

(2011) 12 DEL CK 0372
In the Delhi High Court
Case No : Criminal A. 79 of 1998

Baljeet Kaur

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2011) 185 DLT 692

Hon'ble Judges : S. Ravindra Bhat, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Sanjay Suri, for the Appellant; M.N. Dudeja, APP for the State, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Justice Pratibha Rani

1. Strange are the ways of love. Neither the love of husband nor the affection of four minor children could put a check on the intense love of appellant Baljeet Kaur for Surrender Singh, the deceased. Even the sanctions of the society or its reaction to such relationship or what people will say or think and how her children would face their friends, adverse effect on the marriage prospects of her two grown-up daughters, nothing could stop the appellant to desert her family so that she could live only for and with Surrender Singh (deceased).

2. The appellant before us was settled in her matrimonial home consisting of her husband and four grown up children, before falling in love with Surrender Singh, who was not only unmarried but much younger to her. The deceased Surrender Singh was brother of her Nandoi. The close relationship and family ties provided her the opportunity to meet him and this relationship nurtured during their frequent trips to Singapore and other foreign countries visited by them to import goods to India for sale. When the "love" between the two became known to the family members of both the sides, it met with opposition. At that stage, she

preferred to walk out and break all family ties to live separately so that there is no surveillance on them and they could live for each other in their own world.

3. However, the destiny had something else in store for them. The appellant is before us for committing the murder of the person in whose love she just walked out of the marriage and left everything. Not only that, she also filed a divorce petition to clear her way to marry the deceased. What an irony! Surrender Singh met his end at the hands of the lady who loved him more than anyone else in the world. The rage appeared to be such that it was not satisfied by just killing. She, despite being follower of "Sikh" religion and the deceased also a "Sikh", shaved his head and beard and cut the body into pieces. None could anticipate such a tragic end of this love story.

4. After being convicted for committing the murder of Surrender Singh and destruction of evidence, she is before us challenging her conviction u/s 302/201 IPC and the sentence awarded to her by the Trial Court thereunder.

5. The Appellant Baljeet Kaur has impugned the judgment dated 30.08.1997 and order on sentence dated 06.09.1997 by which she was held guilty and convicted for the offence punishable under Sec. 302 IPC for committing the murder of Surrender Singh and also for the offence punishable under Sec. 201 IPC for causing disappearance of evidence by cutting the body parts into pieces and disposing of legs. Vide order dated 06.09.1997, she was sentenced to undergo imprisonment for life and to pay a fine of Rs. 3000/-for the offence punishable under Sec. 302 IPC and also to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/-for the offence punishable under Sec. 201 IPC

6. The prosecution case unfolds with recording of DD No. 4A dated 13.08.1988 at Police Station Shalimar Bagh, Delhi. On that day, Shri Joginder Singh, cousin of the deceased informed the police that he along with his cousin Inder Vir Singh had visited the Flat No. 127, Income Tax Colony in search of Surrender Singh. Smt. Baljeet Kaur present in that flat informed about presence of parts of human body in that flat which he had come to inform, for necessary action.

7. The DD entry was handed over to Inspector Jagjit Singh, SHO, who along with staff made departure entry in the official vehicle No. DBL 8693. When the SHO along with staff reached the flat of Baljeet Kaur, he met Inder Vir Singh and Baljeet Kaur and presence of two human hands in the kitchen was also noticed, which were identified by Inder Vir Singh to be that of his brother Surrender Singh. Foul smell was emitting from the flat. Inder Vir Singh made statement (Ex.PW-6/B) stating about the illicit relations between his brother Surrender Singh and Baljeet Kaur for about four years prior to that and that his brother left home on 10.08.1988 at about 6 PM informing that he was visiting Baljeet Kaur at her house in Pitam Pura and would return by next day. When he failed to return, he went along with his cousin Joginder Singh in search of Surrender Singh. On opening of the door by Baljeet Kaur, foul smell was noticed and on enquiry by him about his brother Surrender Singh, she informed that Surrender Singh had

killed and cut into pieces some person in her absence and thrown the pieces in the house and left for some unknown place. She also informed that she herself was disturbed and sought his help. Thereafter, he sent Joginder Singh to inform the police and waited for arrival of police at the place. After arrival of the police on noticing the two human hands, one of which was clearly visible from the bag in which the hands were kept. He identified them to be of his brother Surender Singh.

8. After making endorsement (Ex.PW-25/A) on the statement (Ex.PW-6/B), the rukka was sent for registration of the case, on the basis of which FIR No. 32/1988 u/s 302/201 IPC was registered. During the course of investigation, pieces of human body were also recovered from a trunk, but the legs were missing. The matter was investigated and crime team was also called. Spot was got photographed and incriminating articles were seized.

9. On a day prior i.e. on 12.08.1988 vide DD No. 7A (Ex.PW-13/A) at Police Station Patel Nagar information was received at 6:40 AM about legs of human being lying there. The DD was handed over to ASI Puran Giri, who along with Ct. Jagdish left for the spot and after reaching there found left leg lying there and in the meantime another leg was also informed to be lying at the back side of premises No. 22/18, West Patel Nagar in a polythene bag and on checking it was found to be right leg. After making endorsement to the effect that somebody has been murdered and in order to destroy the evidence, the legs have been thrown there, the endorsement on DD Ex.PW13/A was sent for registration of FIR No. 277/88 u/s 302/201 IPC at Police Station Patel Nagar. All the Police Stations were informed about the recovery of two legs and the same were also sent for getting the post mortem conducted which was done by PW-17 Dr. L.T. Ramani.

10. After the recovery of pieces of human body without legs from Flat No. 127, Income Tax Colony in possession of Baljeet Kaur, the two legs recovered by the police of Police Station Patel Nagar along with remaining pieces of bodies recovered from 127, Income Tax Colony were sent for post mortem which was conducted by PW-3 Dr. Bharat Singh and as per postmortem report Ex.PW3/A, the cause of death has been given as "asphyxia due to strangulation" and it was also confirmed that two legs recovered were the part of the same body.

