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**(2014) 08 DEL CK 0078**  
**In the Delhi High Court**  
**Case No : Crl. A. 690/1999 and 43/2000**

Baleshwar Dass

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 04-08-2014

**Acts Referred:**

**Citation :** (2014) 3 JCC 2140

**Hon'ble Judges :** Pradeep Nandrajog, J; Mukta Gupta, J

**Bench :** Division Bench

**Advocate :** R.K. Thakur and Ritu Negi, Advocate for the Appellant; Aashaa Tiwari, APP Lalit Kumar and ASI Rattan Lal, Advocate for the Respondent

**Final Decision :** Allowed

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## Judgement

Pradeep Nandrajog, J.—Akhilesh Kumar Mehta and Baleshwar Dass have been held guilty for the offence of having murdered Satish.

2. The incriminating evidence leading to the finding of guilt against the two co-accused is : (i) the deceased and the accused were known to each other; (ii) accused Baleshwar Dass and deceased had stolen computer parts and Baleshwar Dass was not sharing the gains and that Akhilesh Kumar Mehta had purchased a stolen television from the deceased and had not made full payment despite demands; (iii) the deceased was last seen alive in the company of the accused when the three were quarrelling on May 20, 1998; (iv) Sharda PW-3 had seen the string/rope Ex.P-1 in the hand of Akhilesh Kumar Mehta in the evening of May 20, 1998 which rope was found tied around the neck of the deceased; (v) Akhilesh Kumar Mehta had made an extra-judicial confession to Raj Kumar Gupta PW-4 confessing that he and Baleshwar Dass had murdered Satish; and (vi) pocket diary Ex.PW- 23/A of Akhilesh Kumar Mehta was found lying near the dead body.

3. Circumstances No.1 and 3 i.e. the accused and the deceased were known to each other and the three were last seen alive quarrelling with each other on May

20, 1998 has been held proved by the learned Trial Judge with respect to the testimony of Vijay PW-2 and Sharda PW-3. Her testimony of having seen Ex.P-1 in the hand of Akhilesh Kumar Mehta which string/rope was found tied around the neck of the deceased is the basis of proof of incriminating circumstance No. (iv).

4. In his testimony Vijay PW-2 has deposed that he knew the deceased since he was living in a jhuggi in his neighbourhood and was working with Nandi Caterers. On May 21, 1998, at 11.00 A.M. he came to know that Satish had died. He saw the dead body with a string tied around the neck. He knew the accused Baleshwar Dass and Akhilesh Kumar Mehta since they also lived in jhuggies nearby. On May 20, 1998 he had seen the deceased and the two accused at 11.00 A.M. and thereafter at 4.00 P.M. when they were consuming alcohol. Sharda PW-3, who is the mother of Vijay deposed that she knew the deceased and the accused since they resided in the same jhuggi cluster where she resided. On May 21, 1998 she saw the dead body of Satish with a string around the neck. She had seen the two accused and the deceased together at 11.00 A.M. and thereafter at 9.00 P.M. on May 20, 1998 when the three were quarrelling. She had seen the string Ex.P-1 in the hand of Akhilesh Kumar Mehta on May 20, 1998.

5. On being cross-examined she stated that she came to know that Satish had died on May 21, 1998 because before taking the dead body the police had announced in the jhuggi cluster that people should assemble to try and identify the dead body.

6. Insp.Gurmeet Singh PW-22 has deposed that on May 21, 1998 he was posted as Additional S.H.O. of P.S.Mandir Marg and on receiving information he reached the jhuggi cluster and saw the dead body of a male boy aged 20-22 years lying with a nylon rope tying around neck. A pocket diary was lying nearby. On the diary name of Akhilesh Kumar Mehta was written. He seized the pocket diary vide memo Ex.PW-22/A. He deposed that he joined the investigation again on May 23, 1998. Baleshwar Dass was arrested by him who made a disclosure statement Ex.PW-18/B. Thereafter they arrested Akhilesh Kumar Mehta. He recorded Akhilesh's disclosure statement Ex.PW-18/G. The accused took them to a jhuggi in Khan Market of one Chotu and got recovered three computers, one wall clock and 14 computer parts Ex.P-7 collectively.

7. Insp.Niranjan Singh PW-23 deposed that on May 21, 1998 he was working as the S.H.O., P.S.Mandir Marg. DD No.2-A was handed over to him by SI Johri Lal. They reached the spot and saw the dead body of a male with a nylon rope around the neck. The dead body was not identified by anybody. A small pocket diary Ex.PW-23/A was found at the spot. Name of one Akhilesh Kumar Mehta was written. Large number of people was called from the jhuggi cluster to identify the dead body. Sharda and Vijay identified the dead body as that of Satish and then he sent the dead body to RML Hospital.

8. The claim of Vijay PW-2 and his mother Sharda PW-3 that they learnt of Satish having died on May 21, 1998 is incorrect. The claim of Insp.Niranjan Singh that the two identified the dead body as that of Satish is incorrect. Their claim is belied from the fact that in the rukka, on basis whereof, FIR Ex.PW-7/A was registered at 1.30 P.M. records that nobody came forward to identify the dead body. The MLC Ex.PW-13/A records that an unknown male was brought at the hospital by SI Bhoop Singh at 11.50 A.M. DD No.2-A, Ex.PW-8/A recorded by the Duty Officer at P.S.Mandir Marg at 8.05 A.M. set the investigation into motion.

