
(2014) 01 DEL CK 0244
In the Delhi High Court
Case No : Criminal A. 527 of 1999

Ramesh	Vs	APPELLANT
State (Govt. of NCT of Delhi)		RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 201 302

Citation : (2014) 01 DEL CK 0244

Hon'ble Judges : Sanjiv Khanna, J;G.P. Mittal, J

Bench : Division Bench

Advocate : Aditya V. Singh, for Mr. Avninder Singh, for the Appellant; Rajdipa Behura, APP for State, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—By the impugned judgment dated 27.02.1999, appellant Ramesh has been convicted u/s 302 of the Indian Penal Code, 1860 (IPC for short) for murder of his wife Krishna @ Radha in the intervening night of 17-18.01.1996. The appellant has been sentenced to imprisonment for life with fine of Rs. 2,000/- and in default/failure to pay fine, to undergo rigorous imprisonment for three months. Body of an unidentified woman was found in a pond at about 9:00 a.m. on 18.01.1996 by Ami Chand (PW-9). He has deposed that he had gone to his agricultural fields, situated near Bishamber Dass Ashram. There in a pool, he saw a dead body of a woman and informed the police on telephone no. 100. On the basis of his statement, rukka Ex. PW-9/A and FIR No. 37 of 1996, u/s 302/201 IPC, Police Station Trilokpuri was recorded. PW-9 has deposed that near the pond in question, one salwar, one lady's kameej (shirt), one chuni, one blouse, one frock of a child, one plastic thaili, two pieces of strings (nara), one lady's purse, one pair of plastic chappal, two pieces of leather belt without buckle, some broken bangles were recovered. A lady's purse with Rs. 10/-, a few written papers, a key and an envelope containing the photograph of the deceased and other articles were seized vide Ex PW9/B. Ami

Chand (PW-9) has, however, not stated and deposed as to presence of a girl child, aged about 1-2 years near the place, where the dead body was recovered.

2. Inspector R.P. Tyagi (PW-13) was the Investigating Officer. He has deposed that after the receipt of DD entry No. 4-A (Ex. PW-13/A), he had gone to the spot in question where dead body of a lady aged 24/25 years was found. He inspected and scanned the area and seized incriminating materials which were found at the spot. He has deposed that a baby child, aged between 11/2-2 years was found lying underneath a tree.

3. Head Constable Suraj Bhan (PW-11) conducted investigation along with Inspector R.P. Tyagi (PW-13). PW-11 has deposed about a dead body and recovery of various articles but has not deposed about the presence of the baby child.

4. The dead body of the said lady was sent for post-mortem examination vide application marked as Ex. PW-6/B. It is recorded in the said application, that the dead body had not been identified. In the application it is also recorded that the dead body was received at 10:10 p.m. on 18.01.1996. Subsequently, the dead body was identified to be that of Radha by one Ashok Kumar on 25.01.1996. This is mentioned in the death report Ex. PW-13/D.

5. The appellant Ramesh was arrested on 19.01.1996 at 2:00 am as per the personal search memo Ex. PW5/A in the presence of Ashok Kumar. The same was proved by SI Vijay Kumar (PW-5) who on 19.01.1996 was posted at Mayur Vihar, Phase-II, Delhi.

6. In the impugned judgment, the learned Additional Sessions Judge has recorded the following findings to convict the appellant Ramesh in paragraph 36. For the sake of convenience, the said paragraph is extracted below:

36. The following facts and circumstances have been proved by the prosecution beyond scintilla of doubt and are of the nature that entirely is incompatible with the innocence of the accused and leads to inescapable hypothesis which is consistent with the guilt of the accused.

(i) That the deceased and the accused developed intimacy. Though they belonged to different castes they entered into the wedlock and one child was born from the wedlock. Since this marriage was to the disliking of their parents, they both eloped to Delhi and started living in Delhi. Later they shifted to their village.

(ii) That Ashok Kumar was also living as a tenant in the neighbourhood of the accused and deceased. There used to be quarrels between the deceased and the accused because the mind of the accused got influenced by the attitude of his family members and other villagers.

(iii) That the pressure of the family of the accused and other villagers was so much that the deceased was deserted by the accused and she shifted back to

Delhi. However, it was about 5 months that accused also returned to Delhi and took up a job of tempo cleaner. He was living separate and independent from the deceased.

(iv) That the accused learnt that his wife was indulging in illicit activities. About a week before this occurrence he started living at H. No. 34/11, Trilok Puri, Delhi and started working with one Jagdish.

