
(2015) 03 DEL CK 0063
In the Delhi High Court
Case No : Criminal Appeal 652/2011

Bharat Aneja

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311A, 313
Evidence Act, 1872 — Section 73
Identification of Prisoners Act, 1920 — Section 2, 4, 5
Penal Code, 1860 (IPC) — Section 302, 392, 397

Citation : (2015) 4 AD 165 : (2015) 219 DLT 131

Hon'ble Judges : Ashutosh Kumar, J.; Sanjiv Khanna, J.

Bench : Division Bench

Advocate : Inderjeet Sidhu and Shruti Tiwari, for the Appellant; Varun Goswami, APP along with Inspector Suresh Chand, S.H.O., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashutosh Kumar, J.—By this appeal, Bharat Aneja @ Buntty (Appellant) assails the judgment dated 1.3.2011 passed by the learned Additional Sessions Judge (East) FTC, E-Court, Karkardooma Courts in Sessions Case No. 12/2010 (FIR No. 23/2009, P.S. Jagatpuri) whereby he has been convicted for the offences under Sections 302 and 392 read with 397 of the Indian Penal Code, 1860 (IPC for Short) and has been sentenced to undergo imprisonment for life; fine of Rs.1000/- and in default of payment of fine, Simple imprisonment for two months for the offence under Section 302 IPC; Imprisonment for 7 years, fine of Rs.1000/- and in default of payment of fine, Simple Imprisonment for 2 months for the offence under Section 392 read with Section 397 IPC. The sentences however have been ordered to run concurrently.

2. The appellant has been convicted for murdering Rita Aneja, his aunt, and robbing her of jewellery which she was wearing on 12.10.2009 between 4 PM to 7 PM at house No. 149, Sector No. 7, South Anarkali, Delhi.

3. We have heard counsels for the appellant and the state, pursued the impugned judgment, and examined the testimonies and exhibited documents.

4. PW.1-Kamal Aneja, son of the deceased, came home from the college at about 7.30 PM on 12.10.2009 and found the main door of the house ajar. When he entered the house, he found his mother (deceased) lying on the floor in a pool of blood. Slippers of his mother were found at different places. Seeing this, he informed his father on telephone. The sight made him nervous and he was taken out by his neighbours including the next door neighbours who also were informed about the occurrence. While leaving, PW.1 noticed that one almirah was open and he also spotted one steel glass on the wooden arm of the sofa.

5. Husband of the deceased viz. Gulshan Aneja (PW.5) arrived thereafter. SI Rajesh Dangwal, PW.34, after receiving DD No. 28A reached the spot. A rukka was prepared by PW.34 (Ex.PW.34/A), on the basis of which First Information Report was registered and the investigation was entrusted to Suresh Chand, Inspector of Police (PW.30). The husband of the deceased (PW.5) saw a cricket bat, belonging to his son, on the washbasin. Crime team was called. Photographs of the scene of crime were taken. The chance finger prints were also lifted by the crime team.

6. On the basis of the statements of the witnesses before the police, needle of suspicion veered around the appellant who had visited the house of the deceased three days prior to the incident. Taking lead from such statements of the witnesses, the investigation proceeded.

7. The appellant was arrested on 16.10.2009 outside race course, Meerut. During interrogation, disclosure statement (Ex.PW.30/C and Ex.PW.30/F) were made by the appellant which led the police party to the house of Atul Jain (PW.20), a jeweller who disclosed that the appellant had come with jewellery and had sold the same to him stating that those pieces of jewellery belonged to his mother-in-law and that he needed money for expenses to be incurred post delivery of twin babies born to his wife. Jewellery was sold for Rs.49,000/-, which was paid to the appellant in two instalments. The disclosure of the appellant further led to the recovery of a blood stained shirt from a drain (Ex.PW.6/A), a pair of trousers from the house of the in-laws of the appellant (Ex.PW.6/B) and two gold bangles of the deceased from the house of the in-laws which were brought by the wife of the appellant on his asking and a mobile telephone (Ex.PW.30/G). The gold bangles recovered at the instance of the appellant was identified by Gulshan Aneja (PW.5) in the Test Identification Parade conducted by Sh.Amitabh Rawat, Metropolitan Magistrate (PW.19).

8. The case of the prosecution is, therefore, based on circumstantial evidence and there is no eye witness to the occurrence.

