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

Date of Decision: 11th August, 2016

+ **Crl. Appeal No.385/2000**

SUNIL KUMAR Appellant

Through: Mr. M. L Yadav, Adv.

Versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP for State
with SI Ramesh Chand, PS Sultan
Puri.

+ **Crl. Appeal No.435/2000**

PRADEEP KUMAR Appellant

Through: Mr. Mohit Mathur, Sr. Adv. with Mr.
Hasan Beg, Adv.

versus

STATE GOVT. OF NCT OF DELHI Respondent

Through: Ms. Aashaa Tiwari, APP for State
with SI Ramesh Chand, PS Sultan
Puri.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ranjita, 30 years old, a transgender, was found dead with several stab

injuries at her residence in property described as E-6/43, Sultan Puri on the morning of 29.01.1998 by her maid servant Ram Beti (PW-5). Information was conveyed to the local police station Sultan Puri (police station) at 10.10 a.m. and recorded vide DD entry No. 8A (Ex.PW-18/A). Initially, inquiries were conducted by SI Ranbir Singh (later inspector) who was accompanied by Constable Jagdish Kumar (PW-13). The matter eventually was taken up for investigation by Inspector Jagbir Singh (PW-10), the station house officer of the police station. On the basis of observations of the scene of crime and the initial input through the afore-mentioned DD entry, first information report (FIR) was registered, copy whereof is at page 130-131 of the paper book (the document was not formally adduced into evidence). On the basis of investigation carried out, both the above-mentioned appellants were arrested and brought to trial before the court of sessions on the charge that on the night intervening 28.01.1998, they in furtherance of their common intention had committed murder of Ranjita punishable under Section 302 of Indian Penal Code, 1860 (IPC). The trial resulted in judgment dated 22.05.2000 of the court of sessions holding the appellants guilty, as charged, for offence under Section 302 read with Section 34 IPC. By order dated 23.05.2000, the learned trial court awarded sentence of imprisonment for life with fine of ₹ 1,000/- each, in default rigorous imprisonment for six months, to both the convicted persons (appellants).

2. Feeling aggrieved with the afore-said judgment and order on sentence, these appeals were filed assailing the findings recorded by the learned trial court.

3. We have heard Mr. Mohit Mathur, learned senior Advocate representing the appellant Pradeep Kumar (A-2), Mr. M.L. Yadav, learned Advocate, representing the appellant Sunil Kumar (A-1) and Ms. Aashaa

Tiwari, learned Additional Public Prosecutor representing the State. With their assistance, we have gone through the trial court record in entirety.

4. It may be mentioned here that the appellant Sunil Kumar (A-1) was in private medical practice in the same locality where the murder took place, he running a clinic in the name and style of Sharma Clinic from premises described as E-1/21, Sultan Puri wherein he was a tenant under Raj Kumar (PW-8). The evidence of PW-8 has further brought out that appellant Pradeep Kumar (A-2) was engaged by A-1 as pharmacist in the same clinic. The said evidence further shows that the two appellants would often work late in the night from the clinic and even sleep at the same place in middle portion of the property owned by Raj Kumar (PW-8) the landlord. It may also be added at this very stage that PW-8 has vouchsafed the presence of both the appellants on the said premises (the tenanted premises of PW-8), having retired there for night and both not having gone out at any stage on the night intervening 28-29.1.1998, in which regard PW-8 is confident since in order to go out they would need to borrow the keys of the main entrance which he is categorical in stating was not done on the relevant night.

5. The learned trial court accepted the case of the prosecution against the two appellants mainly on the basis of conclusion that prosecution had duly proved that certain ornaments of the deceased Ranjita having been stolen from her premises on the same night as of murder, had been recovered from the clinic of A-1. It also accepted the evidence of the prosecution that A-2 had led to recovery of his clothes (trouser and shirt) kept concealed on the *taund (loft)* of the same very clinic where A-1 and A-2 were working for gain and are stated to have slept there during the night. The said wearing apparels, stated to be of A-2 were sent to Forensic Science Laboratory (FSL), are shown to have revealed presence of blood stains of human origin

of AB group, the same blood group as of the deceased, evinced from her personal effects taken off the dead body during autopsy. The learned trial court was also impressed with the evidence about recovery of knife (Ex.P-26) shown effected at the pointing out by both the appellants and taken into possession formally (vide memo Ex.PW-1/B), after its sketch had been prepared (Ex.PW-14/A). It may be mentioned here that though the knife (Ex.P-26) when sent to the FSL blood of human origin was detected thereon, its blood group could not be established.

6. The learned Additional Public Prosecutor fairly conceded that in this case there is no direct evidence of complicity of the appellants and the case entirely rests on circumstantial evidence concerning the above-mentioned three recoveries, which were statedly effected on the basis of disclosures made by the two appellants after their arrests on 29.01.1998. We must, however, add that the charge-sheet and the evidence are conspicuously silent as to how suspicion was aroused against the appellants leading to their interrogation when the investigating officer had paid a visit to the clinic of A-1.