(v) That on 17.1.96, Jagdish told the accused that he had received a telephone from Ram Asre. He went to the jhuggi of Ram Asre where he saw the deceased and one Mohan. On seeing his wife with these persons, he got infuriated and had an exchange of hot words with the deceased.

(vi) When he was leaving, the deceased with her infant child followed her by taking her suit-case. However, the accused posed as if he had reconciled and took the deceased alongwith him and got down at Noida Morh.

(vii) On the next day, the dead body of the deceased was spotted by PW Ami Chand lying in the pool of water. The clothes of the deceased showed that these were got changed after she was bedecked by the accused at a deserted place as cosmetic articles were also found lying nearby.

(viii) The infant child was also found lying underneath the tree besides the articles namely the clothes of the deceased which she changed and broken pieces of bangles etc. referred to above. The ladies purse was also there. Two pieces of leather belt, two pieces of cord (intertwined nara), broken pieces of bangles were also recovered besides a slip on which telephone No. 2244130 and name of one "Asuk" was written.

(ix) The disclosure statement of the accused led to the recovery of the suit case which the deceased was carrying with her from the house of the accused. The suit case contained the clothes of the deceased and that of the child.

(x) The recovery of the left-over towel piece from the bushes which was a place non-accessible by the public and was known to the accused and accused alone was the same towel which was found at the spot and a piece of which was tied around the neck of the deceased.

(xi) As per CFSL report (Mark X), the towel pieces were the pieces of the same towel which was recovered in pursuance of the disclosure statement of the accused. Similarly, the "nara" (Ex. P.6) found on the body of the deceased was identical in physical features with the narah sent to the CFSL as per report of the CFSL Mark X.

(xii) The accused left the house of Ram Asre with his wife empty handed and came with the suit-case which his wife was carrying.

(xiii) The factum of receipt of telephone call by PW-3 Jagdish from one Ram Asre for passing on the message to the accused that some persons from his village had come there and he should reach there also stands proved.

(xiv) On his return, accused left empty handed by handing over the keys of his room to PW-3 Jagdish and at about 3 A.M. i.e. in the odd hours of the night, he returned with a suit case which contained the above-referred clothes of the deceased and the child.

7. We have examined the said reasoning and are unable to agree with the factual findings recorded and the final decision/conclusion. Ashok Kumar was not produced as a witness and his court deposition has not been recorded. This has seriously dented and knocked the prosecution case. In fact, only two public witnesses were examined in the Court. Other witnesses were doctors and police officers. We have already referred to the statement of Ami Chand (PW-9). He did not know the deceased or the appellant. He is witness to the discovery of the dead body from the place in question and the police information pursuant thereto. He has also proved material collected from the spot. The other public witness was Jagdish (PW-3), employer of the appellant. He did not know the deceased and the relationship of the deceased with the appellant. PW-3 has deposed that on 17.01.1996 at about 6:00 pm, he had received a phone call made by one Ram Asre, who wanted to speak to Ramesh, who was not present in the workshop at that time. Ram Asre had called from Laxmibai Nagar jhuggi and had informed PW3 that some persons from the village of the Ramesh had come to his jhuggi and he should be sent. After some time, Ramesh came and PW3 relayed the information. Ramesh left the place stating that he was going to Laxmibai Nagar jhuggi to meet the persons who had come from his village as stated by Ram Asre. PW-3 further deposed that the appellant had given the keys of his residence/room to him. Ramesh came back at about 3/3:30 am at night and asked for the key to his room. Jagdish (PW-3) had questioned the appellant Ramesh as to why did he come so late and he was informed that the bus in which Ramesh was travelling had broken down. Thereafter, PW-3 handed over the house/room key to Ramesh. At that time, Ramesh had a suitcase in his hand. Thereupon Ramesh left for his residence. He had handed over the key of Ramesh's room to the police.

8. Learned counsel appearing for the appellant is correct in stating that there are substantial discrepancies and inconsistencies in the statement of Jagdish (PW-3). He has not come forward with the full and true story. PW-3 has simultaneously deposed that he had given the key to the room of the appellant to Ramesh at 3/3:30 am on the intervening night of 17/18.01.1996 but also deposed that he handed over the key of Ramesh's room to the police. It was highlighted that appellant Ramesh could not have and was not required to hand over the key of his room/residence to PW-3. In the cross-examination, PW-3 has accepted that he could not tell the name of the landlord of the room which was occupied by the appellant. Our attention was also drawn to the cross-examination of PW-3 where he deposed that he had no knowledge as to where the appellant was residing. PW-3 had deposed that he accompanied the police to the house of the appellant from where he was arrested. However, the case diary of the police indicates that the appellant was arrested at 2:00 am on 19.01.1996 from a bus stop at Mayur

Vihar, Phase II. Simultaneously SI Vijay Kumar, (PW-5) has deposed that the appellant was arrested near the police post of Mayur Vihar, Phase-II. In the cross-examination, PW-3 accepted that he could not identify the said suitcase by way of its size or colour and he had no idea as to the contents of the suitcase. PW-3 has stated that on 18.01.1996, the appellant had come for work and had done his job in routine. PW-3 has denied that the police had come with Ram Asre to know about the appellant.

