

## **Vinod Kumar And Anr. vs State Of Madhya Pradesh on 30 January, 2002**

**Equivalent citations: 2002(2)ALD(CRI)638, 2002(50)BLJR804, JT2002(2)SC486, AIRONLINE 2002 SC 175, (2002) 2 BLJ 655, (2002) ALL CRI R 950, 2002 BLJR 804, (2002) 44 ALL CRI C 994, (2002) 4 CRIMES 247, (2002) 2 ALL CRI LR 126, (2002) 2 JAB LJ 247, (2002) 2 JT 486, (2002) 6 SUPREME 287, (2002) 2 ALD (CRI) 638, (2002) SC CR R 693**

**Bench: N. Santosh Hegde, Doraiswamy Raju**

### **ORDER**

1. The appellants and one Raju @ Jaswant were charged of an offence punishable under Section 302 read with Section 34 IPC before the IIIrd additional session judge, Bhind, Madhya Pradesh in session case No. 53 of 1986. Learned session judge having found them guilty of said offence convicted them to undergo a sentence for life imprisonment for having committed the murder of one Vijay Singh. An appeal filed against the said judgment and conviction before the High Court of Madhya Pradesh at Gwalior in criminal appeal No. 204 of 1987 was dismissed by the High Court. It is stated that during the pendency of the said appeal, the third accused Raju Jaswant died and the appeal stood abated as against him. After the confirmation of their sentence by the High Court, the two appellants, Vinod Kumar and Anil Kumar, are before this Court in this appeal.

2. It is the prosecution case that on the evening of 20th of December, 1985 the three accused persons went to the bus station at Gurgaon and approached one Vijay Singh who was a driver of taxi car No. DEB2355 and asked him to take them to Mathura from Gurgaon. It is further stated by the prosecution that the driver agreed to take them for a fare of Rs. 650/-. It is stated that the accused persons along with Vijay Singh and his cleaner, Manohar Lal, examined before the session court as PW-18, started from Gurgaon to Mathura. On the way, they went to a petrol pump to fill the petrol. At that point of time, the accused persons told Manohar Lal PW-18, that since children of their boss are also coming and there may not be sufficient place for everybody hence, said Manohar Lal was asked to get down from the car. The further case of the prosecution is that on the evening of 21st December, 1985 the accused persons along with deceased Vijay Singh went to the residence of PW-8 Nankibai at village Ranipura and stayed overnight there and had their dinner in the said house. The prosecution has placed reliance upon the evidence of PW-6 Matru, PW-7 Sat to Bai, PW-8 Nankibai and PW-9 Jitendra to prove the fact that the accused persons with the deceased had spent a night at the residence of PW-8 Nankibai and had dinner there. It is also stated that on 21st December early morning, accused persons approached Nankibai and told her that they wanted to leave her house and they also supposed to make an extra-judicial confession that they had killed Vijay Singh. Further, case of the prosecution is that accused persons demanded money from Nankibai but she refused to pay them any money. The prosecution then pleads that at about 4.30 in the morning, a patrolling party of Ovoid Mod police station which was on duty on the highway between Bhind and

Etawa, having seen these persons in a suspicious circumstance, arrested the said persons and on a search of their person they found certain cartridges as well as a katta and a briefcase belonging to A-2 which were seized from them and arrested them. The prosecution further alleges that based on this recovery, a case under Section 25 of the Arms Act was registered and the said case is still pending before the district & sessions court, Etawa.

3. It is also stated that at about 7.30 a.m. in the village of Ranipura, the local chowkidar reported that a dead body of unknown person is lying in the field. On an enquiry, he came to know that this deceased had come with three persons to the house of PW-8 Nankibai in the village, Ranipura. On further enquiry, it was seen that the dead body was that of Vijay Singh which was identified by his driving licence. It is also stated that at around 3.30 in the afternoon, car No. DEB 2355 was also found abandoned at some distance away from village Ranipura. Based on the further investigation conducted by PW-11, investigating officer lodged a charge-sheet against the appellants herein. During the course of investigation, it was noticed that A-1 had certain injuries on the right hand. The prosecution case is that this injury was suffered by the first appellant during attack on Vijay Singh who on being attacked stopped the car and ran away in the field of Arhar. It is stated that the appellants chased and attacked the deceased with the dagger consequent to which Vijay Singh died. The defence taken by the accused persons is one of the total denial.

