

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

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RAKESH

CRL.A. 829/2015

...Appellant

Through: Joginder Tuli, Mr Ashu Kumar Sharma,
Ms. Joshini Tuli and Ms Babita Rana, Advocates

versus

THE STATE

...Respondent

Through: Ms.Kusum Dhalla, APP

WITH

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GEETA

CRL.A. 1282/2015

...Appellant

Through: Joginder Tuli, Mr Ashu Kumar Sharma,
Ms. Joshini Tuli and Ms Babita Rana, Advocates

versus

THE STATE

...Respondent

Through: Ms.Kusum Dhalla, APP

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE I.S. MEHTA

JUDGMENT

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13 .11 . 2017

Dr. S. Muralidhar, J.:

1. These are the two appeals by Geeta and Rakesh, Accused Nos.1 and 2 (A-1 and A-2), challenging the impugned judgement dated 20th December 2014 passed by the learned Additional Sessions Judge-04, South-West District, Dwarka, New Delhi ('ASJ') convicting them for the

offences punishable under Sections 302/201/34 Indian Penal Code ('IPC') as well as the order of sentence dated 23rd December 2014 sentencing them to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further undergo simple imprisonment ('SI') for three months. In addition, the Appellants were also sentenced to rigorous imprisonment ('RI') for one year for the offence under section 201/34 IPC along with a fine of Rs.5,000/- and in default of payment of fine, they shall further undergo SI for one month.

2. The trial Court held that since there was no evidence on record that the accused persons conspired with each other or co-accused Bhagwan Singh to commit the murder of the deceased, Inderjeet, they stood acquitted for the offence punishable under Section 120B IPC.

3. The case of the prosecution is that A-1 was having an affair with the deceased, Inderjeet. On the date of the incident, i.e. 6th January 2013, she called the deceased on his mobile phone from a Public Call Office ('PCO') operated by Naresh (PW-5) between 3 and 3.30 pm. According to the prosecution, since A-1 suspected that the deceased was having 'an evil eye' on her daughter, A-1 and her brother Rakesh (A-2) and one Bhagwan Singh (absconding accused) made a plan to eliminate Inderjeet at A-1's residence at E-111, Om Vihar, Phase-V, Uttam Nagar. The deceased was killed by a sharp-edged weapon. His dead body was thereafter wrapped in a jute sack, put in a suitcase, wrapped in a quilt and left on a *rehri* in Dwarka.

4. The deceased, who was married and had children, was using two mobile phones bearing Nos. 9211414070 and 9953211720. The deceased stayed with his two brothers Satender Kumar (PW-17) and Devender Kumar (PW-21). PW-17 deposed that A-1 was having an illicit relationship with the deceased. When A-1 learnt about PW-17 and PW-21 having tried to reason with the deceased about the affair, A-1 - who was staying in a rental accommodation close to the house of the deceased - shifted to another rented accommodation at Om Vihar.

5. On the date of incident, when the deceased did not come back to the house till 6 pm and was also not answering calls on his mobile phones, PW-17 and PW-21 began searching for him. The next morning, they lodged a missing person report with the police. While filing said report, they learnt that a dead body had been found in the jurisdiction of PS Bindapur. They then went to DDU Hospital and identified the dead body of the deceased.

6. PW-17 then took the police officials to the house of the A-1 at Om Vihar where he identified A-1. Thereafter, A-1 was arrested. According to PW-17, A-1 disclosed the names of her two accomplices, i.e. Rakesh (A-2) and Bhagwan Singh (absconding). According to PW-17, A-1 further disclosed that after committing the murder, A-2 and co-accused Bhagwan Das had taken the dead body on a motor cycle and left it on a *rehri* at the JJ Colony, Sector-3, Dwarka. She further disclosed that the bed sheet and the mattress on which the deceased was murdered had been burnt by them in a nearby vacant plot.

7. During his cross-examination, PW-17 disclosed that he came to know of the residence of A-1 through a friend of the deceased known as Lucky. He further disclosed that the deceased had told them that A-1 was making threatening calls to him. However, the deceased did not disclose why he was being threatened by A-1. PW-17 stated that the deceased was married to Reena and they had three children. All of them resided with PW-17 and PW-21.

