
(2013) 07 DEL CK 0209
In the Delhi High Court
Case No : Criminal Appeal 505 of 2013

Pankaj @ Pintu

APPELLANT

Vs

State (Govt. of NCT)

RESPONDENT

Date of Decision : 10-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313, 428
Evidence Act, 1872 — Section 114(g), 8
Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 3 JCC 1849

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : M.L. Yadav, for the Appellant; Sunil Sharma, Additional Public Prosecutor, for the Respondent

Judgement

Indermeet Kaur, J.—On 16.09.2010, DD entry No. 44 (Ex. PW-16/A) was recorded in the Police Post, P.S. Punjabi Bagh to the effect that a dead body of a person was lying at F-303, Madipur, JJ. Colony, Delhi. This DD was marked to PW-4 SI Hari Kishan who along with PW-14 Constable Jitender reached the spot. The door of the room on the first floor was ajar. A dead body aged 23-24 years was lying on the floor inside the room on the first floor. A black ligature mark on the neck of the person was noted. The name of the deceased was revealed as Ajeet Kumar Dass. Inquest proceedings u/s 174 of the Cr.P.C. were ordered. The dead body was sent to the mortuary at Sanjay Gandhi Hospital through PW-13 Constable Tribhuvan Singh. Crime team was summoned. PW-18 ASI Azad Singh inspected the spot and prepared the report Ex. PW-18/A. Photographs were taken, negatives of which were proved as Ex. PW-15/A to Ex. PW-15/A15. From the spot a brown blanket upon which the dead body was lying was taken into possession vide memo Ex. PW-4/A. Family members of the deceased were informed.

2. On 18.09.2010, PW-9 Raj Kumar Dass, father of the deceased, identified the dead body of his son at the mortuary of Sanjay Gandhi hospital. The post

mortem was conducted on the same day i.e. on 18.09.2010 by PW-22 Dr. Manoj Dhingra along with PW-6 Dr. J.V. Kiran. The post mortem report has been proved Ex. PW-22/A. As per the most mortem report, following external injuries were noted upon the victim:-

(1) Ligature mark reddish brown paschmetised, extending from 9 cm below left ear lobe on left front of neck across front and right side of neck upto midline back of neck 10 cm below external occipital protuberance, of size 22 cm long and width varying from 0.6 cm to 1.0 cm. The ligature mark is 8.5 cm below chin and 9 cm below right ear lobe.

(2) Contusion bluish black 1 cm x 1 cm on right side of forehead 0.5 cm above middle of right eyebrow.

(3) Contusion bluish block 1 cm x 1 cm on left side of face 1.5 cm below outer angle of left eye.

3. Statement of PW-7 Nirbhay Kumar was recorded. He disclosed that he along with Ajeet (deceased), Pankaj @ Pintoo (accused), Rahul, Karun and Vinod were residing as a tenant in a room at F-303, JJ Colony, Madipur, Delhi. On the fateful day he was at home as he had suffered an eye injury; in the evening deceased Ajeet under the influence of liquor came along with the accused Pintoo. Ajeet tore the pocket of the shirt of Pintoo. At 10:00 PM they all went to the roof to sleep. On the following day when they came down Ajeet was found lying on the floor. All other persons except PW-7 and Rahul, after having their breakfast left for work. PW-7 asked Rahul to wake up Ajeet but Ajeet did not respond; body of Ajeet was noted to have become cold and a black spot was also noted on his neck. Rahul then telephoned Pintoo @ Pankaj who came to the house. They then decided to inform the house owner who was not present. House owner PW-1 Laxman Dass was accordingly informed at about 6-6:15 PM; so also the landlady, his wife PW-3 Kamla. PW-7 along with Pintoo also informed PW-2 Bajrang Lal, pradhan of the colony about the incident.

4. It is not in dispute that up to this time, accused Pintoo @ Pankaj was amongst the informers about the death of the deceased. Pursuant thereto information was also sent to the Police Station and as noted supra the investigating team comprising of PW-21 SI Roshan Lal and PW-4 had reached the spot. After the initial investigation (as noted supra) and the registration of the FIR, investigation was handed over to PW-5 Inspector R.D. Pandey.

