

\$~Part-B (R-12 to 14A)

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

+ CRIMINAL APPEAL NO. 6 /2000

Date of decision: 12th February, 2015

THAN SINGH Appellant

Through Mr. K.K. Sud, Sr. Advocate with Mr.
Chirag Khurana, Advocate.

versus

STATE Respondent

Through Ms. Aashaa Tiwari, APP.

CRIMINAL APPEAL NO. 7 /2000

BRIJ MOHAN @ TONI Appellant

Through Mr. Rajender Chhabra, Advocate.

versus

STATE (NCT OF DELHI) Respondent

Through Ms. Aashaa Tiwari, APP.

CRIMINAL APPEAL NO. 9 /2000

RAM Appellant

Through Mr. M. Shamikh, Advocate.

versus

STATE OF DELHI Respondent

Through Ms. Aashaa Tiwari, APP.

CRIMINAL APPEAL NO. 407 /2000

SHIV PRAKASH Appellant

Through Mr. Rajender Chhabra, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent
Through Ms. Aashaa Tiwari, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL):

This common judgment will dispose of the present set of appeals, which arise out of charge sheet filed in FIR No.759/1997, Police Station Vikas Puri under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short). The impugned judgment dated 9th December, 1999 convicts the four appellants for the charge of murder of Shiv Pratap @ Raju and Rekha in the intervening night of 10th/11th December, 1997 at House No.K-1C/161, Mohan Garden, Delhi. By the impugned order of sentence dated 10th December, 1999, the appellants have been sentenced to undergo imprisonment for life and fine of Rs.5,000/- each for the offence under Section 302 read with Section 34, IPC. In default of payment of fine, they have to undergo Rigorous Imprisonment for six months.

2. On the aspect that the two deceased had suffered a homicidal death as a result of strangulation, we accept and believe the testimony of Dr. K.L. Sharma (PW-4), who had conducted post-mortem on the dead bodies of Shiv Pratap @ Raju and Rekha. The post-mortem reports of the deceased have been marked as Ex.PW-4/A (Rekha) and Ex.PW-4/B (Shiv Pratap @ Raju). As per the post-mortem reports, the cause of death of both persons was asphyxia caused due to repeated ligature strangulations causing mechanical obstruction of airways. The ligature material was something

hard and flexible like a belt. The aforesaid ligature strangulations were sufficient in ordinary course of nature to cause death rapidly.

3. The core issue and question raised is whether the appellants were the perpetrators, of the said offence. The prosecution in the charge sheet had primarily relied on eye witness Savitri, who had deposed as PW-2. But, she has not supported the prosecution case and had stated that she was married, had children and used to reside at Sarojini Nagar. She was on friendly terms with the deceased Raju and he had been frequenting their house for about 1½ years prior to the incident. She asserted that nothing as the regards the alleged offence happened in her presence and she did not remember anything. She was declared hostile and was cross-examined by the Additional Public Prosecutor. During the course of her cross-examination, she resolutely stood by and remained committed to her earlier deposition.

4. In view of the aforesaid factual position, the prosecution sought to build its case upon circumstantial evidence. In this regard, the prosecution primarily relies upon statements of Raghav Ram Singh (PW-5) and Satpal (PW-12), father and brother, respectively, of the deceased-Shiv Pratap @ Raju. Learned counsels for the appellants have submitted before us the testimonies of Raghav Ram Singh (PW-5) and Satpal (PW-12) are on two aspects. Raghav Ram Singh (PW-5) and Satpal (PW-12) had last seen the appellants with the deceased in the evening before the intervening night of the occurrence and that in the morning of 11th December, 1997, after they had seen the dead bodies of Shiv Pratap @ Raju and Rekha, they had heard the appellants accept their involvement in the offence. The appellants have contested the testimonies of Raghav Ram Singh (PW-5) and Satpal (PW-12) as being make-belief, tainted on the ground that they are propped up witnesses. It is submitted that their statements cannot be and should not be

relied upon as the basis for convicting the appellants.