8. The other brother, Devender Kumar (PW-21), deposed more or less on the same lines as PW-17. Neither of them was seriously challenged by the defence in their cross-examination.

9. In the course of the investigation, the police were able to locate and record the statement of PW-24 (Asgari Begum) on whose *rehri* the suitcase containing the dead body was found. She noticed the suitcase on the *rehri* at around 10 pm on 6th January 2013. PW-24 too remained unshaken in her cross-examination.

10. The police was also able to locate and record the statement of the owner of the shop from where A-2 purchased the suitcase. This was Naresh Kumar (PW-5), who was able to identify the suitcase (Ex.PX1) as the same which was sold by him. He was also able to identify A-2 as the person who had purchased the said suitcase. PW-5 stated that he had not issued any bill as such for the suitcase. In his cross-examination, PW-5 stated that there was neither any identification mark on the suitcase nor any name of the company which manufactured it. He further stated: "These kinds of suitcase are readily available in the market and can be purchased from anywhere. I do

not know which company has manufactured Ex.PX1.” He further stated that, “I have not issued any receipt of sale of the suitcase in question.”

11. The person who sold the quilt to A-1 was also examined, namely Yusuf (PW-23). He correctly identified A-1 as having visited his shop. Although the quilt was priced at Rs. 550, she gave only Rs. 420 and undertook to pay the balance the following day. PW-23 stated that he knew Geeta because she was residing just one street away from his shop. Nothing fruitful for the defence emerged in his cross-examination.

12. Ram Dayal Saini (PW-15), the person running the PCO, correctly identified A-1 as she frequently visited the PCO to make calls. He deposed that on 6th January 2013 at about 3-3.30 pm, A-1 made a call from his PCO and went away. In the cross-examination of PW-15, again, nothing emerged which could help the accused.

13. To prove that the deceased used the aforementioned mobile numbers, the prosecution examined the Nodal Officer, Vodafone Mobile Services Limited, Deepak (PW-4). He produced the Call Detail Record (‘CDR’) of one mobile number used by the deceased (at Ex.PW4/D). The Nodal Officer, Idea Cellular Limited, Pawan Singh (PW-2) brought the CDR of the other mobile number (at Ex.PW2/A). The CDRs showed that there were frequent calls to both the mobile numbers from the PCO. The frequency of the calls established that A-1 had a relationship with the deceased.

14. The prosecution was also able to prove that that the deceased was last seen passing through a street in Om Vihar, close to the house of A-1. For

this, the prosecution examined PW-7, Leela Ram, and his son, Dinesh Kumar (PW-10). PW-7 stated that he and his son ran a barber shop in Om Vihar, Phase-V in the name and style New Luck Gents Parlour. PW-7 stated that although the deceased did not enter his shop on the day in question, he passed by it at about 3-3.30 pm and went towards the *gali*. PW-7 too remained unshaken in his cross-examination.

15. Now turning to the evidence of A-1's landlady, Laxmi (PW-22). She stated that A-1 was inducted as a tenant by her in February-March, 2012. A-1 was residing at the ground floor of the property at E-111, Phase-V, Om Vihar. PW-22 stated that A-1 had a daughter aged 16 years and two younger sons. PW-22 disclosed that after the FIR was registered against A-1, she came to know that the deceased had been murdered by A-1. She stated that the deceased used to visit A-1 and when PW-22 asked A-1 about him, A-1 disclosed that he was her cousin. This witness too was unable to be shaken by the defence in her cross-examination.

16. Two neighbours of A-1 were examined by the prosecution, i.e. Sushila (PW-19) and Chandraprakash (PW-20). Both noticed A-1 burning some articles in the vacant plot in front of their house on 6th January 2013. When PW-19 asked A-1 about it, the latter disclosed that she was burning a mattress that was infected by germs. PW-20 too noticed A-1 burning some articles.

17. The post-mortem of the deceased was conducted by Dr. B.N. Mishra (PW-1) who opined that the cause of the death was due to haemorrhagic shock caused by the cutting of a large blood vessel of the neck by a sharp

edged weapon like a knife. PW-1 further stated that the time of death was approximately 18-20 hours prior to post-mortem that took place on 8th January 2013.