9. The prosecution has relied upon the following circumstances for bringing home the charges of murder of the deceased and robbery:-

- a) Friendly entry inside the house of the deceased, indicating that the perpetrator was a known person;
- b) The death was unnatural as a result of violence;
- c) The appellant, prior to the occurrence was penury stricken, though a spendthrift who use to indulge in gambling;
- d) Appellant required money in the past and was provided monetary help by PW.5, the husband of the deceased;
- e) Appellant had earlier approached Banwari Lal (PW.23), his uncle, for Rs.500/-. When such money was not given to him, he mortgaged his mobile phone to a rickshaw puller at the instance of PW.23 for Rs.500/-;
- f) The appellant had visited the house of the deceased three days prior to the occurrence and had enquired about the time when her son PW.1 usually came back from the college;
- g) Sudden change in the fortunes of the appellant post incident:
 - i. Appellant stayed in a hotel in Meerut and Rishikesh immediately after the incident even when he was impecunious and living on borrowed money;
 - ii. Appellant purchased a new sim card and a mobile phone from PWs.21 and 22, viz. Rakesh Juneja and Akash Soni;
- h) The appellant did not visit house of the deceased or PW.5, though other relatives had visited the grieved family to commiserate;
- i) Appellant however regularly enquired from Deepak (PW.3), his cousin, whether any clue about the perpetrator had been found;
- j) Disclosures of the appellant leading to recovery of gold articles, blood stained shirt, pair of trousers and leading the police party to the shop of Amit Jain, (PW.20) a jeweller, who disclosed that a part of the jewellery so robbed was purchased by him from the appellant on grounds of immediate need of money and the appellant was paid Rs.49,000/- for the same and lastly;
- k) The absolute silence of the appellant in his statement under Section 313 of the Code of Criminal Procedure, when the aforesaid incriminating circumstances were put to him.

10. We now proceed to scrutinize whether the chain of circumstances referred to above have been proved and whether they constitute a chain complete in all respects so as to conclusively come to the finding of guilt or whether there are any missing links. It has to be seen whether every such circumstance stands proved and the cumulative effect thereof ascertained.

11. According to Kamal Aneja, PW.1 when he came to the house on 12.10.2009 at about 7.15 PM he found the doors of the house ajar. He has deposed before

the Court that normally, on ringing of the door bell, his mother used to open the door. PW.30, Inspector Suresh Chand who reached the spot immediately after PW.1 also did not find anything suggesting any forced entry in the house. This makes it clear that a known person was involved. The person was not possibly armed and had used the cricket bat as a weapon of offence. Further the said person was probably offered a glass of water, indicating that the deceased knew and had entertained the perpetrator. There was no indication or evidence to suggest forced entry by an unknown person.

12. From the evidence of PW.1 and PW.2, Geeta, it is apparent that the deceased was killed between 4 to 7.15 PM. PW.1 returned to his house at 7.15 PM from his college when he found his mother lying on the floor. Similar statement has been given by PW.5 who came immediately on being informed about the occurrence. PW.2, Geeta, a housemaid for personal reason had left the house i.e. the place of occurrence early, sometimes after 3.45 PM. Thus the time when the deceased had been done to death is between 4 PM and 7.15 PM.

13. Dr.S.Lal (PW.14) the autopsy surgeon conducted the post mortem on the body of the deceased on 13.10.2009 and found the following ante mortem external injuries:-

- i. "Lacerated wound 9 x 1 cms x cranial cavity deep middle of frontal aspect of skull, vertically placed, lower end of wound placed 3 cms above the base of nose.
- ii. Lacerated wound 1.5 x 0.5 cms x bone deep over left side parietal area placed area placed 4 cms left to midline and 8 cms above the left eye brow.
- iii. Reddish bruise 11 x 3 cms over left side upper chest over clavicle bone placed 2.5 cms left to midline.
- iv. Lacerated wound 2 x 0.5 cms x bone deep over right side frontal area of skull placed 2 cms right to injury no. 1.
- v. Bilateral black eye present."

14. On internal examination, subscalpal extravasations of blood was found in the frontal and bilateral parietal area with multiple fracture of frontal bone, biparietal bone with coronal sutural fracture. In the opinion of the doctor the death was caused by cranio cerebral damage produced by heavy blunt force impact which was sufficient to cause death in the ordinary course of nature. The time of death was fixed at 18 hours. This corresponds to the timing between 6 to 7 PM on 12.10.2009. Thus it remains undisputed that the deceased died a homicidal death.

15. PW.1, as has been earlier noticed, saw that one almirah was slightly open. PW.5, the husband of the deceased, also stated about his having noticed absence of jewellery on the person of the deceased which she always wore namely four gold bangles, one gold chain, pair of ear rings and gold rings. Robbery was the motive and the apparent cause of the occurrence.