4. Before the courts below on behalf of the appellants, it was contended that the prosecution witness Manohar Lal, PW-18 cannot be believed upon because of the fact that he had seen the accused persons for the first time only on the 20th of December, 1985 and during the course of the trial, he had difficulty in identifying the appellants. Therefore, his evidence should not be relied upon. In regard to the evidence of PW-6 to PW-9, it is contended on behalf of the defence that these witnesses were compelled by the investigating agency to give evidence against the appellants under threat and coercion of implicating PW-6 Matru Singh in the murder case. For this purpose, the defence relied upon the fact that PW-6 Matru was kept under police custody for about 8 days and the statement of witnesses PWs-7, 8 and 9 was recorded while he was in custody. In regard to the injury suffered by A-1, it is stated that the said injury was suffered by him while he was travelling to Etawa in a lorry and was attacked by dacoits. It is also the case of appellant-1 that he never travelled in the company of the other two accused persons but he was travelling on his own in a lorry when he was arrested by the police.

5. The trial court after considering the material on record came to the conclusion that even though PW-18 had some difficulty in identifying the appellants, the same was not of much material consequence inasmuch as he had sufficient opportunity to see these appellants at the bus stand in Gurgaon. Therefore, even he had difficulty in identifying the accused persons that would not destroy his evidence in total. It also came to the conclusion that evidence of PWs-6 to 9 can be relied upon for the purpose of establishing the fact that these accused/appellants along with deceased Vijay Singh did stay in the house of PW-8 Nankibai on that day. The defence evidence PWs-2 and 3 were supposed to be relative and neighbours of PWs-6 to 9, was not accepted by the trial court. It also relied upon the recovery of the dagger from the briefcase of A-2 though the same did not contain any human blood, it held that the same could have been used to inflict injuries on the deceased. Based on the above material, the trial court came to the conclusion that the appellants and the deceased

accused were guilty of the offence charged against them and convicted them under Section 302 read with Section 34 I PC with imprisonment for life.

6. The High Court on re-appreciation of the evidence concurred with the finding of the trial court and accordingly dismissed the appeal.

7. In this appeal, Mr. Rana Ranjit Singh, learned counsel appearing for the appellants, very strenuously argued that evidence of PW-18 is totally unbelievable. He contended that it is difficult to accept that he had for the first time legitimately seen the appellants then later on. he identified these accused persons before the court more so there being no identification parade. For this proposition, he places reliance on the judgment of this Court in . We do find some force in the argument of Mr. Singh but not to the whole extent. It is true that Manohar Lal had stated that he had seen the accused persons on 20th December, 1985 in the bus stand of Gurgaon four or five times and their names he had written in a diary. Diary has not been produced nor there is any other material to show that Manohar Lal had seen these accused persons as many times as stated before the court. His subsequent conduct in not being able to identify these appellants straight away before the sessions court throws doubt on to the fact that he could identify these appellants. Therefore, in the absence of there being no identification parade, it will be doubtful to hold that Manohar Lal PW-18 has identified the accused successfully before the session judge. However, this does not mean that evidence of PW-18 could be discarded in toto.

8. The prosecution case is that Manohar Lal was the cleaner of the taxi of deceased Vijay Singh. It is the prosecution case that PW-18 was present at the time the taxi of the deceased was engaged by the accused on 20.12.1985. It is also the case of the prosecution that Manohar Lal in the first instance travelled along with deceased and the accused upto petrol pump to fill the petrol. Therefore, even though Manohar Lal was not in a position to identify the accused persons, it is to be accepted that Manohar Lal did see Vijay Singh being engaged by three persons to hire the taxi of Vijay Singh to go to Mathura from Gurgaon on a fare of Rs. 650/-. Therefore, this part of the evidence of PW-18 establishes that the deceased did go with three persons on a tour to Mathura on the evening of 20th of December, 1985 to that extent evidence of PW-18 can be believed.

