

\$~

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

%

Date of Decision: 11th November, 2016

+

CRL.A. 745/2000

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for
the State

versus

JAGBIR SINGH

..... Respondent

Through: Ms. Inderjeet Sidhu, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

GITA MITTAL, J(Oral)

1. The instant appeal has been filed by the State assailing the judgment dated 1st November, 1999 whereby the learned trial judge has disbelieved the prosecution case and acquitted the respondent from commission of the offence under Section 302/452/392/411 of the IPC with which he was charged in Sessions Case No. 22/96 arising out of FIR No.3/96 which was registered by the Police Station Kirti Nagar.

2. It was the case of the prosecution that at about 5.40 p.m. on

4th January, 1996, the wireless operator at police station Kirti Nagar received telephonic information from the L/Ct. Sushila from the police control room to the effect that one lady had been found murdered in the premises no. B/18/6, Double Storey, Ramesh Nagar and that the police should be sent to the spots which was logged as DD No. 14A (Exh.PW5/C).

3. Consequently, this information was marked to ASI Shyam Babu (PW11) who proceeded to the spot with Ct. Raj Kumar (PW10) and Ct. Dilbag Singh (PW14).

4. On the first floor of the aforesaid premises, ASI Shyam Babu (PW11) found that Inspector Sukh Ram (PW19) was already present alongwith Ct. Ram Parshad (PW7). The police found the corpse of a lady who was identified as Rajkumari @ Geeta lying near a *diwan* (type of bed) with a shoe lace tied around her neck. Her husband Harbans Lal Dawar (PW1) was present at the spot.

5. Inspector Sukh Ram (PW19) recorded the statement of Sh. Harbans Lal Dawar (PW1) at the spot (Exh.PW1/A) and made endorsement thereon in his own handwriting (Exh.PW19/A). The rukka was taken by Ct. Ram Parshad (PW7) from the spot to the police station Kirti Nagar for registration of the case. As a result, FIR No.3/96 (Exh.PW5/A) came to be registered. The registration of the case was logged as DD No.18A at 7.25 p.m. (Exh.PW5/A).

6. The crime team, dog squad and the photographer were called to the spot. The Crime Team lifted two chance prints from the wooden diwan lying in the drawing room. Search of the deceased Rajkumari @ Geeta was effected and a gold *kara* was found on her

left hand was taken into possession vide memo Exh.PW1/B.

7. The report of the finger print expert of the bureau of the Crime Branch in this regard has been proved on record as Exh.PW12/A . We may note that Exh.PW12/A against serial no.7, notes as against the column marked for “properties stolen” - cash.

8. One pair of shoes was also found lying in the drawing room. The right shoe did not have laces. This pair of shoes was taken into possession vide memo Exh.PW1/C.

9. Inspector Sukh Ram (PW19) requested for an inquest to be conducted vide Exh.PW19/B, C, D. During the inquest proceedings, Harbans Lal Dawar (PW1) as well as Sh. Ram Lubhaya (PW2), the cousin brother identified the dead body of the deceased (Exh.PW1/D).

10. On 5th January,1996, autopsy was conducted on the dead body by Dr. L.T. Ramani (PW8) who proved his report as Exh.PW8/A. The post mortem doctor had found the following injuries on the body of the deceased:

“External Injuries:

1. Bruising 0.5 x 0.5 c.m. on the micus surface of lower lip on both sides. (2) Finger nail like abrasion 0.4 c.m. long on the upper lip right side (3) Legature constriction mark present around middle part of neck horizontally present all around. It was 3. to 4 m.m. wide with pattern of lace visible at places. The width of the mark was consistant with that of shoe lace. (4) Another narrower mark 1 to 2 m.m. was found around neck. It was wavy on the front and sides and was over-laping the wider part

at the back of neck? Due to friction/pulling of metallic chain. (5) Linear scratch abrasion curve 3''long place obliquely vertical on the lower front of neck below the ligature mark. (6) Four fingernail like mark scattered on the front of the chest, 3 on the right breast and one on the sternum. (7) Scratch abrasion 3 m.m. long near umbilicus. (8) A tiny linear abrasion 3 m.m. on the dorsum of right hand. There was no evidence of injury or violence over genitalia.

ON INTERNAL EXAMINATION – scalp tissues and skull bones normal, brain showed congestion, neck tissues showed extravasation of blood in subcutaneous and deeper neck layer on the front. Tracheal mucosa was congested and there were submucous petechiae on the laryngeal wall. Lungs were congested and showed haemorrhagic spots. Other chest and abdominal organs were normal.”