16. PW.5 remembered about the appellant having come to him in the month of August, 2009 and on the request by his wife, he had helped the appellant, by giving him Rs.5000/-. PW.5 deposed that the appellant had asked him for monetary help as his financial position was precarious. One of the uncles of the appellant namely Banwari Lal who was examined as PW.23, has also deposed that a week prior to the date of the occurrence, the appellant had come and had asked for Rs.500/- being in dire need of money. He admitted of having arranged money by making the appellant pawn his mobile phone for Rs.500/- to a rickshaw puller namely Ramesh.

17. In this context the evidence of PW.2, the housemaid and PW.5, the husband of the deceased assume importance. PW.2 has stated before the Court that the appellant had visited the house of the deceased thrice, the last time being on 9.10.2009, i.e. three days prior to the occurrence. On the next day, i.e. on 10.10.2009, the deceased had asked PW.2 to go and check the room on the first floor as the appellant had gone there on the previous day. PW.5 in his testimony had asserted that the deceased had told him that the appellant had enquired about the timings when their son, PW.1 used to return. He had testified that except the appellant, every person of the family had visited them after the occurrence. His absence was conspicuous and suspicious conduct suggesting his involvement. The appellant was in need of money and was looking for an opportunity to anyhow get it.

18. The fact that the appellant had visited the house of the deceased just three days prior to the occurrence and had made a reconnaissance of some kind by asking about the working hours of PW.1 coupled with the fact that he was in dire need of money, gave leads to the police to investigate and probe.

19. The fulcrum of guilty mind is further evinced from the statement of PW.3, Deepak, a cousin of the appellant. PW.3 who worked in a factory in Meerut has deposed that he received a call from the appellant at about 8.55 PM on 12.10.2009 and PW.3 had informed the appellant about the murder of the deceased. On being asked whether he would visit the house of the deceased, the appellant had professed that he would visit the next day. On 13.10.2009, PW.3 was present outside the Subzi Mandi Mortuary in the morning, when he again received a call from the appellant, who had then enquired whether any clue had been found about the murderer. The appellant had informed PW.3 that he was at Muzaffarnagar and therefore he would not come to the house of the deceased. The appellant again called up PW.3 on 14.10.2009 and made the same enquiry as to the murderer. This conduct of the appellant raised suspicion about his involvement.

20. The appellant purchased a brand new LG mobile set for Rs.1050/- by making cash payment to PW.22, Akash Soni and a sim card of number 9358539234 from PW.21 Rakesh Juneja on 13.10.2009. The ownership of the sim card has been proved by the statement of Sh. Raj Kumar Yadav, PW.24, the Assistant Nodal Officer of Reliance Communications. PW.21 and 22 have categorically stated

before the Trial Court that the sim card and the mobile phone referred to above were purchased by the appellant from them.

21. Considering the precarious financial condition of the appellant, the tragedy which had resulted in the violent death of his aunt, his conduct and conversation with PW3, it appears inexplicable as to why the appellant chose to stay in hotels at Meerut and at Rishikesh in the nights intervening 13th and 14th October, 2009 and 14th and 15th October, 2009 respectively. PW.8 Atul Pawar, manager of Hotel Gaurav, Rishikesh has stated that the appellant stayed in the hotel in the night of 13th October, 2009 and vacated the same at 9.30 AM of 14th October, 2009. Similarly, PW.7 Vipin Tyagi, the manager of Hotel Neeraj, Meerut has testified to the effect that the appellant stayed in the said hotel in the night of 14th October, 2009 and vacated it on 15th October, 2009. There could be no other reason for this. The appellant deliberately kept himself away, even though initially no one had suspected his involvement. The appellant's conduct was deviant and strange. He deliberately avoided visiting the grief stricken family and thought it appropriate to stay in a hotel located in the city of his residence.

22. As has been noticed earlier, PW.5, on seeing the dead body of his wife immediately noticed that certain items of jewellery which were worn by her were not found on her body. The disclosure statement (Ex.PW.30/F), made by the appellant led to the recovery of two bangles by the wife of the appellant who brought it on the asking of the appellant from the house of the in-laws of the appellant. The seizure memo Ex. PW. 30/G was proved by Inspector Suresh Chand (PW.30). PW.20, Atul Jain has testified to the effect that 10-12 days prior to Diwali in the month of October, 2009, the appellant had sold two bangles, a gold chain and two ear rings and had received Rs.49,000/- from him in two instalments within a period of a day. PW.20 deposed that he had melted the gold items and new jewellery was made by mixing it with other gold. The two bangles which were recovered at the instance of the appellant were identified by PW.5 in the Test Identification Parade conducted by PW.19, a judicial officer vide Ex. PW.19A/A.

