

\$~R-36 (Part-B)

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

% **Reserved on : 10th December, 2015**
Date of Decision : 21st December, 2015

+ **CRL.A. 224/2000**

PUNEET @ TITU Appellant

Through: Mr. M. Shamikh, Adv.

versus

STATE OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP with
Insp. Youdh Bir Singh, PS-OIA

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. By judgment dated 26.02.2000 in sessions case No.97/96, the appellant was held guilty and convicted for the offences punishable under Sections 302 and 201 of Indian Penal Code, 1860 ("IPC"), the gravamen of the charge being that on 09.09.1993 he had committed the murder of Savita Mohan Verma in premises No.809/7, Govindpuri, New Delhi and thereafter destroyed evidence by cutting her body into several parts and throwing them off at difference places with the intention to screen himself from legal punishment. By order dated 01.03.2000, he was sentenced to imprisonment for life with fine of

₹1,000/- and rigorous imprisonment for five years with fine of ₹500/- on the two counts with direction that in the event of default in payment of fine he would undergo further rigorous imprisonment for one month and simple imprisonment for 15 days respectively and be entitled to set off under Section 428 of the Code of Criminal Procedure, 1973 (“Cr.P.C.”).

2. This appeal was preferred to assail the findings recorded by the trial court in the impugned judgment to convict the appellant.

3. Savita Mohan Verma wife of Surendra Mohan Verma (PW-8), aged about 38 years, resident of 16/5, Kalkaji, New Delhi was engaged in business of garment manufacturing, running her own factory in House No.809, Gali No.7, Govindpuri, a property also owned by her, one located nearby. On 09.09.1993, due to some business commitments, she is stated to have gone to the factory, even though it was a closed day on account of *Bharat bandh*. She did not return by 6/6.30 PM, as per the normal routine, and her husband (PW-8) lodged a missing report with the local police (vide DD No.23A) on the same night (0130 hours on 10.09.1993). Parts of her dead body came to be recovered from different areas of the city of Delhi on 10.09.1993 and 11.09.1993, which upon being placed/joined together and identified by the husband (PW-8), revealed that she had been killed on 09.09.1993.

4. Ram Parshad son of Ram Lal, father of the appellant (Puneet @ Titu) had taken a portion comprising a room with kitchen on the first floor of property No.809, Gali No.7, Govindpuri on rent, for residence

with family, from the deceased Savita Mohan Verma (hereinafter referred to as “the victim”) about three weeks prior to the above-noted events. The family of Ram Parshad included his wife Bimla Rani and four children, appellant Puneet @ Titu, being the eldest one (aged about 18-19 years), the junior children including two daughters (aged 16 and 13 years respectively) and a son (aged 8 years). The site plan (Ex.PW-29/A), drawn to scale, shows that the portion in use and occupation as tenant of Ram Parshad was on the western corner of the first floor of the property, the portion at the other end (east), separated by an open terrace from the former, being in use of the victim as her office. It has come in the evidence that the factory was located on the ground floor of the property, the victim having engaged nine workers including Murtaza (PW-9) and Hira (PW-12).

5. The offence of murder of Savita Mohan Verma came to light when the lower portion of her dead body, below waist including the lower limbs, was found in a jute bag near D-26, Okhla, Phase-I, within the jurisdiction of Police Station Okhla Industrial Area, New Delhi (hereinafter, “the police station”), vide DD No.4A recorded at 08.50 AM followed by recovery of the middle portion (headless torso), again in a jute bag abandoned in front of property No.F-1185, Chittaranjan Park (within the jurisdiction of Police Station C R Park) sometime around 11.20 AM on 10.09.1993, as recorded vide DD No.10A (vide Ex.PW-5/A) and recovery of her decapitated head (partially burnt) discovered sometime before 09.45 AM on 11.09.1993 in *ganda nala*

(public drain) near S-block, Sultanpuri, Mangolpuri vide DD No.23B (Ex.PW-27/C) of Police Station Sultanpuri. In the wake of recovery of the lower portion of the dead body, FIR (Ex.PW-10/A) for offences under Sections 302/201 IPC had been registered in Police Station Okhla Industrial Area on the basis of *rukka* (Ex.PW-10/B - also Ex.PW-28/A) sent by SI Dalir Singh at 10.05 AM on 10.09.1993. Till that time, there was no clue available as to the identity of the victim. The only thing that could be ascertained from the circumstances then obtaining was that the victim was a women aged about 30-35 years. It appears the missing report lodged by the husband (PW-8), followed by the recovery of the torso of the body brought to light that the body parts were of Savita Mohan Verma. The final confirmation of the fact came upon recovery of the head which, though partially burnt, was identified (from the denture) by the husband (PW-8) to be that of Savita Mohan Verma. The body parts were joined eventually, for purposes of inquest proceedings and investigation, in the mortuary of All India Institute of Medical Sciences (“AIIMS”) on 12.09.1993 and it was confirmed that they were pieces of the same body as belonged to the victim Savita Mohan Verma.

