
(2009) 12 DEL CK 0280
In the Delhi High Court
Case No : Criminal Appeal No. 985 of 2001

Deepak Kaul	Vs	APPELLANT
The State of NCT of Delhi		RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 25, 26, 27
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 12 DEL CK 0280

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sumeet Verma, for the Appellant; Pawan Sharma, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—At 08.45 A.M. on 29.03.1998 HC Om Parkash PW-7, recorded DD No. 4A, Ex.PW-7/A, at police station Malviya Nagar recording that a wireless information has been received that two persons have been killed in the ground floor of the house bearing municipal No. B-1/4, Malviya Nagar.

2. This swung the police into action. On receipt of the afore-noted DD entry, Inspector Mahipal Singh PW-17, accompanied by SI Om Parkash PW-16, Const. Jagat Singh PW- 13, Const. Kiranpal PW-8/PW-12 and SI K.P. Malik PW-9, reached the building in question where they found that the ground floor of the said building was divided into two equal portions bifurcating the plot into two equal halves, one towards the northern and the other towards the southern boundaries of the plot; that dead body of a male person named V.N. Kaul was lying on the floor of the drawing room in the portion of the ground floor towards the southern side and that dead body of a female person named Shanti Kaul wife of V.N. Kaul was lying on a bed kept in the bedroom in the same portion of the building. The appellant who is the nephew of the deceased and his wife Anita Kaul who resided in the other portion on the ground floor and Sanjeev Ahlawat

PW-5, who resided on the first floor of the building in question, were found present outside the building.

3. No eye-witness being present, Inspector Mahipal Singh got registered FIR No. 253/98 by sending the teherir Ex.PW-17/A to the police station.

4. Inspector Mahipal Singh noted blood drops on the floor of the common area outside the two drawing rooms on the ground floor i.e. the drawing rooms of the deceased and the appellant. The floor of the drawing room of the appellant was stained with blood at 14 spots. Cushion covers near the body of V.N. Kaul and the bed sheet spread on the bed where body of Shanti Kaul as also four pillows lying on the bed were found stained with blood. Inspector Mahipal Singh seized the blood stained articles as per memo Ex.PW-5/A. He prepared the rough site plan Ex.PW-17/B showing the spots where he noticed blood. He recorded the statement of Shamsher Singh PW-3 as per which relations between V.N. Kaul and the appellant were strained. The two dead bodies were seized and sent for post-mortem to AIIMS.

5. The appellant was arrested at the spot as the needles of suspicion pointed towards him on account of the statement of Shamsher Singh and blood stains being noted in the drawing room of the appellant as also blood being noted on his shoes, which were seized vide memo Ex.PW-9/C. On being interrogated the appellant made a disclosure statement Ex.PW-9/B wherein he confessed to his guilt and stated that he can get recovered the clothes which he was wearing at the time of the murder of V.N. Kaul and Shanti Kaul and the dao and the rod with which he had murdered them. Thereafter the appellant led Inspector Mahipal Singh and Sanjeev Ahlawat PW-5, to Siri Fort jungle and got recovered a dao and a rod from under the grass which were seized vide memo Ex.PW-5/C. The next day morning on 30.03.1998, the appellant again led Inspector Mahipal Singh PW-17, SI Om Parkash PW-16 and SI K.P. Malik PW-9 to Siri Fort jungle and got recovered a t-shirt and a pant lying hidden in the bushes which were seized vide memo Ex.PW-9/E.

6. On 31.3.1998 post-mortem was conducted on the dead body of V.N. Kaul and Shanti Kaul. 16 injuries, 7 of which were opined to be sufficient to cause death in the ordinary course of nature both individually as well as collectively were noted on the body of V.N. Kaul as per post-mortem report Ex.PW-11/A and an equal number of injuries, 7 of which were opined to be sufficient to cause death in the ordinary course of nature both individually as well as collectively were noted on the body of Shanti Kaul as per post-mortem report Ex.PW-11/B. After conducting the post-mortem, the doctor handed over the clothes, scalp hair and blood sample on a gauze of V.N. Kaul and Shanti Kaul to Const. Kiranpal PW-8/PW-12, who in turn handed over the same to Inspector Mahipal Singh vide memo Ex.PW-8/A.