11. The appellant Baljeet Kaur was interrogated and arrested by the police in this case from the same flat. The police also recovered razor, scissor, knife, churi etc. from the flat which were used by her to remove hair from the head and face etc. of the deceased Surender Singh as well as to cut the body parts into pieces and to destroy the same. During the course of investigation, the Appellant Baljeet Kaur led the police to the house of PW-19 Jasbir Kaur, resident of 25/60, West Patel Nagar and from there she got recovered one portable T.V., one kara and two rings belonging to the deceased Surender Singh. PW-7 Sh. Sanjeev Kumar and PW-20 Sh. Anupam Arya, who deal in providing VCP on hire basis, informed the police about VCP being installed at the flat No. 127, Income Tax Colony by Sanjeev (PW-7) after Baljeet Kaur and one Sardarji came to their shop on

10.08.1988 in the evening for hiring the VCP. The said VCP was collected by PW-20 from the said flat on 11.08.1988 and though at the time of installation of VCP the said Sardarji was present at the flat, but at the time of taking back the VCP only the appellant Baljeet Kaur was present at the flat. After recording statement of neighbours i.e. PW-1 Mrs. Malivarghese, PW-5 Virender Singh, PW-2 Surinder Kumar (Secretary of the Residents Welfare Association), PW-27 Ramji Lal (allottee of the flat) and other witnesses and on completion of investigation, Baljeet Kaur was chargesheeted for committing the offence punishable u/s 302/201 IPC.

12. After the case was committed to the Court of Session and charge for committing the aforesaid offence u/s 302/201 IPC was framed, the appellant entered the plea of not guilty and claimed trial.

13. Besides various exhibits, 37 witnesses were examined by the prosecution in order to prove the guilt of the appellant. She was examined u/s 313 Cr.P.C. to enable her to explain the circumstances appearing against her. Despite detailed statement u/s 313 Cr.P.C., she preferred to give 10 typed pages in reply to the last question put to her i.e. anything else she has to say, submitting that the same be read as answer to this question. She has also examined DW-1 Jaswinder Singh to prove that he met the deceased Surender Singh at the Palam Airport in the night of 10th August, 1988 when he had gone there to meet his brother-in-law. DW-2 Sh. Jagjit Singh, her nephew was examined by her to prove that from 10th August, 1988 till 12 August, 1988 she was residing at her sister's house and had not moved out of the house during that period. DW-2 Sh. Jagjit Singh also claimed himself to be a goldsmith and that he made two gold rings and one kara from the three gold bangles provided to him by the appellant six months prior to this occurrence and that she got the same made for gifting them to Surender Singh.

14. Ld. Trial Court, in para 57 of the judgment, enumerated the circumstances established by prosecution to base her conviction, which are reproduced as under :-

57. Now, from the said evidence brought on record by the prosecution, the following chain of circumstances stands proved against the accused from which it can be reasonably concluded that it was the accused who had committed the murder of deceased Surender Singh in her flat on the night intervening 10/11.8.88:-

1) That she had developed friendship with the deceased Surender Singh about 4 years back prior to the incident and used to visit foreign countries including Singapore and Hong-Kong and used to stay there with him and used to bring imported goods which used to be disposed through the shop of Surender Singh at Sadar Bazar;

2) that she had deserted her husband Wariyam Singh and her four children and had been living with the deceased Surender Singh four years prior to the

incident;

3) that she had taken on rent the flat No. 127, Income Tax Colony, Pritam Pura, Delhi about six months back from PW Ramji Lal to whom the said flat was allotted by his department through PW Virender Singh and had been residing there since February, 1988;

4) that she was in sole occupation of the said flat since the date she occupied the flat;

5) that the deceased Surender Singh had been visiting her in that flat off and on prior to the incident;

6) that on 10.8.88 at about 6.30 PM deceased Surender Singh had left his house after telling his brother Indervir Singh and his other family members that he was going to the house of the accused and had left his house on two wheeler scooter bearing NO.DHQ-4810;

7) that as per record of the transport authority, the said scooter No. DHQ-4810 stood registered in his name since 8.2.87;

8) that the accused accompanied by deceased Surender Singh had visited the video library of PW20 Anupam Arya at QU-129A, Pritam Pura on 10.8.88 at about 8.15 PM where PW7 Sanjit Kumar was working as servant in that shop;

9) that the accused and deceased Baljit Kaur had booked a VCR (UCP) at that time;

10) that PW7 Sanjiv Kumar had last seen the accused and deceased Surender Singh present in the said flat when he had gone to install the VCP in their house on that night on a cycle within 10 minutes of booking the VCR;

11) that on 11.8.88 when PW20 Panupam Arya who had gone to collect the VCR had found only the accused present inside the room of the flat and lot of lady suits were found lying scattered on the cot lying in that room;

12) that on 11.8.88 at about 7 PM accused was found going from her flat by PW1 Mrs. Moliverghes and PW2 Surender Kumar alongwith portable T.V. and a bag;

13) that the accused had reached the house of her friend PW10 Jasbir Kaur on 11.8.88 at about 8.30 PM and had stayed there on the night in her house at 25/60 West Patel Nagar, Delhi;

14) that she had handed over the portable T.V., one god kara, two rings to her friend Jasbir Kaur for keeping in safe custody with her on the next day in the morning on 12.8.88;

15) that the legs of deceased Surender Singh were found lying in the back lane of H.No. 22/18 and H.No. 22/42 West Patel Nagar which were spotted by PW4 Radha Kishan and PW18 Devender Kumar Chadha for which a case was registered un/s 302/201 IPC at Police Station Patel Nagar, vide FIR No. 277/88

and the same was investigated by PW13 ASI Puran Giri and PW9 SWHO, V.P.Singh;

16) That on 13.8.88 the remaining parts of the body of deceased Surender Singh consisting of his arms, his clean shave head and other parts of his body were recovered from the flat of the accused;

17) that the parts of human body were identified by PW Indervir Singh from his face and from his arms which were having a thick hair;

