

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: September 29, 2014*

+ **CRL.A. 313/2012**

RAMESH KUMAR Appellant
Represented by: Ms.Srilina Roy, Adv. for
Ms.Nandita Rao, Adv.

versus

STATE GOVT OF NCT OF DELHI Respondent
Represented by: Mr.Varun Goswami, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Ramesh Kumar is convicted of the murder of his brother-in-law Saktu Prasad with whom he was living and directed to undergo imprisonment for life on the basis of circumstantial evidence.
2. The defence of Ramesh Kumar is of innocence and false implication. He took the plea of alibi and examined Pankaj DW-1 who was his neighbour and friend in Unnao who stated that on July 29, 2010 Ramesh had come to Unnao from Delhi and was there in Unnao till August 07, 2010 when 3 Delhi Police officials reached there and brought Ramesh to Delhi.
3. The process of law was set into motion on receipt of DD No.13A on August 04, 2010 at 15.30 hours at PS Farsh exhibited as Ex.PW-2/A informing that at house No.500/20, Gali No.15, 60 feet road, Viswas Nagar a dead body was lying in the house. On reaching the spot SI Vipin Kumar

Pw-16 and Ct. Mukesh PW-24 found the main gate of the house locked and thus SI Vipin Kumar entered the house through neighbours house where he found a dead body lying on the floor with his face towards floor. The name of the deceased was revealed as Saktu Prasad and one quarter bottle of whisky was lying outside the room. On the basis of DD No.13A, FIR under Section 302 IPC was registered. Blood, blood stained concrete and earth control were lifted. The lock of the gate at the ground floor were broken and seized. On August 06, 2010 the family members of the deceased joined the investigation and statements of PW1 and PW-3 the brothers of the deceased were recorded. Statements of neighbours were also recorded and it was revealed that Ramesh was residing with Saktu Prasad in the house and was missing since the date of incident. On August 13, 2010 Ramesh was arrested and pursuant to his disclosure statement he got recovered the weapon of offence knife from the room in his house from beneath the gas stove. He further led the Police party to Unnao, U.P. from where he got recovered his pant and shirt which were blood stained.

4. The post-mortem of Saktu Prasad was conducted by Dr.S.Lal PW-9 who noted the following external injuries on the body of the deceased:

- “i. Reddish abrasion 4 x 2 cms over left side face over cheek.*
- ii. Stab incised wound 1.3 x 0.3 cms x 4 cm deep over supra sternal notch, vertically placed, upper angle of wound was acute and lower angle was blunt. The wound goes inside the upward and backward direction to cut neck muscles and trachea.*
- iii. Stab incised wound 2.3 x 0.3 cms x chest cavity deep over right side front of chest obliquely placed, inner lower angle of wound was acute and other angle was blunt. The wound was placed 3.5 cms below the mid point of*

clavicle and 8 cms from midline. The wound enter the chest cavity through 2nd inter-costal space and enter the apical lobe of right lung. The wound enter the backward and medially direction and total depth of wound was about 10 cms.

- iv. Stab incised wound 2.4 x 0.3 cms x neck muscle deep on right side lower neck, obliquely placed. The outer lower angle of wound was acute and other angle was blunt. The wound was placed 4 cms medial to shoulder tip. The wound enter medially and backward direction into neck muscles. Total depth of the wound was about 5 cms.*
- v. Stab incised wound 2.4 x 0.3 cms x 5 cms deep over right side lower neck, vertically placed, upper angle was acute and lower angle was blunt. The wound was placed 4.5 cms above the clavicle and 9 cms from midline. The wound enter the neck muscles in medially and backward direction.*
- vi. Stab incised wound 2.4 x 0.3 cms x muscle deep, vertically placed in front of right shoulder. The wound was placed 3 cms below the tip of shoulder. Upper angle of the wound was acute and the lower angle was blunt. The wound enter the muscles in backward and outward direction and came out by making an exit wound of size 2.2 x 0.3 cms over outer aspect of right shoulder. The total length of the track was about 4.5 cms.*
- vii. Stab incised wound 2.5 x 0.3 cms x muscle deep over middle front of right forearm, vertically placed 7 cms below the middle of the elbow. Lower angle was acute and the other angle was blunt. The wound enter the muscles in backward and upward direction and comes out by making a exit wound of size 2.0 x 0.3 cms over outer middle of right forearm. The total length of the track was about 4.8 cms.*
- viii. Stab incised wound 2.3 x 0.3 cms x chest cavity deep in lateral aspect of middle of right side chest, horizontally placed 9 cms below the apex of axilla and 13 cms outer to right nipple. The outer angle of the wound was acute*

and other angle was blunt. The wound enter the chest cavity through fourth inter-costal space in upward and medially direction to enter the middle lobe of right lung. The total depth of wound was about 9 cms.

