

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

% Reserved on: 22nd May, 2017
Decided on: 31st May, 2017

+ **CRL.A. 229/2015**

RAHUL DEV Appellant
Through Mr. Ravi Varma, Mr. Rakesh Kumar,
Mr. S. Lal, Advs.

versus

STATE Respondent
Through Ms. Rajni Gupta, APP for State.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, Rahul Dev challenges the impugned judgment dated 29th August, 2014 convicting him for offences punishable under Section 302/201 IPC and the order on sentence dated 30th August, 2014 directing him to life imprisonment and to pay a fine of ₹5,000/- for the offence punishable under Section 302 IPC and rigorous imprisonment for a period of four years and to pay a fine of ₹2,000/- for the offence punishable under Section 201 IPC.

2. Learned counsel for the appellant contends that despite the fact that the incident took place at around 12.30 AM on the intervening night of 22nd and 23rd June, 2009 the three alleged eye-witnesses reached the Police Station and met the investigating officer Inspector Yashpal Singh only at

4.00AM. There is no explanation as to what the alleged eye-witnesses were doing for three and a half hour. Further there is no departure entry nor has one been exhibited by Inspector Yashpal Singh showing his departure for the scene of crime at 4.00AM. Even as per the case of the prosecution after Inspector Yashpal Singh reached the spot, he called SI Ramesh Dutt only at 5.30 AM and no information in this regard was made prior thereto. Thus the information to the Police and the arrival of the Police at the spot is shrouded with mystery. Though the alleged witnesses were having mobile phones, nobody made a PCR call. Though Nirmal Babbar, landlord of the premises stated that Rahul, Raj Kumar and Umesh were residing in the flat, however he did not depose that Prakash @ Pinkoo was also residing in the flat. Hence presence of Prakash @ Pinkoo who is the maker of the FIR at the spot is doubtful.

3. Learned counsel further contends that to implicate the appellant Umesh Kumar has been introduced along with alleged extra judicial confession made to him. Though it is the consistent case of the prosecution that after the three alleged eye-witnesses went to the Police Station to inform, the door was opened twice, both the times by the appellant, it is unbelievable that the appellant would continue in the same condition with blood stains on his bare chest for three and a half hour and make no effort to clean the same or do anything to avoid his complicity in the offence. Version of Seema, wife of the deceased is not corroborated by the call records. Further even as per Seema, a quarrel took place six months prior to the incident, hence the alleged motive introduced by the prosecution is too weak to base conviction of the appellant. Despite the fact that the case of the prosecution is that the body of the appellant was blood stained and appellant

was wearing a black pant, still no blood was found on the pant of the appellant as per the FSL report. Though it is the case of prosecution that four persons were drinking but only two glasses were found at the spot. Although it is the consistent testimony of the alleged eye-witnesses that the deceased was made to drink alcohol, however the viscera of the deceased did not show presence of alcohol. Further the witnesses have stated that meat was brought by Balloo, who cooked the same which was eaten by the deceased, however as per the post-mortem of the deceased undigested food found in his body was egg and pieces of tomato. Further on all articles of the appellant allegedly collected, even as per the FSL report, blood of the deceased was not found, as no grouping could be given.

4. Learned counsel for the appellant further contends that though finger prints and foot prints were taken from the spot, however no report was exhibited. Despite the fact that mobile phone of the appellant was recovered vide Ex.PW-22/B, however no call details were produced. Further Balloo who allegedly continued to stay with the appellant and cooked the meat was not examined. Further no witness explained how appellant came in possession of the weapon at the roof when as per the alleged witnesses, appellant never went downstairs after they all started eating and drinking. The appellant has been falsely implicated, hence he be acquitted of the charges.

5. Learned APP for the State on the other hand contends that the prosecution has proved beyond reasonable doubt motive from the evidence of Seema, Umesh Kumar duly corroborated by Prakash @ Pinkoo. Suggestions of the appellant to the prosecution witnesses on this issue are contrary in nature and he has tried to say that Balloo was having relations

with Seema which she denied. Merely because the rent agreement was in the name of the three witnesses i.e. Prakash Kumar @ Pinkoo, Ravi Kant Dubey and Rishabh, the same does not mean that the others were not residing in the house. Rent agreement was entered in April 2008 whereafter Prakash Kumar @ Pinkoo also started residing in the premises as and when he came to Delhi. The prosecution case cannot be thrown out merely on the ground that the alleged incident took place at 12.30 AM on the intervening night of 22nd and 23rd June, 2009 and the three eye-witnesses reached the Police Station around 3.30 AM. Every person reacts in different situations differently and immediately they could not muster the courage to go to the Police Station and took some time to decide to go to the Police Station and thereafter went on foot to the Police Station, in which process time was consumed.

