

(2009) 08 DEL CK 0442
In the Delhi High Court
Case No : Criminal Appeal 363 of 2001

Mehboob @ Mehmood

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2009) 08 DEL CK 0442

Hon'ble Judges : Pradeep Nandrajog, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : Rajesh Mahajan, for the Appellant; Pawan Sharma, APP., for the Respondent

Judgement

Indermeet Kaur, J.—Appellant Mehboob has been convicted for having committed murder of Dev Raj @ Dabbu as also for having caused the disappearance of the evidence of the crime i.e. of concealing the dead body of Dev Raj @ Dabbu with the intention to screen himself from punishment. The co-appellant, Shahabuddin, father of Mehboob has been convicted for the offence punishable u/s 201 IPC i.e. for concealing the dead body of Dev Raj with the intention to screen his son from punishment. Appellant Mehboob has been sentenced to undergo life imprisonment as also a fine of Rs. 5000/- in default of payment of fine, SI for two years for the offence u/s 302 IPC; for the offence u/s 201 IPC he has been sentenced to undergo RI for two years and a fine of Rs. 1000/- in default of payment of fine SI for two months. The co-appellant Shahabuddin has been sentenced to undergo RI for two years and a fine of Rs. 5000/-, in default of payment of fine SI for two months.

2. On 14.7.1995, at 9.30 AM, D.D. No. 5A was recorded in Police Station Rohini about a murder having taken place at shop number G-20/139, Sector-7, Rohini. The DD was marked to SI Gian Singh PW-17, who along with Const.Sadhu Ram and Const.Arvind Kumar PW-15 reached the spot, where they met Mohd.Anwar

PW-16, the owner of a barber shop being run by him under the name and style 'Prince Hair Dressers.

3. Mohd.Anwar PW-16, made a statement Ex.PW- 16/A which formed the basis of the rukka. In his statement PW-16 disclosed that he is a resident of house No. G-20, 139, C-20. Sector - Rohini; and that he was running a barber shop where he had employed two barbers; namely, Mehboob and Fareed. That Fareed had left for his village on 10.5.1995 and Mehboob was alone in the shop and used to sleep there. On the intervening night of 13th and 14th July 1995, at about 10.30 PM he left the shop for his house, leaving Mehboob in the shop. Next morning i.e. on 14.7.1995, at about 9.15 PM, when he reached his shop, he saw that one of the two shutters of the shop was half open and on entering the shop he saw a dead body lying on the floor without its head and minus the male organ. He identified the dead body as that of his employee Mehboob.

4. The rukka Ex.PW-17/A was endorsed on this statement of PW-16 and sent through Const.Sadhu Ram on the basis of which the formal FIR Ex.PW-13/A was recorded by lady H.C. Sharda PW-13.

5. Shahabuddin the father of Mehboob was called at the spot and he identified the dead body as that of his son Mehboob. Investigation was thereafter handed over to Inspector Ram Chander PW-12 who also reached the spot. A pair of chappals and a black thread lying near the dead body alongwith the blood stained dari and the gadda were seized from the spot. The dead body was wearing a light green coloured pant and from its pocket, a blue coloured rexene purse was taken out which contained three passport size photographs of Mehboob, besides rupees four. The same were also seized and sealed. Photographer and the crime team were summoned. Sh.Sagar PW-23, took photographs of the blood smeared dead body which was without a head and the penis.

6. During investigation the investigating officer met Tilak Raj PW-6 who ran an eatery (dhaba), near the shop of Mohd.Anwar. He informed that Mehboob used to take food in his dhaba and that Dev Raj his uncle's son were last seen together by him at 11.00 PM on 13.7.1995 when both of them had left his dhaba to view a picture at the shop of Mehboob which was also the place where Mehboob used to sleep at night.