18. After the arrest of Rakesh (A-2), the police, led by IO Inspector Rajbir Singh (PW-33), made a number of recoveries, the principal among which was the recovery of the Cool Pad mobile phone belonging to the deceased. The knife purportedly used in the commission of the offence was also recovered, apart from the shoes purportedly worn by the deceased.

19. Turning to the forensic evidence, a large number of items containing blood stains seized from the house in which A-1 resided were sent to the Forensic Scientific Laboratory ('FSL') for testing. There was also a blood stained piece of the gunny bag recovered from A-1's house. From the open ground in front of her house, one torn, bloodstained sleeve of a shirt and ashes of the articles burnt were recovered. The FSL's report, dated 5th December 2013, confirmed that the blood stains on the wall of the house were of human origin and of Group 'A', the blood group of the deceased.

20. The trial court listed out the circumstances sought to be proved by the prosecution which unerringly pointed to the guilt of the accused as under:

- (a) Homicidal death of Inderjeet.
- (b) The relationship between the accused, Geeta, and the deceased.
- (c) Purchase of quilt by accused, Geeta, in which the suitcase inside which the dead body was found, was wrapped.
- (d) Purchase of the suitcase by accused, Rakesh, in which the dead

body of Inderjeet was found.

- (e) Accused Geeta seen by her neighbours burning fire/mattresses.
- (f) Presence of blood stains in the premises of accused Geeta where the deceased is alleged to have been murdered.
- (g) Recovery of mobile of deceased and weapon of offence from accused Rakesh.”

21. This Court has been taken through all the evidence by learned counsel for the Appellants as well as learned APP for the State.

22. First, there is no challenge to the fact that the deceased has died a homicidal death. PW-1, Dr. B.N. Mishra, has proved the post-mortem report. However, learned counsel for the Appellants pointed out that according to the prosecution, the death occurred sometime between 3.30 pm and 6 pm on 6th January 2013 whereas according to PW-1, who conducted the post-mortem at 12.45 pm on 8th January 2013, the death occurred 18-20 hours prior thereto, which placed the time of death around post-noon on 7th January 2013 and definitely not on 6th January 2013.

23. That the death was homicidal has not been challenged by the Appellants. The body was kept in a gunny bag, stuffed into a suitcase wrapped in a quilt and left on a *rehri*. Also, this happened in the relatively cold weather of January. What effect these factors might have on the opinion of the doctor conducting the post-mortem as regards estimating the time of death has not been brought out in the cross-examination of PW-1. In fact, there is no suggestion to PW-1 in this regard. Moreover, PW-1 himself states that his estimate of the time of death was an ‘approximation’. Therefore, nothing

much turns on this as far as the accused is concerned.

24. The next circumstance which has been discussed by the trial Court, and which is a critical one, is that A-1 knew the deceased and was in a close relationship. It was sought to be urged by learned counsel for the Appellants that the deceased used to supply milk and water to the accused and that is how they knew each other. According to him, there was nothing to show that the deceased and A-1 were in any relationship.

25. The testimonies of the brothers of the deceased, i.e. PW-17 and PW-21, show that the relationship between A-1 and the deceased was not merely of an acquaintance. The fact that there was an affair between the two, resulting in the deceased being spoken to by his brothers and A-1 vacating the earlier rental accommodation and moving to Om Vihar, has been consistently spoken to by both PW-17 and PW-21. Despite their intense cross-examination, both witnesses were unable to be shaken on these facts. The frequency of the calls made by A-1 to the mobile phones of the deceased has also been correctly noticed by the trial Court while discussing the evidence of PW-15. The CDRs of the mobile phones of the deceased were proved by the prosecution. A-1's landlady (PW-22) also testified that the deceased used to visit A-1 at her premises. All of this established that A-1 was in a relationship with the deceased. On their part, both A-1 and A-2, in their statements under Section 313 CrPC, flatly denied even knowing the deceased. This was clearly a false plea and belied by the above overwhelming and unchallenged evidence to the contrary.

26. The next circumstance to be considered is the purchases of the quilt and

the suitcase in which the dead body of the deceased was wrapped and which was then placed on the *rehri*. The dead body was spotted by Asgari Begum (PW-24), on whose *rehri* the suitcase was kept. Yusuf (PW-23) proved that A-1 had purchased the quilt from him. He identified A-1 and the quilt (Ex.P7) correctly. PW-23 deposed that his shop was close to the residence of A-1, where the crime took place. There was no doubt created about the veracity of the testimonies of PW-23 and PW-24.