11. The post mortem doctor opined that all the above injuries were ante-mortem and that the ligature mark was caused by shoe lace while other injuries were caused by blunt force mainly. So far as the cause of death was concerned, the doctor opined that the ligature constriction and pressure on the neck structure was sufficient in the ordinary course of nature to cause death.

The death resulted due to asphyxia from strangulation.

12. With regard to the time of death, the post mortem doctor had opined that death had occurred about 24 hours prior to the post mortem. The post mortem had commenced at about 10.30 a.m. on 5th January, 1996. The time of death therefore can be estimated to

have occurred at about 10.30 a.m. on 4th January, 1996.

13. The doctor had preserved the clothes with the deceased was wearing consisting of a salwar and kurta. We find that Exh.PW18/A noted that the deceased was wearing a salwar and kurta, one golden pendant with a diamond like stone found entangled in kurta while the clothes were intact. The kurta was bloodstained. The doctor has also preserved the white shoe lace found tied tightly around the neck. All these articles were handed over to the police alongwith sample seal. The said seized golden pendant was handed over to the investigating officer vide memo Exh.PW10/D. The shoe lace, clothes and blood sample were handed over to the investigating officer vide memo Exh.PW10/A and the shoe was seized vide memo Exh.PW1/C.

14. The record reveals that the respondent came to be arrested in the case on 12th January, 1996. His personal search was conducted vide Exh.PW15/A.

15. During investigation, on 4th January, 1996, Inspector Sukh Ram, SHO of PS Kirti Nagar prepared the rough site plan of the spot.

16. A scaled site plan was prepared by Inspector Devender Singh, draftsman of the Crime Branch which was proved on record as Exh.PW4/A.

17. The prosecution has placed reliance on a disclosure statement dated 12th January, 1996 itself made by the respondent Exh.PW15/B which led to the seizure of jewellery consisting of one golden *kara*, one broken gold chain, one ear ring which were

seized vide Exh.PW15/C.

18. Exh.PW19/E shows that the pair of shoes was found inside a cupboard. There is no contents, no reference to placement of any cash or any jewellery or other contents of the cupboard or any belongings of the deceased which were missing. There is also no reference to any jewellery either in the rukka Exh.PW1/A and 19/A or in the site plan Exh.PW19/E. There was also no reference to any cash or jewellery in the rukka.

19. After completion of investigation, the police filed a charge sheet under Section 173 of the CrPC. The learned Magistrate complied with provisions of Section 207 CrPC and committed the matter to the court of sessions in accordance with law.

20. After committal by an order dated 17th July, 1996, four separate charges were framed against the respondent for commission of offences under Section 302 read with 34; 454 read with 34; 392 read with 34 and 411 read with 34 of the IPC. The prosecution has examined 19 witnesses in support of its case. The incriminating circumstances were put to the respondent and he was given an opportunity to explain the same in compliance with Section 313 of CrPC. No defence evidence was led.

21. After consideration of the entirety of the matter, the learned trial court was of the view that the prosecution had failed to establish an unbroken chain of circumstances which led to the inevitable conclusion of the guilt of the respondent for the commission of the offences with which he was charged and consequently acquitted the respondent allowing him benefit of

doubt in the case. Aggrieved thereby, the present appeal has been filed by the state seeking to set aside the order of acquittal as well as conviction for the respondent.

22. We have been carefully taken through the record of the case by Ms. Aashaa Tiwari, learned APP for the State as well as by Ms. Inderjeet Sidhu, learned Amicus Curiae for the respondent.

23. The record would show that the respondent was the local milkman and was known to the deceased as well as her husband who has appeared as PW1. The only ground on which the respondent has been suspected for commission of the offence by Sh. Harbans Lal Dawar (husband of the deceased) and Gaurav Dawar (PW6), son of the deceased is that they had not seen the respondent coming to their house for supply of the milk on the day of the incident as well as on the following day. However, this circumstance loses all relevance in as much as it is in the prosecution evidence that the appellant visited the house of the deceased on 5th January, 1996 for offering his condolences on the unfortunate demise of the deceased. The fact that the respondent has visited the house of the complainant for offering condolences on 5th January, 1996 would show that the suggestion that he had anything to hide and was, therefore, staying away from her house is completely misconceived.