7. On 15.7.1995, i.e. on the following day the post mortem was conducted by Dr. Ashok Jaiswal PW-7 who had noted two external injuries on the body:

(i) There was dismemberment of head and neck from the rest of the body at the level of C-7 vertebra exposing soft tissues and vessels at root of neck, both revealing angular cuts in more than one direction with no staining of skin margins which was smoothly cut with few angular cuts at places. No blood or clot seen in the structure found divided. Both esophagus and Trachea were found to be acutely divided. The body of cervical 7 and thoracic one vertebra showed multiple superficial linear cuts. The spinal cord was found to be acutely cut at C-7

level. Tissue around were devoid of any blood clot.

(ii) Penis was found to be missing from its root exposing oval to circular area at its based 1- 1/2 x 1 Margins clean cuts devoid of blood staining. Both testicles were exposed. No blood clot was seen around them. Apart of right spermatic cord of length 2.5cm. seeing handing out with a regular ends. The scrotal sac was missing in front and the part remaining irregular margins devoid of blood. No other external mark of injury of violence seen on the body.

8. The opinion on the cause of death was kept pending as the report of viscera was yet awaited; the doctor had opined that injuries No. 1 and 2 were post mortem in nature and caused by a sharp object. Time since death was opined about 36 hours i.e. relating back to 1.00 to 2.00 PM on the intervening night of 13-14.7.1995. The dead body was thereafter handed over to Shahabuddin co-appellant vide receipt Ex.PW-17/B believing it to be the dead body of his son Mehboob.

9. On 15.5.1995 SI Kuldeep Singh PW-18 who had been entrusted with the investigation of this case by PW-12 visited Mithapur, District Meerut in connection with the present case as co-appellant Shahbuddin has misled them into believing that this murder could have been committed by one Ram Pal Singh; enquiry, however, did not reveal any role of Rampal Singh.

10. On 17.7.1995 PW-18 visited the premises i.e. B- 3/91, Sector-6, Rohini where he met Tilak Raj PW-6 who was in search of his cousin Dev Raj @ Dabbu who was reported missing since 13.7.1995. Dev Raj @ Dabbu used to work in the dhaba of PW-6. They proceeded to the place of Shahabuddin who on inquiry stated that he was fed up with the whole matter and would like to disclose the real truth; at this stage Shahabuddin disclosed that his son Mehboob was alive and the dead body which had been recovered from the barber shop was not of Mehboob but of Dev Raj @ Dabbu. PW- 18 recorded the disclosure statement of Shahabuddin Ex. PW- 6/E and arrested him vide memo Ex.PW-18/A. Shahabuddin disclosed that his son could be apprehended from the Delhi Railway Station; from Nizamuddin Railway Station at platform No. 1 appellant Mehboob was apprehended and interrogated. His disclosure statement Ex.PW-18/B was recorded. He disclosed therein that he had hidden the head and penis of deceased Dev Raj @ Dabbu in the bushes in Sector-6, Rohini and he could get the same recovered as also the Ustra which had been used by him in the commission of the crime. He further disclosed that the clothes worn by him as also the pant of Dev Raj @ Dabbu which he had concealed in his sisters house could also be recovered by him.

11. On the same day i.e. on 17.7.1995 appellant Mehboob led the police party comprising of PW-18, H.C. Raj Kumar, Const.Katar Singh and Tilak Raj, PW-6, to Sector-6, Rohini where they were also joined by Daya Ram PW-4 and Tilak Ram PW-5. From the bushes near Shiva Road at Sector-6 Rohini Mehboob got a white-coloured plastic bag recovered, containing a male head and a penis; a cloth was

tied around the neck of the head and the penis was wrapped in an underwear and a baniyan. On seeing the head PW-4 and PW- 5 who were cousin brothers of Dev Raj @ Dabbu identified the same to be that of their missing cousin Dev Raj @ Dabbu. The said articles were taken into possession vide memo Ex.PW-4/D.