6. The post mortem examination was conducted in the mortuary of AIIMS by Dr. L C Gupta (PW-13), who proved his report (Ex.PW-13/A) at the trial. Given the extensive mutilation to which the dead body had been subjected and the manner in which the body parts had been thrown at different places, it is futile to note here graphically the

observations of the autopsy doctor in his report, save for the conclusion that, in his opinion, the death had occurred due to asphyxia resulting from strangulation by means of ligature, the time of death being about 72 hours anterior to the post-mortem examination being conducted. This would roughly indicate the time of death to be around noon time or thereafter of 09.09.1993. Given the autopsy report and the circumstances in which the dead body parts were found, we have no reason whatsoever not to accept the prosecution case that Savita Mohan Verma had died a homicidal death in the afternoon of 09.09.1993.

7. During the investigation, the police proceedings reveal, the Investigating Officer Inspector Raghubir Singh (PW-32), the SHO of the Police Station had not only inspected the scene of crime, i.e. the office of the victim on the first floor above the factory premises (ground floor) and the adjoining portion in tenancy of Ram Parshad but also interrogated everyone connected to the property, particularly the nine workers including Murtaza (PW-9) and Hira (PW-12). Statedly, evidence gathered from the office showed the office portion to be where violence had taken place. This came to light during the inspection conducted on 10.09.1993 leading to the seizure of certain office documents (Ex.P-4), visiting cards (Ex.P-5), challan books (Ex.P-6/1-2), frock with underwear (Ex.P-7), file cover (Ex.P-8) and carton (Ex.P-9), all bearing drops or stains of blood, vide seizure

memo (Ex.PW-8/B), and blood-stained plastic bags (Ex.P-10) vide seizure memo (Ex.PW-8/C).

8. The evidence of Murtaza (PW-9) and Hira (PW-12) reveals that the Investigating Officer had initially suspected the involvement of one of the employees of the victim engaged in the factory. Both of them disclosed during their respective court testimony that all the employees had been picked up by the police and detained in the Police Station for several days. While PW-9 stated that he was let off after the arrests had been made (which would be on 13.09.1993), the latter stated that the detained workers were released after 6-7 days.

9. According to the evidence of the Inspector Raghubir Singh (PW-32), the Investigating Officer, he had paid visit to the property in question (809/7, Govindpuri) on 12.09.1993 and had found Ram Parshad and his wife Bimla Rani present in the tenanted portion. They were brought to the Police Station and interrogated. According to him, Bimla Rani had disclosed the entire facts. Though he would not elaborate as to what was the version of Bimla Rani at that stage, we presume that he implies revelations made as to the involvement of Ram Parshad, Bimla and the appellant. He also stated that Ram Parshad had also been interrogated and had made disclosures. As we would note in the following paragraph, the formal disclosure statement of Ram Parshad was recorded not on 12.09.1993 but on 13.09.1993. At the same time, there is no such document prepared respecting disclosures made by Bimla on 12.09.1993. Though, going by the chronology of

events pertaining to the course of investigation narrated by the Investigating Officer, there was no evidence available to him on 12.09.1993, Ram Parshad was arrested inexplicably on the said date, as shown by memo of his personal search (Ex.PW-31/E).

10. The report under Section 173 Cr.P.C. submitted on conclusion of investigation, *inter alia*, stated that on 13.09.1993, the rented portion in the occupation of Ram Parshad was inspected with assistance by experts of Central Forensic Science Laboratory (“CFSL”) upon which presence of blood stains in that part of the property was discovered, the evidence having been collected vide seizure memos (Ex.PW-8/G and Ex.PW-8/D). In this view, Ram Parshad was interrogated and he allegedly made disclosures (E.W-8/J) about his complicity, and that of his wife Bimla Rani and son Puneet @ Titu (the appellant) in the murder of Savita Mohan Verma, the motive being to avoid payment of rent as was being demanded. We may add here that, per the prosecution case, Ram Parshad made further elaborate disclosures on 14.09.1993 (Ex.PW-8/K) and 15.09.1993 (Ex.PW-8/L) leading, *inter alia*, to recovery of evidence connected with the crime including a pair of scissors (Ex.P-4) and cycle (Ex.P-11) vide memo (Ex.PW-8/D) and of his clothes, i.e., trousers (Ex.P-7), shirt (Ex.P-8) and underwear (Ex.P-9), all bearing blood stains vide memo (Ex.PW-8/F), in addition to recovery of *dau* (chopper) (Ex.P-2) vide seizure memo (Ex.PW-8/H).