- ix. Stab incised wound 2.4 x 0.3 cms x abdominal cavity deep over right side abdomen, obliquely placed just below the sub-costal margin and 7 cms right to midline. The upper angle was acute and the other angle was blunt. The wound enter the cavity in downward and backward direction to enter liver through and through. The total depth of wound was about 9 cms.*
- x. Stab incised wound 2.3 x 0.3 cms x abdominal cavity deep, vertically placed in middle right lateral aspect of abdomen, 6 cms above the iliac crest and 17 cms right to midline. The upper angle was acute and the other angle was blunt. The wound enter the cavity in upward and backward direction to give nick in intestine and mesentry. The total depth of wound was about 9.5 cms.*
- xi. Stab incised wound 2.3 x 0.3 cms x chest cavity deep over left side lateral aspect of chest placed 13 cms below apex of axillae and 14 cms left to midline. The wound was obliquely placed, inner angle was acute and other angle was blunt. The wound enter in backward, upward and medially direction in chest cavity by cutting the 6th rib and enter the lower lobe of left lung. The total depth of wound was about 8.5 cms.*
- xii. Stab incised wound 2.3 x 0.3 cms x chest cavity deep, obliquely placed 2.5 cms below injury No.11, upper inner angle was acute and the other angle was blunt. The wound enter the chest cavity through 7th inter-costal space in medially and backward direction to enter the lower lobe of left lung through and through. The total depth of wound was about 9 cms.*
- xiii. Stab incised wound 2.3 x 0.3 cms x chest cavity deep, obliquely placed in front of injury No.12, upper angle was acute and the other angle was blunt. The wound enter the chest cavity through 7th inter-costal space in*

upward medially and backward direction to enter the lower lobe of left lung through and through and given the nick in pericardium. The total depth of wound was about 10 cms.

- xiv. Stab incised wound 3.5 x 0.3 cms x chest cavity deep placed 1 cm below injury No.12, vertically placed, upper angle was acute and the other angle was blunt. The wound enter the chest cavity by cutting 7th and 8th ribs and track of the wound merge in injury No.12. The total depth of wound was about 9 cms.*
- xv. Stab incised wound (four) in number of size 2 x 0.3 cms, 1.5 x 0.3 cms, 3.2 x 0.3 cms and 2 x 0.3 cms over left side lateral aspect of abdomen placed 6 cms above the iliac-crest and 20 cms left to midline. The wound lies in area of 7 x 6 cms. All wounds were vertically placed, upper angle of all wounds were acute and the other angles were blunt. The wound enter the chest cavity by making a single track and cutting the intestine and mesentry at places. The total depth of wound was about 11 cms.*
- xvi. Incised wound 3 x 0.5 cms x muscle deep over left side lower back of chest, horizontally placed 6 cms right to midline and 8 cms below the inferior angle of scapula.*
- xvii. Incised wound 2 x 0.5 cms x muscle deep just left to midline, upper back of abdomen placed 16 cms above the upper gluteal fold.*
- xviii. Incised wound 1.5 x 0.5 cms x muscle deep on right side back of abdomen obliquely placed, 2 cms right to midline and 4 cms right to injury No.16.”*

5. Dr.S.Lal exhibited his report vide Ex.PW-9/A and opined that the cause of death was shock and haemorrhagic shock due to ante-mortem stab injury to the chest and abdominal organs. All injuries were ante-mortem in nature and fresh in duration. Injury No.1 was produced by blunt force impact and all other injuries were caused by single edged pointed weapon. Injury No.2, 3, 8, 9, 10, 11, 12, 13, 14 & 15 were sufficient to cause death in

the ordinary course of nature individually and collectively both.