6. Learned APP further contends that Umesh Kumar is an independent witness. He also deposed that when he reached the flat the same was opened by the appellant and there were blood stains on the chest of the appellant. Motive of the appellant is further proved by the vengeance with which he not only caused the death but there after also amputated various parts of the body of the deceased. Appellant made an extra judicial confession to Umesh Kumar which has not been challenged in cross-examination. Contention of learned counsel for the appellant that though it is the consistent case of the eye-witnesses that the incident took place on the roof, however after they got the Police Officer they only went to the third floor and not the roof, is answered from the site plan which shows that to go to the roof one had first to go to the third floor and when the body was found on the third floor itself, there was no purpose of going to the roof in the first instance. Further the

fact that the murder took place on the roof is also fortified by the amputated finger of the deceased recovered from the roof besides blood stains and blood control earth. Besides amputated finger, the fourth injury as per the post-mortem report of the deceased shows that the appellant even tried to amputate shoulder and also chopped the head of the deceased. He brought down the body and was in the process of disposing of by chopping it into various pieces. The appellant took false defense taking the plea of insanity, which is also an additional link in chain of circumstances.

7. Process of law was set into motion when three boys namely Prakash Kumar @ Pinkoo, Ravi Kant and Rishabh came to police station, met Insp. Yashpal Singh and informed him that their associate Rahul had murdered one person at House No. 95-D, Third Floor, V.P. block, Pitampura, Delhi. Insp. Yashpal Singh along with the three boys reached the third floor of the aforesaid house and found that the door of the house was locked from inside. After knocking the door, one boy opened the door who had blood stains on his upper body and was wearing a pant only. Insp. Yashpal Singh conducted the search of the house and found a body in the kitchen. The head of the body was inside a red and black rexine bag near the sink. One instrument, which is used to cut meat was lying on the upper side of the body. On the roof of the house, blood was lying and one finger of the hand was also found lying. One blanket, one empty liquor bottle make 'Signature' and its box, one empty meat box, two glasses, two pairs of chappals and one cream colour shirt was recovered from the roof.

8. Statement of Prakash Kumar @ Pinkoo was recorded wherein he stated that he was a resident of village Ram Nagar, District West Champaran and was staying at House No. 95 D, V.P. Block, Pitampura, Delhi with

Rishabh, Rahul (appellant herein) and Umesh in a tenanted accommodation and used to work in a private company. On 22nd June, 2009 in the evening, he had a word with Rahul on phone and Rahul told him that his friend Diwakar (deceased) would be coming to the house for party. Rahul told him to reach the house and he too would be reaching after getting the stuff. He reached at the roof of the house. Thereafter Rahul and Diwakar also reached there along with liquor and eatables. He knew Diwakar since Diwakar's wife Seema used to work at his place as domestic help and Diwakar used to visit his house. Three of them started consuming liquor on the roof. In the meantime, another friend of Rahul namely Balloo came and had got raw meat with him. Rahul asked Balloo to prepare meat so he went downstairs and started preparing meat. While they were drinking, a quarrel ensued between Rahul and Diwakar over Seema. However, after persuading them, Prakash came downstairs in his room where his friends Rishabh and Ravi Kant were present. Thereafter, Balloo also came downstairs. Around 12:30-1:00 A.M., they heard the noise of 'dham dham' and they thought that Rahul and Diwakar had started fighting again. Three of them went to the roof where they saw Diwakar was lying in a pool of blood and Rahul was attacking Diwakar with a knife used for cutting meat. Rahul, while making a gesture with the knife smeared with blood, asked them to leave from there. All three of them were scared and they came downstairs. Since they all were frightened, they discussed amongst themselves and went to the police station. Thereafter, they narrated the entire incident to the police. Consequently, the police reached the spot. On the basis of the aforesaid statement, FIR No. 303/2009 was registered under Section 302 IPC at PS Maurya Enclave. Thereafter, the dead body including torso, head and finger

was sent to BJRM Hospital for post mortem. Rahul was arrested vide arrest memo Ex. PW-22/C.

