

(2009) 12 DEL CK 0189
In the Delhi High Court
Case No : Criminal A. No. 167 of 2006

Pramod

APPELLANT

Vs

The State of NCT of Delhi

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 366, 376

Citation : (2009) 12 DEL CK 0189

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

Bench : Division Bench

Advocate : B.K. Kapoor, for the Appellant; Richa Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Vide impugned judgment and order dated 02.02.2005, the appellant has been convicted for the offence punishable u/s 366, Section 376 IPC and Section 302 IPC. For the offence punishable u/s 302 IPC and Section 376 IPC, he has been sentenced to undergo imprisonment for life for each offence and for the offence punishable u/s 366 IPC he has been sentenced to undergo rigorous imprisonment for 10 years.

2. The appellant has been convicted for having raped and murdered Kumari ?R", daughter of Sudhir Kumar PW-3.

3. A perusal of the impugned judgment shows that the learned Trial Judge has relied upon four pieces of incriminating evidence against the appellant.

4. The first incriminating evidence/circumstance is the stated extra-judicial confession made by the appellant before Sudhir Kumar PW-3. The second incriminating evidence/circumstance is the MLC Ex.PW-1/A of the appellant which records that when he was examined on 05.12.2002, two injuries on his male sex organ, one being on the ?UMBLICUS" and the other near ?FREANULUM" were noted and as per the testimony of Dr. Vinay Kumar Singh PW-2, who had

examined the appellant after Dr. P.K. Dalmia PW-1 had examined him and prepared the MLC in question, the injuries were opined to be the result of forceful intercourse 4-5 days back. The third incriminating circumstance/evidence is that the half button, Ex.P-2 seized at the spot where the dead body of the young girl was recovered was opined by the FSL to be the counterpart of another half broken button on the shirt Ex.P-3, which was got recovered by the appellant from his room pursuant to his disclosure statement. The FSL report opined the two half buttons to be similar in characteristics and the counter part of each other. The fourth incriminating evidence/circumstance is that the appellant led the father and the neighbour of the girl to a hidden and a secluded spot where the body of the girl was found i.e. the appellant had knowledge of the spot where the dead body was lying and he claimed that somebody handed over the map Ex.P-4/A to him and told him that the body of the girl can be found as per the plan but failed to explain who the person was.

5. It is apparent that the fate of the appellant would centre where the aforesaid circumstances pressed into aid by the learned trial judge have been proved by satisfactory evidence.

6. It is not in dispute that the appellant is the cousin of the father of the deceased and resides in the same building in which the deceased and her parents were residing. It is also not in dispute that the landlord Raj Kishore PW-4 resides in the adjoining building. It has not been disputed before us that the deceased Kumari "R" was aged about 7 years when the unfortunate young girl was ravished and murdered and that the appellant was aged 20 years when the crime took place.

7. The process of law was set into motion, when on 02.12.2002 DD No. 13-A, Ex.PW-6/A, was recorded by the Duty Officer at PS New Ashok Nagar recording that Sudhir Kumar PW-3, the father of Kumari "R" had reported that his daughter was missing since 05.00 P.M. on 01.12.2002 and inspite of all efforts made to find her, she could not be found. Needless to state, a missing persons" complaint was registered at the police station.

8. Efforts made to trace Kumari "R" remained futile, till on 04.12.2002 the appellant lead PW-3, the father of the girl and PW-4, the landlord of the building to the bushes near Chilla Regulator and pointed out the same, informing that some person handed over to him a map Ex.PW-4/A and informed that the body could be found as per the plan. It be noted that the place where the body was found is a secluded spot away from the main road and is surrounded by thick bushes and trees. It is not visible from the road. Needless to state, the dead body of the young girl was found at the spot and information thereof was given at the police station by PW-4 as recorded in DD No. 18-A, Ex.PW-6/B on 04.12.2002.

9. Armed with a copy of the DD No. 18-A, SI Kishore Pandey PW-11, accompanied by SI Jagtar Singh (not examined) and Ct. Dilbagh (PW-8) left for

the spot. At the spot SI Kishore Pandey prepared the Tehrir Ex.PW-11/A by making an endorsement beneath DD No. 18-A and forwarded the same for FIR to be registered for the offence of rape and murder, since with reference to the injuries on the private parts of the dead body, SI Kishore Pandey formed an opinion that the young girl had been raped. At the police station the FIR was registered and since it related to the offence of murder, as per office orders issued by Delhi Police, requiring further investigation to be conducted by an officer not below the rank of an Inspector, Inspector O.P. Singh PW-12, the SHO of PS New Ashok Nagar proceeded to the spot where the spot proceedings were jointly conducted, with respect to the investigation, by SHO O.P. Singh and SI Kishore Pandey.