6. The learned Trial Court held that the following unblemished chain of circumstances stands established against the appellant Ramesh Kumar and thus convicted him:

“a) Presence of strong motive with accused as he often used to fight with deceased asking him to transfer the house in Delhi on his name, transfer plot/ house in Unnao on the name of his brother.

b) Presence of accused in Delhi on the intervening night of 2/03.08.10 when as per P/M report, deceased Saktu was murdered.

c) Abscondance of accused from Delhi immediately after the murder of Saktu.

d) Accused and deceased were only two persons residing in the said house and around the time when Saktu was murdered, presence of accused in Delhi and in the area where spot is situated stands established.

e) Presence of finger prints of accused on quarter bottled recovered from the spot and as per PW11 when accused visited her house at 2.00 AM on 03.08.10 he was under the influence of liquor.”

7. As regards presence of motive the prosecution has examined the two brothers of the deceased Ram Sagar PW-1 and Ram Dev PW-3.

8. Ram Sagar deposed that they were 6 brothers and 5 sisters and in the year 1986 his brother Saktu Prasad shifted to Delhi and used to live with his wife Usha. They had no children. Ramesh Kumar was the brother of the wife of Saktu Prasad belonging to District Unnao, U.P. and for the last 10 years he was residing at Delhi in the house of Saktu Prasad. Around one year back wife of Saktu Prasad died due to illness. At that time Ramesh told him and other relatives that his brother i.e. Saktu Prasad had killed his sister

and he would not spare Saktu Prasad. For a few months Ramesh did not wear any shoes stating that he would wear shoes only after taking revenge of the death of his sister after killing Saktu Prasad. Ramesh used to often quarrel with Saktu Prasad, demanded money from him, asked him to transfer the house in his name and did not permit his brother to sell the house. His deceased brother had come to their village 6 months back and told him that Ramesh was harassing him, asking for transfer of the house where he was residing which was in his name, for return of the jewellery and threatening to kill him. Even 2-4 days prior to the death Saktu had called him and informed that Ramesh was threatening him and asked him to come to Delhi and settle the dispute with Ramesh. On August 04, 2010 they received a call from the Police station informing that their brother had died. The only improvement suggested in cross-examination was that he did not inform to the Police in his statement that for one or two months Ramesh did not wear the shoes stating that he would wear the shoes only after taking revenge of the death of his sister after killing Saktu Prasad.

9. Ramesh Dev PW-3 the other brother of the deceased also deposed in sync with the statement of Ram Sagar. He further stated that on May 12, 2010 their younger brother Ram Snehi died while working at Abu Dhabi when Saktu came to their village and remained for one month. At that time he told that Ramesh had asked him to transfer the house in Delhi and the plot now in the name of Usha in his name and that Ramesh was harassing him. Though he was cross-examined by the learned APP but only to the extent of his visit to Delhi at the time of death of Usha.

10. Learned counsel for the appellant has sought to assail the testimony of Ram Sagar and Ram Dev with regard to the motive on the strength of

testimony of Deepak PW-12 neighbour of Saktu Prasad who stated that the relations between the deceased and accused were normal before and after the death of Usha. Deepak has not supported the prosecution case but be that as it may, the family matters like transfer of property, jewellery etc. would not be known to the neighbours and are generally known only to the family members. Further, in his cross-examination Deepak deposed that Saktu had once told him that he will sell his house and go to his village “*Hum makaan bech kar chale jayenge fir dekhenge Sala kahan rahta hai*”. Thus from the evidence on record it is established that there was a dispute between Ramesh Kumar and Saktu Prasad with regard to residence at Delhi and Saktu Prasad wanted to sell the same to the ouster of Ramesh Kumar.