11. The Investigating Officer (PW-32) testified about the disclosures made by Ram Parshad indicating role of the appellant herein. He deposed that Ram Parshad was produced in the Court on 16.09.1993 (presumably on expiry of the police remand) and, on the same date, the appellant surrendered in the Court and was arrested and orders were obtained for his police remand. According to his evidence, the appellant was interrogated leading to disclosures being made by him, the same having been reduced into writing (vide Ex.PW-8/M). It has been the case for prosecution that pursuant to the disclosures of the appellant, wrist watch (Ex.P-11) make HMT Asha was recovered from the watch repair shop of Zuber Ahmed (PW-3) in Sultanpuri, New Delhi, on 17.09.1993, the same having been taken into police possession vide seizure memo (Ex.PW-8/N), in the presence of Surendra Mohan Verma (PW-8) and SI Vinod Narang (PW-13), the watch having been identified by Surendra Mohan Verma (PW-8) to be that of his wife (the deceased). It was further stated that on 17.09.1993, the appellant led the Investigating Officer to a drain close to a heap of stones and pump house of Mangolpuri and pointed towards garbage from where a *saree* of sky blue and red colour, which had become black was recovered, it being described as the *saree* worn by the deceased at the time of the murder. According to the police proceedings (Ex.PW-8/A), attested by Surendra Mohan Verma (PW-8) and SI Vinod Narang (PW-31), the said *saree* was got washed with water and after it had been dried, a portion (Ex.P-5) thereof was cut out and taken into possession as evidence. It was also claimed that on

19.09.1993, the appellant led the Investigating Officer, and witnesses Surendra Mohan Verma (PW-8) and SI Vinod Narang (PW-31), to bushes around a pool of water (*jauhar*) close to a well in Harijan Basti of village Rithala, Rohini and got recovered a knife (Ex.P-3), which was taken into possession vide formal seizure memo (Ex.PW-8/R) after its sketch (Ex.PW-8/S) had been prepared.

12. Per the prosecution case, the wrist watch (Ex.P-11) and *saree* (Ex.P-5) belonged to the deceased and after her murder, had been taken away from her body by the appellant, the watch having been given for repairs to Zuber Ahmed (PW-3) and *saree* disposed of to destroy evidence. It was also alleged that the knife (Ex.P-3) recovered at the instance of the appellant had been used for cutting the dead body of the deceased into pieces and thereafter had been disposed of by the appellant at the aforementioned place.

13. The report under Section 173 Cr.P.C. dated 08.12.1993 submitted in the court sought the trial of Ram Parshad, Bimla Rani and the appellant for offences under 302/34 and 201/34 IPC. On 30.11.1994, the investigating agency received the CFSL reports (Ex.PX and Ex.PY) which were also submitted in the court. On the basis of the evidence summarised as above, charges were framed accordingly against each accused on 25.09.1995. As mentioned in (paragraph 33 of) the impugned judgment, in absence of any direct evidence, the prosecution pressed charges against the three persons brought to trial on the basis of following allegations:

“(i) The deceased was last seen together with the accused persons.

(ii) The motive to commit crime was the non-payment of the rent of the premises by the accused to the deceased.

(ii) The discovery and recovery of dao, scissor, the weapon of offence & cycle etc. at the instance of accused Ram Pershad.

(iv) Discovery and recovery of watch of the deceased at the instance of the accused Puneet from Sultanpuri.

(v) Discovery and recovery of saree of the deceased at the instance of accused Puneet.

(vi) Discovery and recovery of knife used in the crime.

(vii) The purchase of plastic bag by accused Puneet used in throwing away the portion of the dead body.

(viii) Absconding of accused Puneet from tenanted property immediately after the crime.

(ix) Scientific evidence connecting the accused”.

14. At the trial, both sides led evidence, the defence having examined Ms. Poonam, DW-1, the elder daughter of Ram Parshad and one Balraj (DW-2).

