

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

+ **CRIMINAL APPEAL No. 889/2009**

% **Reserved on: 11th October, 2012**
Date of Decision: 18th October, 2012

RAM KARAN Appellant
Through Mr. A.K. Mishra & Mr. N.K. Tripathi,
Advocates.

Versus

STATE ...Respondent
Through Mr. Sanjay Lao, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P. GARG

SANJIV KHANNA, J.:

Ram Karan challenges his conviction vide judgment dated 29th July, 2009 in Session Case No. 116/2008 arising out of FIR No. 56/2004, Police Station Kapashera, for murder of Ashok Kumar in the night intervening 14th/15th March, 2004. By the impugned order of sentence dated 31st July, 2009, he has been sentenced to life imprisonment and asked to pay fine of Rs.10,000/-. In default of payment of fine, he has to undergo simple imprisonment for three months.

2. It has been established, in view of the statements of Satbir Singh (PW-2) the Caretaker and Randhir Sharma (PW-5) the owner of the building where the crime was committed, that the appellant Ram Karan, the deceased Ashok Kumar and one Suraj, deceased's brother-in-law, were tenants of Room No. 16 in that building. The building was constructed on an area measuring 500 square yards and Room No. 16 was one of the 24-25 rooms given on rent. A relative of PW-5, Satbir (PW-2), who was the caretaker of the building, gave these rooms on rent. PW-2 had his own shop adjacent to the plot. There is cogent evidence to show that Suraj, one of the co-tenants, had left for his village on or about 8th March, 2004 and was not present in Delhi till 17th March, 2004 when Ashok's dead body was found. Suraj returned to Delhi, on 20th March, 2004, from his village with Shri Ram (PW-6) father of the deceased Ashok. PW-6 identified the dead body of his son vide identification memo Exhibit PW-7/A. Lakshmi Prasad (PW-7), who was a resident of Delhi, had also identified dead body of Ashok and had apprised that the deceased and Suraj were brothers-in-law.

3. Constable Bir Pal (PW-13) has stated that the dead body of Ashok was found, on 17th March, 2004, in the evening at about 6.30 P.M. PW13 along with SI Shiv Singh (PW-15) and Satbir (PW-2) were

present at that time. PW-13 was marked DD No. 18A (Exhibit PW-13/A) for investigation. He mentioned that foul smell was emanating out of Room No. 16. SHO, Police Station Kapashera also reached the spot and the room lock was broken. A dead human body, aged about 25-30 years, was found in the room covered half with a blanket, while another blanket was underneath the body. Blood stains were on the wall and one silbatta (stone) was found inside the room. Crime team was called to the spot and incriminating material was collected. The lock was sealed and taken into possession. SI Shiv Singh (PW-15) has deposed a similar statement. Evidence/statement of Satbir (PW 2) on other aspects has been considered below.

4. The core question relates to the involvement of the appellant in the murder of Ashok. The prosecution, in the present case, has not relied upon any eye witness and has premised its case upon circumstantial evidence of last seen, abscondence, motive and recovery of the knife and the key, through disclosure statement and CFSL Report.

5. On the question of last seen and motive, the prosecution solely relies upon, Satbir Singh (PW-2), the Caretaker. He has stated that one of three tenants of Room No. 16, namely Suraj, had gone to his village. The appellant Ram Karan and the deceased Ashok were, therefore, the

two occupants of Room No. 16. On 14th March, 2004, when PW-2 had called Ram Karan and Ashok to his shop for payment of rent, an altercation took place between the two tenants regarding who should pay the rent for that month. PW-2 received Rs.250/- each from the two tenants and, during the course of the conversation, Ram Karan had informed that he would leave for his village next morning. Next day, on 15th March, 2004 at 6.30-7.00 A.M., PW-2 saw the appellant Ram Karan walking with his bag and, when he inquired where the appellant was heading, Ram Karan had apprised that he was going to his native village. PW-2 has not stated that on 15th March 2004 he had verified whether Room No. 16 was locked. It is only on 16th March, 2004 that he found Room No. 16 to be locked from outside but there is no indication of the time when he went and discovered this, in his statement. Then he mentions that, on 17th March, 2004 at about 4-5 P.M., two-three women came and told him that foul smell was coming from room No. 16. He went there and found that the room was locked from outside. He informed Randhir Sharma (PW-5) on the phone and PW-5 informed the police. It was the police which came and broke the lock and the dead body of Ashok was discovered in the room and identified by PW-2. The police sealed the lock and garnered evidence. In the meanwhile, the deceased Ashok's relative reached there and

identified the dead body. Till then the appellant Ram Karan had not returned to the room.