5. Having perused the testimonies of Raghav Ram Singh (PW-5), Satpal (PW-12), as well as those of Constable Manraj (PW-18) and ASI Mahinder Singh (PW-19), we believe that two versions emerge regarding how and when the police and the said family members came to know about the occurrence. Head Constable Reshampal Singh (PW-3) had deposed about DD entry No.33A (Ex.PW-3/E) recording that an injured person was lying in the area of Police Station Vikas Puri. This DD entry was marked to Constable Manraj (PW-18) and ASI Mahinder Singh (PW-19). They have deposed about the visit to the site but nothing abnormal was noticed. Upon returning to the police station, one of the appellants, namely, Ram came in an injured condition, who as per Constable Manraj (PW-18) informed them about the quarrel, which had taken place in premises No.K-1C/161, Mohan Garden, Delhi. Ram, as per the police version and deposition of Constable Manraj (PW-18) and ASI Mahinder Singh (PW-19), was not taken to the site of crime but was taken for medical examination and treatment to Deen Dayal Upadhyay Hospital. We shall be referring to his MLC (Ex.PW-21/A) subsequently. It is evident from the testimony of Constable Manraj (PW-18) that appellant-Ram was injured. In the cross-examination by the Additional Public Prosecutor, Constable Manraj (PW-18) denied that Ram had told them that he had received injury from Raju, i.e. Shiv Pratap at the time of the occurrence, though this fact stands recorded in his statement Mark 'A' under Section 161 of the Code of Criminal Procedure, 1973. ASI Mahinder Singh (PW-19) had testified that at 3.35 A.M., the appellant-Ram came to the police station in an injured condition and told him about his quarrel with Raju, i.e. Shiv Pratap. Blood was oozing from the injuries suffered by the appellant-Ram and he was sent to the Deen Dayal Upadhyay Hospital for check up along with

Constable Manraj (PW-18). He, i.e. ASI Mahinder Singh (PW-19), went to the house No.K-1C/161, Mohan Garden, Delhi. In the cross-examination, ASI Mahinder Singh (PW-19) accepted that he had not recorded any DD entry on or after arrival of the appellant-Ram to the police station. He accepted that Ram did not have any link with the DD entry No.33A. In other words, as per PW-19, he came to know about a quarrel for the first time from appellant-Ram at about 3.35 AM on 11th December, 1997 and had left for the spot in question within 4-5 minutes. However, the appellant-Ram was sent to the hospital. As per PW-19, the place of incident was hardly 2.5 or 3 kilometres from the police station. PW-19 deposed that he had gone there on his scooter but it took him time, i.e. around one hour and thirty minutes, to trace the place of incident. He blamed that the colony did not have proper roads and water had accumulated due to rains.

6. It is noticeable that the MLC of appellant-Ram (Ex.PW-21/A) records the time of examination as 4:20 A.M. on 11th December, 1997.

7. Thus, on one hand, we have testimonies of Constable Manraj (PW-18) and ASI Mahinder Singh (PW-19) that they came to know about an occurrence at house No.K-1C/161, Mohan Garden, Delhi, at about 3.35 A.M. on 11th December, 1997. It has also come on record that the place of occurrence was not far from the police station and was at a distance of hardly 3 kilometres.