15. It is pertinent to note here that the case for the prosecution as to the motive for the crime was rejected on the ground that it could not be believed that there was a dispute on account of non-payment of rent inasmuch as the tenancy was hardly three weeks' old and rent could not even said to be due. The allegation about “last seen” was held to be proved primarily believing the testimony of Murtaza (PW-9) and

Hira (PW-12). The learned trial court found the evidence respecting recovery of the pair of scissors, cycle and *dau* (Ex.P-2) at the instance of Ram Parshad, and recovery of knife (Ex.P-3) at the instance of appellant not very convincing particularly as human blood could not be detected thereupon. The evidence offered through the mouthpiece of Tarun Gupta (PW-1), a witness who was declared hostile as to the purchase of a plastic bag by the appellant (allegedly for disposal of the portions of the dead body) was also rejected.

16. The trial court was not satisfied with the evidence adduced against Ram Parshad and Bimla Rani, who were consequently acquitted by the impugned judgment dated 26.02.2000.

17. The trial court, however, found the appellant guilty convicting him, as charged, holding in (paragraph 79 of) the impugned judgment that the prosecution had brought home the following facts and circumstances incriminating the appellant :

“(i) It is established that accused Puneet was in possession of the watch belonging to the deceased which the deceased was wearing at the relevant time.

(ii) Accused Puneet was in the knowledge of saree of the deceased which the deceased was wearing at the time of death by strangulation.

(iii) Accused Puneet was along with the deceased at the time when the murder of the deceased has taken place by strangulation.

(iv) Accused Puneet absconded from his tenanted premises after the murder of the deceased had taken place.

(v) Articles like saree, watch and head portion of the deceased portion (sic) were recovered in the area of Delhi where accused Puneet claimed to have been resided as per his defence.

(vi) Accused Puneet in his statement under section 313 Cr.P.C. did not explain the circumstances of the discovery and recovery of the watch and saree at his instance.”

18. On careful reappraisal of the evidence in entirety, we are of the considered opinion that the aforequoted conclusions reached by the trial court cannot be sustained. There are gaps and lacunae in the evidence which escaped the notice of the trial court giving rise to erroneous findings. We set out our reasons hereinafter.

19. There is no clear evidence available to establish the time of death with exactitude. The deceased had left her residence, as in routine, around 09.30 AM on 09.09.1993. Murtaza (PW-9) and Hira (PW-12) are the only two witnesses who were stated to have seen her alive thereafter. PW-9, however, would not support the case for prosecution to this effect. According to his version he had not seen her in the factory on that day and would not know if she had at all come or if she had come at what time. He was prepared to state only this much that other workers had disclosed that she had come around 11.30 or 12 o'clock to the factory, which is hearsay. The only witness left on the above subject is Hira (PW-12). According to him, he had gone to the office of the deceased at the first floor at about 02.15 PM for serving

water. At that stage, the appellant and his father (Ram Parshad) were present with her and were discussing about rent. He stated that after serving water he had come downstairs and when he had revisited the first floor around 5 PM, he had learnt from Ram Parshad that the deceased had left by 3 PM.

20. The presence of Ram Parshad on the first floor, both in the forenoon and in the afternoon, was quite natural. He was a tenant in a portion of the property at the same level. Discussion over rent does not necessarily mean a dispute over the matter. The information attributed to Ram Parshad about the deceased having left the place at 3 PM is inconsequential, at least insofar as it is sought to be used as incriminating against the appellant, particularly after the aforementioned result of the trial against Ram Parshad. Even otherwise, there is no guarantee that the deceased after leaving the place at 3 PM could or would not have returned without Ram Parshad or anyone connected to him (including the appellant) coming to know of it. The first of the three portions of the body parts came to light around 08.30 AM on 10.09.1993. The post mortem examination was conducted, after all the three portions had been recovered, on 12.09.1993. In these circumstances, it cannot be said with certainty that the victim had been killed “soon after” the time she was lastly seen in the company of the appellant and his father (i.e. at 02.15 PM on 09.09.1993, per the word of PW-12). Thus, the exclusivity of the

company, and opportunity, cannot be inferred and the possibility of the victim having met others cannot be ruled out.