6. PW-2's statement fails to establish effective and palpable "motive" to commit murder and cannot be regarded as evidence of last seen. In a way, it exculpates and exonerates the appellant, and indicates a possible involvement of third person. PW-2 has stated that he had seen the appellant leaving the room, in the morning of 15th March, 2004 but the dead body of Ashok was actually found on 17th March, 2004, at about 5 P.M. No evidence has been put forth that the deceased was not seen at all on 15th March, 2004 or 16th March, 2004. PW-2 has not stated that he did not see the deceased on the two dates, though his grocery shop was adjacent to the building where the accused and the deceased had rented the room. The police have not investigated on this aspect and have failed to produce other neighbours/ tenants residing nearby to establish that Ashok could not be seen on 15th or 16th March, 2004. As noticed above, neither has PW-2 stated that he had seen the room locked on 15th March, 2004 nor has indicated a time when, on 16th March, 2004, he discovered the room to be locked. Another factum to be noted is that, on 16th March, 2004 when PW-2 visited the room, he did not detect any foul smell from the said room. As per PW-2, on 17th March, 2004 at about 4-5

P.M., he went to Room No. 16 after a complaint, made by few women that there was a foul smell around Room No.16. It is ostensible that PW-2 had suspected the appellant and implicated him, right from the beginning of the investigation, on the basis of his intuition and hunch. His statement under Section 161 Cr.P.C. was recorded on 17th March, 2004 and, till that time; there was virtually nothing beyond this guesswork and instinct to establish and show the appellant's involvement in the said offence.

7. Inspector Rajenderpal (PW-16), the investigating officer, in his cross-examination has stated that he had verified, from the inhabitants of nearby rooms, whether anyone had opened the room after 15th March, 2004 but no one was aware regarding this. He had deposed that Satbir (PW-2) had informed him that room No. 16 remained closed after the appellant's departure but, as noted above, this is wrong as the same has not been stated by Satbir, in his statement in the Court. PW-2's statement in the court is silent on this moot point and PW-2 has not stated whether he had seen or not seen the deceased Ashok, on 15th, 16th or 17th March, 2004.

8. There was no inquiry or investigation regarding whether the deceased Ashok had gone to work or visited anyone on 15th and 16th March, 2004. It has come on record, in the statement of Lakshmi

Prasad (PW-7), that Ashok did tailoring work. As per the Police Diary, Ashok was working in a factory, at Gurgaon. The Investigating Officer and the police did not make any inquiries, from the co-workers or from the management, whether Ashok had visited the factory and worked there on 15th/16th March, 2004.

9. Learned Additional Public Prosecutor has relied upon the Post Mortem Report (Ex. PW3/A) to prove that the death had taken place in the intervening night of 14th and 15th March, 2004 and not thereafter. The Post Mortem examination was conducted at 12.30 P.M. on 20th March, 2004. As per the Report, the time of death was approximately 5 days. As noticed above, the dead body was recovered on 17th March, 2004 at about 6.30 PM. The dead body was kept in the mortuary, thereafter, and thus the aging process was controlled.

10. Ascertainment of exact time of death in the post mortem examination, where death has possibly occurred between 36 to 72 hours or more requires examination of several aspects. Specification of an exact time is beset with difficulties. The time indicated is probable but not precise to an hour. We deem it appropriate to reproduce the following observations made in Modi's Medical Jurisprudence and Toxicology, 23rd Edition at pages 437 and 438.

