

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON :09th February, 2012

**+ CRL.A.432/2011
Crl.M.A.18593/2011**

MAHADEV Appellant.

Through : Mr.D.D.Dandapani, Advocate.

versus

STATE Respondent.

Through : Mr.Sanjay Lao, APP for the State.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE S.P.GARG

S.P.GARG, J. (OPEN COURT)

1. The present appeal has been preferred by the appellant Mahadev against the Judgement dated 19.11.2010 and the Order on sentence dated 26.11.2010 of learned Additional Sessions Judge in Sessions Case No.33/2007 whereby he was convicted for committing offence punishable under Section 302 IPC and sentenced to undergo life imprisonment with fine of ₹5,000/-.

2. The prosecution allegations are that on 8.4.2007 DD No.7A was recorded by 8:25 A.M. by PS Prasad Nagar on receipt of information that a dead body (of a woman) lying in the bathroom in house No.16/698, I Block, First Floor, Bapa Nagar, Padam Singh Road. This DD was assigned to SI Kavar Singh for investigation who along with constable Kamal Singh reached the spot and found the dead body of a woman near

the stairs of the first floor. The body was half naked. SI Kavar Singh recorded statement of one Ravinder Kumar, owner of the house. He disclosed to the police that on coming to know from his tenant Sukhpal at about 6:30 A.M. about dead body of a woman lying in the toilet, he reached the spot and informed the PCR at number 100 by his phone No.9210252085. He also stated that one Mahadev who used to reside as a tenant in one room was not there and his articles were missing from the tenanted room. He claimed that he had seen the deceased (whose name was ascertained to be Munni) on 07.04.2007 at about 3:30 P.M. going with Mahadev in the gali.

3. SI Ravinder Kumar made an endorsement on the statement and registered the FIR by sending the rukka at about 11:30 A.M. Investigation was thereafter taken over by Insp.Ashok Kumar.

4. Insp.Ashok Kumar conducted inquest proceedings under Section 174 Cr.P.C; he summoned the crime team; he got the scene of incident photographed; seized the articles lying at the spot; sent the dead body to mortuary and got the post-mortem conducted. Since Ravinder Kumar suspected Mahadev as the perpetrator of crime, efforts were made to nab him. The Police succeeded, he was arrested at 10:30 P.M. On interrogation, the accused confessed his crime and pursuant to his disclosure statement, one silver chain of the deceased was recovered from the tenanted room. The IO prepared the necessary seizure memo.

5. During the course of investigation, the accused Dinesh and Ganesh were also arrested in this case for committing the crime punishable under Section 201 IPC. Statements of witnesses conversant with relevant facts were recorded. After completion of investigation, the

accused Mahadev was charge-sheeted for committing offence under Section 302 IPC. Accused Dinesh and Ganesh were shown in column No.2 of the charge-sheet.

6. The learned Metropolitan Magistrate did not take cognizance of offence against accused Dinesh and Ganesh and committed the case to the Court of Sessions as against accused Mahadev only.

7. The prosecution produced 29 witnesses to prove the charge. Statement of the accused was recorded under Section 313 Cr.P.C. to afford him an opportunity to explain incriminating circumstances appearing against him. He pleaded false implication in the case when he failed to pay money to the police for allegedly selling smack.

8. After appreciation of evidence and considering the rival contentions of the parties, the Trial Court convicted the accused for murder, under Section 302 IPC. Aggrieved by the said order, the Appellant has come in the appeal.

9. Learned counsel for the Appellant assailed the findings and conviction rewarded by Trial Court urging that there was no legal evidence to prove the accused's guilt. It was urged that major contradictions and discrepancies in the deposition of the prosecution witnesses were ignored by the Trial Courts the prosecution failed to prove any motive of the accused to commit gruesome murder of a woman towards whom he had no animosity; it did not explain as to when and how the deceased's husband came to know about her murder. No independent public witness was joined at any stage of the investigation and all the witnesses examined by the prosecution were stock witnesses. The Trial Court fell in error to put reliance on their wavering testimonies.

10. Learned APP while supporting the impugned judgment in its entirety urged that the incriminating circumstances proved were of conclusive nature and sufficient to form a complete chain establishing the guilt of the accused beyond reasonable doubt. Independent public witnesses were examined to prove the circumstance of 'last seen' with the deceased at about 3:30 P.M. Recovery of silver chain of the deceased pursuant to the disclosure statement is a strong piece of evidence under Section 27 of the Evidence Act. Motive to commit the crime has been mentioned by the accused himself in the disclosure statement. To conceal his crime, the accused removed articles from the tenanted room and set up false defence under Section 313 Cr.P.C. that he was not Ravinder Kumar's tenant. The defence version was rightly discarded by the Trial Court. Minor contradictions and omissions which do not go to the root of the case are not fatal to this case..

