

(2016) 02 DEL CK 0084
In the Delhi High Court
Case No : Crl. A. 375 and 380/2000

Savita Jain and Others

APPELLANT

Vs

State of N.C.T.

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 313

Evidence Act, 1872 — Section 118

Penal Code, 1860 (IPC) — Section 302, Section 34, Section 392

Citation : (2016) 229 DLT 4 : (2016) 2 JCC 914

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Shamikh, Advocate, for the Appellant; Varun Goswami, APP, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—1. Process of criminal law was set into motion when at around 01.00 P.M. on August 27, 1990, L/HC Sushma PW-11, recorded DD No. 7A, Ex.PW-11/A, noting therein that a PCR van has informed over the telephone that a lady has been murdered at House bearing Municipal No. C-277, Behind Ram Lila Ground, New Usman Pur, Delhi.

2. Being handed over a copy of DD No. 7A, accompanied by HC Bhagwan Sahai PW-16, SI Dhoop Singh PW-17, reached the aforesaid house where he saw the dead body of Ms.Madhu Jain (herein after referred to as the "Deceased") lying in a room in the ground floor of said house.

3. In the meantime, Inspector Surjeet Singh PW-24, reached the aforesaid house and took over investigation of the case.

4. While inspecting the house, Inspector Surjeet Singh, met Babu Lal Gupta PW-2, a neighbour of the deceased. He recorded his statement Ex.PW-2/A wherein he stated that his house is situated right in front of house of Prabha

Chand Jain. On August 27, 1990 at about 12 - 12.15 P.M. he was sitting in his house when he heard cry of a child which led him to go outside his house and he saw the three daughters of Prabha Chand Jain, aged 6 years, 5 years and 2 years respectively were crying. He asked them why they were crying. The eldest daughter replied that her mother was sleeping and not waking up and they were hungry. He immediately went inside the house and he saw Madhu Jain wife of Prabha Chand Jain lying dead on the floor with wounds on her neck and stomach. He immediately came out of the house and informed Subhash Chand Jain the elder brother of Prabha Chand Jain. In the meantime, a crowd had gathered at the house of Prabha Chand Jain and somebody from the house informed police.

5. Inspector Surjeet Singh made an endorsement Ex.PW-15/A under the statement Ex.PW-2/A of Babu Lal Gupta and handed it over to HC Bhagwan Sahai who took the same to PS Seelampur where the duty officer, HC Ramesh Chand PW-15, registered an FIR No. 425/1990, Ex.PW-15/B.

6. At the spot, photographer HC Surinder Kumar PW-14, was summoned, who took ten photographs Ex.P-1 to Ex.P-10 of the spot; negatives whereof are Ex.P-11/1 to Ex.P-11/10. Inspector Surjeet Singh prepared the rough site plan Ex.PW-24/A of the spot. He seized two scissors; one of which was blood stained, two kitchen knives and a blood stained wooden comb from the room where the deceased was lying dead, vide memo Ex.PW-2/B. After filling in the requisite inquest papers, Inspector Surjeet Singh sent the body of the deceased to the mortuary of Civil Hospital.

7. At around 01.00 P.M. on August 28, 1990, Dr.L.K. Barua PW-10, conducted the post-mortem of the dead body of the deceased and prepared the post-mortem report Ex.PW-10/A, recording following external injuries:-

"1. Multiple linear crescentric scratch abrasions resembling nail marks were seen, scattered over right cheek and chin area.

2. Multiple (about 20 in number) incised wound sizes varying from 0.5 to 1 cm scattered in different directions all over (illegible) of neck and more towards base.

3. Two incised wounds with tag of skin of 2 mm wide between them over left upper part of the neck, placed vertically. Depth be ascertained. The size of the wound is 1 cm and 1.5 cm individually.

4. Numerous punctured incised looking wounds were found to be scattered in the lower part of sternum and epigastric region of the abdomen also involving left epigastric region and also left hypochondrium involving an area 6" X 6". Most of these injuries were part skin thickness deep and were of 0.5 cm in length. There were 4 bigger wounds of size 1.5 cm to 2.5 cm and were of abdominal cavity deep where from cementum was coming out of abdominal cavity.