5. On the basis of this evidence which primarily appears to be the statement of PW-7, the accused was arrested vide memo Ex PW-4/J. His disclosure statement Ex. PW-5/F was recorded. As per his version, Pintoo had disclosed that he strangled the deceased with a gamcha. At his pointing out, a red coloured angocha having stripes was recovered from the room (where the incident had occurred) which was lying behind certain utensils. The recovery memo Ex. PW-4/L was prepared. The subsequent opinion of the Doctor Ex. PW-22/B was obtained on this angocha and as per their version, the angocha/gamcha could have been

used for strangulation of the deceased. Cause of death was asphyxia consequent to strangulation by ligature material. A mobile phone having sim card No. 9911349384 was also seized from the accused which as per the version of the prosecution was the telephone through which the accused and PW-17 Gauri (wife of the deceased) used to have conversations.

6. On the basis of the aforementioned evidence, the accused was charge-sheeted. Charge u/s 302 of the IPC was framed against him for having caused the death of deceased Ajeet.

7. The prosecution in support of its case had examined 22 witnesses of whom the most material witness was PW-7 Nirbhay Kumar who had in fact set the investigative machinery in motion. Motive for the crime as built up by the prosecution was that the accused and the wife of the deceased were sharing an extra marital relationship and this was sought to be proved through the testimony of PW-17 (wife of the deceased) and PW-9 (father of the deceased). The next circumstance built up by the prosecution was the recovery of the angocha from the crime room which was the weapon of offence. Further case as set up by the prosecution was that the post mortem report fully corroborated this version as death was the result of asphyxia consequent to strangulation by ligature material.

8. The trial Judge had relied upon all the aforementioned circumstances and had ordered the conviction of the accused. This was vide the impugned judgment. The convict was sentenced to undergo life imprisonment and also to pay a fine of Rs. 3,000/- and in default of payment of fine to undergo RI for three months; benefit of Section 428 Cr.P.C. was awarded to him.

9. On behalf of the appellant, arguments have been addressed at length. It is pointed out that this being a case of circumstantial evidence, all the links in the chain should have been proved by the prosecution before conviction could have been ordered and in this case not only are there several gaps in the link evidence even otherwise the circumstances not having been proved; there was no evidence with the prosecution to nail the accused. The conduct of the accused in not fleeing or absconding from the scene of crime, motive not having been proved, the fact that all the other co-tenants along with the accused were on the same footing as was the accused have been ignored by the prosecution. These facts have not been weighed in the correct perspective by the trial Judge. Accused is entitled to benefit of doubt and a consequent acquittal.

10. Learned Prosecutor has opposed these submissions. His submission being that the impugned judgment in fact calls for no interference.

11. Record has been perused.

12. This was admittedly a case of circumstantial evidence. The law of circumstantial evidence is well settled. In a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should, in the

first instance, be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and should be such as to the exclude every hypothesis but the one proposed to be proved.

13. In State of U.P. Vs. Ashok Kumar Srivastava, , it was pointed out by the Hon"ble Apex Court that great care must be taken in evaluating circumstantial evidence and if the evidence relied upon is reasonably capable of two inferences the one in favour of the accused must be accepted. It was also pointed out that the circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established consistent only with the hypothesis of guilt.

14. It is on this touch stone that the evidence as collected by the prosecution has to be weighed.

15. PW-7 Nirbhay Kumar was the star witness of the prosecution. He had in fact set the investigative machinery in motion. Incident of death of the deceased was on the intervening night of 15-16.09.2010. Even as per the version of the prosecution, he was found dead in the morning of 16.09.2010 by PW-7 and Rahul Kumar. The first person to be informed was the accused Pintoo @ Pankaj. He rushed to the spot at 10:15 AM where they noted that Ajeet was dead. It is an admitted fact that PW-7 along with four other persons was a tenant of the room where the incident had occurred. It is also an admitted fact that all the aforementioned persons had gone to the roof of the room to sleep except the deceased Ajeet who was sleeping in the room below. Learned Prosecutor has drawn attention of this Court to the cross-examination of PW-7 where in one part of his cross-examination he has stated that after taking dinner he along with Karul, Vinod and Rahul went to the roof to sleep leaving Ajeet and Pintoo in the room. Submission of the Prosecutor on this count being that the deceased and Pintoo were last seen in the room together. A reading of the testimony of PW-7 in its entirety however dislodges this submission. Not only is the version of the prosecution, from the very beginning been that all the aforementioned friends were sleeping on the roof of the room except Ajeet. PW-7 in his examination-in-chief has categorically stated that except for Ajeet, all others went to the roof to sleep at about 10:00 PM and on the next date, all of them including Pintoo got up together. This version of PW-7 has remained consistent throughout his testimony on oath; version being to the effect that except for Ajeet all others were sleeping on the roof of the room. One sentence in the cross-examination picked up here and there cannot be used to dislodge the otherwise well credited version of a witness; the testimony of the witness has to be read in its entirety and as a whole. It was thus fully established that all other persons except Ajeet were sleeping on the roof of the room and he was alone in the room at night.

