

State of Haryana

Vs

Ram Pal

Criminal Appeal No. 65 of 1992

(G. B. Pattaniak, S. Rajendra Babu JJ)

09.02.1999

JUDGMENT

S. Rajendra Babu J.

1. On June 28, 1986, at about 11.45 a.m. when Jagdish Lal and Sunil Kumar were present on the roof of Anjali Dye House to spread dyed curtains on the roof they saw Jawahar Lal, their brother, being dragged by the accused inside a nearby house. They rushed down and went to the house of the accused where they found that Jawahar Lal's hands were tied by a string towards his back and was forcibly taken inside one of the rooms of the house of the accused. On a lalkaar (exhortation) given by Ram Pal (one of the accused), Raja (the other accused) gave a blow with an iron rod (saria) on the head of Jawahar Lal who fell down and the accused gave further blows with their saria to Jawahar Lal, hitting him on all parts of the body. Jagdish Lal and Sunil Kumar could not do anything and raised an alarm which attracted the attention of Mohinder Singh who was drawn to the spot who too observed the occurrence. Thereafter the accused ran away from the spot with their respective weapons. These witnesses went inside to see Jawahar Lal and got released his hand which had been tied with the string and they found to their shock that the Jawahar Lal was already died. On that basis an FIR was lodged and a case was registered against the accused under Section 302 read with Section 34 IPC. As Jagdish Lal was proceeding towards the police station to lodge the complaint he met S.I. Darshan Kumar before whom he made a statement which was recorded by 1.30 p.m. and a special report reached the Ilaqa Magistrate by 3 p.m. on the same evening. On completing the formalities such as the post-mortem examination of the deceased, Jawahar Lal, and collecting the blood stained earth and on the basis of the disclosure statements made by the accused recovered the sarias which were Exhibits P.7 and P.8 and a charge-sheet was laid. The post-mortem report disclosed that there were numerous injuries on the body which were either lacerated wounds or contusion and they were collectively sufficient to cause death in the ordinary course of nature. At the trial before the Sessions Court evidence was laid to support the case of the prosecution.

2. A defence was raised stating that on the fateful day, at about 4 a.m., Raj Pal, one of the accused, and his sister, Jai Bai, and their grand parents were sleeping inside their house, when Jawahar Lal came there with the intention of molesting Jai Bai. On the cries of Jai Bai all the inmates of the house got up and belaboured Jawahar Lal with their shoes. The other accused, Ram Pal, denied his presence on the spot. Jai Bai was also examined as D.W.1 who supported the version put forth by Raj Pal. The Trial Court, on an analysis of evidence, took the view that the prosecution' story had a ring of truth and was acceptable and on that basis convicted both the accused. On appeal, the High Court unfortunately on a cursory examination of the evidence on record discarded the eye witness account given by the witness and relied upon the defence version so as to order acquittal of the accused after setting aside the order made by the Sessions Court. The State is in appeal before us.

3. We have been taken through the oral evidence and the judgments of the trial court and the High Court. The evidence tendered before the trial court gave no room for doubt that the deceased met with his end at the hands of the accused in their house. Considering the nature of injuries sustained by him the inference is irresistible that he met with a homicidal death. The question that arises for consideration, therefore, is whether the version put forth by the eye witnesses are acceptable in preference to that of the defence version.

4. On a thorough and detailed examination the trial court noticed that P.W.4 (Jagdish Lal) stated that Jawahar Lal (the deceased) was his brother and he was working as a dyer in Anjali Dye House, Panipat on a contract basis and he knows both the accused as their residents are situated very close to the places of their work. Jai Bai is their sister. They suspected that there was some kind of intimacy between Jai Bai and Jawahar Lal. As Jawahar Lal was missing for about 3-4 days he had asked other brother, Sunil Kumar, to help him in his work. It is at that time, on June 28, 1986, at about 11.45 a.m., they noticed the incident taking place in the manner described earlier. They could not rescue their brother as the accused was armed with iron rods and when they raised alarm, Mohinder Singh came to the spot. The version put forth by Jagdish Lal was fully supported by his other brother, Sunil Kumar. Darshan Kumar, Inspector of Police, who investigated the case prepared an inquest report. There is serious dispute between the version put forth by prosecution and the defence as to the time of the death of Jawahar Lal. Dr. R.K. Tandon, who deposed as PW.12, found as many as 11 injuries which he had fully described in the post-mortem report. The death in question had taken place within a few hours after the deceased had taken his last meal. The doctor was cross-examined at length. He stated that in case the last meal was taken by the deceased at about 10 or 11 p.m. previous night, then his death could have taken place at about 4 and 5 a.m. the following morning. He also made it clear that he conducted the post mortem examination at about 6 p.m. and by then the rigor mortis has set in all the limbs of the deceased and he, therefore, stated that the death had taken place at any time within 24 hours from the time of his examination. Therefore, no useful information was elicited in the cross-examination to upset the testimony given by the eye witnesses. We find that the view of the trial court is correct. However, nonchalant may be the deceased he could not have taken the risk of going to the house of the accused to molest Jai Bai at 4 or 4.30 a.m. when other inmates of the house would be present. Therefore, the version put forth by the defence has got to be rejected and accepted the one put forth by the prosecution as creditworthy.

5. The High Court stated that they could not believe the evidence of the eye witnesses on the basis that eye witness account did not tally with the medical evidence. The High Court relied upon the text book on medical jurisprudence and toxicology to state that rigor mortis in the body could have set in about 11 to 12 hours after death and as it was hot summer month and rigor mortis was already complete when the autopsy was performed at 5 p.m. and therefore, incidence could not have taken place as alleged by the prosecution. But a careful reading of the extract from the text book on medical jurisprudence and toxicology would make it clear that rigor mortis may set in between one to two hours and would spread over within 12 hours. Once cannot be definite as to the time when rigor mortis set in and particularly in summer the deterioration of the body would be much faster and hence one cannot rule out the possibility of rigor mortis setting in less than 12 hours and therefore, the medical evidence cannot be stated to be inconsistent with the evidence tendered by the eye witnesses. The other aspect on which the High Court relied upon is that though Jawahar Lal was missing for some time no police report had been lodged in that regard. This fact, in our opinion, assumes no significance in the present case inasmuch as Jawahar Lal was found dead on June 28, 1986. If Jawahar Lal was missing and his body was not found then perhaps this circumstance might have assumed significance. If the version put forth by the eye witnesses is correct non-filing of

complaint as regards missing of Jawahar Lal will not tilt the matter one way or the other.

6. Next circumstances relied upon by the High Court is the number of injuries upon the body of deceased and the injuries are attributed to have been inflicted by Raja, the accused and not upon by the other accused but a careful reading of the evidence of the prosecution witnesses would disclose that they have stated that both the accused had inflicted injuries upon the deceased. The recovery of the weapons (saria) is disbelieved merely on the basis that the accused had ample opportunity to destroy the same and which they would have definitely done. This piece of evidence could not have been discarded on a very tenuous basis that what the accused could have done and not what they did. That finding also in incorrect.

7. We have, therefore, no hesitation in setting aside the order made by the High Court and restore that of the trial court. The bail warrant executed by respondents shall stand cancelled and they shall surrender to serve out the sentence imposed by the trial Court. The appeal is allowed accordingly.