23. The prosecution has also examined PW.6 Vicky Singh who has proved that he had driven the vehicle in which the police team along with IO PW.30, had travelled to Meerut and had arrested the appellant where after, pursuant to disclosures recovery was made.

24. The prosecution has also relied upon scientific evidence namely the testimony of PW.16, K.N. Singh, Finger Print Expert who has proved his report (Ex.PW.16/A). PW.19, ASI Harsh Vardhan being a finger print expert had lifted 30 chance prints from the two steel glasses lying in the room where the dead body was found. Ex.PW.16/A, the report of the finger print expert, discloses that the print was found to be identical with the left and right middle fingers of the accused.

25. The learned counsel, Ms. Inderjeet Sidhu, appearing amicus curiae for the

appellant argued that the factum of arrest of the appellant and his disclosures leading to the recovery cannot be accepted in evidence as local police had not joined the investigation. There is complete absence of independent corroboration of the seizures made pursuant to the so called disclosures made by the appellant. She has further argued that the call details of the brother of the accused were not placed on record and similarly the call record details of Deepak, PW.3, also was not placed on record. Since PW.3 did not support the prosecution version, it does not become clear as to whether the accused had called him from different destinations. Another ground raised by the appellant was that the appellant was arrested on the basis of location of an unknown number which was used by him. No recovery of any mobile phone at the time of his arrest demolishes the prosecution version of apprehending the appellant after the raids referred to above. She has tried to raise an inference that the appellant was neither shying away from the investigation nor made any attempts to hide himself and he would have joined the investigation if called upon by the police.

26. PW.30, the IO has stated that despite efforts by him, no independent person joined the investigation by agreeing to be a witness to the seizures affected pursuant to the disclosures made by the appellant. The issue of non joining of independent witnesses and reliance upon the testimony of police officials as witnesses to the seizure was considered at length by the Supreme Court in State, Govt. of NCT of Delhi Vs. Sunil and Another, , where it has been elucidated:-

".....if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth...." 27. The Supreme Court thereafter went on to say that the notion of approaching every action of a police officer with initial distrust may not be proper. When a police officer gives evidence in Court that a certain article was recovered by him on the strength of the statement made by the accused, it would be open to the Court to believe the version as correct, if it is not shown to be unreliable. Surrounding facts in entirety must be examined.

28. Be it noted that all stages of the movement of the police party in tracking the appellant has been proved by the prosecution. There is nothing on record to show that the evidence of PW.30 the I.O., is either unreliable or unsafe to be acted upon in the present case. They proceeded on the basis of leads and clues to solve the case and nab the culprit.

29. The other contention of the appellant is that PW.20, Atul Jain, the jeweller spoke about the appellant having visited him for sale of gold bangles about 10-12 days before Diwali. The festival of Diwali in the year 2009 was celebrated on 17.10.2009. The date suggested by PW.20 does not match with the facts of

the present case. It has been argued that no case of receiving any stolen property or destruction of evidence was registered against PW.20 and that if PW.20 was operating without a valid license, the possibility of his having been put up as a witness by the police cannot be ruled out.

30. It is apparent from the evidence of PW.20 that he was known to the appellant from before as the appellant and his wife had visited him on earlier occasions. There is no ground or reason to disbelieve statement of PW.20 that the appellant was in need of money and that the gold items which he wanted to sell were that of his mother-in-law. The gold items were purchased by PW.20 for consideration. In the absence of knowledge that the property was stolen property, the action and conduct of PW.20 would not have constituted any offence under the I.P.C. The evidence of PW.20 does not suffer from any infirmity and is reliable and credible.

31. The next contention is that merely because the appellant stayed for two nights in two different hotels in two different locations would not justify the prosecution in jumping to the conclusion that there was a change in the fortune and that the money obtained by selling the looted property was being used for such stay in hotels.

32. Independently of itself, this fact would not have been an important link in coming to any conclusion of guilt. The fact that the appellant sold his mobile phone for Rs.500/-, had received monetary help from PW.5 at one occasion and his having sought help from PW.5 on the ground of his being in dire poverty, and then the appellant spending money for staying in hotels in towns which are near to his hometown, definitely appears to be disquieting.

33. When these facts were brought to the notice of the appellant, there was no specific response under Section 313 of the Code of Criminal Procedure. No doubt, the accused has a right to silence. The mandate of law is that he cannot be forced to make any statement which can be proved against him but under such circumstances plausible explanation from him would be relevant. The steadfast denial of every incriminating statement put to the appellant furthers the impression that the appellant was guilty and had no explanation or justification.

