

**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 03.07.2009

+ **CRL A. 187/1993**

**RAJIV KATYAL** ... Appellant

- Versus -

**STATE** ... Respondent

**Advocates who appeared in this case:-**

For the Appellant : Mr Ajay Burman with Mr R.K. Singh and  
Mr R. Samanotra

For the Respondent : Mr Sunil Sharma

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE V.B. GUPTA**

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

**BADAR DURREZ AHMED, J**

1. The appellant Rajiv Katyal was found guilty of having murdered his uncle (father's brother) Satya Pal and was accordingly convicted for the offence punishable under Section 302 IPC by the learned Additional Sessions Judge, Delhi by his judgment dated 27.10.1993 in Sessions Case No.56/1992 (Old No.21/1986) arising out of FIR No. 558/1985 under Section 302 IPC registered at Police Station Moti Nagar, Delhi. By virtue of a separate order of the same date, the learned Additional Sessions Judge sentenced the appellant to undergo

rigorous imprisonment for life as also to pay a fine of Rs 3,000/- and in default of payment of fine, he was to suffer further rigorous imprisonment for a period of one year.

2. As per the prosecution, the appellant Rajiv Katyal committed the murder of his uncle Satya Pal on 19.11.1985 at about 9.00 a.m. near C-183, Moti Nagar, New Delhi. The said murder is said to have been committed by the appellant by using a pointed iron object referred to as '*sua*'. It is alleged that the appellant repeatedly stabbed his uncle Satya Pal with the said *sua* on his chest and abdomen and thereafter fled from the scene. Satya Pal was first taken to Vohra Nursing Home, Rajouri Garden by PW-5 (Gulshan Kumar, another uncle of the appellant and brother of the deceased Satya Pal) and others. Since no doctor was available at the said nursing home, the injured Satya Pal was taken to Rana Nursing Home. As per Exhibit PW-9/DB, injured Satya Pal arrived at Rana Nursing Home at 9.45 a.m. and passed away shortly thereafter at 9.51 a.m. and the police was thereafter informed.

3. The prosecution case is based upon the statement (Exhibit PW-1/A) of PW-1 (Kundan Lal, another uncle of the appellant and brother of the deceased Satya Pal) given to the police on that date, i.e., 19.11.1985. As per the statement, the appellant Rajiv was the son of his brother PW-12 (Jagdish Lal) who resided at C-187, New Moti

Nagar and that Rajiv had thrown out his father Jagdish Lal from his house for the last about one year. He further stated that the appellant Rajiv had bad habits and that he took money from the house and wasted it. As per the said statement (Exhibit PW-1/A), Kundan Lal stated that his brother PW-12 (Jagdish Lal) had objected to the activities of the appellant Rajiv and it is due to this that the appellant Rajiv alongwith his mother DW-1 (Vimla) had ousted PW-12 (Jagdish Lal) from his house so that they may live freely. It is thereafter that PW-12 (Jagdish Lal) started residing with his parents at 20/14, East Punjabi Bagh where his younger brother PW-5 (Gulshan Kumar), Satya Pal and Rajpal were also residing. The statement (Exhibit-PW-1/A) goes on to further indicate that due to this, the appellant had enmity with his uncle Satya Pal and he used to question him as to why his (appellant's) father was being kept by him (Satya Pal) in their house. Satya Pal did not bother about this. The appellant is said to have threatened Satya Pal many times that if he continued to keep Jagdish Lal with him, he would have to pay for it and the result would be very bad.