11. At the outset, it may be highlighted that homicidal death of deceased is not under challenge. There, however, is no ocular version of the incident and the prosecution case hinges on circumstantial evidence only. The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decisions of Supreme Court. According to that standard the circumstances relied upon in support of conviction must be fully established and the chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. 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. Having regard to these principles in respect of proof of guilt by circumstantial evidence we shall now examine the various circumstances put against the appellant.

12. The prosecution mainly relied upon the circumstance of last seen. On scanning the evidence on record, however, we find that the prosecution failed to establish this circumstance. Munni's body was found on 08.04.2007 in the morning at about 6 or 7 A.M. It is not certain at what time the murder took place. No material was collected by the police during investigation to find out when Munni reached the premises in question and if so with whom. Prior to recovery of the dead body, her husband had not lodged any missing person report. There is no evidence showing when and under what circumstances Munni went missing from her house or place of work. PW-3 (Nathu Singh), husband of the deceased, in his deposition disclosed that he came to know about the murder of his wife on 08.04.2007 when the IO showed him the photograph of his wife and daughter at the police station. IO also showed him some articles which he identified to be of his wife Munni Devi. In the cross-examination, he explained that the deceased was a thread cutter by profession; she used to leave the house at 10:00 A.M. and return at about 1:00 or 1:30 P.M. for lunch. She again used to leave after lunch and return finally at about 5:00 or 6:00 P.M. He pleaded ignorance where the deceased used to go for cutting the thread. This witness did not disclose when the deceased had gone to her place of work on 07.04.2007. He is silent as to what steps were taken to search the deceased when she did not return, as usual, her home in the evening. He did not depose when and from whom, he learnt about the murder of his wife and why he did not

attempt to lodge a missing person report with the police. There is nothing on record showing when the police informed this witness about the recovery of the dead body of his wife or that he was joined in any proceedings conducted during investigation.

13. The entire case of the prosecution is based upon the PW-2's (Ravinder Kumar) statement where he alleged that he had seen both the deceased and the accused in the street at about 3:30 P.M. on 07.04.2007. This claim of the landlord does not inspire confidence because prior to 07.04.2007 he had no acquaintance with the deceased. He had never seen the accused in the company of the deceased earlier. His presence in the street at about 3:30 P.M. is also doubtful. In the information given to the police at the first instance, he did not suspect the accused's hand in the incident. Only in his statement Ex.PW2/A, he came up with the plea of 'last seen'.

14. The statement Ex.PW2/A seems to have been manipulated by the police to solve a blind murder. The PCR form Ex.PW14/A reveals that at about 8:23 A.M. on 08.04.2007, information about the dead body was received. The PCR form further contains the information that the photo of a lady and her daughter was lying near the deceased. It was also recorded that 10/12 tenants used to reside in the premises and main door of the premises used to remain open. In this PCR form, there is no mention that the accused was suspected for committing the crime.

15. On recording Ravinder Kumar's statement (Ex.PW2/A), SI Kavar Singh made an endorsement Ex.PW23/A and sent the rukka for registration of the case at 11:30 A.M. Apparently on the basis of this rukka FIR 150/2007 was recorded at about 11:45 A.M. but the record does

not substantiate this version. One carbon copy of the FIR sent to the learned Metropolitan Magistrate reveals that it was delivered to him on 09.04.2007 at 10:00 A.M. In this FIR only the contents of DD No.7/A were reproduced. Subsequently pages attached with FIR on record showed registration of FIR on the statement of Ravinder Kumar. A computerised copy of the FIR on record shows registration of the FIR only on the basis of informant-Ravinder Kumar. Contents of both contradictory FIR create doubt as to when, in fact, the FIR in question was registered. Since the police had registered the case on the statement of informant-Ravinder Kumar soon after reaching the spot, there was no occasion for it to send a special report to the concerned Magistrate under Section 157 Cr.P.C. only disclosing the contents of DD No.7/A. Nine inquest papers were handed over by SI Kavar to the doctor who conducted the post mortem of the deceased on 09.04.2007. In the inquest papers, there is mention of only recovery of the dead body and nothing is mentioned about recording of the statement of Ravinder Kumar (informant). The same is the position with contents of DD No.16/A. Even in Nathu Singh's statement (PW-3) recorded on 08.07.2006, regarding identification of the dead body on the basis of photographs, there is nothing to show that he had come to know the suspect whereas the arrest memo shows arrest of accused on 08.04.2007 at 10:30 P.M. The prosecution failed to explain the inordinate delay in sending the special report to the area magistrate. All the circumstances on record lead to the inference that the FIR is ante-timed and the statement of Ravinder Kumar was not in existence when allegedly the FIR was shown to have been registered at 11:30 A.M. on 08.04.2007.