7. Ram Pyari (PW-1) who was present on the scene when PW-18 had arrived there upon receipt of information for the first time, Roshni Devi (PW-2), described as foster mother of the victim, besides Jaya (PW-3) and Laxmi (PW-4) were presented as witnesses who were acquainted with the deceased. They, in addition to Ram Beti (PW-5), were examined by the prosecution in order to bring home the connection between the two appellants on one side and the victim on the other. PW-5, the maid servant did talk of she having cooked dinner for certain guests of victim on 29.01.1998 and thereafter having left but she would not even remotely name any of the appellants as amongst those who could be the possible guests over

dinner at the residence of the victim on the said night. Ram Beti (PW-5) is the person who first arrived at the scene on the next morning and having seen the dead body informed others including the police. Her evidence is of no avail to the prosecution to bring home any connection between the appellants and the crime.

8. PW-1, PW-2, PW-3 and PW-4 were examined to prove the fact that the ornaments statedly recovered at the instance of the appellants from the clinic of A-1 were property of the deceased. Though PW-4 initially in her examination-in-chief did support the prosecution case in this regard, in the later part of the testimony, particularly when she was closely examined by the court itself, she categorically stated that she had not seen the victim wearing the said ornaments or having their use or possession at any stage with her own eyes. Similar is the testimony of PW-1, PW-2 and PW-3.

9. In view of the above, the prosecution has miserably failed to bring home any connection between the recovered ornaments and the victim. Even if we proceed on the said assumption that the said articles were property of the victim, there is no material before us to show that the said articles had been stolen from the possession of the victim on the night she was murdered. Noticeably, this was not part of the gravamen of the FIR or the charge laid against the appellants. Even otherwise, as further discussed below, having subjected the evidence about the recovery of these ornaments to acute scrutiny, we find it difficult to believe the same.

10. PW-3 and PW-4 are shown to be attesting witnesses to the recovery. But interestingly, PW-3 also spoke about a person present there holding a bag containing the purse and the ornaments even at the stage when she was first taken to the clinic of A-1 by a police official. It is for this reason that

she refused to confirm the prosecution case that the recovery of ornaments was effected in her presence. It cannot be ignored that PW-4 was accompanying PW-3 at the time of the said recovery.

11. We are not impressed with the evidence regarding the recovery of clothes of A-2 from the clinic of A-1. The disclosure statement attributed to A-2 (Ex.PW-18/C) indicates the clothes had been washed before being put on the loft. Yet, when they were sent to the FSL, blood was detected. It is also pertinent to note that aside from the disclosure attributed to A-2, there is no evidence whatsoever affirming that the said clothes were of A-2. We cannot ignore the fact that the clinic, from where this recovery was made, was not the ordinary residence of A-2. He was, after all, only an employee and the clinic was found open. Even the clothes were found in open condition. The clinic would be visited by a number of persons and it cannot be said with certainty that the clothes were kept there, much less concealed by A-2.

12. The proof of recovery of weapon of offence is based on circumstances which are even more discrepant. The investigation officer had paid a visit, pursuant to the disclosures allegedly made simultaneously by the two appellants, on 29.01.1998. This visit on 29.01.1998 had allegedly led to the recovery of the ornaments and the clothes of both the appellants as incriminating material. In normal course, a police officer investigating a crime of such grave nature would subject the premises to a thorough search. Yet, no weapon of offence including knife was found on the premises on 29.01.1998. It is not clarified as to what led the investigating officer to pay another visit on 30.01.1998 leading to the recovery of the knife (Ex.P-26) on the said date. It is not palatable that on the first visit a knife of such size as produced in evidence, would have escaped notice if it was lying in open

drain inside the small premises of the clinic. We must add here that the knife (Ex.P-26) of which sketch (Ex.PW-14/A) was prepared on 30.01.1998 does not even appear to be the same article as was sent to the autopsy doctor for his opinion on 11.03.1998 leading to the further opinion (Ex.PW-19/A). In the said further opinion, the autopsy doctor had prepared sketch of the knife which was presented to him. We find even the dimensions of the two articles in the said two sketches to be different and not matching with each other.

13. In above facts and circumstances, we do not find it safe to accept the prosecution evidence about the above-mentioned recoveries. In the consequence, the appeals are allowed. The judgment and order on sentence are set aside. The appellants stand acquitted. Their bails bonds are discharged.

14. The Registry shall send copies of this judgment to the two appellants by registered post at their respective addresses.

(R.K. GAUBA)
JUDGE

(GITA MITTAL)
JUDGE

AUGUST 11, 2016
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