4. It was further stated that on 19.11.1985 at about 8.30 a.m., PW-1 (Kundan Lal) had gone to C-183, New Moti Nagar in order to find out about the mare which had to be arranged for his brother Gulshan's marriage to be held on 29.11.1985. There, he met PW-2 (Narain Dass) and discussed about the mare and the petromax which was also to be

arranged. He further stated that while he was talking with Narain Dass, the appellant Rajiv @ Bawa came out of his house and started abusing Satya Pal. He stated that Satya Pal had given him time to meet the *ghori wala* and he had arrived. While abusing, the appellant Rajiv is said to have gone inside his house C-187, New Moti Nagar and from there he brought a pointed iron object and injured Satya Pal by attacking him and giving blows on his chest and abdomen. Satya Pal started bleeding. As per Exhibit-PW-1/A, the said incident was witnessed by him [PW-1 (Kundan Lal)], PW-2 (Narain Dass) and other public persons who were standing nearby. They tried to apprehend the appellant but he, while showing the pointed object in his hand and giving threats, ran away. Due to fear, he was not chased by them. In the meantime, PW-5 (Gulshan Kumar) also arrived. It is further stated that they took Satya Pal to Vohra Nursing Home, Rajouri Garden but, as no doctor was available there, they took him to Rana Nursing Home. There, the doctor examined him and treated him, but Satya Pal died at 9.51 a.m. The doctor at Rana Nursing Home informed the police. As per Exhibit-PW-1/A, PW-1 (Kundan Lal) claimed that his brother Satya Pal had been killed deliberately by the appellant and sought that legal action be taken against him.

5. On the basis of this statement, the *ruqqa* was prepared by PW-24 (Manohar Lal Sharma), the investigating officer in this case, and sent to

the police station through PW-9 (Constable Shambhu Dayal). Thereafter the FIR was registered.

6. After the inquest proceedings, the dead body was sent for *post mortem* examination etc. Statements of the witnesses were recorded. A search was made for the appellant who was apprehended in a park near the *ganda nala*. The appellant is alleged to have made a disclosure statement disclosing the fact of where he had thrown the *sua* in the *ganda nala*. However, the *sua* was not recovered. At this juncture, it may be pointed out that no attempt for making the recovery or taking the appellant to the place from where the *sua* could be recovered appears to have been made. The *post mortem* report was obtained and thereafter the CFSL report was also received. The *challan* was filed. Charge under Section 302 IPC was framed and since the appellant pleaded not guilty, the trial was undertaken.

7. The prosecution examined as many as 25 witnesses in support of its case. The Section 313 CrPC statement of the appellant was recorded and the defence also examined two witnesses, namely, DW-1 (Smt. Vimla, appellant's mother) and DW-2 (Smt. Sunita, appellant's sister).

8. The main thrust of the defence case before the trial court was that the entire prosecution case hinges upon the solitary testimony of PW-1

(Kundan Lal). The other eye witnesses, PW-2 (Narain Dass), PW-3 (Shankar Lal), PW-5 (Gulshan Kumar) and PW-7 (Satbir) have all indicated that they did not see anyone inflicting the injuries and, therefore, have not supported the prosecution case. The learned defence counsel also submitted before the learned Additional Sessions Judge that even the testimony of PW-1 (Kundan Lal) cannot be believed because of serious contradictions. His testimony is not of such a quality that it could be made the basis of a conviction without seeking any other corroborative evidence. The learned Additional Sessions Judge rejected the plea raised by the defence counsel and took the view that although there were contradictions in the testimony of PW-1 (Kundan Lal), they were not so material as to be fatal to the entire prosecution case. The court was also of the view that PW-1 (Kundan Lal) was the uncle of the appellant and there was no reason why he would depose against his own nephew naming him to be the assailant of his brother. The learned Additional Sessions Judge also brushed aside the fact that the *sua* which was the so-called weapon of offence had also not been recovered. He noted the fact that PW-25 (Dr L.T. Ramani), who conducted the *post mortem* examination, had clearly observed that all the nine injuries on the person of Satya Pal were puncture wounds. Such wounds were only possible by a weapon like a *sua* and, therefore, according to the learned Additional Sessions Judge, non-recovery of the weapon of offence from the possession of

the appellant or at his instance was of no consequence. Consequently, the learned Additional Sessions Judge, believing the testimony of PW-1 (Kundan Lal) to be a true eye witness account, found the appellant guilty for the offence of murder punishable under Section 302 IPC.