34. With regard to the scientific evidence, learned counsel for the appellant submitted that the evidence of PW.16 (Sh. K.N. Singh), the finger print expert and PW.19 ASI Harsh Vardhan who lifted the chance prints from the crime scene were not admissible in evidence in view of the Full Bench decision in the case of Sapan Haldar and Another Vs. State, .

35. In Sapan Haldar (supra) the question before the Full Bench was whether the writing and signature of an accused are akin to "measurements" as defined under clause (a) of Section 2 of the Identification of Prisoners Act, 1920 and consequently whether Sections 4 and 5 of the Identification of the Prisoners Act, 1920, will apply to a handwriting sample or a sample signature. The Full Bench, proceeded to answer the questions raised as:

"31- We answer the reference as follows:

i. Handwriting and signature are not measurements as defined under clause (a) of Section 2 of The Identification of Prisoners Act, 1920. Therefore, Section 4 and Section 5 of The Identification of Prisoners Act, 1920 will not apply to a handwriting sample or a sample signature. Thus, an investigating officer, during investigation, cannot obtain a handwriting sample or a signature sample from a person accused of having committed an offence.

ii. Prior to June 23, 2006, when Act No. 25 of 2005 was notified, inter-alia, inserting Section 311A in the Code of Criminal Procedure, 1973, even a Magistrate could not direct a person accused to give specimen signatures or handwriting samples. In cases where Magistrates have directed so, the evidence was held to be inadmissible as per the decision of the Supreme Court in Ram Babu Mishra's case (supra). According to Section 73 of the Indian Evidence Act, 1872, only the Court concerned can direct a person appearing before it to submit samples of his handwriting and/or signature for purposes of comparison."

36. The Full Bench in Sapan Haldar (Supra), thereafter went on to state as follows:-

"32. Though not falling for consideration in this reference, with respect to finger prints, which are included in "measurements", the weight of the authorities is that if by way of Rules or Executive instructions the manner is prescribed to take the measurements, alone then can an Investigating Officer, under Section 4 obtain the measurements but strictly as per manner prescribed; but it would be imminently desirable, as per the decision in Mohd. Aman's case (supra) to follow the procedure ordained under Section 5 of The Identification of Prisoners Act, 1920."

37. It would be relevant here to mention that prior to Sapan Haldar (Supra), another Full Bench in Bhupender Singh vs. State, (Criminal Appeal No. 1005/2008 decided on 30.09.2011) had delivered their opinion on the reference:

"whether the sample finger prints given by the accused during investigation under Section 4 of the Identification of Prisoners Act, 1920 without prior permission of the Magistrate under Section 5 of the Act will be admissible or not."

In fact the decision in Bhupinder Singh (Supra) had necessitated reference to the full bench in Sapan Haldar (Supra) in respect of specimen handwriting and signatures.

38. However, without going into the above mentioned issue, we are of the view that in the absence of IO, PW.30 (Insp. Suresh Chand) having made any categorical statement about when and where the specimen signatures of the appellant was obtained, it would not be safe to rely upon the opinion of Finger Print Expert namely PW.16. PW.16 vide his report Ex.PW16/A has found chance prints identical with the left and middle finger impression of the appellant.

39. From the conspectus of the evidence which has been discussed above, it is clear that the chain of circumstances are complete. There does not appear to be any missing link in the chain. The strings of circumstances, as noticed above, are properly tied and each circumstance stands proved.

40. In the absence of any eye witness to the occurrence, these circumstances leave no room for doubt that the murder was caused by the appellant alone and nobody else.

41. It is no longer in dispute that where the evidence is of circumstantial nature, it needs to be fully established and the facts so established should be consistent not only with the hypothesis of the guilt of the accused but inconsistent with his innocence (Refer to Hanumant Vs. The State of Madhya Pradesh, , Sharad Birdhichand Sarda Vs. State of Maharashtra, and C. Chenga Reddy and Others Vs. State of Andhra Pradesh, .

42. Tested on the touchstone of the above- stated guiding principles regarding appreciation of circumstantial evidence, the decision arrived at by the Trial Court does not warrant any interference. The Trial Court has given good reasons for returning the verdict of guilt against the appellant.

43. Before we part with this case, we cannot help but observe that though there was no lead in the beginning as nobody had suspected the appellant, the case was cracked by the investigating team in a short time. This is laudable, and merits acknowledgement.

44. The appeal, being devoid of merits, is dismissed.

45. Lower Court records to be returned.