

(2011) 03 DEL CK 0545

In the Delhi High Court

Case No : Criminal Appeal 90 of 2011, Criminal M. (Bail) 110 of 2011 and Criminal M.A. 900 of 2011

Rahisa

APPELLANT

Vs

State of the NCT of Delhi

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 181 DLT 651 : (2011) 3 JCC 1532 : (2011) 5 RCR(Criminal) 849

Hon'ble Judges : S. Ravindra Bhat, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Charu Verma, for the Appellant; Jaideep Malik, APP, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.

Crl. A. 90/2011, Crl. M (Bail) 110/2011 & Crl. M.A. 900/2011 (under Section 482 Code of Criminal Procedure)

1. This judgment will dispose of the appeal preferred against the judgment and order of the Additional Sessions Judge (hereafter "the Trial Court") dated 29.09.2010 in SC No. 80/2008 convicting the Appellant for the offence u/s 302, IPC, and sentencing him to undergo life imprisonment.

2. The prosecution allegations are that on 27.09.2005, ASI Satish Chand (PW-13) and Constable Komal, (posted at police post IGNOU, P.S. Mehrauli) reached Khasra No. 174/2, Village Neb Sarai on receipt of information (DD No. 24) that blood was coming out from the room occupied by the tenant of Baljit Singh (PW-1). On reaching the spot, it was discovered that blood was actually coming out from under the door of a room which seemed to be locked but in fact

the lock (of which) was simply hanging. Upon opening the door, a dead body was found lying on the floor. It bore injury marks on the head and there was bleeding from the right ear. PW-13 informed SI Suresh Chand, (PW-5) about recovery of the body. PW-5 reached the spot and made inquiries which revealed that the dead body was of Raghubir, PW-1's tenant. PW-5 sent a Rukka with Constable Anil, on the basis of which FIR No. 573/05 was registered with P.S. Mehrauli. SHO C.K. Sharma (PW-19) reached the spot, inspected the scene of occurrence and collected exhibits from the spot. He seized a piece of blood stained floor in a plastic box, earth control, one blood stained blue coloured slippers, two empty glasses and half a bottle of liquor, a mosquito net with 4 bamboos, a blood stained pajama, a blood stained blanket, a jute bag, a dori and pillow lying on the cot and a blood stained kurta from the rehri outside the room.

3. The dead body was identified by the sons of the deceased, Satbir i.e (PW-11), and Udaivir (PW-12). The dead body of Raghubir was sent for post mortem to AIIMS Hospital. The post mortem was conducted on 28.09.2005 by Dr. Arvind Kumar (PW-6); the report is at Ex. PW-12/A. On 29.09.2005, PW-11 went to P.S. Mehrauli and recorded a statement to the effect that he suspected accused Rahisa (a resident of the room adjoining Raghubir's room), for the murder of his father. On 29.09.2005, PW-19 along with other police officials went to accused's residence and arrested him; the arrest memo is at Ex.PW-15/A. The accused made a disclosure statement, pointed out the spot of occurrence, and got an iron rod allegedly used for the commission of the offence recovered (Ex.PW-15/C, Ex.PW-15/D & Ex.PW-15/E). After completion of the investigation, a charge sheet was filed in the Court and the case was committed for trial to the Sessions Court. The accused was charged for committing the offence punishable u/s 302 IPC on 14.07.2006. The accused pleaded not guilty and claimed trial. The Trial Court after hearing the matter and going through the evidence held the accused guilty u/s 302 IPC.

4. The Trial Court in convicting the Appellant relied on:

- i. The last seen theory of the prosecution,
- ii. The conduct of Appellant on the night of 25.09.2005 and
- iii. The recovery of the iron rod

The Trial Court considered the last seen evidence given by PW-11 along with the evidence about the time of death of deceased. PW-11 had last seen the Appellant and the deceased on 25.09.2005 at about 8:00 PM and then again saw Appellant near the room of the deceased with an iron rod at about 12:00 AM. The dead body of the deceased was recovered on 27.09.2005 and was sent for post mortem on 28.09.2005. As per the post mortem report, time since death was about 3-4 days. The Trial Court held that if the post mortem report is read along with the statement of PW-11, then it can be safely inferred that the deceased had died sometime on 25.09.2005, the day on which PW-11 had seen the accused and deceased together at 8:00 PM and later had found accused present