18) that the scooter bearing No. DHQ4810 on which the deceased had gone was found parked on the ground floor in a garage and the keys Ex. P23/1 to 3 were handed over the accused to Inspector Jagjit Singh;

19) that the accused had made disclosure statement Ex. PW10/A and subsequent to disclosure statement she had pointed out the place where she had thrown the burnt clothes/ashes and the hair of deceased;

20) that the accused had pointed out the place at West Patel Nagar where she had thrown away the legs of deceased in polythene cover; 21) that the accused had got recovered the portable

T.V. and the gold ornaments consisting of gold kara and two rings from the house of her friend Mrs. Jasbir Kaur, situated at 25/60 West Patel Nagar;

22) that the said portable T.V. and the gold kara and two rings were identified by PW10 Indervir Singh to be belonging to his brother Surender Singh;

23) that the post-mortem on all the parts of human body was conducted by PW3 Dr. Bharat Singh, who had opined that the death of deceased Surender Singh was caused by strangulation and his body was cut into pieces after his death;

24) that the human blood of B-group was found on clothes of the accused consisting of lady shirt, chunnies and salwar recovered from her flat and the human blood of B-group was also found on the trunk in which the parts of the body of deceased Surender Singh were found.

So, from the said chain of circumstances proved by the prosecution, the only inference which can be drawn is that it was the accused and none-else, who had committed the heinous offence of murdering the deceased and then cutting his body into pieces. In my opinion, the chain of evidence against accused is so complete that it only leads to the guilt of accused and only conclusion can be drawn from the above preponderance of the circumstances brought on record by the prosecution that within all human probability this ghastly act must have been committed by the accused.

15. Mr. Sanjay Suri, learned counsel appearing on behalf of the Appellant has submitted that the prosecution case is based on circumstantial and last seen evidence and the prosecution has miserably failed to prove either of the two. It has been submitted that in respect of last seen evidence, the prosecution

examined PW-7 and PW-20 and both of them stated that they were maintaining record of providing VCPs on hire basis, which could have been a clinching evidence in this matter. Non-seizure of the same is fatal to the case of the prosecution. Reason for them to depose against the appellant was pressure of the police. Regarding the testimony of Inder Vir Singh and Joginder Singh, it has been submitted that Surender Singh (deceased) was the youngest and his elder brother Harbans Singh had already expired and with a view to grab the entire business and property, Surender Singh was killed and the appellant was falsely implicated in this case to settle the score. The family of Surender Singh had a grudge against her for the reason that Surender Singh used to visit her frequently. It has been further submitted that there is no evidence of illicit relationship between the appellant and the deceased.

16. On behalf of the appellant, it has been further contended that the entire police record is manipulated to suit the design of Inder Vir Singh to falsely implicate the appellant in this case. It was not on 13th that the appellant came to know about lying of pieces of human body parts at the flat of Baljit Kaur. PW-5 Virender Singh is a witness to the fact that on the night of 12.8.1988 itself on getting foul smell coming from the flat of the appellant, seeing her concerned, he along with his bhabhi, mother and the appellant visited Police Post Pitam Pura and met SI Reval Singh and informed him about the same. The police visited the spot in the night itself. The appellant was not having the key, hence the door was broken open and thereafter the pieces of human body were detected in the flat. He has further deposed that on the night intervening 12/13th August, the police was on job which fact is further proved from the statement of PW-28 Sardar Waryam Singh -husband of the appellant that he got the call from the SHO early in the morning enquiring about the whereabouts of Baljeet Kaur and the police visited him along with Baljeet Kaur in the early morning itself. The testimony of PW-19 Jasbir Kaur also established that she was with the police from early morning of 13th August throughout the day and in these circumstances statements of PW-19 Jasbir Kaur and PW-28 Sardar Waryam Singh prove that the police was already in action since the night of 12th August itself. So, whatever documents were prepared by the police on the morning of 13th August, 1988 have to be disbelieved. It has also been contended that the crime scene was got photographed but the photographs did not reveal the presence of razor, knife, churi, scissor etc. which is sufficient to presume that these things were planted later on to falsely implicate the appellant in this case at the behest of brother of the deceased.

17. He has further submitted that the credibility of the defence witnesses have to be treated at par with that of the prosecution witnesses and from the testimony of DW-1, while presence of Surender Singh on 10.08.1988 at Palam Airport is established, the testimony of DW-2 Joginder Singh is sufficient to prove that the appellant was staying with them during the period from 10th August to 12th August. In these circumstances, there was neither any question of Surender Singh visiting the flat of the appellant on 10August in the evening nor the

question of installation of any VCP on hire basis by PW-7 and PW-20 at that flat. It has also been emphasized that from the statement of SI Ravel Singh, who was the In-charge of PP Pitam Pura as well as the statement of crime team that information was received from P.P Pitam Pura, it can be inferred that everything was happening at PP Pitam Pura and SI Ravel Singh, who was informed about foul smell being emitting from the flat of the appellant came to know of everything during that night itself, but for the reason known to the prosecution, they have shown the information being given to P.S. Shalimar Bagh and investigation being conducted by Inspector PW-25 Jagjit Singh, the SHO, which is falsified from the statement of SI Ravel Singh (PW-23). It has been contended that Inspector Jagjit Singh expired during trial without his statement being completed and his incomplete statement cannot be read in evidence, so SI Om Prakash was examined by the prosecution twice; once in his own capacity and secondly after the death of Inspector Jagjit Singh. It has also been pointed out that it has come in the statement of PW Inder Vir Singh that on 12th he checked the RML Hospital to find out the whereabouts of his brother Surender Singh. He has also stated that Surender Singh left home on 10.08.1988 for meeting the appellant and if it was so then where was the need to check Surender Singh in RML Hospital instead of checking at the house of the appellant.

