

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

% *Judgment Reserved on: September 25, 2014*
Judgment Delivered on: September 30, 2014

+ **CRL.A. 803/2014**

RAJU Appellant

Represented by: Mr.J.S.Kushwaha, Adv.

versus

THE STATE Respondent

Represented by: Ms.Aashaa Tiwari, APP for the State
with Inspector Satish Kumar, PS
Bhalswa Dairy.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Raju is convicted for the murder of Shankar and destruction of evidence. Besides Raju, Renu the co-convict was also convicted for offence punishable under Section 201 IPC, however no appeal has been preferred by Renu and thus we proceed to hear the appeal of Raju.

2. Raju assails the impugned judgment on the ground that the prosecution has not been able to establish the motive behind the commission of offence. The alleged weapon of offence has not been recovered. It is further stated that the case of the prosecution is that Raju washed the vehicle, concealed the seat cover and mats of the vehicle; in such a situation it is unbelievable that he would keep his blood stained clothes in his room so that the Police may recover it. The chain of circumstantial evidence is

incomplete. According to Bhola Sahu father of deceased he along with his brother Ram Prashad and nephew Sudhir informed the Police about missing of his son Shankar, however Ram Prashad has neither been cited as a witness nor examined. There is no evidence of any illicit relation between the two accused. The entire case is based on a woven hypothesis without any basis and hence the appellant be acquitted.

3. No defence evidence has been led by Raju and his explanation in his statement under Section 313 Cr.P.C. is as under:

“I am innocent. I have been falsely implicated in the present case and the allegations against me are absolutely false and incorrect. I have nothing to do with the commission of offence in any manner whatsoever. The alleged recovery shown at my instance are planted and I did not make any disclosure statement to the Police and I have been framed in the case by the complainant party in collusion with the Police without any basis.”

4. The prosecution case in brief is that on December 21, 2010 Renu wife of Shankar lodged a missing report regarding her husband vide DD No. 20A at 4.10 PM exhibited as Ex.PW-10/D at PS Bhalswa Dairy. Again on intervening night of December 21/22, 2010 Bhola Sahu PW-7 the father of deceased Shankar lodged a missing report at PS Bhalswa Dairy expressing his suspicion over his daughter-in-law Renu and stated that since Renu had illicit relationship with one Raju their neighbour he suspected their hand in the disappearance of his son Shankar. On the complaint of Bhola Sahu FIR No. 165/2010 was registered at PS Bhalswa Dairy under Section 365/34 IPC. Renu was interrogated and pursuant to her disclosure statement she led the Police to Jhuggi of Raju from where he was apprehended.

5. Disclosure statement of Raju was recorded and Raju disclosed that

after murder the dead body of Shankar was thrown in the drain of field, near village Ladpur and they could get the dead body and the belongings of deceased Shankar recovered. On the pointing out of Renu and Raju from a dry nala in village Chatera, District Sonipath, Haryana near under construction highway dead body of Shankar was recovered. Near the dead body the seat cover and mats of Champion vehicle were also found lying which were also seized. Renu also got recovered the clothes of the deceased. Further during Police custody remand Raju got recovered his blood stained clothes which he was wearing at the time of incident from his jhuggi, however weapon of offence could not be recovered. The prosecution case is thus based on the circumstantial evidence.

6. Bhola Sahu, the father of deceased who informed about the illicit relations between Renu and Raju has stood by his version in the rukka before the Court. According to him Raju had been threatening to kill Shankar. Shankar and Raju were partners in the deal of Mahendra vehicle and Renu had even asked for divorce from Shankar. On December 20, 2012 his son Shankar went in his vehicle Mahendra Alfa to Azadpur Mandi for his work at about 9.00 AM but did not return till late night. He asked Renu about Shankar, however she refused. So he informed the Police on December 21, 2010 about missing of his son aged 30 years. He identified the dead body of Shankar, the seat covers and mats which were blood stained and found lying on the spot to be belonging to the vehicle of Shankar. He deposed about recoveries made in his presence.

