

(2003) 09 SC CK 0085

In the Supreme Court Of India

Case No : Criminal Appeal No. 974 of 2002

Rajendra Kumar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302, 392, 397, 414

Citation : (2004) 1 ACR 998 : AIR 2003 SC 3196 : (2003) AIRSCW 4554 : (2003) 2 ALD(Cri) 23 : (2003) CriLJ 4344 : (2003) 1 JT 150 Supp : (2003) 7 SCALE 381 : (2003) 10 SCC 21 : (2003) 6 Supreme 822 : (2003) 2 UJ 1509

Hon'ble Judges : N. Santosh Hedge, J;B. P. Singh, J

Bench : Division Bench

Advocate : K.S. Bhati and Aishwrya Bhati, for the Appellant; V.N. Raghupathy and Bharati Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Santosh Hegde, J.—The appellant and three other persons were charged for offences punishable under Sections 302, 392, 397, 414 and 120B IPC before the Additional Sessions Judge No. 2, Sriganganagar in S.C.No. 130 of 1995. The learned Trial Judge found the appellant herein, A-1 Kailash and A-2 Naresh guilty of all the above offences, while the said court found A-4 Indu guilty of offence punishable under Sections 120B and 414 IPC. In an appeal filed against the said judgment and conviction, before the High Court of Judicature at Rajasthan, the High Court allowed the appeal of A-2 Naresh but confirmed the conviction and sentence imposed on the other accused. In this appeal, A-3 Rajendra Kumar alone has challenged his conviction.

2. The prosecution case briefly stated is as follows :

A-1 Kailash who was married to A-4 Indu was having an illicit relationship with the deceased Vimla who was married to PW-12 Ram Nivas. It is stated after sometime the accused persons named above conspired to kill said Vimla with a view to steal her jewellery. With this intention in mind A-1 Kailash approached

PW-3 Hari Om to rent out a room in the premises owned by PW-3 which was agreed to by PW-3 and a partial advance of Rs. 100/- was paid by A-1 to PW-3, with a promise that he would either pay the balance of money required as advance or would produce the guarantee of a respectable person. Soon thereafter, when the room was taken on rent, A-1 told PW-3 that the room will also be occupied by two others, namely, A-2 and A-3. With this arrangement the possession of the said room was taken on 15.12.1994 by A-1. It is the prosecution case that on 16.12.1994 in the morning A-2 and A-3 came with their bedding to the said room which was witnessed by PW-3 and occupied the same. PW-3 further states that on 17.12.1994 he contacted A-2 and A-3 and asked them to make arrangement for the balance of the advance money or to produce surety immediately. PW-3 further states that on 18.12.1994 he saw these A-2 and A-3 bring a lady whom he later identified as deceased Vimla to the said room, subsequently when questioned A-2 and A-3 supposedly told PW-3 that the said lady was the wife of A-1. PW-3 further states that on 19.12.1994 in the evening he tried to contact A-2 and A-3 but he found the room was locked. On 20.12.1994 morning PW-3 states he peeped through the door of the room and found a dead body in the room about which he informed the police immediately. It is the further case of the prosecution that the dead body was that of Vimla wife of PW-12, who, according to PW-12 had left the house on 19th evening, wearing six gold bracelets (bangles), one ring and two gold ear rings which were missing from the body of Vimla when she was found dead. It is the prosecution case that during the course of investigation, out of the missing jewellery, 2 bangles were recovered from one Sanjay in Ghaziabad (U.P.) to whom the appellant had sold the said bangles. The recovery was at the instance of the appellant and in the presence of PWs. 17 and 18. It is based on these circumstantial evidence the High Court found the appellant and two others guilty as stated above, and it is against the said judgment of the High Court the appellant is before us in this appeal.

3. Shri K.S.Bhati, learned counsel appearing for the appellant as amicus curiae in this case has contended that the prosecution has relied on two circumstances to base a conviction on the appellant and they are (i) that this appellant was found in the company of A-2 occupying the room rented out by PW-3 where Vimla's dead body was found; (ii) certain jewellery belonging to said Vimla was allegedly recovered from the shop of one Sanjay (not examined) which according to the prosecution was sold to said Sanjay by the appellant.

4. Learned counsel contends apart from the fact that these two circumstances have not been established at all, the said circumstances even if they are found to be established cannot lead to one and the only conclusion that the appellant was a party to the crime in which Vimla lost her life. He submitted that the appellant was a resident of Sriganganagar itself and in spite of the fact that the prosecution knew that the appellant was one of the accused in the case he was not arrested for nearly 4 months and the recovery was also made after a period of 4 months, therefore, the said two circumstances cannot be held to be sufficient evidence to

involve the appellant in the crime. He also pointed out from the evidence of PW-3 that on 18.12.1994 the lady who had come to the room of the appellant, had left soon after and thus there was no evidence to show she ever came back thereafter, therefore, the theory of last seen also does not apply to the facts of this case, hence, the fact that the body was found in the room which was once allegedly occupied by the appellant would not in any manner, lead to an irresistible inference or conclusion that the appellant was a party to the murder of Vimla. He also pointed out the recovery of the gold bangles from the shop of Sanjay was only on 15.3.1995 while the dead body was recovered on 20.12.1994 and the recovered gold bangles were never sealed at the time of taking possession by the prosecuting agency, hence, no evidentiary value could be attached to said recovery.

5. Shri V.N.Raghupathy, learned counsel appearing for the respondent-State defended the judgments of the two courts below by contending that the circumstances relied on by the prosecution clearly establish the involvement of the appellant. He contended that the appellant has absolutely no explanation how he came to be in possession of the bangles belonging to the deceased nor has he explained how and in what circumstances the dead body of Vimla was found in the room occupied by him. Therefore, the learned counsel contended the finding of the two courts below does not call for any interference.