9. The next part of the prosecution case is that on the night of 21st December, 1985 i.e. a day after the taxi was engaged by these appellants, these accused persons with the deceased Vijay Singh landed in the house of PW-8 Nankibai at village Ranipura. This is spoken by PW-8 herself. She stated in her evidence that A-2 and A-3 are her cousin's children, hence, known to her. She introduced them to PWs-6, 7 and 9. It is also stated in her evidence that these appellants along with deceased had dinner in her house. PW-7 Sat to Bai who is daughter-in-law of PW-8 Nankibai had prepared the food for them that night. Though she did not know A-1 and the deceased, she has identified both these persons as those who stayed in the house that night. Her evidence coupled with that of PWs-6, 7 and 9 has to be appreciated in the background of the fact that the deceased's body was found in their village next morning as also his car somewhere near the village Ranipura and also the accused persons were arrested next morning near about that village. It is also to be noted that at the time of arrest, A-1 had an injury in his hand. The two courts below have rightly appreciated these facts and accepted the prosecution case in regard to presence of these persons including the

deceased in Ranipura village on 21st December, 1985. It is also to be noted that the defence set up by A-1 that he was not travelling with other two accused persons is not believed by the two courts below. Therefore, if we consider the chain of incident, it is clear that on 20th of December, 1985, three persons engaged the taxi of Vijay Singh to travel to Mathura but later on they went to Ranipura where they stayed over night and on the next day the vehicle as well as dead body of Vijay Singh was found in or near the village Ranipura. The appellants were also found in the early morning at about 4.30 a.m. around 3 kms. away from Ranipura, this fact completes a chain of circumstantial evidence to show that the appellant and the deceased were together from the evening of 20th December till the night of 21st December. The prosecution having established this fact, in our opinion, it falls on the appellants to establish the fact that where and at what point of time they parted company with Vijay Singh. This not having been done, it leads to the irresistible conclusion that the appellant alone could have been responsible for the death of Vijay Singh. These circumstances are further strengthened by the fact that the finger prints lifted from the car of the deceased and analysed by PWs-10 and 22 tallied with the finger prints of the accused persons. Though the trial court in this regard has not placed reliance on the evidence of the finger print experts, the High Court, on a reconsideration, has accepted this evidence and we too agree with the High Court because of the fact that this part of the prosecution case has not been challenged by the appellants.

10. It is then argued by Mr. Singh that there was absolutely no motive of the appellants to commit the murder of Vijay Singh. In our opinion, the prosecution case indicates that the appellants wanted to steal the car of the deceased but because of intervening circumstances, they could not fulfil this object. At any rate, the prosecution having established beyond reasonable doubt that these accused persons are responsible for the murder of the deceased, assuming that there is no motive that would not, in any manner, destabilized the prosecution's case.

11. We may submit at this stage that the learned counsel for the appellants has placed reliance in other judgments of this Court in the cases of Kanan and Ors. v. State of Kerala, , Kansa Behera v. State of Orissa and State of Rajasthan v. Shri Teja Singh and Ors.<sup>1</sup> [2001 Scale 670] to point out to us that in all cases based on circumstances the courts should be satisfied that those circumstances establish the fact that it is the accused alone who could never cause the crime. Having perused the said judgment, we do not think that the appellants could take advantage of these judgment since, in our opinion, in the case in hand, the prosecution has established by proved circumstances that it is the accused persons who are guilty of the murder of the deceased.

12. For the reasons stated above, this appeal fails and the same is dismissed. It is stated that the first appellant is on bail. His bail bonds shall stand cancelled and he shall surrender to serve the remaining part of the sentence awarded to him.