

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.03.2011

+ **CRL.A. 294/2009**

RAJ KUMAR @ RAJA ... Appellant

versus

THE STATE (NCT OF DELHI) ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Ajay Verma with Ms Swati Gupta and Ms Marie Riba
For the Respondent : Ms Richa Kapoor

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE MANMOHAN SINGH

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

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the judgment dated 13.02.2008 passed in Sessions Case No.35/2007 by the learned Additional Sessions Judge, Delhi, arising out of FIR No.425/2006 registered at Police Station Nabi Karim on 29.12.2006. The appellant has been convicted under Section 302 IPC for having committed the murder of one Rashid in House No. BB 448, Ashoka Basti, Nabi Karim, Delhi. The appeal is also directed against the order on sentence dated 14.02.2008, whereby the appellant Raj Kumar @ Raja was directed to undergo imprisonment for life and was also liable to a fine of ₹ 2,000/- for the offence under Section 302 IPC. In default of the

payment of fine, the appellant was directed to undergo simple imprisonment for three months.

2. The appellant Raj Kumar @ Raja is an eunuch and it is the case of the prosecution that he used to reside with the deceased Rashid at the above address as wife and husband, respectively. It is further the case of the prosecution that Rashid did not like the fact that Raj Kumar @ Raja used to bring one boy from Sadar Bazar in the room in which they used to reside. It is further the case of the prosecution that on account of this, there were a series of altercations and disagreements between the appellant Raj Kumar @ Raja and the deceased Rashid. It is also alleged that the appellant had asked Rashid to leave the premises and to go to his village which Rashid was not willing to do. Next to the room in which Raj Kumar @ Raja and Rashid resided, one Chandni, also an eunuch, used to reside. The premises in which the appellant Raj Kumar @ Raja and Rashid used to reside was a tenanted one and was on the third floor of the building of which the landlady was one Maya Devi [PW-9]. It is also the case of the prosecution that on 23.12.2006, at about 6.30 or 7.00 p.m., one Smt Seema, who is stated to be the appellant's sister (cousin), came to the room of the appellant alongwith her husband, Kuldeep [PW-10]. It is the case of the prosecution that Seema and Kuldeep as well as the appellant and Rashid were all in the room. It appears that there was an argument between the appellant Raja and Rashid with regard to the boy from Sadar Bazar. In the meanwhile, PW-9 [Maya Devi] came to the room and demanded the monthly rent for the room. The appellant stated that he did not have the money available within him at

that point of time on which PW-9 [Maya Devi] is said to have stated that she needed the money urgently as she was going to hospital. Consequently, the appellant is said to have given her a sum of ₹ 20/-, whereupon PW-9 [Maya Devi] left the room. Shortly, thereafter, PW-10 [Kuldeep], who is Seema's husband, also left the room. In the meanwhile, PW-4 [Chandni], who was residing in the adjoining room, had also come into the room occupied by the appellant and Rashid. After the departure of PW-9 [Maya Devi] and PW-10 [Kuldeep], four persons were left in the room, namely, the appellant Raj Kumar @ Raja, the deceased Rashid, PW-5 [Seema] and PW-4 [Chandni]. At that point of time, the appellant stated that he had mortgaged a gold ring with the goldsmith and that he needed to take it back. Consequently, he, alongwith PW-4 [Chandni] and PW-5 [Seema] left the room and went to the goldsmith. Rashid remained in the room.

3. It is further the case of the prosecution that after the appellant collected his ring from the goldsmith, the three of them, i.e., the appellant, PW-4 [Chandni] and PW-5 [Seema] returned to the building. On their return, PW-4 [Chandni] went to the toilet at the ground floor. PW-5 [Seema] followed the appellant up the stairs towards the appellant's room. It is alleged that PW-5 [Seema] stood outside the room on the landing after climbing the stairs as she was short of breath. The appellant is said to have gone inside the room in which Rashid was present. It is the case of the prosecution that immediately thereafter the appellant strangled Rashid with his hands and brought about his demise. PW-5 [Seema] is said to have

witnessed the later portion of the strangulation and in the meanwhile, PW-4 [Chandni] also came up the stairs.