6. We have heard the learned counsel for the parties and perused the evidence. The fact that Vimla was having an illicit relationship with A-1 Kailash has practically gone unchallenged. In that background, we notice A-1 approached PW-3 on 15.12.1994 asking him to let out a room for the occupation of his two brothers and paid an advance of Rs. 100/- promising to pay the balance or to produce a respectable surety in that regard. Prosecution further alleged that on 16.12.1994, PW-3 had seen A-2 and A-3 come with their bedding and occupied the said room. PW-3 also says he had seen A-1, A-2 and A-3 together in the said room on 17.12.1994 also. PW-3 further says that on 18.12.94 around mid day A-2 and A-3 brought one lady who was later told by the accused persons to PW-3 to be the wife of Kailash A-1. Of course, PW-3 in his evidence states that on that day she went away from the room. PW-3 further stated that when he wanted to contact the accused for recovery of balance of rent on 19.12.1994 in the evening, he found the room was locked. PW-3 further says that on 20.12.94 when he went to the room he saw between the doors a dead body lying in the room and none of the accused persons were found. The accused have not been able to demolish this part of the evidence of PW-3 that A-1 did negotiate and took a room on rent from PW-3 stating that the same will be occupied by two of his brothers, A-2 and A-3 occupied that room and were seen staying in the room from 16.12.94 to 19.12.94 and the room was locked from the evening of 19.12.94 and the dead body of Vimla was found in the morning of 20.12.94. These facts which are accepted by the two courts below show that the appellant along with other accused were in the possession of the room in question from 16.12.94 to 19.12.94. The deceased Vimla had visited that room on 18.12.94

and her dead body was found in the morning of 20.12.94 in the said room. It is the prosecution case as spoken to by PW-12 that his wife Vimla had gone to the neighbour's house on the 19th December, 1994 wearing her jewellery for distribution of sweets and thereafter she did not return back. Therefore it is the case of the prosecution that on the 19.12.94 Vimla came to the room occupied by the appellant and was found dead in the morning of 20th December, 1994. Based on this evidence, we find that Vimla had visited the room occupied by the appellant on 18th December, 1994 was found dead in the same room on 20th morning, though her coming again on 19th was not seen by anybody. The fact remains that as per the evidence of PW-3 the appellant and other accused were in occupation of that room on the 19th December, 1994 but immediately after the recovery of the body none of them was traceable and no explanation whatsoever has come from any one of these accused including the appellant how and in what manner they left the room or how and in what manner the dead body of Vimla was found in that room. It has also come in evidence which is admitted that appellant had his own house in Sriganganagar. If so, appellant has not given any explanation why he came to occupy that room. Bearing in mind the fact that Vimla had visited the room in the company of appellant and A-2 on 18.12.1994, we can presume that the appellant was acquainted with her hence there was an obligation on the part of appellant to explain how her body came to be in the room because accused were in the exclusive possession of the room. In the absence of any such explanation from the appellant, we think the courts below were justified in concluding that the appellant was involved in the murder of Vimla.

7. The next circumstance relied upon by the prosecution to prove the involvement of the appellant in this murder is the recovery of bangles from the shop of Sanjay which according to the prosecution, was sold by the appellant to said Sanjay. It is the prosecution case that when the appellant was in police custody he volunteered to give information as to jewellery sold by him in Modi Nagar in Ghaziabad (U.P.) and he offered to show the shop where the jewellery in question was sold by him. From the evidence of PWs 17 and 18, it is clear that at the instance of the appellant the gold bracelets (bangles) belonging to the deceased were recovered from the shop of Sanjay as per Ex. P-41 which the appellant had sold to him. The complaint made by the learned counsel appearing for the appellant in regard to this recovery is that Sanjay the person who purchased the bangles was not examined by the prosecution and that the bangles so recovered were not sealed, therefore, no value should be attached to the prosecution case. This argument has been dealt with by the courts below who have rejected this argument for good reasons and we agree with the said finding of the courts below. The prosecution has examined PW-19 who at the request of PW-12 the husband of the deceased made those bangles and sold them to him. He states that he had put a specific number on these bangles from which he identified the bangles recovered from the shop of Sanjay as the bangles manufactured by him at the request of PW-12. PW-12 the husband has also

identified the bangles as those which belonged to his wife who on the day she went missing was wearing them. PW-2 a neighbour to whose house the deceased went to give sweets also says that on the 19th December, 1994 afternoon when the deceased came to her house she was wearing all these jewellery including the bangles which she identified in the court. In view of these consistent evidences as to the identification of the bangles, we do not think much importance can be attached to the fact that these bangles were not sealed at the time when recovery was made from the shop of Sanjay which is further corroborated by the evidence of PWs 17 and 18. Therefore, we are convinced that the prosecution has also established this circumstance of recovery of the bangles which were sold by the appellant to Sanjay.

8. From the above discussion it is clear that the prosecution has established beyond reasonable doubt that the appellant was one of the persons who was in occupation of the room rented out by PW-3. He had accompanied the deceased once to the room on 18th December, 1994. he was in occupation of the room on the 19th December, 1994, the dead body was found in the said room on 20th December, 1994, the appellant was immediately missing thereafter, the appellant has no explanation for being in occupation of a room in which the deceased was found inspite of the fact he had his own residence in Sriganganagar and at the instance of the appellant two gold bangles belonging to the deceased were recovered. Based on these circumstances in our opinion the courts below have justly found the appellant guilty of the offence charged. Therefore, this appeal fails and the same is dismissed.

9. We place on record our appreciation for the assistance rendered by Shri K.S. Bhati, learned counsel, who has appeared as an amicus curiae. We direct that he be paid a sum of Rs. 750. Ordered accordingly.