9. What is clearly noticeable is the absence and failure of the prosecution to produce and lead evidence of Ashok Kumar who was the material and relevant witness. Even, Ram Asre was neither produced nor has he deposed in the court. There is no evidence to show that the appellant was married to the deceased and the child in question was their child, though this may be correct. No such evidence has been placed or produced. There is no evidence that the appellant had met the deceased at the residence of one Mohan Kumar where Ram Asre was present. There was no evidence to indicate that the deceased was involved in any questionable activities or had separated from the appellant after their marriage. As per the prosecution version, the appellant and the deceased were living separately and not on talking terms. They did not know each other's address.

10. The learned Additional Public Prosecutor appearing for the State has submitted that the appellant had made two disclosure statements Ex. PW5/B and Ex. PW5/G. Contents of the suitcase belonging to the deceased included doctor's prescription slips of the deceased and her daughter were marked as Ex. P-17/1 and Ex. P-17/2. As per the prosecution version, piece of a towel was found from the spot of occurrence. As per PW-3, the appellant was arrested from his residence on 19.01.1996, whereas PW-5 and PW-13 have stated that he was arrested near Mayur Vihar, Phase-II on 19.01.1996. Thus, there is discrepancy in the place of arrest which independently and on its own though not significant, however with other lapses/failures, supports the pleas and contentions of the appellant.

11. Ex PW5/C is the memo regarding pointing out by the accused at the spot, which was known to the police witnesses, and hence cannot be read in evidence. Ex. PW5/D is the pointing out memo relating to the piece of towel and Ex. PW5/E relates to the pointing out memo with regards to the suitcase and the contents thereof including the OPD or prescription slips referred to above. As per the police version, the piece of towel pursuant to the disclosure statement of the appellant was found from the bushes near the place of occurrence in rainy well No. 1 on the northern side of the National Highway 24. The same is also deposed to by Inspector R.P. Tyagi (PW-13). The said evidence relating to recovery of the piece of towel and the suitcase in which OPD prescription slip were found are weak links and debatable. These are not sufficient to convict the appellant. They do not complete the chain of events. According to the prosecution, the deceased was residing separately from the appellant. After coming to know about the

identity and details of residence of the deceased, it was normal for the Investigating Officer and the police officials to visit the said residence or room of the deceased and look for clues and evidence. More particularly in the present case, as the details of the culprit or perpetrator was unknown. This is a fact which has not been deposed to or stated by PW-13 and the other police officers. On the question of recovery of the piece of towel and conviction for the crime, the case of the prosecution is somewhat shaky and unreliable. In *Dhananjay Chatterjee alias Dhana Vs. State of W.B.*, it was observed as under:-

7. It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinise the evidence lest suspicion takes the place of proof. Since the instant case is based on circumstantial evidence and the sentence awarded by the trial court and confirmed by the High Court is that of death, we have to consider the circumstances carefully bearing the principles noticed above in mind.

12. The FSL report mark "X" was not exhibited. The said report records that on examination of the piece of towel with the towel found on the body of the deceased that the "same could have been identical in physical features". At this stage, it may be noticed that as per the post mortem report Ex. PW6/A, both hands of the deceased were tied together with a piece of towel. Another piece of towel was used around the neck of the deceased along with a piece of string (nara). Thus CFSL report is not absolutely certain as to the similarity and whether the towel piece recovered was from the towel which was used to tie the deceased and for strangulating her. It is noticeable that the shoes of the deceased were not sent for CFSL examination. The Investigating Officer, as per the police case diary, had taken the shoe marks and foot prints, but thereafter it appears that no investigation and forensic examination was carried out to ascertain whether the shoes and the footprint marks were identical or not. We do not think it will be safe to base conviction on the sole disclosure statement and alleged recovery of prescription slips and piece of towel keeping in view the gaps in the prosecution story.

13. In view of the aforesaid, we are inclined to give benefit of doubt to the appellant and he is acquitted of the charge and the sentence awarded by the Trial Court is set aside.

14. The bail bond furnished by the appellant is cancelled. The appeal is allowed.