9. Before us, the learned counsel for the appellant reiterated the arguments advanced by the defence counsel before the trial court. The sum and substance of his arguments was that there is only one witness and that is PW-1 (Kundan Lal), who appears to support the prosecution case. All the other eye witnesses have either turned hostile or have not otherwise supported the prosecution case. The testimony of PW-1 (Kundan Lal), on which the entire prosecution case hinges, is full of contradictions. The nature of contradictions is such that serious doubts are cast on the truthfulness of the account given by PW-1 (Kundan Lal). In such a situation, the conviction of the appellant cannot be upheld on the basis of the solitary evidence of PW-1 (Kundan Lal), which is not corroborated by any other prosecution evidence. The learned counsel for the appellant also argued that the entire case was manipulated and framed with the assistance of the prosecuting agency. It was submitted that the appeal ought to be allowed and the conviction and the order on sentence be set aside.

10. Mr Sunil Sharma, appearing on behalf of the State, fully supported the impugned judgment and order on sentence. It was his contention that the trial court has gone into the evidence in great detail and has examined not only the testimony of the prosecution witnesses, but also those of the defence witnesses, threadbare, and it has then come to the conclusion that the testimony of PW-1 (Kundan Lal) was fully reliable. According to Mr Sunil Sharma, the victim, the accused and many of the witnesses belong to the same family. He submitted that there may be contradictions of a minor nature with regard to the D.D. entries, but they do not affect the merits of the case. He also submitted that the motive for the murder also stood established. According to him, the motive was supplied by the strained relations between the appellant and his father as also the fact that his father had been thrown out of his house by the appellant and that his father had been supported and given a place to stay by his uncles and in particular Satya Pal. This circumstance annoyed the appellant who harboured deep animosity against Satya Pal. Mr Sunil Sharma submitted that this was the motive for the appellant committing the murder of his uncle.

11. Mr Sunil Sharma also submitted that the enmity was actually between the appellant and the deceased Satya Pal and not between the appellant and PW-1 (Kundan Lal). This being the position, according to him, there was no reason as to why PW-1 (Kundan Lal) would

falsely implicate the appellant. Mr Sharma submitted that if the testimony of PW-1 (Kundan Lal) is to be regarded as being above board, then the prosecution case stands established irrespective of minor contradictions. He submitted that the trial court has rightly concluded that the testimony of PW-1 (Kundan Lal) with regard to the actual incident is believable. That being the case, according to Mr Sharma, no further corroboration is necessary and the conviction of the appellant has rightly been based solely on such testimony. It was, therefore, submitted by Mr Sharma that the appeal be dismissed and the conviction and sentence be upheld.

12. Since PW-1 (Kundan Lal) is the key to this case, let us see what he has stated with regard to the alleged incident. In his examination-in-chief, he has, *inter alia*, stated as under:-

“The marriage of my brother Gulshan was scheduled to take place on 29<sup>th</sup> November, 1985. We had hired petromax and mare etc. from Narain Dass Arora C-183, New Moti Nagar. Prior to 19.11.1985 we had agreed with Narain Dass Arora, petromax owner that we will come to his shop on the morning of 19<sup>th</sup> November, 1985 and there we will finalise the whole programme. On 19.11.1985 at about 8.30 AM I started from my house to reach Narain Dass Arora, the petromax owner and reached there within 5-6 minutes. When I reached there near about that very time Sat Pal also came there. While I and Sat Pal were talking to Narain Dass Arora, Rajiv @ Bawa came out of his house No. C-187, New Moti Nagar and approached us and started abusing Sat Pal. One or two minutes thereafter went into his house and returned again within about two minutes to Narain Dass Arora’s shop. When he came at the shop for the second time he was holding a pointed object of iron and immediately on reaching there he started stabbing