near the room of the deceased at about 12:00 AM. The Trial Court, further, took into account the conduct of the accused on the night of 25.09.2005, as narrated by PW-11. The Trial Court observed that the conduct of a person is an important piece of evidence as the guilt of the person and the state of his mind is often reflected by his conduct. PW-11 had deposed that when he saw the accused near the room of the deceased, the accused was nervous and on seeing him (PW-11) he jumped over the boundary wall on the left side into another plot. Therefore it was observed that the conduct of accused was a reflection of his state of mind and hence is a supporting evidence in favour of the prosecution. The Trial Court has also relied on the recovery of the iron rod (weapon of offence) for the purpose of conviction of Appellant. It was observed that by way of accused's disclosure statement Ex.PW-15/C, an iron pipe/rod was recovered with blood stains on it Ex.PW-1/E. The blood stains on the iron rod were of blood group "A" same as that of deceased and hence it connected the iron rod to the commission of offence. It was further observed that recovery of iron rod cannot be doubted simply because there was no public witness engaged during the recovery.

5. Ms. Charu Verma, learned amicus appointed by the court to appear in the case, since the accused expressed his inability, due to financial constraints, to engage a lawyer, urged that the impugned judgment cannot be sustained. It was submitted that the Trial Court committed several errors in appreciating the prosecution, which if seen in their proper perspective, cannot lead to the Appellant's conviction. It was urged that the mainstay of the prosecution story was the testimony of PW-11, who claimed to have "last seen" the deceased in the company of the Appellant. It was submitted that the entire case being premised on circumstantial evidence, the prosecution was under a duty to prove each circumstance beyond reasonable doubt, with the further obligation to ensure that all the links in the chain were likewise proved, and also show to the court that the conclusion could point only to the hypothesis of the accused's guilt, ruling out every possibility of his innocence.

6. It was submitted that PW-11 is an untrustworthy witness, who in his earlier statement on 28.09.2005, while identifying his father, clearly stated that he did not suspect anyone for the murder. Yet, he stated a full day later that on 25.09.2005, at about 8:00 PM while on a visit to his father (with whom he and other members of the family were not in good terms, and who used to stay away from his family) he saw a quarrel between the deceased and Appellant, when they were abusing each other. He claims to have intervened and calmed his father and thereafter gone home. He informed his mother about the quarrel; she asked him to return to the deceased's premises. He reached the deceased's room at about 12:00 AM (midnight) and saw that the door was locked. He says that while entering the plot (where his father's room was located), he saw accused Rahisa coming from the side of his father's room with a rod in his hand. He says that after seeing him (PW-11), the Appellant jumped over a boundary wall and left. PW-11 observed that, the Appellant was looking nervous. As the door of the deceased's room was locked, PW-11 returned home. He says that he

inquired about his father on the next day and was told that the deceased had gone to attend some marriage. He says that on 27.09.2005, he came to know about the murder of his father from the police officials. It was submitted that this entire story was unbelievable, as it is plainly against normal human conduct. Had in fact PW-11's statement been true regarding 25.09.2005 then the first thing he would have done, on learning about his father's murder, or at least, on identifying his body, would have been to inform the police about the identity of the suspect, since there was hardly any time lag between the so called quarrel, and the discovery of death. PW-11's utter silence in that regard, and his disclosing these facts on 29.09.2005, falsifies the entire story, as it was the result of fabrication and afterthought.

7. It was submitted that Ex. PW-12/A, the post-mortem report shows that the autopsy was started at 2:55 PM on 28.09.2005. The report indicated the time of death to be 3-4 days before it was conducted. In that case, there was an irreconcilable conflict between the medical and ocular version, because the time of death indicated by the doctor was 3 days before the postmortem. However, PW-11's version showed the "last seen" part to be less than 3 days before the time indicated in the postmortem report. This, says the counsel, points to the improbability of the prosecution version.

8. The learned amicus submitted that the motive behind the commission of the offence was not proved by the prosecution. The prosecution had urged that the accused had rented a cycle rickshaw from the deceased and as he (accused) was unable to pay the rent, the deceased had scolded and abused him. As the accused felt insulted, he killed the deceased. The prosecution failed to prove this motive as the IO was unable to obtain sufficient evidence as to there being strained relations between accused and deceased for non-payment of rent. It was submitted that the IO did not record the statement of any witness in support of the allegation that the accused had in fact rented a cycle rickshaw from deceased and was having trouble paying the rent. On the contrary, submitted the learned Counsel, the deposition of PW-11 falsified the entire story, since he testified that besides the rehri used by the deceased, he did not have any other side business.