9. Prakash Kumar @ Pinkoo who was examined as PW-1 deposed in conformity with his earlier statement. He further stated that Rahul was having illicit relations with Seema and Diwakar came to know about it. Seema had stopped coming for work at their house. Rahul used to tell him that he was unhappy without meeting Seema, Diwakar was coming in their way and he would set him right.

10. PW-5 Ravi Kant Dubey stated that on 22nd June, 2009, he had come to the house of his cousin Rishabh who was residing at a tenanted house at VP-95D, Pitampura, Delhi. He corroborated the testimony of Prakash Kumar @ Pinkoo. PW-15 Rishabh also deposed in sync with the testimony of Prakash Kumar @ Pinkoo and Ravi Kant Dubey.

11. PW-8 Seema, wife of Diwakar, deposed that she used to work as a domestic maid at the house of Rahul and he used to have fun with her. She objected to the same. She had left for village, however, her husband remained at their jhuggi in Delhi. She had informed to her husband about the behaviour of Rahul towards her. Rahul had exchanged some hot words with her husband several times. During her cross-examination, she stated that Rahul used to catch hold of her hand in the presence of Rishabh and Umesh as well as in their absence. Further Rahul made filthy remarks at her. She denied the suggestion that Rahul did not misbehave with her nor made any filthy comments or fun with her.

12. PW-10 Umesh stated that on the night of 23rd June, 2009, when he came back to the house from duty, the house was bolted. He knocked the door, which was opened by Rahul, who was only wearing a black colour

pant and was bare chest. There was blood on his chest and hands. Rahul told him *“Maine Diwakar ka khoon kar diya hai, ab uski laash ko thikane lagana hai. Tu yahan se bhaag ja, nahin to tera bhi yahi haal hoga.”* He got terrified and walked away towards his office. He further stated that Rahul and Seema had illicit relations and Diwakar knew about it. Diwakar used to blackmail Rahul on account of this and used to extract money from him. Rahul told him that Diwakar was blackmailing him.

13. PW-19 Nirmal Babbar deposed that he was the owner of property No. 95D, VP Block, Pitampura. He had rented out two room set on the third floor of the said premises to Rahul. He was living there with two boys namely Raj Kumar and Umesh.

14. PW-7 Dr. V.K. Jha, Medical Officer, BJRM Hospital conducted post mortem on the dead body of Diwakar on 25th June, 2009 and prepared the report Ex. PW-7/A. As per the post mortem report, following external injuries were found on the body of Diwakar:

- i) *Incised wound left lower leg at lower end of size 3 cms X 1.5 cms X muscle deep in outer aspect.*
- ii) *Amputation of finger from middle phalanges in middle finger of right hand.*
- iii) *Incised wound on palmar aspect of right hand of size 9 cms X 3 cms into bone deep and 8 cms X 2 cms X bone deep respectively in the middle end in a gap of 1 cm.*
- iv) *Incised wound on left shoulder extending upto axilla 12 cms X 7 cms X bone deep, skin muscles, vessels exposed.*
- v) *Skull with stump: The cut stump attached to head showed multiple irregular cut over front of neck and on the back muscles are severed with bruising at cut ends of fifth vertebrae present in the cut slump separated head and parts of the neck attached to it also showed cut marks on its body which are partial. Spinal cord passing through it shows cut separation.*

- vi) *Neck: The cut part of the neck attached to the trunk also showed multiple irregular cut in whole circumference and the body of sixth cervical vertebrae showed partial cut in the front, the spinal cord is cut in whole circumference and separated from the upper part of neck. Blood clots are present over both severed part of the cut neck."*

15. Dr. V.K. Jha further deposed that when the separated head and neck were put in the alignment, then sungly fit into each other matching the cut ends of decapitation anatomically. As per the internal examination of neck, trachea was drawn in chest cavity. The cause of death was opined to combined effect of hemorrhagic shock and asphyxia as a result of ante mortem cut throat injury. Cut throat injury was sufficient to cause death in ordinary course of nature and was inflicted by other party. Weapon used was heavy sharp cutting straight weapon. During his cross-examination, he admitted that as per the post mortem report, undigested egg pieces were found in the stomach of the deceased.