Sat Pal by the said pointed object. At that time I was standing near thiya of Narain Dass. Accused stabbed 7-6 times at one stretch on the stomach, chest and throat of Sat Pal by the said pointed object. Before the accused had started stabbing Sat Pal my younger brother Gulshan had also arrived there at the spot and was present there at the time of occurrence. We and other persons present at the spot tried to apprehend the accused but he waiving the sua while holding in his hand and threatening us fled towards Milan Cinema. There was bleeding from the body of Sat Pal on account of injury but the blood was soaked by his clothes and did not trickle down the ground. Gulshan had come to the shop by car. I and Gulshan put Sat Pal into the car and took him to Vohra Nursing Home Rajouri Garden but no doctor was available there. Therefore, at that very time we took Sat Pal to a nearby Rana Nursing Home Rajouri Garden. The doctor examined Sat Pal there but Sat Pal died at 9.51 AM. The concerned doctor of Rana Nursing Home informed the police after death of Sat Pal and after some time the police arrived there. The police recorded my statement at the Nursing Home itself which was read over to me and I appended my signature thereto. My report is Exhibit Pw1/A. The police completed inquest proceedings and the dead body was taken to the police station on a police vehicle. Inquest report was prepared in my presence and I signed the same. I identified the dead body. Inquest report is Exhibit PW1/B and my statement identifying the dead body is Exhibit PW1/C. Later, the police went to the spot also and I told them the place of occurrence. The site plan was prepared by the police.”

13. While PW-2 (Narain Dass) admitted that he did repair work for petromax etc. for marriages at the pavement near his house C-183, New Moti Nagar and that deceased Satya Pal had booked petromax from him in connection with the marriage of his brother, he also stated that he had not seen the appellant Rajiv inflicting injuries on any person. He stated that he did not know anything about the occurrence of this case. Thereafter, PW-2 (Narain Dass) was treated as a hostile witness

and was cross-examined by the learned Additional Public Prosecutor (APP). He was also cross-examined by the defence counsel and in the course of such cross-examination, he stated that it was correct that on 16.11.1985, the younger son of Jagdish, who was his grandson, had died and, therefore, he had not opened his shop on 19.11.1985.

14. The next person mentioned in the testimony of PW-1 (Kundan Lal), apart from the deceased Satya Pal and the appellant Rajiv, is PW-5 (Gulshan Kumar). It must be remembered that PW-5 (Gulshan Kumar) is Kundan Lal's brother and is also an uncle of the appellant Rajiv Katyal. In fact, the appellant Rajiv Katyal is the son of PW-12 (Jagdish Lal), whose four brothers include the deceased Satya Pal, PW-1 (Kundan Lal), Rajpal and PW-5 (Gulshan). As per PW-1 (Kundan Lal) "before the accused had started stabbing Satya Pal my younger brother Gulshan had also arrived there at the spot and was present there at the time of occurrence". This is a clear improvement from his statement (Exhibit-PW-1/A) where it is not so stated. In fact, in PW-1/A, it is recorded that Gulshan Kumar arrived at the spot after the stabbing incident was over and after the appellant is alleged to have run away. Now, let us compare this testimony with what PW-5 (Gulshan Kumar) has stated. In his examination-in-chief, PW-5 (Gulshan Kumar) stated that on 19.11.1985 at about 9.30 a.m., he had gone to see Narain Dass *ghori wala* at C-183, New Moti Nagar in connection with

his marriage in a car borrowed from his friend. He had gone to meet Narain Dass *ghori wala* for fixing the time for the mare and the petromax for his marriage. He further stated that when he reached the shop of Narain Dass, he heard an alarm there “*mar gaya... mar gaya*” and on reaching the spot, he found his brother Satya Pal in an injured condition. Importantly, he stated that he had not seen the person who had injured Satya Pal at the time when he had injured Satya Pal. He stated that he and his brother Kundan Lal took Satya Pal in an injured condition in a car to Vohra Nursing Home where no doctor was available. Then, they took him to Rana Nursing Home and at Rana Nursing Home, the doctor concerned examined Satya Pal and declared him to be dead. The doctor informed the police and the police came over to Rana Nursing Home. However, this witness was declared to be hostile and was cross-examined by the learned APP. Thus, he does not support the version given by PW-1 (Kundan Lal).

