

(1996) 11 DEL CK 0033
In the Delhi High Court
Case No : Criminal Appeal No. 22 of 1994

Om Parkash

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (1996) 64 DLT 689 : (1996) 39 DRJ 573

Hon'ble Judges : Kripa Shankar Gupta, J; Arun Kumar, J

Bench : Division Bench

Advocate : Rajeev Awasthi and P.K. Behl, for the Appellant;

Judgement

Arun Kumar, J.

(1) This appeal is directed against the judgment of a learned Additional Sessions Judge, Delhi dated 29th September, 1993. The appellant was charged u/s 302 Indian Penal Code for the murder of his wife. He was convicted and sentenced to undergo imprisonment for life. The appellant has filed the present appeal against the said judgment.

(2) We may first note certain facts which are not in dispute in this case:-

(i) Smt. Shrishd Devi, deceased was the wife of the appellant. The appellant had returned to India from Burma along with his family sometime in the year 1965.

(ii) The appellant has three sons and one daughter. One of the sons separated from the family after his marriage. The other two sons and the daughter are all grown-up and lived in the family house at 19B-1/B, Janakpuri, New Delhi with their mother Smt. Shrishti Devi. (iii) The appellant had left the family about 7/8 years prior to the date of incident and had started residing in a Gurudwara and he was working in the Gurudwara as a sewadar. (iv) It is also in evidence that the appellant left the family because there were frequent quarrels between him and his wife as he was not doing anything. The material on record shows that there was a considerable age difference between the appellant and his wife. It

was around 23/24 years.

(3) The present is a case where there is no ocular witness nor there is much of circumstantial evidence against the appellant. The only evidence against the appellant is said to be that of last seen together, besides alleged recovery of the weapon of offence at the instance of the appellant. Shri Rajiv Awasthy, advocate appearing on behalf of the appellant contended that both these pieces of evidence against the appellant are very weak and demonstrably insufficient to convict the appellant for the offence of murder of his wife, Smt. Shrishti Devi.

(4) The incident is of 11th October, 1990 at about 5.30 P.M. at the residential house of Smt. Shrishti Devi, wife of the appellant. It is alleged that the appellant who was at that time residing separately in a Gurudwara went to his house at about 3.30/3.45 P.M. and with the help of a kitchen knife stabbed his wife Smt. Shrishti Devi who was lying on a bed/diwan and was alone in the house at that time. On receipt of Dd no.23-A that a woman had been murdered, S.I. Joginder Pal Singh along with Constable Satya Narain proceeded to the house where the incident had taken place. The Sho of the area was also informed through wireless. On reaching the spot Si Joginder Pal Singh came to know that the injured had been removed to the Ddu hospital by a Pcr Van. The Sub Inspector found blood stained bed sheet on the diwan. There was blood on the floor. The Sub Inspector proceeded to the Ddu hospital leaving a constable behind at the scene of occurrence. At the hospital he obtained the Mlc of the injured. The Mlc Ex. Public Witness -19/A/Ex. Public Witness -22/A shows that the patient was brought to the hospital by Asi Mahinder Singh at 6.00 P.M. on 11th October, 1990. The patient was not able to speak, Therefore, the alleged history of the case could not noted on the MLC. As per the death report Ex Public Witness -21/A, the patient was declared dead at 10.15 P.M. The patient had a stab injury on her neck but she developed cardiac problem and could not be revived.

(5) The learned counsel for the appellant has drawn our attention to the statements of five witnesses who alone are relevant for the purpose of the present appeal according to him. Besides this he has taken us to the statement of Dr. L.T. Ramani, Public Witness -25 who had conducted the post mortem on the body of the deceased. Our attention has also been drawn to the Cfsi report particularly the serological report.

(6) Public Witness -16 and Public Witness -17 are the only two witnesses regarding the evidence of last scene. They are both neighbours of the deceased. Bhagwati Public Witness -16 stated that on 11th October, 1990, i.e., the day of the incident, at about 3.30/3.45 P.M. she was standing outside her house and she saw the accused going towards his house. She further stated that she had not seen the accused entering his house. She only saw him going towards his house. She admitted in the cross-examination that she did not see the accused knocking at the door of his house or entering his house. She also admitted that she did not hear any voices coming from the house of the deceased. Ram Lal, Public Witness -17 stated that at about 3.45 P.M. on the date of the incident he

was sitting on a cot outside his house. He saw the accused knocking at the door of his house with great force and was asking for the door to be opened. He went on to say in examination-in-chief that the door was not opened in his presence as he had in the meanwhile gone inside his house. He further stated that he had seen the accused for the first time on that day. He admitted in cross-examination that he did not see the accused going inside the house. He also stated in the cross-examination that he took the accused for a beggar. The choga (gown) which the appellant was alleged to be wearing at the time of the incident and which was also alleged to be blood stained was shown to this witness during cross-examination. The witness failed to identify the same. Both these witnesses had been declared hostile at the request of the Additional Public Prosecutor and were cross-examined by him. However, nothing could be brought out in their cross-examination.

(7) Shushma, Public Witness -5 is the daughter of the appellant while Pradeep Kumar PW-18 is the son of the appellant. So far as testimony of these witnesses is concerned, it does not advance the case of the prosecution on the aspect of last seen because whatever they have stated in relation to this aspect is totally hearsay and, Therefore, cannot be taken into consideration. Santosh Kumar Soni, Public Witness -10 is the fifth witness whose testimony was brought to our notice by the learned counsel for the appellant. He is the brother of the deceased. He admitted that since the appellant was not doing any job, differences had arisen between the appellant and his wife who was the sister of this witness. He also admitted that appellant had left his sister and was living separately in a Gurudwara for last about 7/8 years. He learnt of the death of her sister on 10th October, 1990 i.e. day after the incident. He only stated that others had told him that Om Parkash the appellant had murdered his sister. The testimony of this witness does not have any bearing on the point in issue.

