

*

IN THE HIGH COURT OF DELHI

%

Judgment reserved on : 27.03.2009

Judgment delivered on: 01.04.2009

+

CRL.A. No.413/2001

KALLOO PASSI

...Appellant

Through : Ms.Charu Verma, Advocate

versus

STATE

...Respondent

Through : Mr.Pawan Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. At 8.49 A.M. on 10.11.97 DD No.2A, Ex.PW-6/A, was recorded at Police Station Kirti Nagar recording that an information has been received that a dead body, in a burnt condition, is lying at DDA Park, Nehru Camp, behind Central Warehouse, Lakar Mandi, Kirti Nagar.

2. SI Jitender Kumar PW-10, accompanied with Const. Verinder PW-6, reached the spot where they found that a dead body in a burnt condition was lying on a heap of garbage and that smoke was coming out of the said garbage. Since no eye-witness was found present at the spot, SI Jitender Kumar PW-10, made an endorsement Ex.PW-6/B,

on DD Entry Ex.PW-6/A and handed over the same to Const. Verinder PW-6, for registration of an FIR. FIR No.495/97 Ex.PW-15/A, was registered at 10.45 A.M. on 10.11.97.

3. The dead body which was later identified as that of one Dharanath (hereinafter referred to as the "Deceased"). It was sent to the mortuary where Dr.Ashok Jaiswal PW-12, conducted post-mortem at 1.00 P.M. on 10.11.97 and gave his report Ex.PW-12/A, which records that the dead body was 80% burnt; that one incised stab wound of size 4.5 cm x 1.0 cm was found on the left side of the chest obliquely placed over left paraxial region, 16 cm below medial end of left clavicle, 7 cm from epigastric region at 1-2 O' clock position; that the said wound is ante-mortem in nature caused by a sharp – edged weapon and is sufficient in the ordinary course of nature to cause death; that the death is caused due to haemorrhagic shock consequent to the said wound.

4. After conducting the post-mortem, the doctor handed over the clothes and blood sample on a gauze of the deceased to SI Jitender Kumar PW-10, who seized the same vide memo Ex.PW-6/C.

5. On 16.11.97 one Jagjivan PW-2, the father of the deceased; one Shiv Shanker PW-1, a resident of the village of the deceased and one Ramjiwan PW-3, who used to reside in the same building as that of the deceased, identified the dead body of the deceased and indicted the appellant as the assailant of the deceased. Since the afore-noted

persons had accused the appellant of having murdered the deceased, the police set out to apprehend him.

6. The appellant was apprehended on 21.11.1997 by the police. SI Kulbhusan PW-17, interrogated the appellant in the presence of SI Ran Singh PW-14, Jagjiwan PW-2, Shiv Shanker PW-1 and Ramjiwan PW-3. The appellant made a disclosure statement Ex.PW-14/A confessing to his guilt and stated that he can get recovered the clothes which he was wearing at the time of the murder of the deceased and the dagger with which he had murdered the deceased and a rehri rickshaw which he had used to transport the body of the deceased from the room in which he had committed the murder to the spot where the body was found. The appellant led the afore-noted persons to a vacant plot bearing Municipal No.C-136, Mansarover Garden and got recovered a shirt, a saree and a torn petticoat which were seized vide memo Ex.PW-1/D. Thereafter the appellant led the afore-noted persons to a lane situated at the rear of the said plot and got recovered five metallic pieces, which when put together formed a dagger. The said five metallic pieces were seized vide memo Ex.PW-1/F. The appellant then led the afore-noted persons to a vacant plot situated near the Fire Station and got recovered a rehri rickshaw which was seized vide memo Ex.PW-3/A.

7. The five metallic pieces which were recovered at the instance of the appellant were sent to Dr.Ashok Jaiswal PW-12, for his opinion, who vide report Ex.PW-12/B, opined that the said five pieces are the

pieces of two daggers and that the incised wound found on the person of the deceased is possible to have been caused by the two daggers formed by putting together the said five pieces.

8. The clothes and five metallic pieces recovered at the instance of the appellant; the clothes and blood sample of the deceased were sent to a serologist for a serological test. Vide FSL reports Ex.PW-17/B and Ex.PW-17/C it was opined that the blood group of the deceased was 'B'; that human blood of 'B' group was detected on the clothes of the deceased; that human blood was detected on the clothes and the metallic pieces recovered at the instance of the appellant, group whereof could not be determined.

9. Needless to state, the appellant was sent for trial. Charge was framed against the appellant for having committed the offences punishable under Section 302 IPC.

10. At the trial, the prosecution examined 17 witnesses. We need not note the testimonies of all the witnesses save and except the testimonies of Ramjiwan PW-3 and Booty PW-11, who were the material witnesses of the prosecution.

11. Ramjiwan PW-3, deposed that he, the deceased and the appellant and one Booty used to work at a saw machine situated at Kirti Nagar. That he, the deceased, the appellant and his wife used to reside in a room situated in a building while Booty and his wife used to reside in the adjoining room. That the room in which he i.e. the deceased and the appellant were residing in was partitioned by jute

cloth and that the appellant and his wife used to reside in one part thereof and that the deceased used to reside in the other part. That on 08.11.97 when he returned to his room at around 10 P.M. after purchasing kerosene oil he found that the deceased and the appellant were not present in the room. That after about one hour the appellant came in a rehri rickshaw and parked the same in a vacant plot adjoining their building. That he could not get any information about the whereabouts of the deceased despite making inquiries. That 2-3 days thereafter he heard an announcement about a dead body and whereupon he went to the police station and identified that the dead body was that of the deceased. That thereafter he went to his native village and informed the family members of the deceased about his death.