7. The version of Bhola Sahu is corroborated by Sudhir Kumar Gupta PW-2 the cousin of the deceased. He deposed in sync with Bhola Sahu about the lodging of the FIR, disclosure statements and the recoveries

pursuant thereto. He also identified his signatures on the memo prepared at the spot.

8. The version of Bhola Sahu and Sudhir is assailed on the ground that the third witness Ram Prashad who had gone along with them to register FIR has not been examined. It is not the quantity of the witnesses but the quality of the witnesses that matters in a trial. Two witnesses of the incident have been examined by the prosecution who have stood by their version in the examination-in-chief and the cross-examination as well, and thus the non-examination of the third witness is not material. Moreover Ram Prashad was not a signatory to the memos prepared.

9. Inspector Rakesh Chand prepared the memos with regard to recovery of dead body and other articles from the spot as noted above. The seizure memos were exhibited as Ex.PW-2/A. Regarding the dead body Ex.PW-2/B, Ex.PW-2/C of the blood stained and plain grass and soil were prepared by Inspector Rakesh Chand PW-19 and witnessed by Sudhir Kumar Gupta PW-2, SI Rajender Singh PW-18 and ASI Om Prakash PW-9. Further at the instance of Raju his blood stained clothes were seized from his house vide seizure memo Ex.PW-13/A.

10. There is no challenge to these recoveries except to say that there is variation in the statement of witnesses on the fringes which obviously does not affect the veracity of the statements made. As per the FSL report human blood was found on the clothes of the appellant and the recoveries cannot be rejected on the ground that it would be highly improbable for the appellant to be keeping those clothes in his house.

11. The champion vehicle No. DL-1LL-0666 involved in the offence was recovered and according to the disclosure statement the same had already

been washed. Ms. Seema Nain, PW-1 of the FSL team inspected the said vehicle on December 27, 2010 and she detected blood on the back side floor of tempo and back side (lower) door of tempo and lifted the stains. However, as per the FSL report no blood could be detected on the same for the reason they were removed from the place after the tempo was washed and obviously were so dilute that the grouping and origin could not be found out. Further on inspection of the champion vehicle bearing No. DL-1LL-0666 on February 06, 2011 its foot mat was found missing which was the same as that got recovered from the spot and was blood stained. As per the FSL report the blood group of the deceased was 'B' group and the same blood was found on the seat cover and the mat of the champion vehicle got recovered at the instance of Raju.

12. Dr.V.K.Jha PW-10 conducted the post-mortem of deceased Shankar and prepared the report vide Ex.PW-10/A. He noticed the lacerated wound of size 2 cm x 1 cm on left temporal region at the root of pinnae. Burning singeing, tattooing was present around the wound (entry wound of the fire arm). On internal examination of the head he found that the bullet had entered through left temporal region and after traversing the brain matter entered into left frontal region and finally contusing the brain matter lodged in right temporal brain matter. The bullet was recovered and seized. He opined the cause of death as cranio cerebral damage as a result of fire arm injury. According to him injuries were ante-mortem in nature and injury No.1 was sufficient to cause death in the ordinary course of nature. Time since death was approximately 36 hours. The post-mortem conducted at 12.00 noon on December 22, 2010 and thus death of the deceased took place on the intervening night of 20th and 21st at around 12.00 in the midnight.

13. Learned counsel for the appellant has strenuously contended that there is no evidence to prove that the wife of the deceased co-convict Renu and the appellant were having illicit relations. The deposition of Bhola Sahu PW-7 the father of the deceased is sufficient in this regard. Only on his complaint when investigation was carried out, the offences committed were unravelled and the dead body of Shankar was recovered.

14. In view of the circumstantial evidence on record the prosecution has been able to prove beyond reasonable doubt that appellant Raju committed the murder of Shankar and thereafter threw the body along with other blood stained articles and also washed the champion vehicle to destroy the evidence. The appeal is dismissed. Appellant will suffer the remaining sentence.

15. T.C.R. be returned.

16. 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 30, 2014
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