7. The seized materials; blood lifted from the floor outside the entrance door of the house of V.N. Kaul; cushion and cover of the chair and strands of the hair

seized from the room where body of V.N. Kaul was found; blood lifted from the floor of the drawing room of the house of the appellant; bed sheet, pillows and broken ring seized from the room where body of Shanti Kaul was found; shoes of the appellant; dao, rod, t-shirt and pant recovered at the instance of the appellant and the clothes, scalp hair and blood sample of V.N. Kaul and Shanti Kaul were sent for forensic examination and vide FSL reports Ex.PX and Ex.PY it was opined that human blood was detected on the strands of hair, cushion and cover of the chair seized from the room where body of V.N. Kaul was found, group whereof could not be determined; that group of the blood seized from the floor outside the entrance door of house of V.N. Kaul and floor of the drawing room of the house of the appellant could not be determined; that human blood was detected on the broken ring seized from the room where body of Shanti Kaul was found, group whereof could not be determined; that human blood of B. group was detected on the bed sheet and pillows seized from the room where body of Shanti Kaul was found; that human blood of A. group was detected on the shoes of the appellant; that human blood of AB. group was detected on the dao recovered at the instance of the appellant; that human blood of A. group was detected on the rod recovered at the instance of the appellant; that human blood of B. group was detected on the t-shirt recovered at the instance of the appellant; that human blood was detected on the pant recovered at the instance of the appellant, group whereof could not be determined; that human blood of B. group was detected on the salwar and knee elastic worn by Shanti Kaul at the time of her murder; that human blood of A. group was detected on the pyjama, vest and kurta worn by V.N. Kaul at the time of his murder; that blood group of Shanti Kaul could not be determined and that blood group of V.N. Kaul was A.

8. Needless to state, the appellant was sent for trial. Charges (two) were framed against the appellant for having committed offences (two) punishable u/s 302 IPC.

9. At the trial, the prosecution examined 17 witnesses to prove the seizures effected at the spot, the disclosure statement of the appellant and the recovery of the dao and the rod as also a t-shirt and a pant at the instance of the appellant.

10. There being no eye-witnesses, it is apparent that the case of the prosecution hinged upon the recoveries got effected by the appellant, blood being detected on the floor of the drawing room of the appellant, blood being detected on the shoes of the appellant; and lastly the motive, which we note failed since Shamsher Singh PW-3, while deposing in Court stated that the relationship between the appellant and his uncle i.e. the deceased and the wife of the deceased were cordial.

11. Relevant would it be to note that pertaining to how many people gathered at the spot and whether said persons of the locality went inside the portion of the house occupied by the deceased and the other half portion in occupation of the appellant, Shamsher Singh PW-3 stated: It is correct that before the police came

many persons of the locality have gathered at the spot. I have not noticed any person entering the house of B.N. Kaul in my presence. I do not know whether the persons of locality had gone inside the house to see the dead bodies. Sanjeev Ahlawat PW-5 stated: .Apart from me nobody had entered the room except wife and father of the accd. SI K.P. Malik PW-9 stated: When I reached the spot along with IO there were many persons gathered outside the house of the deceased which included neighbours. I do not know whether any public person had entered the house of the deceased. Const. Jagat Singh PW-13 stated: When I reached the spot people from the locality were present at the spot. SI Om Parkash PW-16 stated: When we reached on the place of incident in the morning there about 5/6 public persons had reached already. On being questioned by the defence about the blood stains found on the floor of the drawing room of the house of the appellant, the witness stated: The blood stains which I noticed in the house of accd. were very thin and dim in nature..... Inspector Mahipal Singh PW-17 stated: Prior to the reaching of the police at the spot first the servant of the dec. had entered the premises and she had told other persons about the incident. Persons from the same building had entered the room where dead body was lying before the police reached. Number of persons from the locality were present at the spot but standing outside the house. On being questioned about the defence about the blood stains found on the floor of the drawing room of the house of the appellant, the witness stated: The blood stains in the house of accd. were visible only after careful and minute examination.