5. Similar punctured wounds para embolical areas which defused bruising were seen involving an area of 4" X 3".

6. 13 incised stab wounds most of them placed horizontally over the left illic and hypogastric area with sizes varying from 1.5 cm to 3 cm in length and were 7. Depth to be ascertained.

7. 16 incised wounds all placed horizontally almost parallel to each other over front of right thigh in an area of 7" X 3 1/2". The size of the injuries varying from 1.5 cm to 3.0 in length with skin muscle deep and so trailing of the outer edge.

8. 12 incised wounds were seen on outermedial aspect of left thigh in an area of 8" X 5". The sizes of the wound varied from 1.5 cm to 1 cm. All injuries were placed vertically and were of skin muscle deep."

8. He recorded the opinion that the injuries were ante-mortem and caused by sharp object; bruises found on the person of the deceased were caused by blunt force application; death of the deceased was caused due to hemorrhagic shock resulting from the injuries and all injuries were inflicted simultaneously and possibly by scissors and small kitchen knife. He handed over the clothes, vaginal swab and blood sample of the deceased on a gauze to the police officials.

9. The investigation conducted by the police revealed that the three accused viz. Parveen Kumar Jain, Savita Jain and Satish Chand Jain were residing as tenants in the house of the deceased and were missing since the day of the murder of the deceased. Besides, Priyanka PW-1, the eldest daughter of the deceased informed the investigating officer, as recorded in her statement under Section 161 Cr.P.C. that the three accused were seen by her leaving the house when she returned from a temple and found her mother asleep and not responding to her calls. Jewellery of the deceased was disclosed as being stolen. The needle of suspicion was obviously pointing towards the three accused.

10. On September 15, 1990, in the presence of SI Kali Charan PW-23, Sheela Devi PW-7 and Prabha Chand Jain PW-9 husband of deceased, Inspector Surjeet Singh arrested accused Parveen Kumar Jain and Savita Jain from the New Delhi Railway Station.

11. On his personal search, four gold bangles on which name "Madhu" was inscribed, one gold ring on which a red stone was embedded and letter "T" was inscribed, one earring and one pair of silver bangles were recovered from possession of the accused Parveen Kumar Jain and seized as recorded in memo Ex.PW-9/C. Additionally, accused Parveen produced a half sleeves shirt and the same was seized vide memo Ex.PW-9/R.

12. On her personal search, a purse on which name "Madhu" was embroidered was found from the possession of accused Savita Jain and seized as recorded in memo Ex.PW-9/A.

13. On September 21, 1990, in the presence of SI Kali Charan and Prabha Chand Jain Inspector Surjeet Singh arrested accused Satish Jain. On his person search, a briefcase on which name "PC Jain" was inscribed was recovered from his possession and seized as recorded in memo Ex.PW-9/H.

14. Inspector Surjeet Singh interrogated accused Satish and recorded his disclosure statement Ex.PW-9/F wherein he disclosed that he could lead the police team to the person(s) to whom he had sold his share of the loot i.e. jewellery of deceased. Thereafter accused Satish Jain led the police team to two jewellery shops in Bombay and Mathura and from the shop at Mathura got recovered a pair of gold earrings, a gold ring and a gold chain of deceased from said two shops. The jewellery sold in Bombay was disclosed by the owner of the shop to have been melted.

15. The seized articles were sent to the CFSL for serological examination. Vide CFSL reports Ex.PW-25/A and Ex.PW-25/B it was opined that blood group of deceased was O and human blood of group O was detected on shirt produced by accused Satish, vaginal swab of deceased and scissors recovered from the house of deceased.

16. Needless to state, the (three) accused persons were then put to trial.

17. At the trial, the prosecution examined twenty five witnesses. We eschew reference to the formal and procedural witnesses and note the testimonies of only the relevant witnesses as per whose testimonies, the learned Trial Judge has returned a finding of guilt against the accused persons.