12. On 18.7.1995 investigation of this case was handed over to Inspector S.S. Ramela PW-20. On 19.7.1995 PW-20, PW-18, Moti Ram PW-3 were led by the appellant Mehboob to Brahampur Mohalla Khattonwali in Meerut where he pointed out the house of his sister and from inside the house he got a blood-stained pant and shirt recovered which were kept below a diwan in the room of the house; the grey coloured pant contained an Ustra without a blade which was taken into possession vide memo Ex.PW-3/B; the sketch of the Ustra Ex.PW-3/A was prepared; the blood stained shirt and the pant were also taken into possession.

13. On 20.7.1995 PW-20 visited the office of the ADM Meerut and under his order Ex.PW-19/A the Tehsildar Manish Kumar Sharma PW-10 joined by Raja Ram Verma PW-2 and SI Layak Singh Yadav PW-21 member of the U.P.Police, reached the grave yard of Village Meethapur, Meerut. At the instance of accused Shahabuddin a grave was dug and from there a dead body was taken out by Mangal Singh PW-22; the body was wrapped in a white cloth and the same was seized vide memo Ex. PW-4/C. The dead body was identified at that time by PW-4 and PW-5 as that of their deceased brother Dev Raj @ Dabbu.

14. On 21.7.1995 the dead body along with the severed head and the severed male penis were again taken to the doctor PW-7 for his opinion who did not think it fit to conduct a second post mortem on the said dead body; he opined that the head and the penis belong to the same dead body as the level of the cut of the dismembered parts i.e. the head and the penis matched and corresponded in manner and level; the cause of death was again kept pending as the report of the viscera was yet awaited. This second report is Ex.PW-7/B.

15. On 24.8.1995 PW-7 examined the weapon of offence i.e. a razor with a metallic blade and plastic handle sent to him by ASI Gian Singh PW-17; on examination it was opined that dismemberment of head and the external genitalia of the deceased; both post mortem injuries could have been caused by this sharp weapon. This report is Ex.PW- 7/C.

16. The trial Judge vide its impugned judgment had convicted Mehboob for the murder of Dev Raj @ Dabbu; he had also been convicted along with his father Shahabuddin for having caused disappearance of the evidence of the offence by concealing the dead body of Dev Raj @ Dabbu and of having given the impression that the dead body was that of Mehboob.

17. On behalf of the appellant Mehboob, it has been argued that the testimony of PW-6 cannot be relied upon as there are material improvements made by him in Court qua his first version recorded u/s 161 Cr.P.C. Ex.PW-6/A, thus belying the last-seen theory. It was urged that the razor (ustra) had been tampered with

inasmuch as the recovery memo Ex.PW-3/B records that there is no blade in the razor but the razor sent to the doctor who conducted the post-mortem had a blade inserted inside the razor. Attention has also been drawn to the post-mortem report Ex.PW-7/A which had opined that injury No. 1 and 2 are post-mortem in nature; it is argued that the opinion on the cause of death was yet awaited and in the absence of which it cannot conclusively be said that the death of Dev Raj was homicidal. It was urged that while examining appellant Mehboob u/s 313 Cr.P.C., the evidence pertaining to last seen with the deceased was not put to Mehboob and hence the same has to be excluded while considering the incriminating evidence against Mehboob. It has lastly been argued that at best the offence u/s 201 of the IPC is made out for the appellant having disguised the dead body of Dev Raj @ Dabbu to make it look as if it was his own; he cannot however be connected with the murder of Dev Raj @ Dabbu. There is no serious challenge to the conviction of co-accused Shahabuddin.

18. We have perused the record; appreciated the evidence and taken note of the arguments advanced by the learned defence counsel. We are of the unhesitating opinion that the judgment of the trial Court call for no interference.