“Between 18 to 36 or 48 hours after death, gases collect on tissues/cavities and hollow viscera. From 18 to 36 or 48 hours after death, the gases collect in the tissues, cavities and hollow viscera under considerable pressure with the result that the features become bloated and distorted, the eyes are forced out of their sockets, the tongue is protruded between the teeth, and the lips become swollen and everted. A frothy, reddish fluid or mucus is forced from the mouth and nostrils. Ultimately, the features become obliterated and unrecognizable. The abdomen becomes greatly distended. Hence, on opening the cavity, the gas escapes with a loud explosive noise. Owing to the pressure of the gases, the stomach contents are forced into the mouth and larynx and are seen running out of the mouth and nostrils. The breast of female bodies are greatly distended. The penis and scrotum become enormously swollen. The cellular tissues are inflated throughout, so that the whole body appears stouter and older than it actually is.

These gases form blisters under the skin containing a reddish coloured fluid, on the various parts of the body. When these burst, the cuticle being softened peels off easily. These are characterized by the absence of vital reaction. Bruises and abrasions may become unrecognizable when the cuticle is denuded. Wounds, whether caused before or after death, begin to bleed once more owing to the pressure of the gas within the heart and blood vessels. Wounds also become so altered in appearance that it may be difficult to form an opinion as to whether they were caused before or after death, unless the presence of the clotted blood can be distinctly made out. At this stage, there is considerable difficulty in identification.”

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“Between 48-72 hours, From 48 to 72 hours, the rectum and uterus protrude. The gravid uterus may expel its contents, and prolapse. The hair becomes loose, and is easily pulled out. The nails are also loose, and are easily detached.

In three to five days or more, the sutures of the skull, especially of children and young persons, are separated, the bones are loosened, and the liquefied brain runs out. The teeth become loose in their sockets and may fall off.

The next stage of putrefaction is known as colliquative putrefaction, which begins from five to ten days or more after death. During this stage, the walls of the abdomen become softened, and burst open protruding the stomach

and intestine. The thorax, especially in children bursts. The diaphragm is pushed upwards.

If the putrefactive processes still go on, the tissues become soft, loose and are converted into a thick, semi-fluid, black mass. They ultimately separate from the bones, and fall off. The bones are consequently exposed, and the orbits are empty. The cartilages and ligaments are similarly softened, and ultimately the bones are destroyed, so that after some years no trace of the body is left. The time taken up by these changes varies considerably with the temperature and the medium in which the body lies.”

Modi’s Medical Jurisprudence and Toxicology indicates that by 72 hours there is formation of bullae.

11. The aforesaid paragraphs indicate that even with same symptoms and signs, there can be variation in time. Post Mortem Reports are important, in a criminal case, on many aspects, including the time of occurrence/death. However, it may not be possible to ascertain the exact time of death/occurrence to a particular hour and estimation may be approximate. In such cases, the Post Mortem Report may be used as corroborative evidence or may require corroboration with other material and evidence, adduced by the prosecution. In the present case, however, we are not satisfied that credible material or evidence exists to corroborate and establish that the death has occurred prior to 7.00 A.M. on 15th March, 2004.

12. We have examined the Post Mortem Report. The Report states that mouth was found partially opened and deformed, tongue was

protruded and nails were cyanosis. The discharge from natural orifices was putrefactive, with exudates from mouth and nostrils. Bowels were distended due to collection of putrefactive gases. Similarly, the genital organs were distended due to accumulation of putrefactive gases.

13. As recorded and noticed, in Modi's Medical Jurisprudence and Toxicology it is suggested that within 18 to 36 hours, gases collect on tissues/cavities and hollow viscera. If the death had taken place in the intervening night of 14th and 15th March, 2004 by 16th March, 2004, foul smell of gases would have probably been sufficient to attract attention. This did not happen. Modi's Medical Jurisprudence and Toxicology, lists and records symptoms and signs which can relate a time periods spread over to 24 to 48 hours or even more. The symptoms/signs can vary from body to body, depend upon climatic conditions etc. and, thus, are dependent on varied factors. As per the prosecution case, the body was found approximately 60 hours after the death. From the symptoms/signs mentioned in the Post Mortem report it is difficult to accept and hold that the death must have taken place on or before morning of 15th March, 2004. It was possible thereafter. The report itself uses the expression approximately 5 days. In the facts of the present case difference of some hours is relevant. The possibility

that the death could have taken place post 7A.M on 15th March, 2004 cannot be ruled out or negated on the basis of the Post Mortem report.