18. It has been strongly contended that as per prosecution, the appellant was having illicit relationship with the deceased. If it was so then she had absolutely no motive to commit the murder of a person with whom she was in love and for whom she deserted her husband and children. While submitting that the nature of "last seen" and circumstantial evidence produced by the prosecution is very weak, stress was laid on absence of motive for the appellant to commit the alleged offence of murder. It has been further submitted that Scooter bearing registration No. DHQ-4810 claimed to have been owned by the deceased Surender Singh and its keys recovered from the flat of the appellant also could not be proved, as it has come on record that the scooter could not be started with the key Ex.PW-23/1 and there is no evidence on record to connect the appellant either with the key or with the scooter.

19. Learned APP for the State, supporting the impugned judgment, submitted that this is a case based on last seen and circumstantial evidence, which have been proved by the prosecution beyond reasonable doubt to the extent that all the circumstances proved against the appellant are inconsistent with hypothesis of her innocence and consistent with her guilt.

20. This case is based on "last seen" and circumstantial evidence. When a case rests on such evidence, such evidence must satisfy the following conditions :-

- (i) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- (ii) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

21. Now the question arises, whether the evidence adduced by the prosecution satisfies the above conditions, for which we have to look into each and every circumstance leading to death of Surrender Singh.

Recovery of body parts:

22. It is not in dispute that the appellant alone was occupying the flat No. 127, Income Tax Colony, allotted to PW-27 Ramji Lal, a Govt. employee and let out to her through PW-5 Virender Singh. Recovery of body parts from that flat is not only proved from the photographs, but undisputedly the appellant complained of foul smell being emitting from her flat and the matter was reported to the police. The only dispute is as to whether or not it was done on the night intervening 12/13th August, 1988. From the testimony of PW-10 Inder Vir Singh and PW-11 Joginder Singh, it has been proved by the prosecution that parts of the body were recovered from the kitchen (except legs) as well as from the trunk which were identified by PW-10 to be that of his brother Surrender Singh. Recovery of body parts from the kitchen of the appellant on 13th August has also been proved by the police officials, who reached the spot after being informed. The spot has also been got photographed and recovery of parts of body of Surrender Singh on 13th August except legs stands duly proved from the flat of the appellant.

23. From the testimonies of PW-4, PW-18 (public witnesses), PW13 ASI Pooran Singh and PW-9 SHO Vijay Pal Singh of PS Patel Nagar, it stands proved that on getting information from the public witnesses regarding lying of human legs they visited the spot and found human legs lying at some distance from each other.

Medical evidence;

24. The post mortem on the two legs recovered by police persons from Police Station Patel Nagar on 12th August, 1988 was conducted by PW-17 Dr. L.T. Ramani and vide his report Ex.PW-17/A he opined that the pair of limbs were human legs belonging to an adult male and that the time elapsed between death and postmortem examination was about 30 hours. After the recovery of remaining parts of the dead body from the flat of the appellant, the two legs recovered within the jurisdiction of police station Patel Nagar and the remaining parts were sent for post mortem which was conducted by Dr. Bharat Singh. In his detailed report (Ex.PW-3/A), he opined as under :-

Cuts on the legs below the knee joints are of similar nature i.e. soft tissues are

cut in a sharp manner and bones show irregular broken ends. We can fit them on these cuts ends of both the legs, those two leg portions received earlier on 12.08.88, skin, hair and circumferences of the bones are similar.

The CFSL results Ex. PW25/K and PW25/L prove that blood of group "B" of human origin i.e. of deceased, was found on Ex.18 i.e. numerous black strands of hair; Ex.20 i.e. fleshy like material described as skin pieces; Ex.21a i.e. one wet dirty cloth piece having stains; Ex.21b i.e. two polythene bags stained with brown stains at places; and Ex.22 i.e. brown gauge cloth piece.

"Last seen"

25. In this case the prosecution has examined PW-7 Sanjeev Kumar, an employee of Video Hut, who had gone to install the VCP at the flat of the appellant as per the order placed for the same by the appellant and the deceased Surender Singh, who visited their shop on the evening of 10th August, 1988. He has specifically stated that the appellant along with the deceased (whose photograph was identified by him at PS Shalimar Bagh visited their shop and he went to the flat of the appellant to install the VCP. The channel's knob was not working properly. It was an imported B/W T.V. He took a thread and set it in working order. In the meantime Sardarji also arrived with a plier. At that time, deceased was present in the flat of the appellant. The cassette was provided by the appellant which he inserted inside the VCP and started the VCP and TV. At that time when he left, except the appellant and one Sardarji, there was none else in that flat. He also stated that he was called at the police station where he was shown the photograph (Ex.PW-6/A) which he identified to be that of same Sardarji, who visited their shop with the appellant and at whose flat he installed the VCP.

26. PW-20 Shri Anupam Arya, owner of Video Hut also deposed about the visit of the appellant with the Sardarji at his shop for hiring a VCP for night and after some time he sent his employee Sanjeev (PW-7) for installing the same who returned after installing the same at about 9 PM. He also stated that on 11.08.1988 at about 8:30 AM, he visited the said flat to collect the VCP and after about two minutes of knocking, the door was opened by the appellant and he saw some lady suit scattered on a cot in the room and VCP was also kept on the same cot. The appellant gave him Rs. 40/- as hire charges for VCP and he took the VCP and returned to his shop. On 13.08.1988, he as well as PW-7 were called at police station Shalimar Bagh where they were shown photograph (Ex.PW-6/A) which they identified to be that of same Sardarji who visited their shop along with the appellant.

27. It has come in the statement of PW-7 and PW-20 that they were maintaining some record of providing VCR/VCP on hire basis and they were having two video cassette players at that time of make Monex. They used to make entry in the register i.e. recording address of the person to whom it was provided on hire and in routine that register used to be destroyed every month. We agree with learned

counsel for the appellant that the said register that had the record of installing VCP at the flat of the appellant should have been seized by the Investigating Officer, but at the same time its non-seizure is not fatal to the case of the prosecution for the reason that small shop keepers providing VCPs/VCRs on hire basis for one night on nominal charges of Rs. 40/-are not expected to maintain record in an organized manner. Both these witnesses are independent public witnesses, not even known to the appellant prior to this date. They had absolutely no motive to depose about the deceased Surender Singh being last seen in the company of the appellant when PW-7 visited the flat of the appellant in the night of 10th August, 1988. Despite lengthy cross-examination, their testimonies could not be challenged and we have no hesitation to hold that PW-7 Sanjeev Kumar, an employee of PW-20 has seen the deceased alive in flat No. 127 of the appellant. From the testimony of PW-20, it is proved that next day morning at about 8:30 AM when he visited the said flat to collect the VCP, only the appellant was there who paid him the hire charges and he returned after collecting the VCP.