12. In his examination u/s 313 Cr.P.C. the appellant denied everything and pleaded false implication.

13. In defence, the appellant examined two witnesses namely Julie Antony DW-1 and Jagannath Batra DW-2, the acquaintances of V.N. Kaul and the appellant. Both the witnesses deposed that the relations between V.N. Kaul and the appellant were very cordial and that V.N. Kaul used to treat the appellant as his son. Additionally, Julie Antony DW-1, deposed that a quarrel had taken place between the appellant and Sanjeev Ahlawat over the house of V.N. Kaul few days before the incident.

14. Holding that the fact that a trail of human blood was found from the floor outside the entrance door of the house of V.N. Kaul to the drawing room of the house of the appellant; that human blood of same group as that of Shanti Kaul was detected on the shoes worn by the appellant around the time of the murder of V.N. Kaul and Shanti Kaul; that human blood of same group as that of V.N. Kaul was detected on the rod recovered at the instance of the appellant; that human blood of same group as that of Shanti Kaul was detected on the t-shirt recovered at the instance of the appellant and that human blood was detected on the pant recovered at the instance of the appellant establish that the appellant had committed the murder of V.N. Kaul and Shanti Kaul, vide judgment and order dated 08.11.2001 the learned Trial Judge has convicted the appellant and

sentenced him to undergo imprisonment for life for committing offences (two) punishable u/s 302 IPC. The sentences awarded to the appellant were directed to run concurrently. (It may be noted here that the learned Trial Judge has held that the prosecution has not been able to establish that the appellant had a motive to murder V.N. Kaul and Shanti Kaul for the reason the evidence of Shamsher Singh PW-3, pertaining to the motive of the appellant does not appears to be trustworthy when seen in the light of the evidence adduced by the defence)

15. As noted herein above, under-noted 4 circumstances has led the learned Trial Judge to convict the appellant:

I. A trail of blood was found from the floor outside the entrance door of the house of V.N. Kaul and Shanti Kaul to the floor of the drawing room of the house of the appellant.

II. Shoes worn by the appellant around the time of the murder of V.N. Kaul and Shanti Kaul was found to be stained with human blood of same group as that of Shanti Kaul.

III. Dao and t-shirt recovered at the instance of the appellant was found to be stained with human blood of same group as that of V.N. Kaul and Shanti Kaul.

IV. Human blood was detected on the pant recovered at the instance of the appellant.

16. A close scrutiny of the evidence on record shows that the first circumstance used by the learned Trial Judge to infer the guilt of the appellant is factually incorrect. No trail of blood was found from the floor outside the entrance door of the house of V.N. Kaul to the drawing room of the house of the appellant. A perusal of the rough site plan Ex.PW-17/B and the site plan to scale Ex.PW-17/H of the ground floor of the building in question, the testimony of the police officers who had participated in the spot investigation and Sanjeev Ahlawat PW-5, shows that two drops of blood were lying on the floor outside the entrance door of the house of the appellant and that fourteen blood stains were found on the floor of the drawing room of the house of the appellant.

17. Pertaining to 14 blood stains found on the floor of the drawing room of the appellant, a perusal of the rough site plan Ex.PW-17/B and the site plan to scale Ex.PW-17/H of the ground floor of the building in question shows that the ground floor of the building in question was divided into two mirrored portions. The portion on the left was occupied by V.N. Kaul and Shanti Kaul whereas the portion on the right was occupied by the appellant and his family. There was a portico in front of the two portions.

18. The testimonies of Shamsher Singh PW-3, Sanjeev Ahlawat PW-5 and Inspector Mahipal Singh PW-17, establish that Shamsher Singh, Sanjeev Ahlawat, the appellant, the wife and father of the appellant and the maid employed by V.N. Kaul and Shanti Kaul had gone to the rooms where the bodies of V.N. Kaul and Shanti Kaul were lying before the arrival of the police. The

testimonies of Shamsheer Singh PW-3, Sanjeev Ahlawat PW-5, Inspector Mahipal Singh PW-17, SI K.P. Malik PW-9, SI Om Parkash PW-16 and Const Jagat Singh PW-13, establish that many persons from the neighbourhood of V.N. Kaul and Shanti Kaul had gathered at the spot before the arrival of the police. Thus, the possibility of somebody unwillingly and unconsciously stepping on the blood of the deceased and thereafter walking into the drawing room of the appellant, thereby staining the same with blood cannot be ruled out. The fact, as deposed to by SI Om Prakash PW-16 and Inspector Mahipal Singh PW-17 that the blood stains were very faint also indicates towards this happening.