14. The Supreme Court in *P. Venkaiah vs. State of Andhra Pradesh* AIR 1985 SC 1715, cautioned that medical science is not yet so perfect as to determine exact time of death. Time of death cannot be determined, in a computerised or mathematical method, to be accurate as to the last hours. We do not think it appropriate to accept, the prosecution argument, that the death has taken place in the intervening night of 14th and 15th March, 2004, solely on the basis of the Post Mortem Report.

15. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. With the aforesaid evidence and material it is difficult to positively establish and hold that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the present case, there are umpteenth possibility of what could have happened on 15th March 2004 and 16th March 2004 and it would be impossible to apply the theory of last seen to incriminate the accused.

16. The alleged motive, in the present case, is rather weak to uphold a charge of murder. PW-2 has stated that there were some antagonism between the appellant and the deceased Ashok, regarding payment for the rented room, for the month in question. Ultimately, he received Rs.250/- each from the appellant and deceased Ashok. The rent obviously was Rs.500/-and had been paid by both of them. This suggests that the alleged altercation was sorted out and the two tenants shared the rent of Rs 500/-. There is nothing to indicate that, even after the payment, the quarrel continued or heated arguments had taken place.

17. This brings us to the question of abscondence. As noticed above, PW-2 has stated that on 14th March, 2004 the appellant Ram Karan had told him that he would be going to his village on 15th March, 2004 and PW-2 had seen him going with a bag. When questioned, the appellant had informed PW-2 that he was going to his native village. Thus, the appellant had informed PW-2, even before the occurrence and when Ashok was alive, that he would be leaving Delhi to go to his native village. PW-2 has affirmed that he had seen the appellant leaving, with a bag, on 15th March 2004 at 6.30/7.00 A.M. The appellant, in his statement under Section 313 Cr.P.C., has urged that he had left Delhi, for Vaishno Devi, by a night train, on 14th

March, 2004. This is contrary to what has been stated by PW-2 but it is difficult to hold that, this statement along with other implicating material evidence, is sufficient to convict the appellant. Inspector Rajenderpal (PW-16), the Investigation Officer who had taken over the investigation from SI Shiv Singh (PW-15) has, in his examination-in-chief, not averred what steps were taken to locate, interrogate and, if required, arrest the appellant till 30th March, 2004. There is no evidence that PW-16 had gone to the village of the appellant to locate the appellant and interrogate him. He has stated that, on 30th March, 2004 at about 10.11 A.M., PW-2 had informed him that accused Ram Karan was present near the building. He reached the spot and found the appellant Ram Karan near the room. The appellant was overpowered by the police at the instance of Satbir (PW-2). In the cross-examination, however, he stated that on 30th March, 2004 he had seen the appellant at about 3.00/4.00 P.M.

18. Satbir (PW-2) has stated that, on 30th March, 2004 at about 1/1.30 P.M., he had seen accused near the crossing, next to the plot, and he apprehended him. Police reached there and the appellant was handed over. As per the arrest memo (Exhibit PW-2/E), the appellant was arrested at 9.30 A.M. on 30th March, 2004. Thus there is a clear discrepancy about the time of arrest as per the arrest memo, and even

in the statements made by the two witnesses PW-2 and PW-16. However, PW-16 and PW 2 have admitted that the appellant, on his own, had come to the room/building and was apprehended there on 30th March, 2004.

19. The prosecution has relied upon recovery of the key to Room No. 16, from the bag of the appellant, which was seized and taken into possession vide memo Exhibit PW-2/G. Presence of the pad lock key, in the bag of the appellant, cannot be regarded as sufficient incriminating evidence. It is an accepted position that the appellant was a joint tenant of the room and, therefore, presence of key in his bag does not implicate him. Presence of the key is an expected, normal and clearly a neutral factor, in the present case.