Appellant seen leaving her flat with bag and TV

28. PW-1 Mrs. Moly Verghese was the immediate neighbour of the appellant residing in quarter No. 124, Her statement is to the effect that entrance door of flat Nos. 124 and 127 open in the same corridor and she used to see the appellant standing in her balcony and one Sardarji used to visit her. She has also stated that about 2/3 days before she came to know of the murder; she had returned from her office at about 7.00 PM. When she saw that the appellant was standing in the corridor with a portable T.V and a bag. Though this witness did not fully support the case of the prosecution, but her testimony to the extent it supports the case of the prosecution that one Sardarji used to visit the flat of the appellant and her seeing the appellant leaving with bag and TV can be relied upon by this Court, as this part of her testimony further stands corroborated by PW-2 Surinder Kumar, General Secretary of the Residents Welfare Association of the Income Tax Colony. His testimony is sufficient to establish that on seeing the lady going with a TV and bag he made enquiry and came to know that she was the resident of flat No. 127 and her name was Baljeet Kaur and that lady was seen going on a three wheeler scooter along with a TV and bag. This witness was frank enough to give reason for not being able to identify the appellant to be the same lady as when he saw her, she was well dressed and in make up and stressing that if she is again dressed like that, he would be able to identify her. Thus, the testimony of PW-1 & PW-2 proved the appellant leaving her flat with the bag and portable TV 2/3 days prior to the date of murder of Surender Singh was detected. Here again, it is relevant to mention that as per prosecution, murder of Surender Singh came to light on 13th August, 1988 when his legless body was recovered and the two legs had already been recovered on 12th August, 1988 in the early morning, from which it can be calculated that from 13th August, 1988, 2/3 days before means on the evening of 11 August, 1988.

Recovery of scooter

29. As per prosecution witness (PW-29), scooter bearing registration No. DHQ 4810 was found registered in the name of Surender Singh s/o Shri Dharam Singh, r/o 3247, Bahadurgarh Road and this fact was confirmed from the record of Transport Authority at Sheikh Sarai, New Delhi and the date of transfer in the name of Surender Singh was recorded as 08.02.1987, he being the second owner. This scooter was seized by the IO, while it was lying parked in open garage of Income Tax Colony. Its keys have been recovered from the flat of the appellant.

30. Although lot of emphasis has been laid on the fact that when during evidence it was tried to be started with the key recovered, it could not be started, so it was doubtful whether the keys recovered were that of scooter or not. This contention is liable to be rejected for the simple reason that the keys chain recovered contained three keys. Other two keys could open the dickey but the third could not start the scooter not because it was not of that scooter, but there could be many technical reasons as scooter was lying parked in the malkhana of police station for a long time, If a vehicle remained parked for a long time, it becomes a junk. Even absence of petrol could be a reason due to which it could not be started. Non-start of scooter at the stage of evidence with one of the keys is insignificant. Once the deceased is proved to be the registered owner of the scooter, keys of the same being recovered from the flat of the appellant and even the scooter was found parked on the ground floor garage, it is proved beyond reasonable doubt that the deceased visited the appellant on the scooter in the evening of 10th August, 1988. As he met homicidal death, his scooter and keys remained there only at the place of the appellant.

Recovery of kada, ring and TV from PW-19 Jasbir Kaur

31. It has been proved by PWs 1 & 2, residents of Income Tax Colony that 2/3 days prior to detection of murder of deceased Surender Singh, the appellant Baljeet Kaur was seen going with a bag and TV. PW-19 Jasbir Kaur stated that on 11(year she could not recollect), but 2 1/2 years ago (she was examined on 14.05.1991), she was present in West Patel Nagar, the appellant came to her house at about 8 or 8:30 AM with a small TV. On that night she stayed at her house claiming that she was unwell. Next day morning she handed over a packet containing gold kara and two rings with a promise to take the same back at noon time on the same day, but she did not return thereafter. It was only on 13.08.1988 that the appellant visited her house accompanied by the police and she handed over kada, rings and TV to the police vide memo Ex.PW-10/A3. She identified TV Ex.P25, kada Ex.P26 and gold rings Ex.P27 & P28 which were left by the appellant at her house. During cross-examination, she tried to change the time of the visit of the police and recording of her statement as early morning of 13August to strengthen the defence of the appellant that the police came to know of the incident on the night of 12th August itself. On this plea of the appellant, we would advert later on. Here suffice to say that testimony of PW-19

Jasbir Kaur proved leaving of TV, one kada and two gold rings at her house by the appellant on 11th August, 1988 which she handed over to the police at the instance of the appellant on 13th August.

Relationship with the deceased

32. As per prosecution case, the appellant was in illicit relationship with the deceased and due to this reason she left her family and started residing separately four years prior to this occurrence. She was living alone and the deceased used to visit her frequently and stay with her. It has also come in the statement of PW-10 Inder Vir Singh, brother of the deceased Surender Singh that the appellant Baljeet Kaur was the wife of brother-in-law (sala) of his elder brother Harbans Singh. He has stated about illicit relationship between the deceased and the appellant and that on the evening of 10th August, 1988 the deceased left home to visit the appellant, but failed to return thereafter and on 13th August, 1988 when the family members became worried about him, he along with his brother joginder Singh visited the flat of the appellant to look for him.