18. Priyanka PW-1, aged nine years, the daughter of the deceased deposed that the accused used to live on the first floor of their house as tenants. One day she and her sisters had gone to a temple in the morning. When they returned and knocked the door of their house, Parveen told them that their mother had gone to the house of their aunt (bua) and Parveen and Savita left with their three children saying that they were to purchase some medicine. Therefore, they went to the house of their aunt where they were told that their mother had not come to her house. They returned to their house and saw their mother lying on the floor in a room. Blood was oozing out of the body of her mother. She and her sisters came out of the house and started weeping whereupon their neighbour Babu Lal Gupta came there.

19. Babu Lal Gupta PW-2, deposed in sync with his statement Ex.PW- 2/A, contents whereof we have briefly reproduced while recording the narrative. Additionally, he deposed that accused Parveen and his family were residing as tenants on the first floor of the house of the deceased. Significantly, a suggestion was given to the witness on behalf of the accused that the accused had vacated the tenanted premises two days prior to the incident.

20. Shashi Gupta PW-3, a neighbour of the deceased deposed that accused Parveen and his wife Savita were living as tenants in a room on the first floor of the house of deceased. She had sometimes seen accused Satish visiting Parveen and Savita. On August 27, 1990 she had gone to the terrace of her house and saw Savita standing near the ledge of the terrace of the house of the deceased. After sometime she again went to the terrace of her house and again saw accused Savita standing near the ledge of the terrace. She enquired from Savita

as to why she had come to the terrace to which she Savita replied that she was observing a fast and her husband had gone to the market to purchase vegetables. After sometime she saw the three accused leave the house of the deceased. At that time they were carrying a suitcase with them. After sometime she found the deceased lying dead in her house.

21. Anoop Singh Jain PW-4, brother-in-law of the husband of the deceased deposed that on August 27, 1990 at about 12-12.15 P.M. the three daughters of deceased had come to his house and enquired from him whether their mother i.e. the deceased was present in his house to which he replied in the negative.

22. Prabha Chand Jain PW-9, the husband of the deceased deposed that on August 27, 1990 at about 07.25 A.M. he had gone to his shop while his wife and three daughters remained at home. At that time Parveen and Savita were residing as tenants in a room on the first floor of his house. Satish is the brother of Parveen was also present in the tenanted room at that time. On the same day at about 01.00 P.M. he learnt that his wife had been murdered. Four gold bangles Ex.P-1 to Ex.P-4 on which name of Madhu belongs to his wife. The gold ring Ex.P-5 having a figure T, silver kangans Ex.P-6 and Ex.P-7 and gold kundal Ex.P-8 belonged to his wife.

23. Radha Verma PW-13, deposed that her husband was an acquaintance of accused Parveen. On August 26, 1990 Parveen came to her house and demanded money from husband and her husband refused to lend money. The next day Parveen along with his family came to their house after a haircut and borrowed a razor from her to shave his moustache and thereafter the family left.

24. Umesh Verma PW-12, husband of Radha Verma deposed in sync with the testimony of Radha Verma.

25. Sohan Singh PW-20, deposed that he is a gold smith and had a shop at in Mathura. In the month of September, 1990 accused Satish sold, one gold chain, one pair of earrings and one gold ring to him for a sum of "5,200/- vide receipt Ex.P-13.

26. It needs to be noted that save and except Priyanka (daughter of deceased) suggestion(s) were given to the prosecution witnesses that Prabha Chand Jain had strained relations with his wife and they were deposing falsely at the instance of Prabha Chand Jain. We only comment that the probable attempt was to argue that Prabha Chand Jain murdered his wife.

27. Examined under Section 313 Cr.P.C. except admitting that Parveen and Savita were staying as tenants in a room on the first floor of the house of deceased, the accused denied every incriminating circumstance. Pertinently, the accused did not say in their statement that they had vacated the tenanted premises two days prior to the incident.