4. In order to prove its case, the prosecution has examined as many as 19 witnesses. The most important of these witnesses are PW-1 [Dr Sunil], who conducted the *post mortem* examination; PW-4 [Chandni], whose role has been indicated above; PW-5 [Smt Seema], who is an eye-witness; PW-9 [Maya Devi], the landlady; PW-10 [Kuldeep], Seema's husband; PW-8 [Mohd Aarif], who is the brother of the deceased Rashid; PW-11 [Abdul Jabbar], who is the uncle of the deceased Rashid; and PW-13 [Dr Mohd. Zahid], who is the doctor, who first declared Rashid to be dead.

5. We may point out that, initially, the police was brought into action by an information received in the Police Control Room. The information was recorded in the PCR Form [Exhibit PW 14/A] on 24.12.2006 at 01.12 hrs. The informant was shown to be one Iqrar, who, as transpired later, was the brother-in-law of the deceased. The said informant indicated that Rashid had died and that the police be sent as murder was suspected. In the said PCR Form, it was recorded that, though the appellant Raja and Chandni had stated that Rashid had died because of chest pains, Rashid's uncle PW-11 [Abdul Jabbar] suspected that the eunuchs had murdered him. In fact, initially, the statements of Chandni and Seema were not recorded on 24.12.2006, because the police was perhaps unsure of whether this was a case of murder or not. However, the report of the *post mortem* examination was received on 29.12.2006 in the late evening and it

disclosed that Rashid was a victim of manual strangulation. Consequently, the *Ruqqa* [Exhibit PW12/A] was sent at about 09.10 p.m. on 29.12.2006 and the FIR No.425/2006 was registered at Police Station Nabi Karim. It is thereafter that the statements of Chandni and Seema were recorded under Section 161 CrPC. Furthermore, since there was a possibility that PW-5 [Seema] may resile from her statement, inasmuch as she was related to the appellant Raja, an application had been moved for having her statement recorded under Section 164 CrPC and the same was recorded, which is Exhibit PW-4/A. Similarly, Chandni's statement under Section 164 CrPC was also recorded on the same day being Exhibit PW-19/B. Both of these statements clearly implicated the appellant Raja and were in consonance with the prosecution version.

6. Both PW-5 [Seema] as well as PW-4 [Chandni] have supported the prosecution case in their testimonies before court. There may be some minor contradictions here and there, but the core of the story remains the same. They have clearly stated that they were present in the room alongwith the appellant and Rashid when the landlady [PW-9 (Maya Devi)] came into the room and demanded the monthly rent. They have stated that a sum of ₹ 20/- was paid to Maya Devi, upon which she left the room. They also stated that shortly thereafter PW-5 Seema's husband PW-10 [Kuldeep] also left the room as he was to join his duty. Both of them stated that the appellant Raja told them that he had to collect his ring from the goldsmith and that they accompanied him to the goldsmith leaving Rashid alone in the room. Thereafter, on the return from the goldsmith, Chandni went to the toilet in

the ground floor and Seema followed the appellant Raja to the third floor up the stairs. Thereafter PW-5 [Seema] has categorically stated that she halted at the landing after climbing the stairs in order to regain her breath, whereas Raja had gone ahead into his room and immediately thereafter, she found the appellant Raja holding the deceased Rashid by his neck and, subsequently, Rashid was thought to be unconscious. Chandni also came in the meanwhile and thereafter, PW-4 (Chandni) and the appellant Raja went to call the doctor, i.e., PW-13 [Mohd Zahid]. The said PW-13 [Mohd Zahid] also stated that he was called by one eunuch and that he had gone to the premises in question and he had found Rashid to be dead. Thus, the prosecution case with regard to the manner in which the incident took place stands fully corroborated by the testimonies of PW-4 [Chandni] and PW-5 [Smt Seema]. PW-9 [Maya Devi] also corroborated the fact that she had gone into the room to demand the monthly rent and that she had left the premises after taking ₹ 20/- from the appellant Raja. PW-10 [Kuldeep] has fully supported the prosecution version in that he had accompanied his wife PW-5 [Seema] to the appellant's room and that after Maya Devi left, he also left for his duty.