33. The contention of learned counsel for the appellant is that there was no illicit relationship between the appellant and the deceased Surender Singh and there is no proof of the same. Statement of PW-28 Waryam Singh, husband of the deceased as well as admission of appellant herself in her statement u/s 313 Cr.P.C. is sufficient to prove the kind of relationship she had with the deceased. She not only walked out of her matrimonial home, leaving her husband and four children but also arranged for a separate flat so that the deceased could visit her any time. It is her own admission that she wanted to marry the deceased and for that she even filed a divorce petition which was dismissed in default after her arrest in this case. The circumstances brought on record and admission of the appellant herself is sufficient to clear the cloud, if any, on their relationship.

Motive

34. The prosecution has not come out with any motive for commission of this crime by the appellant. The case of the prosecution rests on "last seen" and circumstantial evidence. The motive always remains locked in the head of offender. Motive is an emotion which impels a person to do a particular act. It may not always be possible to discover that impelling factor. In the case reported as Sahadevan @ Sagadevan Vs. State rep. by Inspector of Police, , the Supreme Court held that in case of circumstantial evidence, if the circumstances relied upon by the prosecution are beyond doubt, then the absence of motive would not hamper a conviction.

35. In the case reported as Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and Others, , it was held as under :-

In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire

prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy.

36. Here in the given facts, deceased and the appellant were in the relationship and appellant was living separately in that flat which was frequently visited by the deceased which fact was well known not only to her husband and family but also to the family of the deceased so much so that before visiting the flat of the appellant on 10.08.1988, deceased informed his family that he was visiting Baljeet Kaur. It has earlier been observed by us that the prosecution has not been able to prove on record any motive for the appellant to kill the person for whom she left the entire world, but the question arises whether inability to prove the motive in itself is sufficient to acquit the appellant in this case. To our mind, the answer is in negative. In every relationship there are hiccups and if we can term it as live-in relationship, it had also its own share of problems. What happened that night within the four walls of the flat of Baljeet Kaur that resulted into strangulation of deceased is not known but it is certain that inability to prove the motive in this case has hardly any negative effect on the case of prosecution.

Probability of defence version

37. The contention of the appellant is that regarding foul smell emitting from her flat was noticed by her when returned on the evening of 12.08.1988 which she brought to the notice of family of PW-5 Virender Singh who accompanied her to PP Pitam Pura. SI Reval Singh and Inspector Jagjit Singh came to the spot during night itself and on finding parts of the dead body at her flat, she was forced to identify which she could not. During that intervening night, her husband was contacted and Jasbir Kaur was also brought to the PS early in the morning which fact stands established from the testimony of PW-5 Sh. Virender Singh, PW-9 Sh. Vijay Pal Singh - SHO and PW-28 Sardar Waryam Singh. In these circumstances, the entire prosecution case regarding intimation being received on the morning of 13.08.1988 collapsed as the public witnesses, who are prosecution witnesses, have supported the version of the appellant as to who was the first informant.

38. First of all, the version of the appellant as given by her during her examination under Sec. 313 CrPc is to be considered. As already mentioned, apart from the answers given during her examination under Sec. 313 CrPc, in reply to the last question whether she had to say anything else, she submitted ten typed pages duly signed by her stating that the same be considered as her reply to the last question. In her statement under Sec. 313 CrPc, she has admitted having a relationship with deceased Surender Singh due to which she walked out of her matrimonial home about four years prior to the occurrence. She also admitted having taken on rent Flat No. 127, Income Tax Colony which used to be visited by deceased Surender Singh. She also admitted filing of a divorce petition by her so that after taking divorce from PW-28 Sardar Waryam Singh, she could marry the deceased Surender Singh and dismissal of that petition in default after her arrest in this case. She also stated that there were

two keys of the lock of the flat, one used to be with her and other used to be with Surender Singh.

39. Referring to the incident of 12.08.1988, she stated that when she came to her flat at about 5.00 pm, foul smell was coming from her flat and on opening, she found blood stains on the ground and some dead body pieces. She was so much shocked on seeing all this. She immediately closed the door and locked the same and went to the house of PW-5 Sh. Virender Singh where she met his wife. She continued waiting for the return of Virender Singh and when he returned at 10.00 pm, she narrated entire incident to him. PW-5 Virender Singh alongwith his mother and sister-in-law (Bhabhi) accompanied her and they reached PP Pitam Pura at about 11.45 pm on 12.08.1988 itself and narrated the entire incident to SI Reval Singh - Incharge, PP Pitam Pura who accompanied them at 2.00 am to the spot. Inspector Jagjit Singh - SHO also reached the spot and lock of the door was opened by police after taking the keys from her and thereafter, the police showed her two severed arms of a dead body and other parts of the dead body were recovered from a trunk with bottom legs/feet missing, which she could not identify. It is further mentioned in this written note that at 2.00 or 2.30 am, police knocked the door of PW-1 Malivarghese and recorded her statement, took search of the house and seized all the articles lying there. Thereafter police asked her to take them to the residence of her husband at 200, Parmanand Colony, Mukerjee Nagar from where her husband was brought to the police station. At the police station, Mohinder Kaur - sister of her husband and Harbans Singh - brother of the deceased and husband of Mohinder Kaur were found present and at about 5.30 pm, they again returned to the flat accompanied by her husband. She claimed to have been arrested at 2.30 pm on the night intervening 12.08.1988/13.08.1988 and that the SHO left the PS and returned at about 7.30 am on 13.08.1988 alongwith Jasbir Kaur who remained present in the police station throughout the day and did not produce any of the articles as claimed by the police nor she (appellant) was taken to Patel Nagar by the police. she also claimed that two rings and kada were got made by her to present Surender Singh at the time of marriage and that Surender Singh never used to wear the same.

40. She also stated that since her TV was out of order, she took the same for repair but as the shop was closed, it could not be repaired and when the TV was out of order, there was no question of asking for VCR from the Video Hut Shop.