15. There are other contradictions in the testimony of PW-1 (Kundan Lal) which have already been acknowledged by the trial court. Those contradictions related to the time, the place where PW-1's (Kundan Lal's) statement was recorded by the police, the time at which the photographs were taken, etc. In fact, PW-1 (Kundan Lal) had so contradicted himself with regard to the recording of his statement

Exhibit-PW-1/A that the court had to put a question to him to the following effect:-

“Court Q:- In your statement dated 02.06.1986 recorded in the court, you have stated that the police had recorded your statement Exhibit PW1/A at Rana Nursing Home and you had signed on that. Today, in your statement in the court, you have stated that you signed on Exhibit PW1/A at the spot. Thus you have made two contradictory statements. Can you tell if out of these two statements, which one is correct and which is wrong because both the statements cannot be two (sic: true) at the same time ?

A. Today’s statement of mine is correct. On Exhibit PW1/A I had in fact signed at the spot. My earlier statement that I had signed on Exhibit PW1/A at Rana Nursing Home is not correct. I had made that statement due to confusion/ misunderstanding.”

16. PW-3 (Shankar Lal), who was cited as a public witness also turned hostile. He stated that he had noticed a crowd near Punjabi Bagh Bridge. He also stated that he had not seen the appellant Rajiv inflicting injury on the person of anybody. He also stated that some people in the crowd were telling that a Sikh had run away after injuring someone and that he had seen him fleeing at a far distance. He further stated that the person with whom the fight with the Sikh had taken place had gone towards Punjabi Bagh on a rickshaw. Obviously, this witness was also declared to be hostile and was cross-examined by the learned APP. PW-4 (Jagdish Lal) is the son of PW-2 (Narain Dass). He was declared to be hostile inasmuch as he did not support the prosecution case with regard to the preparation of the receipt dated 06.10.1985 with respect to the booking of the petromax and the mare in

connection with the marriage of Gulshan Kumar. According to him, the receipt was prepared later at the instance of the police. In cross-examination by the defence counsel, he further stated that 3-4 days prior to the occurrence, i.e., on 16.11.1985, his son had died. He produced the certificate marked DA in respect of his son's death. He further stated that on account of the said death, their shop remained closed on 19.11.1985.

17. PW-7 (Satbir Singh), who is also a public witness, indicated that when he reached the shop of the mare and petromax near Milan Cinema at about 8.45 a.m. or 9.00 a.m., he saw a crowd collected there and that Satya Pal was bleeding. He also stated that he did not see anybody inflicting the injuries on the person of Satya Pal deceased. The said witness was also declared hostile and was cross-examined by the learned APP.

18. From a review of the evidence on record, it is apparent that none of the prosecution witnesses, who were said to have been eye witnesses, other than PW-1 (Kundan Lal), have supported the prosecution case. The entire edifice of the prosecution case rests on the testimony of PW-1 (Kundan Lal). The learned Additional Sessions Judge has believed the testimony of PW-1 (Kundan Lal) after arriving at the conclusion that there was no occasion for PW-1 (Kundan Lal) to