20. Learned Additional Public Prosecutor has relied upon the CFSL report (Ex. PW-16/8 and 16/9) and the recovery of the blood stained clothes (Ex. PW-2/J), from the bag of the appellant, on 30th March, 2004. As per the police version and as per the PW-2, a lemon colour shirt (Exhibit P-7) and vest (Exhibit P-8) were recovered, from the bag of the appellant, and had been sent to CFSL. As per the CFSL report, blood was detected on the shirt but not on the vest. The blood was human origin and of group B, similar to the blood group found on some of the exhibits worn by the deceased. Admittedly, the recovery

in the present case is nearly 15 days after the date of occurrence of the alleged crime. It is difficult to believe that the appellant would not have washed his clothes in so many days when he had enough opportunity and cause to wash the blood stained clothes. Even in normal circumstances he would have washed them. Thus, we do not think the CFSL report, as alleged, by itself can be treated as sufficiently incriminating fact to connect the accused with the offence or a fact which by itself completes the chain. As noticed there is hardly any corroborative credible evidence to establish the appellant's involvement in the crime.

21. Alleged recovery of knife, on the basis of the disclosure and at the instance of the appellant, has to be rejected. PW-2 has stated that the appellant had led the police party to the terrace of Room No. 24 and got the knife recovered. In the cross-examination, however, PW-2 stated that in his presence, the police officers did not record any statement of the appellant but the police had obtained his signatures. PW-2 has further stated the roof, from where the appellant accused had got the knife recovered, was accessible to other persons including children. The knife was a vegetable cutting knife. PW-2 has further averred that he did not know who had brought the knife, from the room, and, as far as he remembers, the police had asked someone to

bring the knife from the roof. Inspector Rajenderpal (PW-16) has stated that, pursuant to disclosure statement, the appellant had taken them to the roof of the room situated near the entrance gate and produced a knife, after removing garbage, and stated that he had used the knife for slitting the neck of the deceased. As per the CFSL report, no blood was detected on the knife (Exhibit 8). Alleged recovery of the knife, is therefore highly doubtful and cannot be an incriminating factor.

22. In a case of circumstantial evidence, to convict a person the prosecution must prove the following:

“(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be

consistent with the guilt of the accused but should be inconsistent with his innocence.”(See *Padala Veera Reddy v. State of A.P.* [1989 Supp (2) SCC 706).

23. In the present case, the following facts have been established:-

- I. There was a quarrel, between the deceased and the appellant, on 14th March, 2004, about payment of rent but the matter was pacified and the rent was paid. There is nothing to indicate that, thereafter, there was any further altercation between the appellant and the deceased.
- II. The appellant had left the room, on 15th March, 2004 at about 6.30/7.00 AM, and returned, on 30th March, 2004. As per PW-2, on 14th March, 2004 in the presence of the deceased, appellant had stated that he wanted to go to his village next day. PW-2 had seen him going on 15th March, 2004 at 6.30/7.00 AM. The appellant, however, contradicted his stand and, in his statement under Section 313 Cr.P.C., had stated that he had gone to Vaishno Devi, on the night of 14th March, 2004. However, no evidence has been led before the court to show that the appellant had not gone to his village. There is no evidence as such of absconding. The appellant came on his own to the spot, on 30th March, 2004.

- III. Principle of last seen is not applicable. There is no evidence that Ashok was not seen alive on 15th and 16th of March, 2004. Post Mortem report does not clinch and conclusively establish that the deceased had expired on or before 7 A.M. on 15th March, 2004. (See paragraphs 6 to 15, above)
- IV. Recovery of the key, from the bag of the appellant, is a neutral factor as the appellant was a tenant and was using the said room.
- V. Appellant's shirt had blood stains, as per the CFSL report (Ex. PW16/A and PW16/9), but it is doubtful whether the appellant could not have washed his shirt in the period of 15 days.
- VI. Recovery of knife, at the behest or disclosure of appellant, is doubtful. No blood stain was found on the knife.

24. Examining the aforesaid circumstances, it cannot be said that there is a chain of evidence, so complete, that it cannot be held and concluded that the crime was committed by the appellant accused and no one else. The circumstances do not unerringly point towards the guilt of the appellant. There are gaps and doubts and it cannot be said, with certainty, that the appellant has committed the said act of murder.

Evidence is not inconsistent with his innocence. The appellant is, therefore, entitled to benefit of doubt.

25. In view of the aforesaid position, we allow the present appeal. Conviction of the appellant under Section 302 IPC is set aside and he is acquitted giving him benefit of doubt. Appellant shall be released immediately unless he is required in any other case.

-sd-
(SANJIV KHANNA)
JUDGE

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(S. P. GARG)
JUDGE

October 18th, 2012
VKR/kkb