11. Salma @ Sehrunisha PW-11 is yet another witness whom Ramesh Kumar met before leaving and spoke from her phone to Unnao. Salma deposed that she was working as a mid-wife and knew Saktu Prasad and his wife Usha who were living as neighbours. They had no child. Ramesh Kumar the brother of Usha was living with his sister and the deceased. She further deposed that around six months back on the second day of the month of Ramzan she went for her job in the morning at 7.00 AM and came back to her house at about 2.30 PM. She saw a bag kept in her house and asked her son Shan Waris about the bag. Her son told her that the bag was kept there by Ramesh uncle and he left the house. After taking meal she again left her house for her job at Krishna Nagar and returned back at 7.30 PM where after she went to sleep. At about 2/2.30 AM Ramesh came to her house and told her that his grand-father was ill and requested her to give some money. Rakesh was barefoot and perplexed. She took ₹800/- from her mother-in-law and added up ₹150/- from her own and gave a total sum of ₹950/- to

Ramesh. Ramesh also took her mobile phone and talked to someone on her mobile phone and left her house with his bag. When she was called to the Police station she was scared as the accused had spoken from her mobile phone and thus she broke the SIM card. However, she told the Police that Ramesh had spoken from her mobile phone.

12. The version of Salma that she last saw Ramesh Kumar at 2/2.30 AM and Ramesh Kumar spoke from her phone is corroborated by the cell phone details of her mobile No.9990936731 which have been proved by Pawan Singh, Nodal Officer, Idea Cellular PW-10. The said phone number was in the name of her husband Niyaz Varis and from the said phone number a call was made on August 03, 2010 at 2.53 AM to mobile No.9648373018 which was in the name of Munni Lal S/o Chautri, R/o 49 Mau, Sultanpur, Unnao, U.P. Though the prosecution has not proved that who was Munni Lal, however what is relevant is that Ramesh from the phone of Salma spoke to someone at Unnao.

13. The plea of alibi of Ramesh Kumar in his defence that he had left Delhi on July 28, 2010 for Unnao is thus belied. This defence of Ramesh is further belied by the evidence of Krishan Pal PW-7 who stated that he had seen Ramesh 4-5 days prior to August 04, 2010.

14. The prosecution has thus been able to prove Ramesh Kumar absconded post murder of Saktu Prasad. As noted above PW-11 Salma deposed having met Ramesh Kumar at 2.00-2.30 on the intervening night of August 2nd/3rd, 2010 when he came and asked for money from her whereafter he went away. Further Kishan Pal PW-7 deposed that he had seen Ramesh four-five days prior to August 04, 2010. The post-mortem of the deceased was conducted on August 06, 2010 at 12.40 PM and as per

Dr.S.Lal the time since death was three-four days. Thus the murder of the deceased took place somewhere on August 2nd, 2010.

15. Learned Trial Court has relied upon the report of finger print bureau Ex.PW-15/A. Chance prints were taken from the liquor bottle which was lying outside the house and as per the report the said chance print matched with the right thumb impression of Ramesh Kumar. It is the case of the prosecution itself that the deceased and Ramesh Kumar were living together in the same house which has been established beyond reasonable doubt by the evidence of the witnesses and thus the presence of his finger print on the articles in the house was but natural. We are not in agreement with the finding of the learned Trial Court that if the accused would have consumed the liquor before July 28, 2010 as he says that he had left Delhi on July 29, 2010 it is unlikely that the bottle had remained lying outside the room till August 02, 2010 when Saktu got murdered. No such inference can be drawn.

16. It is the case of the prosecution that at the instance of Ramesh Kumar a knife was recovered however, the recovery of the said knife cannot be used against Ramesh Kumar because neither any witness has deposed having seen Ramesh Kumar inflicting injuries with the said knife nor the said weapon of offence was sent to the doctor to seek his opinion that the injuries could be sustained by the said weapon. In the absence of any eye witness identifying the weapon or an expert opinion, the weapon of offence recovered does not connect with the crime.

17. Even ignoring the evidence of recovery of weapon of offence and the finger print bureau report except to the extent that it shows the presence of Ramesh Kumar in the said house, we are of the opinion that the prosecution

has proved its case beyond reasonable doubt by proving the circumstance of motive, presence of Ramesh Kumar on the intervening night of August 2nd/3rd, 2010, his making a phone call to Unnao at 2.55 AM on that intervening night, absconding from Delhi immediately thereafter, that besides Ramesh and Saktu, no other person was living in the house and the plea of alibi raised by Ramesh Kumar being falsified.

18. Consequently, the impugned judgment of conviction dated November 23, 2011 and order on sentence dated November 28, 2011 are upheld. The appellant, who is in custody, will suffer the remaining sentence.

19. Appeal is dismissed.

20. T.C.R. be returned.

21. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 29, 2014
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