16. PW-3 Naresh Kumar, Senior Scientific Assistant (Biology), FSL prepared the detailed biological Report Ex. PW-3/A and serological report Ex. PW-3/B. As per Ex. PW-3/A, blood could not be detected on Exhibit '10' which is the black pant of Rahul. As per the serological report, human blood of 'B' group was found on Exhibit '6' i.e. the weapon of offence which tallied with the blood group of the deceased.

17. As per Ex. PW-23/A i.e. the FSL report qua Chemical, Microscopic and GC-HS examination, Ethyl alcohol was found in Exhibit '4' i.e. one empty green-coloured glass bottle, labeled as "Signature Rare Aged Whisky" and not in the viscera of the deceased.

18. PW-14 Dr. Neeraj Chaudhary, CMO, BJRM Hospital stated the MLC (Ex.PW14/A) of Rahul was prepared by Dr. Pawan Patrick whom he had seen writing and signing. As per the said MLC, clotted blood stains were found on the right forearm, chest and abdomen of upper surface of skin. He found no fresh external injury at the time of medical examination, however, minimal tenderness on the side of left thumb and left index finger were found with no body crepitation or swelling, all movements normally present.

19. Defence taken by Rahul in his statement under Section 313 Cr.P.C. was that he has been falsely implicated in the present case as Umesh and Prakash were having illicit relationship with Seema (wife of deceased). Prakash was unhappy with him as he had removed Seema from work and had asked her to never visit his house. On the date of incident, an altercation took place between Prakash and Diwakar, when they called upon him. He pacified the matter. Thereafter, they all drank and he became unconscious. Later on, he was removed to his room by Prakash and Balloo and were made to lie on the bed. He further stated that Prakash and Umesh were not happy with him since he had removed Seema from work as he had seen them in compromising state in the house. He further added that Prakash was the accused in the present case but he took benefit of his unconsciousness and implicated him in connivance with other witnesses and police.

20. To substantiate the defence version, Ashish Soy was examined as DW-1 who was a Senior Consultant, Neuropsychiatric. He stated that Rahul had been his patient since 2009. During his first visit, he was diagnosed with Epilepsy and Psychotic Depression. On diagnosis, he also found that Rahul was having hallucination and was living in a world which was unreal. As per his records, Rahul was in severe stage of Psychotic Depression. He exhibited

the medical certificate and the prescription as DW-1/A and Ex. DW-1/PA respectively.

21. Contention of learned counsel for the appellant that the three eye-witnesses took nearly three and a half hours to go to the Police Station and bring the Police officer, thus there is manipulation deserves to be rejected. From the post-mortem report the vengeance with which murder of the deceased Diwakar was committed is evident. Not only he slit the neck, beheading the deceased, he amputated his finger and was in the process of cutting shoulder. In such a situation the eye-witnesses getting perplexed is not unnatural. Thus after panicking the eyewitnesses having taken some time to go to the Police Station after mustering courage and since they had no vehicle they went on foot, the delay in going to the Police Station, having been explained is not fatal to the prosecution case. In the decision reported as (1983) 3 SCC 327 Rana Partap v. State of Haryana the Supreme Court held-

“6. Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.”

22. As noted above, Seema wife of the deceased deposed that Rahul Dev used to make phone calls to her which was objected by her where after she left for the village and her husband remained in Delhi. She had informed about the behavior of Rahul Dev to her husband and an exchange of hot words took place between them several times. She also admitted that her husband used to doubt about her relationship with Rahul Dev. She stated that Rahul caught hold of her hand in the presence of Rishabh and Umesh and in their absence he used to make filthy remarks. She denied the suggestion that Balloo used to make filthy remarks to her or that he proposed to marry her.

23. Version of Seema is further corroborated by Umesh who stated that Rahul and Seema were having illicit relations and Diwakar knew about it and Diwakar used to blackmail Rahul on account of this and extract money from Rahul. Umesh was told by Rahul that Diwakar was blackmailing him. This fact is further corroborated by the version of Prakash @ Pinkoo who also deposed that Rahul was having illicit relations with Seema, wife of Diwakar, Diwakar knew this fact; Rahul expressed his unhappiness on not meeting Seema; Diwakar was coming in their way and he would set him right.