16. PW-7 in one part of his cross-examination has also admitted that a quarrel had taken place between Ajeet and one person whose name he does not remember but he was residing on the roof. In this context, the defence as sought

to be set up by the accused would become relevant. The defence of the accused as elucidated in the cross-examination of the witnesses of the prosecution is to the effect that the deceased had in fact had an altercation with a kabariwala who also used to reside at F-303 and he had a quarrel with Ajeet and had given him a beating. Although the name of kabariwala does not find mention in the cross-examination of the witness but PW-1 the landlord has also admitted that a kabariwala was his tenant in his house at F-303; in fact there were 30 tenants in his house. This is also the stand of the accused in his statement u/s 313 of the Cr.P.C.

17. There is also no explanation by the prosecution as to why either Rahul (who was present along with PW-7 at the spot) was not examined or for that matter any other co-tenant. Adverse inference u/s 114(g) of the Indian Evidence Act is drawn against the prosecution on this count; best evidence has been deliberately withheld.

18. The motive for the crime has been sought to be proved through PW-9 and PW-17. PW-9 in his cross-examination has admitted that his son and accused were fast friends. In fact both of them were from the same village and the village of the accused was at a distance of 7 kilometers in Banka District itself; both of them knew each other since for the last 2-3 years. PW-9 in one part of his cross-examination has deposed that his daughter-in-law Gauri (PW-17) used to talk with the accused on phone to which he objected but she stated that she being a distant relative, she had a right to talk to him. The fact that the accused was a distant relative and from the same village is not in dispute. PW-17 further stated that she met Pintoo only once when he came with her husband to their village; she has no mobile phone. The motive as sought to be set up by the prosecution has thus not been established from the aforementioned testimonies. The trial Judge has in fact noted that the motive is weak. The investigation qua the mobile phone has also not advanced the case of the prosecution in any manner. The mobile phone 9911349384 revealed that it was in the name of Sukha Ram S/o. Ram Chander; the call details were proved as Ex. PW-20/B. The connectivity between the calls alleged to have been made between the accused and PW-17 was nowhere established. This circumstance must also necessarily fail.

19. The only other circumstance relied upon by the prosecution was the recovery of the angocha. Not only is this circumstance doubtful, this Court can almost in all positively conclude that this angocha seems to have been planted upon the accused. PW-4 had first reached the spot of investigation which was around 07:15 AM. As per his version, he stayed at the spot for almost three hours. In this period of three hours, the crime team was called; 15 photographs were taken of the spot; the room was searched and blanket upon which the dead body was lying had been seized. It is extremely improbable that upto this point of time the angocha had not been seen by the investigating team or by the crime team. This angocha was purported to have been recovered on 18.09.2010 i.e. three days after the date of occurrence. This recovery had been effected from behind

certain utensils lying in the room. This recovery creates a serious doubt; it is impossible to imagine that search of the room having been conducted by the investigating agency coupled with photographs having been taken by the crime team yet the angocha could not be noted or spotted. This recovery is surely suspicious; it necessarily has to be disregarded. The opinion of the Doctor on the angocha in these circumstances is of no value.

20. This is sum total of the evidence which has been collected by the prosecution. Not only is the investigation shoddy and shabby but in fact there has been no investigation worth any credence which in fact could have led to the prosecution of the offender and thereafter a conviction.

21. The conduct of the accused is also relevant fact u/s 8 of the Indian evidence Act; that has been totally ignored; he did not flee from the scene of the crime; he was the person who had in fact informed the PCR about the incident; his role appears to be no different from the role of other persons sleeping in the house; how and in what circumstances he was nailed has not been answered by the prosecution.

22. The chain of circumstances is far from complete. Benefit of doubt is accordingly given to the accused. Giving him the benefit of doubt, the appellant is acquitted. Appeal is allowed. The appellant is in custody. He be released forthwith. A copy of this order be sent to the Jail Superintendent for compliance.