8. We have referred to the aforesaid facts as we have some doubts and reservation regarding how and when Raghav Ram Singh (PW-5) and Satpal (PW-12), the father and brother, respectively, of the deceased Shiv Pratap @ Raju came to know about the occurrence. Learned Additional Public Prosecutor for the State has in this connection primarily relied upon

the testimony of Satpal (PW-12), who had deposed that on 10th December, 1997, Shiv Pratap @ Raju and Savitri along with the appellants had gone to the house of Savitri at K-1C/161, Mohan Garden. His brother Shiv Pratap @ Raju thereafter did not return and about 6/6.15 A.M. they had gone to the said house and had seen that the house was open and dead bodies of Shiv Pratap @ Raju and Rekha were lying there. In his cross-examination, Satpal (PW-12) had asserted that his brother, i.e. Shiv Pratap @ Raju had informed them on telephone at 9.30/10 P.M. that he was coming, i.e. returning. Satpal (PW-12) had further testified that Shiv Pratap @ Raju occasionally used to stay in the house of Savitri. In other words, the assertion made by Satpal (PW-12) was that deceased Shiv Pratap @ Raju used to reside with Raghav Ram Singh (PW-5) and Satpal (PW-12) at their common residence. However, Raghav Ram Singh (PW-5) in his court deposition had asserted and testified differently, virtually accepting that the deceased Shiv Pratap @ Raju used to reside at Mohan Garden. He in his cross examination on behalf of Shiv Prakash on 20th November, 1998, deposed:-

“My deceased son resided with me as well as [at] Mohan Garden. My son stayed at night at Mohan Garden and day time he came to me. He came to me after 1/2 days.”

In his cross examination on behalf of Than Singh and Brij Mohan @ Toni, on 14th January, 1999, he testified:-

“Savitri her sister Rekha, my son Shiv Pratap Singh resided in the house where the incident took place. ... My deceased son was having relation with Savitri for 2/3 years before the incident. My deceased son also came to us during that period off and on. ... My deceased son continued this practice by staying 2 or 3 days at Mohan Garden and then coming to us during 2/3 years.”

Raghav Ram Singh (PW-5) had claimed that Savitri was a woman of loose character and his deceased son was allured by her, which was the reason

why the deceased used to reside with Savitri.

9. We have referred to the deposition of Satpal (PW-12) and then the deposition of Raghav Ram Singh (PW-5) on the aforesaid aspect in some detail as both of them have deposed on the aspect of last seen together story. However, we have grave reservations on accepting the testimony of Raghav Ram Singh (PW-5) and Satpal (PW-12) on the said aspect. The reason being, that in case the deceased Shiv Pratap @ Raju and Savitri used to reside and live in house No.K-1C/161, Mohan Garden, Delhi, there was no reason or cause for the appellants to visit the residence of Raghav Ram Singh (PW-5) and thereupon ask the deceased Shiv Pratap @ Raju and Savitri (PW-2) to proceed to House No.K-1C/161, Mohan Garden, Delhi. PW-5's assertion that Shiv Pratap @ Raju and Savitri used to stay with them at day-time, i.e. during working hours, is unbelievable and not acceptable. Raghav Ram Singh (PW-5) had also stated that the deceased Shiv Pratap @ Raju used to come after one/two days. Thus, the assertion by Raghav Ram Singh (PW-5) and Satpal (PW-12) to the effect that the appellants had come to their residence on 10th December, 1997 at about 6/6.15 P.M. in the evening and, thereafter, all of them had left for house No.K-1C/161, Mohan Garden, Delhi along with Savitri (PW-2), is questionable and lacks credibility. It is clear and lucid as accepted by Raghav Ram Singh (PW-5) that he knew the appellants since some time prior to the incident. Raghav Ram Singh's (PW-5) testimony was recorded first. He accepted that his deceased son, Shiv Pratap @ Raju used to reside with Savitri. The latter was described by him as a woman who had lured his son. The statement of PW-12, Satpal on the later date, has to be read and understood with caution and care. This makes the evidence of last seen rather weak and tenuous. We are conscious and aware of the fact that the evidence of last seen is also mentioned in Ex.PW-5/A, i.e. the statement

made by Raghav Ram Singh (PW-5) to ASI Mahinder Singh (PW-19), which became subject matter or content of the FIR (Ex.PW-3/B). However, in spite of the aforesaid position, we are not inclined to unconditionally and unreservedly accept the version of Raghav Ram Singh (PW-5) and Satpal (PW-12) on the question of last seen as deposed to by them.