24. Though in a case of eye-witness account the prosecution need to prove motive, however from the evidence of the witnesses as noted above the prosecution has proved beyond reasonable doubt the motive for the commission of offence against Rahul Dev. The Supreme Court in the decision reported as (2015) 11 SCC 145 Kamla Kant Dubey v. State of U.P. held-

“18. It is settled principle that a conviction can well be founded on the testimony of a single witness if the court finds his version to be trustworthy and corroborated by record on material particulars [Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382 which in turn relied upon Joseph v. State of Kerala, (2003) 1 SCC 465 : 2003 SCC (Cri) 356 and State of Haryana v. Inder Singh, (2002) 9 SCC 537 : 2003 SCC (Cri) 1239] . We find on the touchstone of these principles, the testimony of PW 1 is completely trustworthy. Out of three infirmities found by the High Court, one regarding place of occurrence is not correct at all. So far as other two infirmities are concerned, it is a well-accepted principle that the first information report need not contain every single detail and every part of the case of the prosecution. However, assuming them to be improvements, in our view the basic substratum of the matter does not get affected by such improvements at all. Even after segregating the part which appears to be introduced as improvement, the testimony of PW 1 is clear and creditworthy. The feature that there was a strong motive for the respondents to commit the murder in question is also clear from the record and the trial court had accepted that the respondents had strong motive to commit the crime. The finding as regards motive has not even been touched by the High Court. While PW 1 narrated the facts regarding civil litigation, the fact that the respondent-accused were being tried for the murder of his father and that there was a separate case instituted against them for having assaulted Brahmadeen, he was not countered in cross-examination. The motive therefore lends complete corroboration and assurance while appreciating the version of PW 1.”

25. The three eye-witnesses Prakash @ Pinkoo, Ravi Kant Dubey and Rishabh have all deposed about the incident, have corroborated each other's version and nothing material has been elicited in their cross-examination. It is the case of prosecution that Prakash, Rahul and Diwakar went to the roof and started taking liquor. Balloo, a friend of Rahul also joined them. Balloo brought raw meat and cooked the same where after Prakash, Rahul, Diwakar

and Balloo started drinking and eating, when an argument ensued between Rahul and Diwakar about Seema, wife of Diwakar. After pacifying them Prakash came down in the room where Rishabh and Ravi Kant were also present. At about 12.30-1.00 AM they heard the noise from the roof and when Prakash, Rishabh and Ravi Kant went to the roof they saw Diwakar lying in the pool of blood and Rahul standing there with a long knife in his hand. Rahul was bare chest and there was blood on his chest. He signaled them with the knife in his hand and asked them to leave the spot. They got scared and came down. After discussion Prakash, Rishabh and Ravi Kant went to the Police Station.

26. Though no alcohol was found in the viscera of the deceased, however from the place of occurrence i.e. the roof, liquor bottle, meat box and eatables were lifted and liquor bottle was sent to the FSL and was found to be containing ethyl alcohol. Further amputated finger of Diwakar was also found on the roof. When the three witnesses came back they saw that Rahul had brought down Diwakar in the kitchen and head of Diwakar was lying in a bag. Since Rahul was apprehended at the spot he was examined medically on the same day and blood stains on his chest were collected by the Doctor by a swab, although it did not give the grouping, but was opined to be human blood. The fact remains that even in the absence of the grouping of the blood found from the chest of Rahul there is no explanation by him as to how blood came on his chest which was duly collected by a swab by the Doctor when there was no injury on him.

27. Evidence of call records would have only been corroborative in nature and where the primary witnesses itself are reliable, conviction can safely be

based on the testimony of the said witnesses even in the absence of corroboration from the call detail records.

28. Evidence of Seema, Umesh, Prakash, Ravi Kant Dubey and Rishabh coupled with the extra judicial confession of Rahul made to Umesh, human blood recovered from the chest of Rahul at the mid-night, coupled with the recovery of the amputated body of Diwakar, when he alone was present in the house after Inspector Yashpal Singh, Prakash, Ravi Kant and Rishabh reached the third floor of the premises which Rahul Devi has failed to explain, prove the case of the prosecution beyond reasonable doubt. See: (2011) 10 SCC 158 Takdir Samsuddin Sheikh v. State of Gujarat and (2007) 14 SCC 150 Namdeo v. State of Maharashtra.

29. In view of the cogent and convincing evidence led by the prosecution we find no infirmity in the impugned judgment of conviction and the order on sentence.

30. Appeal is dismissed. TCR be returned back.

(MUKTA GUPTA)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

MAY 31, 2017
‘ga’