19. Tilak Raj PW-6 has deposed on the circumstance of having last seen the accused Mehboob in the company of Dev Raj @ Dabbu. He has on oath deposed that he is running a dhaba and deceased Dev Raj @ Dabbu used to work with him; he was his cousin. Accused Mehboob used to come to his hotel for eating food; Mehboob was working in the shop of Anwar, a barber and he used to sleep in the shop at night. On the 13th day about three years ago (in the year 1995) at 11.00 PM Mehboob had come to his hotel for taking food and thereafter he had taken Dev Raj @ Dabbu to his shop to see a picture; Dev Raj @ Dabbu did not return back at night. Dev Raj @ Dabbu while going with Mehboob had not taken food and stated that he would take his meal on returning after seeing the picture. On the following morning he went to the shop of Mehboob where he saw a dead body lying, which he identified as that of Mehboob as it was wearing the same clothes as Mehboob was wearing when he had come to his shop on the previous day for eating food. A pair of chappals belonging to his cousin Dev Raj @ Dabbu were also found lying there. PW-6 has further deposed that his cousin Dev Raj @ Dabbu was reported missing from 13th night and he was not traceable right up to 17.7.1995 despite his best efforts; on 17.7.1995 he met some police official who told him that Mehboob was alive and he could be arrested from the Nizamuddin Railway Station.

20. PW-6 was subjected to a lengthy cross-examination and he was confronted with his version Ex.PW-6/A which he had given to the police i.e. his statement recorded u/s 161 Cr.P.C. In his cross-examination, it has come on record that in Ex.PW-6/A there was no mention that Mehboob had visited his hotel at 11.00 PM on the night of 13-14.7.1995 and after taking food he had taken Dev Raj @ Dabbu to his shop to see a picture and that Dev Raj @ Dabbu did not return at night from the shop of Mehboob.

21. From this version, it is clear that this part of the testimony of PW-6 on oath in Court is an improvement qua his first version before Investigating Officer and has to be ignored. PW-6 has categorically on oath stated that Dev Raj @ Dabbu while going with Mehboob had not taken his food and had stated that he would take his meal after seeing the picture. This part of his statement has not been the subject matter of any cross-examination, and thus must be deemed to be accepted. Placing reliance upon this version, it has been established that Dev Raj @ Dabbu had gone with Mehboob on 13.7.1995 without taking his food and had stated that he would take his meal on his return after seeing the picture; thereby proving that both Dev Raj @ Dabbu and Mehboob had left together on the night of 13.7.1995.

22. In a judgment reported in Bal Kishan Vs. State and Another, , it has been held by this Court that if there is a failure to cross-examine a witness in respect of a material assertion, it is to be presumed that that assertion stands admitted.

23. Version of SI Kuldeep Singh PW-18 is also relevant in this context. He has deposed that on 17.7.1995 he had joined investigation and had gone to B-3/91, Sector-6, Rohini where he met Tilak Raj; he further deposed that he had recorded the statements of Tilak Raj and Const.Kattar Singh; thus apart from the statement Ex.PW-6/A recorded on 14.7.1995 there was yet another statement recorded by the Investigating Officer of PW-6 Tilak Raj which was on 17.7.1995 and which had not been confronted to PW-6; be that as it may; even while ignoring this submission of the learned Counsel for the State; the unconfronted deposition of PW-6 on oath is by itself sufficient to establish that accused Mehboob and the deceased Dev Raj were last seen by PW-6 on the intervening night of 13-14.7.1995 when Mehboob had had his dinner but Dev Raj was yet to have it; they had left together for seeing a movie.

24. Sunder PW-8 has also on oath testified that Mehboob was working in the barber shop of Anwar; Dev Raj @ Dabbu used to work in the hotel of Tilak Raj and Dev Raj sometimes used to see picture at the shop of Anwar.

25. Mohd. Anwar PW-16 was the owner of the barber shop where Mehboob used to work. He had deposed that both his employees Mehboob and Fareed used to sleep in the shop after the days work; Fareed had gone to his village on 10.5.1995. On 13.7.1995 at about 10.00-10.30 PM he had left the shop after leaving Mehboob there. On the next morning i.e. on 14.7.1995 at about 9.00-9.15 PM he noted that one of the two shutters of his shop was half open; on opening the shop he saw a dead body lying on the ground covered with a cloth; on removing the cloth he saw that the dead body was headless and its male organ had also been severed. The police was informed. The dead body was wearing a chhalla and the purse in the pant pocket contained three passport size photographs of Mehboob; the dead body was also wearing the same clothes which Mehboob was wearing on 13.7.1995. On this basis PW-16 had identified this dead body as that of Mehboob.