21. The prosecution case about the wrist watch (make HMT Asha) is highly doubtful. Firstly, there is no material to show that Surendra Mohan Verma (PW-8) had spoken about such watch at any stage of investigative process leading to the arrests and recovery. There is nothing special about the wrist watch (Ex.P-11) so as it to be found to be the property of the deceased. Though the police proceedings (Ex.PW-8/N) show him to be a witness to the said recovery from Zuber Ahmed (PW-3) at the instance of the appellant, Surendra Mohan Verma (PW-8) was reluctant to confirm it on his own. He had to be declared hostile and cross-examined for certain facts (including that of recovery of the watch) to be elicited from his mouthpiece. He would not narrate the identity of the shopkeeper from where the watch was seized or the circumstances narrated by the shopkeeper for explaining his possession of the watch in question. Noticeably, in the seizure memo (Ex.PW-8/N), it is not indicated that the watch (Ex.P-11) at the time of recovery was positively identified by Surendra Mohan Verma (PW-8) to be that of his wife.

22. Having regard to the contents of the seizure memo (Ex.PW-8/N), the watch received for repairs by Zuber Ahmed (PW-3) had a black coloured dial with golden frame attached to a “coca-cola coloured” strap. The instructions at the time of the watch being thus handed over for repairs were for the dial and frame to be changed. The

watch (Ex.P-11) instead had a white dial, steel frame and steel chain. There is no explanation offered as to how the watch was connected to a steel chain rather than the strap with which the deceased would use it and, if it had actually undergone such changes, how it could have been identified, if indeed the husband (PW-8) was able to identify it, to be that of the deceased.

23. There was no claim in the prosecution case originally set up as to the order for repair of the watch having been documented at any stage by Zuber Ahmed (PW-3). At the trial, however, he was called upon by the prosecution to produce the bill book, the relevant page (Ex.PW-3/DA) having been referred to by the witness. The bill book seems to be actually a collection of loose leaves stapled together, a record casually prepared and maintained. It is not formally page numbered and contains entries which are not self-explanatory. The witness conceded that this does not represent formal records of his business or shop. He conceded that the bill (Ex.PW-3/DA) which purportedly represents the transaction concerning the watch (Ex.P-11) seized from him bears two dates, viz., 09.09.1993 and 21.09.1993. He explained that the first date represented the date of the work order and second the date on which the article was to be delivered. There is a cross mark appearing on the document which, the witness conceded, meant that the article had been returned. Yet, the article pertaining to the work order dated 09.09.1993 was still in his possession. His explanation that the appellant had first taken away the watch one or

two days after the work order and then returned it afresh, in these circumstances, could very well be an afterthought as there is no fresh entry recorded. This would also reflect that the appellant had not absconded or vanished. Possibly till then being a young boy his involvement was not suspected.

24. The evidence about recovery of *saree*, a portion (Ex.P-5) of which is shown seized (vide Ex.PW-8/A), at the instance of the appellant is even more suspect. The missing report vide DD No.23A lodged by the husband (PW-8) was part of the documents relied upon. The copy of the said DD entry was submitted with the charge-sheet. It was, however, not formally proved; the explanation brought out through the testimony of Inspector K P Kuraitin (PW-30), speaking on the strength of DD No.45B (Ex.PW-30/B), being that the original *roznamcha* had since been weeded out. For present discussion, we presume the copy of the DD No.23A (at page 575 of the trial court record) to be the true copy of the original *roznamcha* entry. This would show that the deceased at the time of setting out for the factory in the morning of 09.09.1993 was wearing a blue colour *saree*. In contrast, what is shown recovered (vide Ex.PW-8/O), at the instance of the appellant, is a *saree* which was sky blue and red in colour. The *saree* found in the public drain, vide (Ex.PW-8/A), had become black. Presumably, it would have gathered dust and soot over the period after its disposal at the said place. Given the nature of crime under investigation, there was no occasion for the Investigating Officer (PW-

32) to get it washed before its seizure. The washing of the wearing apparel in such circumstances was virtually meddling with the evidence collected, possibly to explain away the absence of blood. Further, there is no reason why the cloth (*saree*) as a whole was not seized or as to why only a portion was cut out for formal seizure.

25. It has been the plea of the defence that the appellant was not living with his parents and other siblings in the tenanted portion in the property of the deceased. He was instead living with his maternal uncle in Mangolpuri. This is what his sister Poonam (DW-1) affirmed during her statement. The prosecution did not lead any evidence to prove to the contrary.

26. For the foregoing reasons, and in the circumstances, we are not inclined to uphold the findings recorded by the trial court in the impugned judgment against the appellant.

27. In the result, the appeal is allowed. The impugned judgment and order on sentence are set aside. The appellant is acquitted. He was released on bail pending hearing on the appeal. The bail bonds furnished by him are discharged.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

DECEMBER 21, 2015
VLD