9. It was argued by the amicus that the finger prints on the two glasses and bottles, recovered from the deceased's house, were not taken. Similarly, the prosecution made no attempt to connect the blood stained kurta allegedly recovered from near the premises, with the crime. It was submitted that such recovery was highly suspect, because the location of such a kurta, in a public place, and its remaining there for more than 3 days, would have aroused suspicion. It was submitted that there are several other discrepancies and lacunae in the prosecution story, which should have led the Trial Court to acquit the Appellant. Further, no attempt was made to record the testimony of any witness, since the room rented from PW-1 by the deceased was adjacent to several other tenements. By the prosecution accounts, they were inhabited.

Nothing prevented the prosecution from recording the statements of other tenants or occupants. Their depositions would have fortified the prosecution version, if true.

10. It was next pointed out that the improbability of the Appellant's arrest pursuant to PW-11's statement is writ large on the record, because the said witness, according to the IO, is supposed to have disclosed at 7:00 AM on 29th September, 2005 about the involvement of the Appellant. It was urged that no reason for such urgency, or the unusual manner in which the statement was recorded, has been indicated. Contrary to this fact, the Appellant was in fact picked up from his house, and formally arrested later.

11. Learned Counsel submitted that the recovery of the iron rod, the so called murder weapon, cannot be said to have been established. The recovery did not involve any public witness, despite the article being allegedly seized from a public place. The second aspect to this, it was urged, was the prosecution's failure to have the article tested for finger prints.

12. It was lastly submitted that for a prosecution to successfully establish that the accused was "last seen" with the deceased, the window of time should be very narrow, and there must be credible corroborative evidence. It was submitted that invariably, in such cases, the prosecution rests its version on circumstances, which have to be proved beyond reasonable doubt. In the present case, there was nothing to corroborate or support the version of PW-11 - at best shaky if not entirely unbelievable - of the fight between the Appellant and the deceased, and the former emerging from the premises of the deceased, with the iron rod, in a suspicious manner, later. It was submitted that the said witness had not seen anything, and was introduced to make out a false case in favour of the prosecution.

13. The learned APP submitted that the judgment of the Trial Court should not be interfered with. Though the case was based on circumstantial evidence, in the present instance, the prosecution had established all the necessary elements to prove each factor, beyond reasonable doubt, and link the chain of circumstances in such manner as to unerringly point to the Appellant's guilt, and no other hypothesis. It was submitted that the recovery of the iron rod was the consequence of the accused's disclosure, and no fault could be found with it. Referring to the testimony of PW-11, it was submitted that his previous statement, was not about what he had observed when his father was alive, but to identify his dead body. In the circumstances, no fault could be found with his statement, recorded at the earliest opportunity, on 29.09.2005. There was nothing unnatural or objectionable in such course of action.

14. It was submitted that the Appellant was indeed the last person seen in the company of the deceased, as was spoken to clearly in the unshaken testimony of PW-11. The motive for the killing was his/the Appellant's insult for his inability to pay the rent due for plying the rickshaw. PW-11's testimony along with the

seizure of the murder weapon, at the Appellant's behest, was sufficient to conclusively nail his complicity and guilt for the offence.

15. The prosecution further urged that Blood group "A" was present on the blood stained pajamas, woolen blanket, pillow, dari and kurta. The iron rod too was stained with "A" group blood. It was urged by the prosecution that since the blood on the seized articles matched that of the deceased, it connected the iron rod with the commission of the offence. Unless the Appellant had special knowledge about the presence of the iron rod, he could not have, assisted in their discovery and being brought on record, as Ex.PW-15/E. It was also submitted that since the prosecution had established its initial burden, and proved the involvement of the Appellant, the onus of proving that he did not commit the crime, was upon the Appellant; he did not do so. For these reasons, the Trial Court's judgment needs to be affirmed.

