

State of Haryana

Vs

Ved Prakash

Criminal Appeal No. 445 of 1980

(S. Mohan, G. N. Ray JJ)

21.02.1992

JUDGMENT

1. The prosecution in the instant appeal chose to rely upon mere circumstantial evidence, but unfortunately that circumstantial evidence was held not sufficient to link the accused with the charge of murder of two innocent young boys, namely, Jai Bhagwan (10 years) and Surinder Kumar (5 years). They were the brother and son respectively of P.W. 33 of village Bandara in Jind District. On 27th October, 1977 they were going towards a field. This was seen by P.W. 13, Mohinder, at about 4.30 p.m. The said Mohinder also saw Ved Prakash (the respondent herein) going towards his field armed with a spade. P.W. 18 also saw the respondent going towards his field on the pathway. These boys did not return home, P. W. 33, who is employed as a teacher in Jind, used to come back daily to his house at village Bandara. On the day when he returned from the school he asked about the whereabouts of these boys but nothing was found. Therefore, on 28th of October, 1976, P.W. 19 at the instance of P.W. 33 went to the Police Station and lodged a complaint for a vigorous search. It was found that the dead bodies were lying in the sugarcane field. P.W. 35, the Sub Inspector, accompanied with P.W. 33 prepared inquest reports collected blood-stained earth from underneath the bodies. He also took a lock of hair from a close by place. The Sub-Inspector also lifted moulds Ex. P. 10 to P. 16 from near the dead bodies. Two moulds were of the fleet shoe impressions and two were of the Desi shoes.

2. It appears that when post-mortem on the deadbody of Jai Bhagwan was performed by Dr. K. V. Singh, he was not able to give the cause of death. Likewise, Dr. Karan Singh, P.W. 12, who had performed the post-mortem on the dead body of Surinder Kumar, was not able to give the cause of death. However, both the Doctors opined that the death had taken place five days prior to the post-mortem. The prosecution also came out with a story that on 11th October, 1976 the respondent-accused went to P.W. 31, Dr. Raj Kumar, and gave an extra-judicial confession which was recorded through a tape recorder. According to the story that these two boys were chewing sugarcane on the ridge of the field a few days earlier to the incident. The accused reprimanded them whereupon they ran away. Later on the fateful day they were again found in a sugarcane field which led to the belief on the part of the accused that these two boys were responsible for stealing sugarcane and because of this motive he murdered the boys. Therefore, thus, the prosecution would rely on to the following:

- (i) Both the deceased were going towards the field from where ultimately the bodies were recovered and at the same time the accused was also seen going towards that side armed with a spade;

(ii) the extra-judicial confession made by the appellant to Dr. Raj Kumar in the presence of Lal Chand, and

(iii) the matching of the crime moulds found from near the dead bodies with the shoes Exhibts P. 6 and P. 7 taken off the feet of the accused.

Picking these circumstances, the learned Sessions Judge was of the view that it was the accused who had caused the death of these two young boys and convicted him for an offence under S. 302, I.P.C., on two counts and sentenced him to undergo imprisonment for life. However, on appeal the High Court carefully analysed these circumstances and allowed the appeal holding that the fact of the appellant going with the spade in the direction leading to the sugarcane field cannot connect him with the offence alleged namely, murder of the boys.

3. As regards the extra-judicial confession, the High Court came to the conclusion that it was impossible to accept that this confession would have been made by the accused to a person who was not known to him earlier. It was improbable that a stranger could have come and to confess the crime and the Doctor anticipating this confession had kept the tape recorder ready. Concerning the moulds, it did not believe because no authenticity was attached to the evidence of the recovery of shoes. Raj Kumar and Lal Chand were held to be convenient witnesses. In the result, the accused was acquitted. Thus, the State has come up in appeal.

4. It is one of the stated principles of law that a witness may lie but not the circumstances. But this Court through a number of pronouncements has repeatedly cautioned that the Court must adopt cautious approach while basing its conviction purely on circumstantial evidence. Therefore, our endeavour has been to find out whether the circumstances in this case would establish the crime attributed to the accused. The three important circumstances as the High Court has pointed out are (i) the deceased going towards the sugarcane field during which time also the accused was seen going in the same direction with the spade, (ii) the extra-judicial confession made to Dr. Raj Kumar in the presence of Lal Chand and (iii) the matching of the crime moulds found near the dead bodies. On a careful perusal of the judgment under appeal and on hearing the learned counsel for the appellant and the respondent, we are unable to persuade ourselves that the High Court has gone wrong. The fact the accused was going in the direction of the sugarcane field from where the bodies were recovered is hardly a circumstance which would ever establish the crime attributed to the accused. the prosecution has failed, in our opinion, to prove in conclusive manner the presence of the accused and the deceased in the same area before they met with death.

5. We fully concur with the finding of the High Court in relation to extra-judicial confession. First and foremost PW. 31, Dr. Raj Kumar, had not seen the accused earlier nor did the accused know P.W. 31 earlier. Therefore, it sounds strange that the accused could have made an extra-judicial confession that too in the presence of P.W. 31 Lal Chand when both of them were strangers to the accused. It is equally surprising that Doctor kept ready a tape recorder anticipating his confession. It is clear this is an evidence brought out by influence; may be perhaps when the accused was in police custody. The medical evidence also does not support the extra judicial confession when the Doctors and the post-mortem examination could not fix the cause for death.

6. Lastly, what remains is matching of shoes recovered under Exts. P. 6 and P. 7. This circumstance is far-fetched to establish the offence. In the result, we see no warrant for interference. The appeal is dismissed accordingly. Appeal dismissed.

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