19. The second circumstance used by the learned Trial Judge to infer the guilt of the appellant is that the shoes worn by the appellant around the time of the murder of V.N. Kaul and Shanti Kaul was stained with human blood having same blood group as that of Shanti Kaul.

20. The said finding is partially incorrect. The blood group of V.N. Kaul was A as recorded in the FSL report Ex.PY. There is no direct evidence to establish the blood group of Shanti Kaul inasmuch as her blood group could not be ascertained at the FSL with reference to her blood sample taken on a piece of gauze, but could be safely said to be group B. because this was the blood group detected on her clothes and the cloth pieces lifted from the bed where her body was lifted. The FSL report shows that the blood group of V.N. Kaul was group A.. As per the FSL report human blood of group A. i.e. the same group as that of V.N. Kaul was detected on the shoes worn by the appellant when he was arrested.

21. The testimonies of Shamsheer Singh PW-3, Sanjeev Ahlawat PW-5 and Inspector Mahipal Singh PW-17, establish that the appellant had gone to the rooms where the bodies of V.N. Kaul and Shanti Kaul were lying. The floors of the rooms in question were stained with blood at different spots. The possibility that shoes of the appellant got stained with blood at the time when he walked on the floors stained with blood of V.N. Kaul and Shanti Kaul cannot be ruled out at all. In such circumstances, the fact that the shoes worn by the appellant around the time of the murder of V.N. Kaul and Shanti Kaul was stained with human blood having same blood group as that of V.N. Kaul is explainable and hence not ruling out his innocence.

22. Pursuant to the disclosure statement made by the appellant he got recovered a dao and an iron rod, the purported weapons of offence. As noted above, blood group of V.N. Kaul was of group A. and there is evidence to conclude that the blood group of Shanti Kaul was B.. Surprisingly, as per the FSL report blood of group AB. was detected on the dao.

23. It is apparent that some overzealous police officer has planted blood on the dao for the reason blood group A. and blood group B. when mixed together do not make blood group AB..

24. That apart in the decision reported as Prabhu Vs. State of U.P., an axe, a shirt and a dhoti which were found to be stained with human blood were

recovered from the house of the accused, at his instance. Supreme Court clarified the provisions of Section 25 - 27 of the Evidence Act by laying down that any statement of the accused that with a particular weapon of offence, he had committed the murder is not admissible u/s 27 of the Evidence Act as it does not lead to any discovery of fact within the meaning of Section 27 of the Evidence Act and even the statement of the accused that blood stained shirt and dhoti belong to him is not such a statement which leads to any discovery within the meaning of Section 27. It was laid down that it is fallacious to treat the fact discovered within Section 27 as equivalent to the object produced; the fact discovered embraces the place from which the object was produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. It was held that is not legally permissible to admit evidence of the alleged statement of the accused that the axe had been used to commit the murder or the statement that the blood stained shirt and dhoti were his. It was held that from mere production of the blood stained articles by the accused, one cannot come to the that the accused committed the murder inasmuch as the fact of production cannot be said to be consistent only with guilt of the accused and inconsistent with his innocence, for the reason it is quite possible that someone else committed the murder and kept the blood stained articles in the house of the accused and that the accused might have produced the said articles when interrogated by the police.