26. This version of PW-16 had led the investigation into motion. Investigating Agency believing that the dead body recovered from the barber shop was that of Mehboob, the same was handed over to his father Shahabuddin who had also reached the spot. The post mortem Ex.PW-7/A had opined that the external injury No. 1 and 2 i.e. the severance of the head and severance of the male organ were both post mortem injuries but the cause of death had been kept pending.

27. On 17.7.1995 Shahabuddin had made a disclosure statement in the presence of PW-18 SI Kuldeep Singh. Tilak Raj PW-6 was also present. Shahabuddin had disclosed that his son Mehboob was alive but in conspiracy with him he had identified the dead body as that of his son Mehboob which was actually of Dev Raj @ Dabbu. On pointing out of Shahabuddin accused Mehboob had thereafter been arrested.

28. On the same day i.e. 17.7.1995, PW-6 along with police party, joined by PW-4 and PW-5, both cousins of Dev Raj @ Dabbu, led by Mehboob reached Sector-7, Ambedkar Park, from where near the bushes he retrieved a white bag containing a head and a penis. On seeing the head, PW-4 and PW-5, recognized this head as that of their cousin Dev Raj @ Dabbu. This recovery memo Ex.PW-4/B had been attested by PW-4 and PW-5 and both the said witnesses besides the police officials, PW-17 and PW-18, have corroborated one another on oath in Court in this regard.

29. The disclosure statement of Shahabuddin Ex.PW- 6/C had further led to the retrieval of the dead body of Dev Raj @ Dabbu which he had buried in the jungles of Meethapur; on 20.7.1995 police party headed by PW-20 had reached the graveyard of village Meethapur, Meerut where in the presence of PW-20, PW-10, PW-21, PW-4 and PW-5 the dead body was retrieved from the graveyard by PW-22; vide memo Ex.PW-4/C. Ex.PW-4/C has been attested by PW-4, PW-5, cousins of the deceased Dev Raj as also by PW-21, a member of the U.P.Police, PW-10, the Tehsildar and all have corroborated one another in their testimony on oath in Court. This dead body was without a head and minus the male organ; dead body was identified by PW-4 and PW-5 as that of their deceased cousin Dev Raj @ Dabbu.

30. On 21.7.1995 PW-7 had vide his report Ex.PW-7/B opined that this head and penis belong to the same dead body which had been the subject matter of his post mortem.

31. Indeed, the seizure memo Ex.PW-3/B and the sketch Ex.PW-3/A of the razor (ustra) shows the same without any blade and the testimony of the doctor who conducted the post-mortem clearly shows that the razor sent to him for opinion had a blade inside. It is apparent that the overzealous investigating officer has tampered with evidence and hence we do not rely upon said recovery.

32. The version of the prosecution, however, does not suffer if evidence pertaining to the razor is discarded, as admittedly, the injuries which had been

caused by virtue of this weapon i.e. the severance of the head and the penis were both post mortem injuries and were not the cause of death of the deceased.

33. The defence counsel has pointed out that the prosecution has failed to prove that the death was homicidal as the doctor had not given any conclusive opinion on the cause of death. It is not the defence that Dev Raj @ Dabbu had died a natural death or committed suicide; he had obviously been killed by some person; the question to be determined by this Court is as to who this person was. In this context, relevant it would be to state that apart from the aforementioned evidence proved, the blood stained gadda and dari which had been seized from the spot on which the dead body was lying also detected blood group `B which was the blood group of the deceased and is evident from the CFSL report Ex.PW-20/D; this piece of evidence establishes that Dev Raj @ Dabbu had been killed on this gadda and dari which was the bedding of Mehboob lying in the shop where he used to sleep.