16. The case of the prosecution is mostly based on the testimony of PW-11 Satbir, son of deceased. He deposed that his father (deceased) had rented a room and was staying on his own at Neb Sarai as he and his mother did not get along. He stated that on 25.09.2005, at about 8:00 PM he had gone to visit his father and on reaching there he saw a quarrel between the deceased and accused. They were abusing each other. He says that he intervened and calmed his father and took him inside the room and thereafter he (PW-11) went home. On reaching home he informed his mother about the quarrel that had taken place between the deceased and the accused. His mother asked him to go back to the deceased's premises. He reached the room of the deceased at about 12:00 AM (midnight) and saw that the door was locked. He says that when he was entering the plot where his father's room was located, he saw accused Rahisa coming from the side of his father's room and he was having a rod in his hand. He says that after seeing him (PW-11), accused jumped over a boundary wall and left. PW-11 observed that, accused was looking nervous. As the door of the deceased's room was locked, PW-11 returned home. He says that he inquired about his father on the next day and was told that the deceased had gone to attend some marriage. He says that on 27.09.2005, he came to know about the murder of his father from the police officials. He says that he later recollected the incident of 25.09.2005 and made a statement to IO. While it is true that this witness did identify the deceased's body, at the same time, he mentioned that the name of the murderer or suspected murderer was unknown. If indeed the witness had in fact witnessed a quarrel between the Appellant and the deceased, when he says he did, it would have been the most natural thing, to disclose the incident, and the furtive manner in which he spied the Appellant, moving away from the deceased's premises, to the police, on the first available instance, i.e. on 28th September, 2005. His waiting for one full day is a suspicious circumstance, which has not been accounted for.

17. The prosecution's king pin is reliance on the last seen evidence. The law on this aspect has been summarized in State of U.P. Vs. Satish, as follows:

22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses P Ws. 3 and 5, in addition to the evidence of PW - 2.

In a later judgment, i.e. Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, it was observed that:

27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case the courts should look for some corroboration.

18. The Court has to consider the gap between the time when the Appellant and deceased were last seen together and time when the deceased had died. PW-11 had last seen the Appellant and deceased on 25.09.2005 and the dead body of the deceased was recovered in the afternoon of 27.09.2005. Therefore the time of the death of deceased is of great importance. The post mortem was conducted on 28.09.2005 at about 2:55 PM. As per the report, the time since death of the deceased was about 3-4 days. Therefore according to the report, the death of the deceased had occurred either on 23.09.2005 or 24.09.2005. If the post-mortem report is to be relied upon then in that case, it seems highly improbable that PW-11 had met the deceased on 25.09.2011 and hence the last seen theory is not proved beyond reasonable doubt.

19. The prosecution had further urged that the blood group "A" was found on the blood stained pajamas, woolen blanket, pillow, dari and kurta. The iron rod was also having blood stains of "A" group. It was urged by the prosecution that since the blood on the seized articles matched that of the deceased, it connected the iron rod with the commission of the offence. However it is important to note that only the blood group "A" (deceased's blood type) was recovered from the blood stains and no where has the accused's blood been found; it was not even tested.

20. As far as the recovery of iron rod goes, it was argued by the Ld. Counsel of the accused that since no public witness was made a party to the recovery, the recovery cannot be believed. The Court is inclined to believe this argument, because the prosecution nowhere shows that the recovery was at a time, when members of the public could not be expected to be there at the spot, which was a fairly busy area.

21. The Court is of the opinion that even the motive behind the commission of the offence was not proved by the prosecution. The prosecution had urged that the accused had rented a cycle rickshaw from the deceased and as he (accused) was not able to pay the rent, the deceased had scolded him and abused him and as the Appellant felt insulted, he killed the deceased. The prosecution failed to prove the motive as the IO was not able to obtain sufficient evidence as to there being strained relations between accused and deceased for nonpayment of rent. He did not record the statement of any witness in support of the fact that accused had in fact rented a cycle rickshaw from deceased and was having trouble paying the rent.

22. It can be seen from the above discussion that the last seen evidence in this case is tenuous and cannot be sufficient to implicate the Appellant's role in the incident. There is no corroboration of PW-11's testimony; statements of even natural and potential witnesses who could have heard about the commotion or fight, was not recorded. Furthermore, the recovery of the blood stained kurta and other articles, was not linked with the Appellant. Absolutely no motive can be ascribed or attributed to the Appellant, which impelled him to kill the deceased. In a case of circumstantial evidence, the prosecution has to establish each and every circumstance, and tie each link so conclusively as to point only at the accused's guilt.

23. We are of the opinion that the Trial Court, in the impugned judgment erroneously convicted the Appellant. The appeal (Crl. A. No. 90 of 2011) has to therefore, succeed, and is accordingly allowed. The bail and surety bonds furnished by and on behalf of the Appellant are hereby discharged.