appellant State and Shri O. P. Rana, amicus curiae for the respondent, and examined the evidence on record carefully. The prosecution demanded conviction of the respondent on two types of evidence. First, the ocular account of the sole eyewitness, Kumari Kamla, aged about 9 or 10 years. Second, the oral extra-judicial confession of the accuse before PWs, Om Prakash and Ghanshyam Das. The High Court found that the evidence of the extra-judicial confession was wholly untrustworthy. As regards PW Kumari Kamla the High Court has found it highly unsafe to convict the appellant on the uncorroborated testimony of this child witness. The High Court has pointed out infirmities in her evidence and given cogent reasons why they think it unsafe to act upon her uncorroborated evidence. We do not think it necessary to reiterate all those reasons. It will suffice to reproduce one of them in the words of the learned Judges of the High Court, as this reason more than any other, shows that by the morning of June 9, 1970, even after Kamla's return home, the complainant mother of the ill-fated deceased, was not sure as to whether the deceased was accidentally burnt or had been set fire to by her husband, the accused. The learned Judges observe :

Ghanshyam, eldest son-in-law of Bhagwati admitted to have told Vijay Pal on the morning of June 9, 1970 that his mother-in-law was agreeable to give him the hand of her younger daughter if it was found that Kaushalya had caught fire accidentally without any culpability on his part. It cannot be believed that such a thing could have been said by Ghanshyam unless Bhagwati had told him something to that effect. It is almost impossible to believe that if Kamla had mentioned to her mother that she had herself seen Vijay Pal sprinkling kerosene oil on the clothes of Kaushalya and then setting fire to the clothes, Bhagwati could still think of offering the hand of her younger daughter to the murderer of Kaushalya. It, therefore, appears that probably Bhagwati was not sure about the guilt of Vijay Pal even till the morning of June 9, 1970, though she may have had some suspicion. May be the different versions in the two applications which were got typed by her were on account of the uncertainty in her mind.

2. We entirely agree with this reasoning which, more than any other argument, undermines the truth of the prosecution story. It not only throws a serious doubt on Kamla's claim to being an eyewitness of the occurrence, but also destroys the veracity of the evidence regarding the alleged extra-judicial confession.

3. We are at one with the High Court in holding that the prosecution had failed to bring home the guilt to the appellant beyond all reasonable doubt. The appeal fails and is dismissed.

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