34. On the question of motive, it can to some extent be gathered from the version of PW-18. On 15.7.1995, PW-18 had gone to Meerut to make enquiry about Ram Pal Singh as the investigation had been misled by Shahabuddin that Ram Pal could be the culprit; this enquiry had revealed that in the year 1995 Kuldeep son of Ram Pal had been murdered by Mehboob and Mehboob was facing trial in Meerut in this connection. This could be probablized as the reason why Shahabuddin had misdirected the investigation towards Ram Pal. The dead body was also disguised by Mehboob to look like his own body; it was wearing the apparel of Mehboob; and the wallet in its pant pocket had his photographs; clearly with an intention to mislead that he i.e. Mehboob had died; he had wanted to feign his death; possibly to escape the legal consequences of the murder case pending against him. The submission that motive to a large extent is established, thus, carries force.

35. It is no doubt true that while examining Mehboob u/s 313 Cr.P.C., the incriminating evidence pertaining to Mehboob being last seen in the company of the deceased has not been put to Mehboob, but the question arises whether on said account the said evidence of last seen has to be ignored. We note that PW-6 who claims to have last seen the deceased and Mehboob leave his dhaba at 11:00 PM was cross examined and his testimony on said point has not even been challenged. The impugned decision shows that this point was not even urged before the learned Trial Judge. In the decision reported as Ishwar Singh Vs. State of U.P., . it was held that where no prejudice is shown in the defence and the point is urged for the first time in appeal pertaining to a relevant circumstance not put to the accused, the same would be an irregularity and the incriminating circumstance can be considered while evaluating the evidence.

36. Let us now examine the cumulative effect of the evidence gathered and proved by the prosecution.

37. Prosecution has been able to establish that on the intervening night of

13-14.7.1995 accused Mehboob and the deceased were last seen in the company of one another and they had gone to the barber shop of Mehboob to see a picture where Mehboob used to sleep. On the following day a headless dead body minus its male organ was found lying; the same was identified as that of Mehboob as it was wearing the apparel as that worn by Mehboob on the previous night; later on it was revealed that the dead body was of Dev Raj @ Dabbu and not of Mehboob. Mehboob had with a malafide intent put his own clothes on the dead body of Dev Raj @ Dabbu giving the impression that it was his dead body; thereafter Mehboob had disappeared from the scene. He was arrested only on 17.7.1995 at the pointing out of his father after he i.e. Shahabuddin had blurted out the truth and revealed that his son Mehboob was still alive. On the same day at the instance of Mehboob a male head and a penis had been recovered. This head had been identified by the relations of Dev Raj @ Dabbu as that of their cousin brother. Three days thereafter i.e. on 20.7.1995 Shahabuddin had got the headless dead body of Dev Raj @ Dabbu retrieved from the graveyard at Meethapur, Meerut where he had buried it. The post mortem doctor had opined that the head and the penis which had been sent to him along with the headless dead body for the second time matched with one another and this head and penis belong to the same body thereby establishing that Dev Raj @ Dabbu had been killed at the `Prince Hair Dresser; where the dead body has been found. There is no evidence of any third party entering this shop in this intervening period from 11.00 PM up to 9.15 AM i.e. the following morning when Mohd. Anwar saw a dead body lying in his shop; there is no explanation from Mehboob as to how and in what manner Dev Raj had died; post mortem report had also opined the time of death to be between 1.00-2.00 AM in the intervening night of 13- 14.7.1995; Mehboob was also missing; motive can also be gauged.

38. All these factors cumulatively establish that Dev Raj @ Dabbu was murdered by none else than the appellant Mehboob; the fingers of guilt clearly point towards him. The conspiracy of the father and son i.e. Shahabuddin and Mehboob to destroy the evidence of the death of Dev Raj by giving an impression that the person who had died was Mehboob has also been well established.

39. The judgment of trial Court suffers from no infirmity; both the appeals are without any merit; they are dismissed. Accused are on bail. Their surety bonds and bail bonds are cancelled. They are directed to surrender themselves and serve the remaining sentence.