(8) So far as the statement of Dr. L.T. Ramani, Public Witness -25, is concerned, he is the doctor who conducted the post mortem on the body of the deceased. As per his opinion, the injury on the neck of the deceased was ante-mortem and was caused by some sharp-edged weapon and was sufficient to cause death in the ordinary course of nature. Death was due to hemorrhagic shock consequent to injury to the neck vessels. He proved his report as Ex. Public Witness -25/A. The appellant examined Harvinder Pal Singh, DW-1 for purposes of a defense of alibi. However, this defense was never pursued and, Therefore, the evidence of the said witness is not necessary even to be noted.

(9) From the above oral evidence it cannot be said that the fact of last seen together is established. The witnesses have fallen short of even saying that they saw the appellant entering the house of the victim of the crime. Neither of the two witnesses i.e. Public Witness -16 and Public Witness -17 say that they saw the accused entering the house. Thus it cannot be said that the accused was last seen with the victim.

(10) About the alleged recovery of the weapon of offence, the learned counsel for

the appellant has submitted two things. First he submits that the personal search of the appellant vide memo Ex. Public Witness -18/H showed he had in his possession one small knife. The argument proceeds that the appellant had taken to Sikhism and was working as a sewadar in Gurudwara. The small knife is the kirpan which he used to carry as a Sikh. On this basis it is submitted that the appellant did not have to pick up a kitchen knife to commit the crime. Secondly, it is submitted that the alleged disclosure statement of the appellant Ex. Public Witness -18/J and alleged recovery memo regarding recovery of the knife Ex. Public Witness -18/L do not have any independent witness supporting the same. The disclosure memo is witnessed only by the police officials and Pradeep Kumar son of the appellant who had appeared as a prosecution witness to support the prosecution case against the appellant, his own father. Similarly recovery memo is witnessed only by the police officials and Pradeep Kumar, the son of the appellant. The recovery memo is not even signed by the appellant. Janakpuri is a busy area and non-association of any public witness casts a doubt on the prosecution case about the recovery of the alleged knife at the instance of the appellant. The doubt gets stronger in the background of the fact that the appellant is shown to be already possessing a knife as pointed out hereinbefore. In the peculiar facts of the case we have strong doubts about the alleged recovery of the weapon of offence at the instance of the appellant.

(11) Another important feature of the present case is that the serological report creates total confusion about the blood group of the deceased. On the record there is nothing to show that the appellant had any injury on his person or he bled at the time of the incident. There is no Mlc relating to the appellant. This goes to show that the appellant's blood could not be there on any of the pieces of evidence which were sent for serological examination. Human blood as per the report Ex.PX was detected on the bed sheet, handkerchief, gadda (mattress), saree, blood stained earth, pair of chappals, kurta, chhuri (knife) and petticoat. As per the evidence the blood on these items had to be that of the deceased alone. However, as per the serological report, on some of the items the blood group of the blood found thereon was of group "A" while on other items (gadda, saree and pair of chappals) it was of group "B". On the petticoat, the blood group shown is that of "AB" group. This difference in blood group has remained unexplained. This casts a serious doubt on the prosecution case.

(12) The learned counsel for the appellant emphasised the fact that there was nothing found at the spot which could connect the appellant with the crime or which could establish the presence of the appellant on the scene of the crime. If he entered the house at about 3.30 or 3.45 P.M. as per the alleged eye witnesses Public Witness -16 and Public Witness -17 and remained there till about 5.30 P.M., i.e., the time of the incident, surely there would be some items in the house having his finger prints. Lifting of finger prints has not figured at all. Neither party has made any reference to this. According to the learned counsel for the appellant this supports the plea that the appellant has been falsely implicated

and that he was not at all present at the spot at the time of the incident.

(13) We would also like to note here that there is total absence of any motive for the crime in the present case. The prosecution has not even alleged nor led any evidence regarding motive of the crime. The accused was admittedly living separately from his family for the last seven/eight years from the date of incident. Seven/eight years is a period long enough to let ill feelings, if any, between the couple to pacify. What could be the sudden provocation for the appellant to commit the crime on that fateful day has remained unexplained.

(14) The knife, i.e., the alleged weapon of offence was not shown to the doctor who appeared as Public Witness -25 (Dr. L.T.Ramani) for his opinion that the injury in question could have been caused by that knife. This means that the weapon of offence was not got connected with the crime.

(15) We have already referred to the entire relevant material against the appellant which has been brought to our notice by the learned counsel appearing for both the parties. The oral evidence of Public Witness -16 and Public Witness -17 has already been referred to and in our view is not sufficient to establish that the appellant was last seen together with the victim of the crime in the present case. At best, as per their evidence the appellant passed-by the house. He could have gone somewhere else even if that statement of the witnesses was true. Unless there is clear, clinching and reliable evidence of last seen together with the victim, the appellant cannot be convicted. In the present case there is no evidence of last seen together at all. The other incriminating evidence against the appellant i.e., the alleged recovery of weapon-of offence at his incidence has already been discussed. We have expressed our doubts about the alleged recovery. Besides this we have pointed out other flaws in the prosecution case. All this leads to the only conclusion that the conviction of the appellant u/s 302 Indian Penal Code for the murder of his wife Smt. Shrishti Devi cannot be sustained. This appeal is accepted and the impugned judgment and order of the learned Additional Sessions Judge convicting and sentencing the appellant u/s 302 Indian Penal Code for the murder of Smt. Shrishti Devi is set aside. The appellant is ordered to be set at liberty forthwith unless required in connection with any other case.