25. In the decision reported as *Mani v. State of Tamil Nadu* 2008 (1) JCC 277 the case set up by the prosecution that the appellant and one Moyyasamy had murdered deceased Sivakumar who had strained relationship with Moyyasamy. On 24.11.1996 the deceased was chatting with his father Arunachalam and his other family members when the appellant came there and had a cup of coffee with Arunachalam. At about 6.00 P.M. the appellant took the deceased to his house. When the deceased did not turn up till 10.00 P.M. Arunachalam went to the house of the appellant and found that blood was oozing from the house. Since the house was locked Arunachalam came back to his residence where one Amulnathan informed him that he had seen the deceased in the company of the appellant and Moyyasamy at 07.00 P.M. On the next morning at 6.00 A.M. Arunachalam again went to the house of the appellant and found trail of blood near the said house and ultimately from that he traced the body of the deceased which was lying in the nearby field. The appellant got recovered blood stained clothes and kodvul lying under the grass in an open ground which was 300 feet away from the field from where the body of the deceased was recovered. The Sessions Court convicted both the accused persons whereas the High Court acquitted Moyyasamy but convicted the appellant. Supreme Court acquitted the appellant for following reasons: - (i) no evidence was led by the prosecution to establish that the house where blood was found was owned or exclusively possessed by the appellant; (ii) Arunachalam is not a trustworthy witness inasmuch in view of the fact that he realized that something unusual has happened at 10.00 P.M. but he did not lodge a report with the police till next day

at 10 O. clock; (iii) the discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery; (iv) the prosecution never made any attempts to prove that the clothes recovered at the instance of the appellant belonged to him; (v) there is serious discrepancy in the evidence pertaining to the recovery and (vi) even if the evidence pertaining to recovery is accepted the fact that blood stained clothes and kodvul were recovered at the instance of the appellant does not connect the appellant with the crime. (Emphasis Supplied)

26. In the decision reported as K.V. Chacko @ Kunju Vs. State of Kerala, an axe which was found to be stained with human blood was recovered at the instance of the appellant. It was held by Supreme Court that in the absence of any evidence to establish that the death of the deceased was caused by an axe, the said recovery does not connect the accused with the murder of the deceased.

27. In the decision reported as Narsinbhai Haribhai Prajapati v. Chhatrasinh and Ors. AIR 1977 SC 1753 the Supreme Court had held that in the absence of any other evidence the circumstances of seizure of blood stained shirt and dhoti from the person of an accused and dharias from the houses of the accused are wholly insufficient to sustain the charge of murder against the accused.

28. In the decision reported as Surjit Singh and another Vs. State of Punjab, a watch belonging to the deceased and one dagger which was found to be stained with human blood were recovered at the instance of the accused. It was held by the Supreme Court that said recovery by itself, does not connect the accused person with the murder of the deceased. It was further held that said circumstance may create some suspicion but the same cannot take the place of proof.

29. In the decision reported as Deva Vs. State of Rajasthan, Supreme Court had held that merely because a knife is alleged to have been recovered at the instance of the accused would not lead to a conclusion that the accused was the perpetrator of the crime of the murder.

30. In view of the above discussion, we hold that the prosecution has not been able to establish beyond reasonable doubt that the appellant is guilty of murdering V.N. Kaul and Shanti Kaul. As already noted in foregoing paras, the learned Trial Judge has held that the prosecution has not been able to establish the motive of the appellant to murder V.N. Kaul and Shanti Kaul. The fact that the prosecution failed to establish the motive of the appellant lends credence to the conclusion arrived by us that the appellant is innocent. In this regards, it is relevant to note the following observations made by Supreme Court in the decision reported as Tarseem Kumar Vs. The Delhi Administration, :- Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of

the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the Court the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. In the present case, no motive on the part of the appellant to commit the murder of Gulshan, has been suggested or established on behalf of the prosecution.

31. It may be noted that on 29.03.1998 the father of the appellant was admitted at the hospital and the appellant, his wife and children had visited his father in late evening and had returned to their house at late night. As per the prosecution, in between, the appellant had returned and murdered his uncle and aunt and thereafter went back to the hospital to bring back his wife and children, but no such evidence has been led to prove that the appellant was seen near the place of the crime when his wife and children were away.

32. The appeal is allowed. The impugned judgment and order dated 8.11.2001 is set aside. The appellant is acquitted of the charges framed against him. Since the appellant is on bail, the bail bond and the surety bond furnished by the appellant are discharged.