16. The prosecution did not collect any evidence to find out at what time the deceased had reached the place of her work and at what time she had left the same. The name of her employer has not come on record. No inquiry was made from him nor was he was cited as a witness. The prosecution failed to show the purpose for which the deceased was present in the street when allegedly she was witnessed by Ravinder Kumar with the accused.

17. PW-9 (Bhagwan Das) claimed that the deceased met him at about 2:30 P.M. on 07.04.2007 near Gurdwara Khalsa Nagar, Tank Road, New Delhi where the accused was talking to Munni Devi and thereafter both went away from there. This witness failed to explain how suddenly he happened to meet the deceased when she was not working at that particular place. None of the witness examined by the prosecution disclosed where both the accused and the deceased left after 3:30 P.M. No witness came forward to testify if the accused was last seen with the deceased soon prior to the incident at any specific place. The prosecution did not examine any occupant of tenanted rooms to ascertain if any of them had seen the accused taking the deceased in his room at any particular time. The movement of deceased after 3:30 P.M. were not ascertained by the prosecution.

18. Mere presence of accused with the deceased at 3:30 P.M. itself cannot be taken as a strong incriminating circumstance to connect the accused with the commission of offence. Regarding law on the circumstance of last seen, the observation of Supreme Court in ***Muhibur Rahman v. State of Assam*** (2002) 6 SCC 715 are relevant:

“The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place.”

19. It is alleged that conduct of the accused in removing his articles from the tenanted room before his arrest is unnatural. We find nothing unusual in this. The police failed to reveal where the accused had taken his household articles. The prosecution also failed to trace the place where he had shifted. No such household article was recovered from any such place. No tenant/occupant of the building in question saw the accused shifting his articles from the room. The accused was not apprehended from the place where he allegedly shifted to. No adverse inference thus can be drawn against the accused on that account.

20. The recovery of silver chain Ex.P-6 pursuant to the disclosure statement of the accused cannot be considered as an incriminating circumstance since the prosecution failed to establish that the chain belonged to the deceased or that it was recovered at his instance. Accused, who had allegedly shifted all his articles prior to his being arrested, is not expected to leave behind only a silver chain inside the room. Moreover the room was searched by the police at the time of recovery of the dead body and nothing incriminating was found there at that time. The inquest papers reveal recovery of many articles of the

deceased's person that were not removed by the accused. There was no reason for the accused to remove the silver chain of insignificant value and conceal it in his almirah. TIP proceedings in respect of the silver chain are of no consequence as similar chains were produced in an open condition and were seen by the witness. The silver chain Ex.P-6 was not shown to PW-3 (Nathu Singh) in his deposition.

21. The prosecution failed to establish the appellant's motive to commit the murder with whom he had no prior animosity. The motive disclosed by the accused in his disclosure statement cannot be taken into consideration under Section 25 of the Evidence Act. The motive reflected in the disclosure statement does not fit into the prosecution story.

22. The police failed to explain what lead them to arrest the accused Dinesh and Ganesh at first instance and thereafter to put them in column No.2 of the charge-sheet. No cogent evidence was led to prove involvement of the accused Dinesh and Ganesh in the incident. PW-26 Insp.Ashok Kumar levelled allegations against the accused that he was engaged in the sale of ganja etc. However, no evidence was led to substantiate this accusation. No case was ever registered against the accused for the possession or sale of any such contraband.

23. In the light of above reasons, we are of the considered view that the prosecution has failed to establish any incriminating circumstance pointing an accusing finger against the Appellant for the crime. The circumstances relied upon by the prosecution have not been established and Trial Court fell into error in convicting the Appellant on scanty evidence. Mere suspicion cannot supplant proof. The appeal deserves to be allowed giving the Appellant benefit of reasonable doubt. The

impugned judgment dated 19.11.2010, thus cannot be sustained and is set aside. The bail bonds are cancelled. The Appellant shall released forthwith of not required in any other case.

(S.P.GARG)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

February 9th , 2012
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