10. The map Ex.PW-4/A stated to have been handed over by the appellant to PW-3 was handed over by PW-3 to Inspector O.P. Singh PW-12, who recorded said seizure vide Memo Ex.PW-4/B. A chappal Ex.P-1 was seized as recorded in the Memo Ex.PW-3/C. A half broken button Ex.P-2 was recovered from the spot as recorded in the Memo Ex.PW-3/D. The appellant was interrogated at the spot by Inspector O.P. Singh PW-12 with respect to how he came in possession of the map Ex.PW-4/A. The appellant claimed that somebody has handed over the same to him. He gave no explanation as to under what circumstances and who gave the map to him. He was interrogated further, and at that stage, made a disclosure statement Ex.PW-3/B informing therein that he had committed the offence of rape and murder of his cousin and that the shirt which he was wearing at the time when he committed the offence can be got recovered by him as he had kept the same in his house. Thereafter, in the presence of PW-3 & PW-4, he led Inspector O.P. Singh to his house and produced a shirt Ex.P-3 which was seized as recorded in the Memo Ex.PW-4/C. The same had a half broken button still stitched to the shirt.

11. The appellant was arrested and on the next date i.e. on 05.12.2002 was sent to Lal Bahadur Shastri Hospital for a medical check-up where Dr.P.K. Dalmia PW-1 examined him and prepared the MLC Ex.PW-1/A, noting therein the two injuries on the male sex organ of the appellant; the injuries being as recorded by us in para 3 above. On the same day the appellant was examined at the same hospital by Dr. Vinay Kumar PW-2, who opined with reference to the injuries noted on the MLC Ex.PW-1/A, that the two injuries suggested forceful intercourse 4-5 days back. He also opined that the appellant was capable of sexual intercourse.

12. In the meanwhile, the dead body of the young girl, which was recovered on 04.12.2002, was sent to the mortuary of Lal Bahadur Shastri Hospital, where Dr. Vinay Kumar PW-2 conducted the post-mortem and prepared the post-mortem report Ex.PW-2/B recording therein the presence of ligature marks on the neck of the young girl. He opined that the cause of death was "asphyxia" due to strangulation. Various injuries on the other parts of the body suggesting resistance by the victim were noted. Pertaining to whether the young girl was

subjected to sexual intercourse, he noted the existence of injuries on the "labia majora" of the young girl.

13. The half button Ex.P-2 as also the shirt Ex.P-3 was sent for forensic examination and as per the report Ex.PX it was found that both half pieces of button were similar in respect of colour, design, number of holes, diameter, thickness, distance between the holes and diameter of holes. It was noted that the broken edges of the two pieces of button were physically fitted when placed in juxtaposition. It was opined that the afore-noted features were sufficient to form an opinion that the two pieces were of the one and the same button.

14. Conceding that the medical examination of the appellant conducted on 5.2.2005 as recorded in the MLC Ex.PW-1/A clearly established that the appellant had forceful intercourse 4-5 days back i.e. on 1.2.2005, Counsel states that the appellant being a young boy could have had sex with anyone. This is hardly a satisfactory answer because having conceded that the injury is the result of sexual intercourse, the appellant had to explain as to with whom he had a sexual intercourse. Normal sexual intercourse with a consenting partner would not have resulted in the injuries to the male sex organ of the appellant and the two injuries establish forced sex.

15. Not disputing the recovery of the half-broken piece of button Ex.P-2 at the spot, Learned Counsel questions the recovery of the shirt Ex.P-3 having thereon the other half piece of the broken button by urging that no independent witness has been associated with the recovery and hence the same is doubtful.

16. The plea afore-noted ignores that the seizure memo pertaining to the shirt Ex.P-3 is witnessed by PW-4 who is an independent person and not the relation of the victim. That apart, there is no question of the shirt Ex.P-3 being planted for the reason a half-broken button on the same proved to be the other half of the half-broken button Ex.P-1 found at the spot where the dead body was found, establishes that he who was wearing the shirt was present at the spot where the half-broken button Ex.P-1 was found and thus the police could not have planted the shirt for the reason before something can be planted, it must be in the possession of he who recovers the same.

17. The aforesaid recovery is sufficient evidence where from any reasonable person can state with confidence that it establishes the presence of the appellant at the spot where the young girl was ravished and murdered as also the fact that the button broke when the victim offered resistance.

18. Evidence establishes that the appellant led PW-3 and PW-4 to the place where the dead body was recovered. The explanation of the appellant that he learnt about the spot when somebody gave to him the plan Ex.PW-4/A is a ruse. We note that when examined u/s 313 Cr.P.C. the appellant denied having handed over the plan. But, the testimony of PW-3 and PW-4 establishes that the appellant led them to the spot where the dead body was found. Thus, there is evidence of the fact that the appellant had knowledge of the spot where the dead

body was lying. How did he gain knowledge of the spot is a fact within his special knowledge and he having not explained the same, an adverse inference needs to be drawn against the appellant.

19. Excluding the extra-judicial confession made by the appellant to PW-3, the aforesaid three pieces of evidence are sufficient where from the guilt of the appellant can be inferred and his innocence ruled out.

20. The order of conviction is legal and valid and so are the sentences imposed.

21. The appeal is dismissed.

22. The appellant is in jail. Copy of this order be sent to Superintendent, Central Jail, Tihar for being supplied to the appellant.