41. PW-5 Sh. Virender Singh tried to support the appellant by making improvements in his statement recorded under Sec. 161 CrPC by introducing a new version of his visit to the Police Station on the night of 12.08.1988 with the appellant as well as his mother and sister-in-law (Bhabhi). It is pertinent to note here that prior to recording of DD No. 4-A dated 13.08.1988, no DD entry was recorded either at PP Pitam Pura or PS Shalimar Bagh pertaining to any incident at flat No. 127, Income Tax Colony. Even DD record was also summoned from PP Pitam Pura for cross examination of PW-23 SI Reval Singh but it could not help

the appellant. So it is necessary to find out whether, infact, appellant visited PP Pitam Pura on the night of 12.08.1988 accompanied by PW-5 Sh. Virender Singh and his relations. The falsity in this plea of appellant is exposed from the statement of PW-5 Sh. Virender Singh himself as while deposing before the Court, he stated that when he returned home on 12.08.1988 at about 10.30 or 11.00 pm, his wife was weeping because foul smell was coming from the flat of the deceased. First of all, foul smell can be because of any reason like, dead rat in the house or any other reason which could not be a cause for wife of PW-5 Sh. Virender Singh to cry. As per PW-5 Sh. Virender Singh, the keys of the flat were not available with the appellant and when the police accompanied them during night, they had to break open the kunda of the door. He also stated that PW-23 SI Reval Singh initially expressed his inability to visit the spot due to non-availability of any vehicle in the Chowki, then he alongwith SI Reval Singh and the appellant came in a taxi to the quarter of appellant on the same night. He omitted to mention as to how his mother and Bhabhi returned from the Chowki and from which Taxi Stand they hired the taxi. This entire story as narrated by PW-5 as to what happened during the intervening night of 12.08.1988/13.08.1988, does not find any corroboration either from the version of appellant given under Sec. 313 CrPC or from the statement of PW-1 Ms. Malivarghese whose entrance door is just opposite to the entrance door of the house of the appellant in the same corridor. It is just not possible for her to remain unaware of visit of the police at midnight in the flat just opposite to her flat. Though PW-5 Sh. Virender Singh claims to be present at the spot for ten hours, but he does not speak about associating PW-1 Ms. Malivarghese in the proceedings by the police on that night.

42. PW-28 Sardar Waryam Singh - husband of the appellant though stated that about 21/2 years back (he was examined on 05.06.1990) his brother received information on telephone inquiring about his wife on which he informed that he had no knowledge. On the same early morning at about 5.00 am, police came to their house alongwith his wife and then he came to know about murder of Surender Singh and that at that time, his wife was staying in Pitam Pura. Here, the question that remains unanswered by the appellant is that she does not claim to have given the telephone number of her husband to the SHO and if she was already with the police right from about 11.00 pm on 12.08.1988, where was the occasion for the police to telephone her husband and ask where she was especially when divorce petition was pending. Surprisingly, even as per PW-28 Sardar Waryam Singh, at the time when he was contacted by the police, he came to know about the murder of Surender Singh but appellant has preferred to claim through DW-1 Sh. Jaswinder Singh that Surender Singh was seen alive on the night of 10.08.1988 at Palam Airport, It is different that the statement of DW-1 Sh. Jaswinder Singh cannot be trusted as even he was not aware about the appellant being staying separately from her family i.e. husband and children, four years prior to the incident and the place i.e. Palam Airport where he claims to have spotted the deceased at about 10.30 pm, was otherwise not possible in

view of statement of PW-7 Sh. Sanjeev Kumar who had seen the deceased alive in the company of appellant about 9.00 pm on 10.08.1988 at the time of installation of VCP at the said flat and even the scooter of the deceased was lying parked at the ground floor and keys of the same were recovered from the flat of the appellant.

43. The testimony of PW-19 Smt. Jasbir Kaur further falsifies the statement of the appellant regarding recovery of TV, Kada and rings. It has come in the statement of PW-19 Smt. Jasbir Kaur that she started knowing the appellant just 6-7 months prior to the occurrence as they used to meet in Gurudwara. She categorically stated about the perplexed condition of the appellant on her visit to her house on the evening of 11 August, 1988 alongwith one TV, Kada and two rings and that Kada and rings were left with her next day morning with the assurance to collect the same on the same day from her which she failed to do. PW-19 Smt. Jasbir Kaur is a witness to the recovery of T.V., Kada and rings from her possession and Kada and rings as well as the TV have been claimed by the appellant to be belonging to her. How these articles reached the house of Jasbir Kaur at Patel Nagar if the appellant was staying with DW-2 Sh. Jagjit Singh during this period i.e. 10.08.1988 to 12.08.1988, remains unexplained by her. Another important factor that requires consideration is that DW-2 Sh. Jagjit Singh claims himself to be a goldsmith having prepared Kada and rings out of two gold bangles given by the appellant to him so that she could present the same to Surrender Singh at the time of marriage. This statement of DW-2 Sh. Jagjit Singh is not finding any support from the statement of appellant herself. Not only that, he admitted that it did not bear any mark or stamp to show that the same were manufactured by him. While appellant claimed in her statement under Sec. 313 CrPC that these kada and rings were never worn by Surrender Singh, DW-2 Sh. Jagjit Singh admitted during his cross examination that they were used one. Appellant has failed to reconcile this contradictory version, one coming from her mouth and another from her nephew (DW-2). Another aspect that requires consideration is as to whether appellant was staying at her sister's house during 10.08.1999 to 12.08.1988. DW-2 Sh. Jagjit Singh claims that from 10.08.1988 to 12.08.1988 appellant did not move out of their house and remained with them. If it is so, then how PW-19 Smt. Jasbir Kaur could come into possession of the TV, Kada and rings etc. belonging to the appellant and left by her with PW-19 Jasbir Kaur during her visit on 11.08.1988. She not only visited but also stayed there during night pretending ill-health. This statement of PW-19 Smt. Jasbir Kaur stands corroborated from the statement of PW-1 Ms. Malivarghese and PW-2 Sh. Surinder Kumar who had seen the appellant leaving the premises where she was staying, alongwith one bag and TV. That bag was subsequently found lying empty with blood stains at the flat of the appellant and two legs lying in the area of Patel Nagar visited by the appellant on the evening of 11.08.1988. This material available on record is sufficient to discard the statement DW-1 Sh. Jaswinder Singh and DW-2 Sh. Jagjit Singh in toto.