28. The accused did not lead any evidence in defence to prove alibi.

29. Vide impugned judgment dated May 12, 2000 it has been held by the learned Trial Judge that following circumstances are proved by the evidence led by the prosecution:-

"(1) Sh.Prabha Chand Jain used to reside at H. No. C- 240/1-A, New Usman Pur, Delhi, on the ground floor portion along with his wife Madhu Bala Jain and three daughters, the eldest of whom is Miss Priyanka Jain.

(2) Accused Praveen Kumar Jain, his wife Savita Jain were residing as a tenant in one room on the first floor portion of the house of Sh.Prabha Chand Jain.

(3) On 27.8.90 Sh.Prabha Chand Jain left for his shop at Lajpat Rai market at 7:30 a.m. leaving behind Smt. Madhu Bala Jain and three daughters.

(4) Accused Praveen Kumar Jain, his wife Savita Jain, his brother Satish Jain were also present in the tenanted premises that day.

(5) It was a holiday and children of Sh.Prabha Chand Jain had not gone to school that day.

(6) Miss Priyanka Jain along with her younger sisters had gone to temple and on returned when she knocked the door accused Praveen Kumar had told that their mother had gone to the house of their father's sister.

(7) He further told the girls that they were going to purchase medicine and left the house along with other accused with their bag and baggage.

(8) Smt. Shashi Gupta, who resides just opposite to the house of Prabha Chand, went to the roof of her house and found accused Savita Jain standing there from a very long time and when she questioned her, then the latter told her that she was waiting for her husband, who had gone to purchase vegetables.

(9) Priyanka Jain along with her younger sisters had gone to the house of Anup Singh Jain and on enquiry they came to know that their mother had not gone there.

(10) On return Priyanka Jain and her sisters found their mother dead in the house with multiple stab injuries on her person.

(11) Girls started weeping and on hearing their cries, Babu Lal Gupta reached there and found Madhu Bala Jain dead with stab injuries.

(12) He noted that radio was on at high volume without any programme on it.

(13) He found no traces of the accused persons in the house.

(14) Babu Lal Gupta went to the house of the brother of Prabha Chand Jain and informed him about the incident. Police reached there and found Madhu Jain lying dead with various injuries.

(15) Shashi Devi also reached there and found Madhu Bala Jain lying dead.

(16) Prabha Chand Jain reached his house when he heard about the incident and told the police that various ornaments and goods were missing from his house.

(17) Accused persons went to the house of Radha Verma that day and they had their meals and accused Praveen Kumar offered to pay a sum of Rs. 50/- to Radha Verma to purchase rice while a day before he was penniless.

(18) Accused Praveen Kumar got his hairs cut and shaved his mousetaches in order to disguise his identity. Thereafter all the accused persons left for the house of the sister-in-law of accused Praveen Kumar Jain.

(19) On 15.9.90 accused Praveen Kumar Jain and Sarita Jain were arrested from New Delhi Railway Station and from their possession gold ornament and a purser were recovered which were stolen from the house of Prabha Chand.

(20) On 21.9.90 accused Satish was arrested and from his possession a brief case of Prabha Chand was recovered.

(21) Accused Satish Chand led the police party to Bombay and Mathura where he had sold the ornaments stolen from the house of Sh.Prabha Chand Jain.

(22) Witness Sohan Singh confirms that accused Satish had sold ornaments at his shop for a sum of "5200/-".

(23) Ornaments sold at the shop of Sohan Singh and a brief case recovered from the possession of Satish were identified by Sh.Prabh Chand Jain as the same which were stolen from his house, on the date when his wife was murdered."

30. It has further been held by the learned Trial Judge that afore-noted twenty three circumstances proved by the prosecution lead to the following irresistible conclusions:-

(i) The three accused persons formed a common intention to rob and murder the deceased.

(ii) With an intention to aid, assist and help accused Parveen and Satish, accused Savita stood on the terrace of the house of deceased on the day of incident on watch and ward duty.

(iii) Accused Parveen and Satish misled daughters of the deceased on the day of incident thereby managing to escape from the house of deceased with booty.