24. It is pointed out by Ms. Inderjeet Sidhu, learned counsel for the respondent that Sh. Harbans Lal Dawar (PW1) has stated in his testimony that he had found cash missing and had informed the police only on 5th January, 1996. Yet, we find that the Crime Team

reported on 4th January, 1996 has noted a cash amount as missing property. This allegation is vague as no specific amount is mentioned.

25. We also find that in the statement given to the police Sh. Harbans Lal Dawar (PW1) makes no reference to any cash being missing from the house or to any kind of property including jewellery of the deceased been missing.

26. Learned counsel for the respondent has submitted that the learned trial judge rightly disbelieved the recovery of jewellery of the deceased on 4th January, 1996 or thereafter that they had found any cash or jewellery missing from his house. At the time of recovery of the dead body, the police has found that the deceased was wearing a gold *kara* and bracelet. No complaint with regard to anything missing was noted in the inquest proceedings (Exh.PW19/B) as well.

27. In these circumstances, FIR No. 3/96 registered by the Police Station on 4th January, 1996 was registered only for the case under Section 302 IPC relating to the murder of Smt. Rajkumari @ Geeta.

28. The Crime Team report leaves much to be desired. The report dated 4th January, 1996 refers to two chance prints lifted from the diwan which was in the drawing room. We may advert to the testimony of ASI Madan Lal (PW12) who was the finger print expert who lifted the chance prints. It is in his testimony that the Finger Print Bureau of the Crime Team visited the spot only on 11th January, 1996, more than a week after the offence to inspect an

occupied house!

29. It is noteworthy that police witnesses PW7, PW10 and PW11 who have participated in the investigation right from the beginning have not made any deposition with regard to the lifting of chance prints.

30. We also note the trial judge has, after carefully scrutinizing the record, concluded that the prosecution did not disclose the lifting of the chance prints from the spot till the time the respondent was arrested and found that this fact by itself established that the chance prints were planted on the accused after his arrest.

31. The learned trial judge has doubted the test identification parade conducted for identification of jewellery alleged to have been recovered at the instance of the appellant. The prosecution relied upon the recovery of jewellery of the deceased at the instance of the appellant. This has been disbelieved primarily for the reason that the family members of the deceased have not alleged that any jewellery was missing.

32. In addition, the test identification parade of the jewellery has been doubted by the trial judge for the reason that after recovery of the gold jewellery ASI Jaswant Singh (PW15), ASI Mahender Singh (PW 16) and Inspector Sukh Ram (PW19) went with it to the place of occurrence where they met the husband. The trial judge has noted the statement of Harbans Lal Dawar (PW1) that the respondent was brought to his house on 12th January, 1996 and there was every possibility of the case property having been seen

by the husband of the deceased. We are of the view, therefore, that the trial judge has rightly disbelieved the outcome of the TIP.

33. One material circumstance pointed out by the defence before the trial court was that it was the prosecution case that two persons were involved in the commission of the offence. Other than the respondent, the police had also charged one person with Rajender @ Nanna with commission of the present offence.

34. It appears that Rajender @ Nanna was killed during trial after the incident. The prosecution alleged that the respondent was tried for murder of co-accused Rajender in a separate case. The respondent was acquitted by the trial court in this trial as well.

35. In view of the above, we are of the view that the case set up by the prosecution is not free from doubt. There is no evidence at all that the deceased Rajkumari @ Geeta was seen at all in the company of the respondent at any time on 4th January, 1996, let alone evidence to enable this court to hold that she was last seen alive in the company of the respondent. There is no reliable and cogent evidence which could be considered by us as an incriminating circumstance to support the guilt of the appellant for commission of her murder.

36. So far as the alleged recovery of jewellery of the deceased at the instance of the appellant is concerned, the complainant has made no allegation with regard to any jewellery or cash of the deceased being missing from her person or her husband on 4th January, 1996 or even thereafter. The alleged recovery attributed by the prosecution as having been made at the instance of the

respondent on 12th January, 1996 is not free from suspicion and doubt. No public witnesses have been joined by the prosecution at the time of alleged recoveries. The respondent appears to have been set up for trial purely on suspicion.

37. For all these reasons, we see no reason to disturb the findings returned by the learned trial judge in the judgment dated 1st November, 1999.

This appeal is completely devoid of legal merit and is hereby dismissed.

The personal bond and the surety bond submitted by the respondent or on his behalf shall stand discharged.

GITA MITTAL, J

ANU MALHOTRA, J

NOVEMBER 11, 2016/kr