44. Lot of emphasis has been laid on behalf of appellant on the photographs of

the crime scene which do not show scissor, shaving razor and axe and claimed that all these articles were planted to falsely implicated the appellant. Deceased being "Sikh" did not require any shaving razor and the photographs reveal that head and beard of the deceased were found shaved at the time of recovery of the body pieces. If the photographer has concentrated on the body pieces while taking photographs of the crime scene, the recovery of axe, scissor, shaving razor etc. does not become doubtful just because they are not shown in the photographs. If these articles were planted one, the police officer planting them would have been ensured that these articles are duly photographed alongwith the body pieces. So this contention is also liable to be rejected.

45. A doubt has been tried to be created as to whether the deceased Surender Singh was killed by someone and cut into pieces and thrown at the flat of appellant. Till the date of arguments before this Court, it has not been claimed that Surender Singh was seen alive by anyone after 10.08.1988 till 13.08.1988 i.e. when he was seen alive in the company of appellant and the subsequent date when the pieces of his body were recovered from the flat of the appellant. The body has been duly identified by brother of the deceased and absolutely no doubt about the parts of body and legs recovered from Patel Nagar to be of the deceased Surender Singh.

46. From the testimony of PW-7 Sh. Sanjeev Kumar who came to install Video at the flat of Appellant, recovery of scooter keys from the flat of the appellant as well as that of scooter from the ground floor (open garage), visit of Surender Singh to the house of appellant on the evening of 10.08.1988 stands proved. The testimony of PW-20 Sh. Anupam Arya who had gone to collect VCP from the said flat, it is proved that at that time only appellant was seen in the flat. These witnesses are independent witnesses and had no axe to grind in the matter. The loopholes in the version of the appellant that the police was informed by her on the night of 12.08.1988 and the support she tried to take from PW-5 Sh. Virender Singh, PW-19 Smt. Jasbir Kaur, PW-28 Sardar Waryam Singh as well as DW-1 Sh. Jaswinder Singh and DW-2 Sh. Jagjit Singh in this regard boom ranged her defence.

Conclusion

47. The testimony of PW-23 SI Reval Singh and Inspector Jagjit Singh is sufficient to prove beyond reasonable doubt that prior to lodging of DD No. 4-A, the police was not aware of presence of pieces of dead body at the flat of appellant and their presence in the residential complex where appellant was residing on the night intervening of 12.08.1988/13.08.1988 is not proved at all. Had they visited on the night of 12.08.2011/13.08.2011 to the house of the appellant, not only case of the recovery of two severed legs could have been solved immediately, there was hardly any need for getting two postmortem conducted on the legs, one by PW-17 Dr. L.T. Ramani and another by PW-3 Dr. Bharat Singh alongwith other parts of body.

48. The statement of appellant under Sec. 313 CrPC that when she alongwith PW-5 Virender Singh and police returned to her flat, the door was opened with key, is in contrast to the version of PW-5 that key was not with her and the kunda of the door was to be broken open. Otherwise also, the version of the appellant that initially she opened the flat and on seeing the body pieces and blood on the floor, she was shocked and immediately she came out and after locking the door, she went to inform PW-5 Sh. Virender Singh, is contrary to version of PW-5 Sh. Virender Singh as per whom, she has only complained about foul smell emitting from her flat without knowing the cause. As stated by appellant under Sec. 313 CrPC, after opening the flat on the evening of 12.08.1988, she came to know about the presence of pieces of human body in her flat. In that case, nothing stopped her from calling the PCR, informing the office of Residents Welfare Association and her acquaintance/well-wishers like PW-5 Sh. Virender Singh or even her immediate neighbour Ms. Malivarghese. She could not have waited for return of PW-5 Sh. Virender Singh till 10.30/11.00 pm and then visit PP Pitam Pura, which statement is falsified from the police record.

49. Here in the instant case, the murder has been committed within the four walls of flat No. 127, Income Tax Colony which was in exclusive possession of the appellant. The plea of alibi during the period 10.08.1988 to 12.08.1988 from her flat has been found to be false especially in view of the testimony of PW-19 Smt. Jasbir Kaur. In the case reported as Trimukh Maroti Kirkan Vs. State of Maharashtra, , while referring to the cases where the offence takes place in the privacy of house without any eye witness available, it was held as under :-

If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecution* 1944 AC 315 quoted with approval by Arijit Pasayat, J. in *State of Punjab Vs. Karnail Singh*,). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading having regard to the facts and circumstances of the case.

50. The postmortem was conducted on 14.08.1988 and time since death is given as about four days prior. In this case of last seen evidence, the time gap between the point of time when the deceased and the accused were seen alive and the time of death is so small that possibility of the offence being committed by any other person becomes impossible and ruled out.

51. We find that prosecution has been able to discharge its onus by proving that deceased was lastly seen in the company of appellant at about 9.00 or 9.15 pm on 10.08.1988 in her flat. The factum of leaving the premises alongwith a bag and TV in an auto and her visit to Patel Nagar to the house of PW-19 Smt. Jasbir Kaur and recovery of two severed legs from that very area on 12.08.1988 further proves beyond any reasonable doubt that it was the appellant who had taken away the two severed legs for disposal of the body cut into pieces. The recovery of pieces of body of Surender Singh from the flat of the appellant when PW-10 Inder Vir Singh and PW-11 Sh. Joginder Singh came in search of Surender Singh, makes the appellant liable to explain as to how the pieces of human body were found in her flat or to own the liability for homicide. No doubt, the initial burden is always on the prosecution to discharge the onus but the facts which are within the special knowledge of the appellant, the prosecution is not required to prove such facts as part of its primary burden.

52. In view of the foregoing discussion, we do not find any error or infirmity in the impugned judgment and order. The appeal is without any merits and is therefore, to fail. The same is accordingly dismissed.

53. The appellant shall surrender before the Trial Court on 15.12.2011 to serve the balance of her sentence. The registry shall transmit the Trial Court Record and this judgment, forthwith, to ensure compliance.