9. The MLC would evidence that the deceased was at the hospital at 11.50 A.M. Nobody had identified the dead body. The rukka and the FIR which was registered pursuant thereto at 1.30 P.M. would evidence that the body was not identified and was that of an unknown person.

10. The post mortem of the deceased was conducted on May 24, 1998. Sharda PW-3 and one Maina wife of Prab, stated to be the neighbours, had identified the dead body. That the dead body was kept at the mortuary from May 21, 1998 till May 23, 1998 as an unclaimed body is proof of the fact that for the first time only on May 24, 1998, Sharda PW-3 came forward to identify the dead body.

11. It is apparent that the claim of Sharda and her son Vijay of the fact that they had identified the dead body of Satish on May 21, 1998 before the police removed the dead body from the spot is patently false.

12. We have also perused the case diary in which the investigation officer has written the names of six males residing in the slum cluster and that none of them identified the dead body when he had asked the inhabitants of the slum cluster to identify the dead body and that thereafter he sent the dead body to the hospital. We have already noted hereinabove the contents of the rukka and the FIR registered as also the MLC of the deceased, all of which conclusively established that nobody identified the dead body at the spot.

13. The possibility of the investigation officer planting Vijay and Sharda and making them to speak that the two had seen the accused with the deceased last evening and the three were quarrelling cannot be ruled out. The two surfacing after three days of the recovery of the dead body cannot be glossed over.

14. Circumstance No.(i), circumstance No.(iii) and circumstance No.(vi) held proved by the learned Trial Judge are findings which cannot be sustained.

15. The motive for the crime used by the learned Trial Judge is with respect to the disclosure statements made by the accused and suffice would it be to state that the disclosure statements concerning motive are inadmissible in evidence. Recovery of some property pursuant to the disclosure statements made by the accused and in particular the computer spare parts Ex.P-7 collectively has been held to be incriminating evidence. The learned Trial Judge has overlooked the fact that at best the prosecution has proved that pursuant to the disclosure statements made by the accused some electronic parts, a television computers

were recovered. But there is no evidence that the same belonged to the deceased or were a part of a booty in which the deceased had a share. What the learned Trial Judge has done is to believe the disclosure statement that the accused and the deceased had a dispute on sharing the gains of stolen property and the property recovered being stolen property would be incriminating because it would establish that since the deceased had an issue with the accused on sharing the spoils of stolen property the two killed the deceased. The circumstance No.(ii) held established is on a faulty legal reasoning.

16. If Sharda is not to be believed as a truthful witness, her claim that she saw the nylon rope Ex.P-1 in the hands of Akhilesh Kumar Mehta the previous evening which rope was found around the dead body of the deceased is also to be negated.

17. The accused Akhilesh Kumar Mehta was residing in the same slum cluster and the recovery of his pocket diary Ex.PW-23/A from a place nearby where the dead body of the deceased was recovered is not of a very incriminating nature and once circumstances (i), (ii), (iii) and (iv) are removed, by itself said circumstance would be insufficient to point towards the guilt of Baleshwar Dass and Akhilesh Kumar Mehta. In any case said circumstance cannot be incriminating against Baleshwar Dass.

18. Raj Kumar Gupta PW-4 claims that Akhilesh Kumar Mehta made an extra-judicial confession to him of having murdered Satish and named Baleshwar Dass as his accomplice. Said extra-judicial confession cannot be treated as incriminating evidence against Baleshwar Dass. As regards Akhilesh Kumar Mehta, we find that as per his deposition, Raj Kumar Gupta resided in the same jhuggi cluster. On May 21, 1998 Akhilesh Kumar Mehta had demanded Rs. 1000/- (Rupees One Thousand only) from him saying that he needed the money to go to his village and when Akhilesh Kumar Mehta requested him to loan Rs. 1000/- (Rupees One Thousand only) he was in a perturbed condition and on making inquiries Akhilesh Kumar Mehta told him that the previous night he and Baleshwar had strangled Satish. Now, everybody in the slum cluster knew of Satish having been murdered in the early morning of May 21, 1998. As per the police in spite of male members in the slum over present being summoned to identify the dead body, none of them came forward to identify the dead body. We have noted the evidence hereinabove which shows that till May 24, 1998 nobody came forward to identify the dead body. The claim of PW-4 that Akhilesh Kumar Mehta had made an extra-judicial confession to him of having killed Satish and Baleshwar Dass was his accomplice would thus be a highly tainted evidence to reject the creditworthiness of the extra-judicial confession.

19. These are our reasons to hold in favour of the appellants.

20. The appeals are allowed.

21. The impugned decision dated July 21, 1999 convicting appellants of the offence of having murdered Satish is set aside. Order on sentence dated July 24,

1999 requiring appellants to undergo imprisonment for life is also set aside.

22. The appellants are acquitted of the charge framed against them.

23. The bail bonds and surety bonds furnished by the appellants are discharged.

24. TCR be returned.