(iv) Accused persons robbed the deceased.

(v) Accused persons murdered the deceased.

31. In view thereof, the learned Trial Judge has convicted the accused of having committed the offences punishable under Sections 302 and 392 IPC read with Section 34 IPC and has sentenced them to undergo imprisonment for life for the offence punishable under Section 302 IPC and rigorous imprisonment for a period of five years for the offence punishable under Section 392 IPC.

32. Aggrieved by the aforesaid, the three accused had filed three appeals. But since Satish died during the pendency of the appeal filed by him, vide order dated September 04, 2013 Criminal Appeal No. 383/2000 filed by him was disposed of as having abated. We are thus left to decide the captioned appeals filed by Savita and her husband Parveen.

33. There is hardly anything to be debated upon for the reason a cumulative reading of the testimony of the prosecution witnesses, shows that accused Parveen and Savita were residing as tenants in a room on the first floor of the house of the deceased and were present in house of the deceased on the day of incident around the time of murder of deceased. The testimony of Priyanka PW-1 and Shashi Gupta PW-3 proves the same. (Accused Parveen and Savita have admitted that they were residing as tenants in a room on the first floor of the house of the deceased in their statement recorded under Section 313 Cr.P.C. We note that a suggestion was given to some of the prosecution witnesses in their cross-examination by accused Parveen and Savita that they had vacated the house of deceased two days prior to the incident but no such defence was taken by them in their statement under Section 313 Cr.P.C.)

34. The testimony of Priyanka Jain (child witness) proves that the appellants tried to mislead her by telling her that their mother had gone to the house of their aunt thereby misleading the poor child aged then 6 years to proceed to the house of her aunt, corroboration to which visit by Priyanka and her sisters is found in the testimony of Anoop Singh Jain. This is another incriminating circumstance against the appellant.

35. It is well settled that conviction can be based on the testimony of child witnesses if the same is found to be reliable and only as a rule of prudence corroboration is sought. The position of law relating to evidence of child witness was dealt by the Supreme Court in the decision reported as , (1997) 5 SCC 341 Dattu Ramrao Sakhar vs. State of Maharashtra wherein it was held:-

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.

The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his

understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. This precaution is necessary conclusion was erroneous. This precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness."

36. The next incriminating circumstance is the recovery of the jewellery and purse of the deceased on the personal search of the accused. Since co- accused Satish is dead it would be irrelevant to discuss recovery of jewellery of the deceased pursuant to his disclosure statement from a shop at Mathura. The argument that the recovered jewellery was not subjected to a TIP is irrelevant for the reason husband of the deceased was present when the appellants were arrested and he had seen the jewellery which was recovered from them. The name of the deceased is Madhu and the four gold bangles Ex.P-1 to Ex.P-4 had Madhu inscribed thereon. Madhu's husband is a gold smith and though there is no evidence that he had crafted the gold jewellery of his wife, it would be a factor to be taken into account that he probably did so and thus being the maker of the jewellery was in a good position to identify the same. In any case, he did so during testimony in Court and no serious attempt has been made to discredit him when he was cross- examined.

37. The CFSL reports Ex.PW-25/A to Ex.PW-25/C reveals that the blood group of the deceased was found on the shirt produced by Parveen when he was arrested.

38. The chain of circumstantial evidence : last seen, appellant's trying to mislead the children of the deceased, appellant Parveen trying to hide his identity, recovery of the stolen property unerringly points towards the guilt of the appellants and rule out their innocence. The post-mortem report clearly establishes an intention to murder the deceased and not leave her alive because if she was not killed she would have easily told who injured her and committed the robbery because appellants were tenants in a room in the same building where the deceased lived with her family and was murdered.

39. The appeals are dismissed. The conviction and the sentence imposed are maintained. The bail bond and surety bond furnished by the appellants are cancelled. The appellants shall surrender to suffer the remaining sentence.

40. Copy of this decision be sent to the Superintendent Central Jail Tihar for his record.

41. TCR be returned.