10. Also, it is not comprehensible as to why on a cold December morning at about 6/6.15 A.M., Raghav Ram Singh (PW-5) and Satpal (PW-12) decided to visit the premises where the deceased Shiv Pratap @ Raju and Savitri (PW-2) used to reside. It is logical and apparent that they had information and knew about the unfortunate event. The only conceivable possibility is that ASI Mahinder Singh (PW-19) or Constable Manraj (PW-18) may have informed them about the occurrence after the appellant Ram had visited the police station at 3.35 A.M. on 11th December, 1997.

11. What is apparent is that Raghav Ram Singh (PW-5) from the very beginning suspected involvement of the three appellants, namely, Brij Mohan @ Toni, Shiv Prakash and Than Singh. Raghav Ram Singh (PW-5) had deposed that after coming back from house No.K-1C/161, Mohan Garden, Delhi, he went to the house of Shiv Prakash located opposite Bharat Properties at Vikas Nagar and there he had heard the aforesaid three appellants speaking with Savitri (PW-2). His description that he overheard and learnt that the three and Ram had killed Shiv Pratap @ Raju and Rekha is rather stodgy and tedious. He has deposed to the effect that Savitri (PW-2) was also present there and had cried that these people had murdered Rekha and Raju. At the spot, he claimed that he had caught hold of Brij Mohan @ Toni and Satpal (PW-12) had apprehended Shiv Prakash. Police was called later on. The aforesaid assertion has been deposed in a

similar manner by Satpal (PW-12). However, the said version of over-hearing conversations at the house and candid confession and outspokenness does not inspire confidence and appears to be implausible. However, we accept that Raghav Ram Singh (PW-5) and Satpal (PW-12) may have looked around and searched for the possible suspects Brij Mohan @ Toni and Shiv Prakash and others, who were thereafter detained and arrested by the police, but the suggestion that the accused divulged and acknowledged the involvement in the crime is contrived and constructed. Thus, we are inclined to discard and disbelieve the version given by Raghav Ram Singh (PW-5) and Satpal (PW-12) that they had heard the conversations revealing the truth taking place inside the house in the morning. As per the police version, Brij Mohan @ Toni and Shiv Prakash were arrested at about 8.10 A.M. on 11th December, 1997. Mere arrest would not prove anything unless the involvement of the said two persons is proved by acceptable and cogent evidence on record.

12. As per the testimony of Raghav Ram Singh (PW-5) and Satpal (PW-12), Than Singh had managed to run away from the spot. Than Singh was arrested on 27th January, 1998. Conviction against him would also fail for the same reason, as his involvement also has not been proved beyond reasonable doubt.

13. In the testimony of Raghav Ram Singh (PW-5) it has come that the deceased Rekha was sister of Savitri (PW-2). This appears to be correct and it is also apparent that Raghav Ram Singh (PW-5) knew and recognised Rekha, the second deceased. This is apparent when we read Ex.PW-5/A, which was the first complaint and became the basis of the FIR (Ex.PW-3/B). Name of Rekha, i.e. the second deceased, has been specifically stated by Raghav Ram Singh (PW-5). The second deceased, i.e., Rekha was also identified by Satpal (PW-12).

14. This brings us to the case against the appellant-Ram, which is different and initially appeared to be unimpaired and sound. As per the police version deposed to by Constable Manraj (PW-18) and ASI Mahinder Singh (PW-19), appellant-Ram had come to the police station at about 3.35 A.M. on 11th December, 1997 and reported about his quarrel in which he had suffered injuries. As per ASI Mahinder Singh (PW-19), he had named Shiv Pratap @ Raju and had also given the house number where the quarrel had taken place, i.e. K-1C/161, Mohan Garden, Delhi. Constable Manraj (PW-18), as noticed above, had somewhat contradicted ASI Mahinder Singh (PW-19). He was also cross-examined by the Additional Public Prosecutor but had affirmed that the appellant-Ram had not specifically informed him that he had received injuries from Shiv Pratap @ Raju.