12. Booty PW-11, deposed that he and his wife used to reside in a room which was adjoining the room in which the appellant, his wife and the deceased resided. That about a year prior to the incident the appellant had told him that the deceased had an evil eye on his wife. That on 16.11.97 he found that the appellant and his wife were missing from the room in which they used to reside.

13. In his examination under Section 313 Cr.P.C. the appellant denied everything and pleaded false implication. The appellant did not lead any evidence in his defence.

14. Holding that the act of absconding by the appellant soon after the discovery of the dead body of the deceased; the recoveries of

blood stained clothes; the recovery of pieces of two daggers and one rehri at the instance of the appellant; the clothes and the broken pieces of daggers recovered the instance of the appellant being tested positive for human blood established that the appellant had murdered the deceased and the motive for the crime was that the appellant suspected that the deceased had an evil eye on his wife as per the testimony of Booty, PW-11. Vide judgment and order dated 21.12.2000 the learned Trial Judge has convicted the appellant and had sentenced him to undergo imprisonment for life for committing offence punishable under Section 302 IPC.

15. As noted herein above, under-noted three circumstances has led the learned Trial Judge to convict the appellant:-

- I. Abscondence of the appellant after the discovery of the dead body of the deceased.
- II. Recovery of the blood stained clothes, the pieces of two daggers and one rehri at the instance of the appellant; human blood being detected on the clothes and the broken pieces of the daggers.
- III. Motive.

16. It is settled law that mere absconding by itself does not necessarily lead to a conclusion of a guilty mind. The act of self-preservation is such that even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime. The act

of absconding is no doubt a relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. For instance, the circumstance of abscondence can be extremely fatal if the prosecution is able to prove that the victim was last seen in the company of the accused and that the accused is absconding after the death of the victim. Normally, the courts are disinclined to attach much importance to the act of absconding, treating as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. (See the decision of Supreme Court reported as Matru v State of U.P. AIR 1972 SC 1050).

17. In the instant case, there is no evidence to show that the deceased was last seen in the company of the appellant. In such circumstances and in view of the fact that circumstance of abscondence of an accused person is considered a weak link in the chain of circumstances utilized for establishing the guilt of an accused person as held by Supreme Court in the decision reported as Raghubir Singh v State of U.P. AIR 1971 SC 2156, we do not consider it safe to rely upon the circumstance of abscondence of the appellant after discovery of the dead body of the deceased to sustain the conviction of the appellant.

18. The next question which requires consideration is that whether the circumstance of recovery of the afore-noted articles is sufficient to conclude the guilt of the appellant.

19. In the decision reported as Narsinbhai Haribhai Prajapati v Chhatrasinh & Ors AIR 1977 SC 1753 the Supreme Court had held that in the absence of any other evidence the circumstances of seizure of blood stained shirt and dhoti from the person of an accused and dharias from the houses of the accused are wholly insufficient to sustain the charge of murder against the accused.

20. In the decision reported as Surjit Singh v State of Punjab AIR 1994 SC 110 a watch belonging to the deceased and one dagger which was found to be stained with human blood were recovered at the instance of the accused. It was held by the Supreme Court that said recovery by itself, does not connect the accused person with the murder of the deceased. It was further held that said circumstance may create some suspicion but the same cannot take the place of proof.

21. In the decision reported as Deva Singh v State of Rajasthan 1999 CriLJ 265 Supreme Court had held that merely because a knife is alleged to have been recovered at the instance of the accused would not lead to a conclusion that the accused was the perpetrator of the crime of the murder.

22. In the decision reported as Prabhoo v State of U.P. AIR 1963 SC 1113 a kulhari, a shirt and a dhoti which were found to be stained
Crl.A. 413/01

with human blood were recovered from the house of the accused, at his instance. Holding that it is well settled that circumstantial evidence must be such as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused and not with his innocence and that from the mere production of the blood stained articles by the accused, one cannot come to the conclusion that the accused committed the murder inasmuch as the fact of production cannot be said to be consistent only with guilt of the accused and inconsistent with his innocence, for the reason it is quite possible that someone else committed the murder and kept the blood stained articles in the house of the accused and that the accused might have produced the said articles when interrogated by the police, the Supreme Court acquitted the accused.

23. In the instant case, there is no evidence to show that a rehri was used by the appellant in committing the murder of the deceased or in the transportation of the body. The only evidence pertaining to the rehri is the deposition of Ramjiwan PW-3, that he had seen the appellant with a rehri on the day the deceased had gone missing.

24. Therefore, in view of afore-noted judicial decisions, we hold that mere recoveries of the blood stained clothes, pieces of two daggers and a rehri at the instance of the appellant do not lead to a conclusion that the appellant is the perpetrator of the crime.

25. Insofar as circumstance relating to motive of the appellant for causing the death of the deceased, suffice would it to be state that

the motive, by itself, is not a circumstance, though it may be relevant in case of circumstantial evidence. (See the decision of Supreme Court reported as Surjit Singh v State of Punjab AIR 1994 SC 110)

26. Even otherwise, the evidence relating to motive of the deceased was the testimony of Booty PW-11, to the effect that the appellant had told him that the deceased was having an evil eye on his wife about a year prior to the incident. There is no evidence to show that the appellant was having a ill-will towards the deceased on the date of the incident. One year back is too remote in point of time.

27. In view of the above discussion, we hold that the prosecution has not been able to establish that the appellant had murdered the deceased. The appeal is accordingly allowed. The appellant is acquitted of the charges framed against him.

28. The appellant is on bail. His bail bond and surety bond are discharged.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

April 01, 2009
Dharmender