7. PW-1 [Dr Sunil], who conducted the *post mortem* examination on the deceased Rashid, categorically stated that Rashid died due to asphyxia consequent upon manual strangulation by virtue of the following *ante mortem* injuries:-

- “1. Contused abrasion 3.4 x 1.1 cm reddish present over right side of mid of neck, 3.4 cm outer to the thyroid cartilage.
2. Multiple abrasion crescentic shape in an area of 3 x 2.1 cm present over the mid front of neck 0.4 cm inner to injury no.1.”

8. The said doctor has not been cross-examined by the defence counsel, although an opportunity had been given. Thus, it is apparent that Rashid died due to manual strangulation. The learned counsel appearing on behalf of the appellant submitted that the versions of PW-4 [Chandni] and PW-5 [Seema] are improbable and that reliance should not be placed on their testimonies. We, however, do not feel that the testimonies of PW-4 [Chandni] and PW-5 [Seema] can be discarded in toto. There may be some contradictions and there may even be some exaggerations, particularly on the part of PW-4 [Chandni], but these witnesses have remained steady insofar as the core issues are concerned.

9. Apart from this, we find that the alternate theory suggested by the defence is clearly ruled out. The alternate theory was that the appellant Raja was in the room alongwith Rashid when Rashid had chest pains and immediately thereafter, he fell off the cot. In the course of recording the statement under Section 313, CrPC, when a specific question was put to the appellant as to whether, when Abdul Jabbar came to the spot, he had disclosed to him that Rashid had died with sudden pain in the chest and he had fallen from the cot, the appellant replied that Abdul Jabbar had come at about 09.30 a.m. and that prior to that, Iqrar had also come to the spot after

he had given him a call. The appellant did not deny the fact that he had disclosed to Abdul Jabbar that Rashid had died with sudden pains in the chest and he had fallen off the cot. In fact, PW-11 [Abdul Jabbar] also stated in his examination-in-chief that the appellant had told him that Rashid had died with sudden chest pain and he had fallen from the cot. He also stated that he was suspicious about the death of Rashid and that the appellant had told him not to waste time and arrange for a vehicle to take the dead body to the native village and not to enter into police matters. He further stated that because of this, he became even more suspicious and the information was given to the police at number 100 and the police came to the spot and conducted the proceedings.

10. The *post mortem* report of PW-1 [Dr Sunil] clearly gives the cause of death as asphyxia following manual strangulation and the alternate theory advanced by the defence of the appellant having died due to cardiac arrest following chest pains is clearly contraindicated.

11. Apart from this, the appellant and the deceased Raja were staying together and there is no evidence of any forced entry or any third person coming into the premises. In fact, the appellant Raja throughout gave the impression that Rashid was alive upon his return from the goldsmith's shop and that he suffered chest pains and fell of the cot as a result of which he died. So, it is not the case that when he returned from the goldsmith's shop, Rashid was already dead. We also find that PW-5 [Seema] has explained as to why she initially did not report the case of murder to the police. In her

testimony, she has stated that the appellant had threatened her and asked not to disclose the true facts but to tell the landlady that Rashid had fallen because of chest pains and that he had become unconscious due to which he had died. PW-5 [Seema] also corroborated what has been stated by PW-11 [Abdul Jabbar] that the appellant told Rashid's brother-in-law, i.e., Iqrar and the other persons present there that Rashid had fallen from the bed and had become unconscious and died due to the same. She fully corroborated the testimonies of PW-11 [Abdul Jabbar] with regard to the appellant Raja's conduct inasmuch as he had asked Rashid's relatives to take the dead body to the village. She also stated that she had not disclosed the true fact to the police at that point of time due to fear and threat meted out by the appellant Raja.

12. In view of the foregoing discussion, we are of the view that the learned Additional Sessions Judge has rightly convicted the appellant under Section 302 IPC for having committed the murder of Rashid. Consequently, the impugned order and / or order on sentence are confirmed.

The appeal is dismissed.

BADAR DURREZ AHMED, J

MANMOHAN SINGH, J

MARCH 14, 2011

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