have lied in court and falsely implicated his nephew for the murder of his brother. The question that seems to have weighed heavily with the learned Additional Sessions Judge was – Why would Kundan Lal lie about the incident ? But this very question can be posed in respect of the appellant's other uncle PW-5 (Gulshan Kumar) also. Why would one uncle [PW-1 (Kundan Lal)] want to implicate the appellant and the other uncle [PW-5 (Gulshan Kumar)] testify against the prosecution case ? This is a question which is very difficult to answer, if at all. But, the fact remains that it is the word of one witness PW-1 (Kundan Lal) against the word of all the others. Furthermore, why did PW-1 (Kundan Lal) make an improvement in his testimony before court that PW-5 (Gulshan Kumar) had arrived at the spot prior to the alleged stabbing incident when, in his statement (Exhibit-PW-1/A), which he claimed to be his true and correct statement, made to the police officer, he had indicated that PW-5 (Gulshan Kumar) arrived at the scene after the stabbing incident and after the appellant had fled from the scene ? When this circumstance is read alongwith the other contradictions with regard to the time when the photographs were taken; with regard to whether they went to the police station at all with the dead body or not; with regard to where PW-1 (Kundan Lal's) statement (Exhibit-PW-1/A) was recorded – whether at the spot or at Rana Nursing Home – serious doubts arise about the accuracy and truthfulness of the testimony of PW-1 (Kundan Lal). There has also been a suggestion on

the part of the defence that PW-1 (Kundan Lal) was eyeing the properties of the appellants father PW-12 (Jagdish Lal). Apart from this, there are several gaps in the prosecution case. One of them is that the car in which the injured Satya Pal is said to have been taken to the hospital has not been identified or recovered. The second is that although it is alleged that the appellant had made a disclosure statement disclosing the place where he had thrown the *sua* in the *ganda nala* and even a pointing out memo had been prepared, no attempt was made to recover the said *sua*. The non-recovery of the *sua*, in these circumstances, is certainly a factor which goes against the prosecution case. There is also the circumstance that the inquest papers were not sent alongwith the dead body for the purposes of *post mortem*, but were sent later on. The body had been received at the place where the *post mortem* was to be conducted at 08.15 p.m. on 19.11.1985. The papers, however, were received at 9.00 a.m. the next day, i.e., on 20.11.1985.

19. There is another dimension to this case and that is whether the injured Satya Pal arrived at Rana Nursing Home on his own or was he accompanied by PW-1 (Kundan Lal) and PW-5 (Gulshan Kumar) ? PW-13 (Dr S.P. Gogia of Rana Nursing Home) stated that the patient came to the nursing home and expired. He informed the police. Exhibit-PW-9/DB is some kind of a report written on the letter head of Rana Nursing Home. The portion marked 'X' which bears the name

Satya Pal son of 'blank' and address 20/14, Punjabi (East) Bagh, T. No. 535369 P.P.; 503419 P.P. was clearly stated by PW-13 (Dr S.P. Gogia) as not to have been written in his hand. He also stated that the portion marked 'Y' which contains the writing 'motorcycle' which is scratched out and beneath it 'DIX 3344' is written, is also not in the hand of PW-13 (Dr S.P. Gogia). The rest of Exhibit-PW-9/DB is stated to be in his hand writing and bears his signature.

20. From these, the learned counsel for the appellant sought to draw the inference that when Satya Pal came to the hospital in an injured condition, the doctor was not aware of his name and address and that was added later on. The further inference is that Satya Pal was not accompanied by either PW-1 (Kundan Lal) or PW-5 (Gulshan Kumar) inasmuch as if that had been the case, they would have certainly given the name and address and would have also given his father's name. The writing which indicates the motorcycle number was obviously added much later on, but it is not known by whom. PW-13 (Dr S.P. Gogia) stated that he cannot say as to why the said portion which was marked 'X' was written and he cannot say whether the patient came on a motorcycle. Importantly, this witness stated in his cross-examination that he did not meet any relative of the patient nor was he informed about the history of the injured.

21. Considering the evidence on record and the totality of the circumstances, we are of the opinion that the testimony of PW-1 (Kundan Lal) is not free from doubt. Apart from his testimony, as already indicated above, there is no other evidence which conclusively points towards the guilt of the appellant. Thus, the benefit of doubt has to go to the appellant. Consequently, the impugned order / judgment and the order on sentence are set aside. The appellant is acquitted of all charges in this case. The appellant is on bail. His bail bond stands cancelled and the sureties stand discharged.

The appeal is allowed.

**BADAR DURREZ AHMED, J**

**V.B. GUPTA, J**

**July 03, 2009**

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