15. Apart from the aforesaid contradiction, which may not be fully material, we observe two circumstances which create serious and grave doubts about the actual involvement of appellant-Ram as the perpetrator who killed Shiv Pratap @ Raju and Rekha. The first circumstance is the conduct of appellant-Ram himself, in coming to the police station on his own. It was certainly not to confess the murders or out of repentance. It appears that he had suffered injuries, which are apparent from the MLC of appellant-Ram (Ex.PW-21/A). The said MLC of Deen Dayal Upadhyay Hospital was recorded after examination of Ram at 4.20 A.M. on 11th December, 1997. It records wounds on the parietal region, occipital region, forehead, mandible, etc. It is further recorded that the patient, i.e., appellant-Ram had consumed alcohol but was not under its influence. X-ray of the skull as well as left mandible was suggested but details are not available. What creates further doubt and suspicion on the appellant-Ram's involvement is the second aspect, a written complaint which was made by Raghav Ram Singh (PW-5) to the office of the Chief Minister

dated 20th December, 1997, marked as Ex.PW-5/DB. In the said complaint, Raghav Ram Singh (PW-5) had expressed his apprehension that appellant-Ram has been wrongly implicated and Savitri along with other appellants, namely, Shiv Prakash, Brij Mohan @ Toni and Than Singh were involved. This complaint also records that at about 5.45 A.M. on 11th December, 1997 appellant-Ram came to his house along with relatives and police men and informed them about the incident, i.e. the occurrence. It was claimed that Ram in fact was a prime eye witness and not a culprit. The aforesaid complaint when shown to Raghav Ram Singh (PW-5) in his cross-examination was accepted. Raghav Ram Singh (PW-5) admitted his signatures at point 'A'. PW-5 also accepted that the aforesaid complaint was typed on his directions and then he had given the application to the office of the Chief Minister. This Exhibit, Ex.PW-5/DB is a document, which dents the allegations against the appellant-Ram. Thus, there is a doubt whether the appellant Ram was a perpetrator or was one of the victims of the violence by others, like the deceased, even if we accept that the appellant Ram was present in the House No.K-1C/161 at Mohan Garden, Delhi.

16. This was a case of double murder in which two young persons had lost their lives, but the prosecution has not been able to prove their case beyond reasonable doubt against the appellants herein. The primary reason, it appears, is that Savitri (PW-2) whose sister Rekha had also died in the said occurrence, did not support the prosecution case. Ex.PW-5/DB, in fact, raises suspicion about involvement of Savitri (PW-2) in the crime. The said doubt was expressed by none other than the father of the deceased Shiv Pratap @ Raju. Raghav Ram Singh (PW-5) accepted that he had given the said complaint (Ex.PW-5/DB) which was neither contradicted nor explained by either Raghav Ram Singh (PW-5) or by way of re-

examination of Raghav Ram Singh (PW-5) by the Additional Public Prosecutor. This could have thrown some light in case the complaint (Ex.PW-5/DB) had been made under a wrong impression or under a threat or coercion. Moreover, as noticed above, as per the prosecution case, Savitri (PW-2) was not involved in the actual offence, but her presence at the time of occurrence as an eye witness is asserted. It is not the prosecution's case that Savitri (PW-2) had suffered any injuries though her sister Rekha had died in the said occurrence.

17. In view of the aforesaid discussion and factual position, we are inclined to grant benefit of the doubt to the appellants and their appeals are accordingly allowed. Their conviction and sentence are quashed and set aside. Their bail bonds are cancelled.

18. Appeals are disposed of. The LCR be sent back to the trial court.

SANJIV KHANNA, J.

ASHUTOSH KUMAR, J.

FEBRUARY 12, 2015
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