27. The purchase of suitcase by A-2 was proved by Naresh Kumar (PW-5). Learned counsel for the accused pointed out that the receipt book (Ex.PW5/D-1) showed a receipt of 6th January 2013 in respect of a VIP suitcase whereas the suitcase in question was not of VIP make.

28. At this stage, it must be noticed that at the hearing of the present case on 12th September 2017, a contention was raised by the Appellants regarding the colour of the suitcase in which the dead body was found. The suitcase bore the mark 'Dell' whereas, according to PW-5, the suitcase sold by him had no brand name. This Court noted that in the *rukka* and the Seizure Memo, the colour of the suitcase was noted as brown and of Dell make, whereas the suitcase produced before the trial Court was observed to be green. This Court, at the hearing on 12th September 2017, directed that the suitcase (Ex.PX1) be produced before the Court. When it was produced on 12th October 2017, this Court, on viewing the same, noted that even the counsel were in agreement that the colour of the suitcase is such that "it can be called either brown or green and prima facie there does not seem to be any misdescription of the suitcase. The suitcase is also of Dell make."

29. PW-5 was clear that the suitcase sold by him to A-2 was not a branded one. The word 'Dell' did not indicate a particular brand of suitcase. The further statement made by this witness showed that "these kind of suitcases are readily available in the market and can be purchased from anywhere." It is, in that context, that PW-5 stated that the suitcase in question was not branded. In any event, PW-5 did not claim to have issued any receipt for the purchase of the suitcase. Therefore, the fact that a receipt bearing the date of 6th January 2013 was for a VIP suitcase was produced does not detract from the fact that what was sold was an unbranded suitcase for which no receipt or bill was issued by PW-5. In the considered view of the Court, nothing in the evidence of PW-5 can be said to help the case of the Appellants. It does not detract from the fact that the suitcase in which the body of the deceased was found was proved to have been purchased by A-2 from PW-5 and it formed an important link in the chain of circumstances.

30. Another important circumstance is that the blood stain recovered from the wall of the residence of A-1 matched the blood group of the deceased. This reasonably fixes the location where the murder was committed. When this circumstance was put to A-1 in her statement under Section 313 CrPC it was met with a bare denial.

31. It was suggested by learned counsel for the Appellants that the recovery of blood stains took place on 8th January 2013 and, therefore, this piece of evidence is not *per se* reliable. There is nothing in the cross-examination of the IO (PW-33), to suggest that there was any tampering with the evidence prior to the recovery of blood stains from the wall or that the evidence was

fabricated in order to falsely implicate the accused. The Court thus finds no reason whatsoever to doubt the recovery of blood stains from the wall of the residence of A-1 and the fact that it showed presence of human blood of 'A' group, which matches the blood group of the deceased. The burning of the articles by A-1 in the open ground in front of the house was seen by her neighbours (PW-19 and PW-20). That, again, has not been able to be shaken by the accused in any manner.

32. It was argued that the trial Court itself has doubted the recoveries made from A-2. In particular, the prosecution was unable to prove that the knife recovered was the very same knife that was used to commit the crime. Further, the shoes recovered were not proved to belong to the deceased. The learned trial Court observed that these lapses were inconsequential when viewed in the overall context of the evidence that has been put forth by the prosecution against the accused.

33. The Court is inclined to agree with the above analysis of the evidence and the conclusion of the trial Court. This has to also be seen in light of the fact that the mobile phone used by the deceased was also recovered from A-2. The mere fact that independent witnesses were not associated with the recoveries will not detract from the fact that this was an incriminating circumstance which linked A-2 to the commission of crime.

34. The learned trial Court has dwelt on the aspects of the prosecution not being able to prove the motive for commission of crime viz., that the deceased was having an 'evil eye' on the daughter of A-1. This is a case

based entirely on circumstantial evidence. Motive would assume importance but the mere fact that the motive was not proved would not by itself be fatal to the case of the prosecution if all the other circumstances unerringly point to the guilt of the accused. The Supreme Court held, in *Suresh Chandra Bahri v. State of Bihar AIR 1994 SC 2420*, as under:

“....sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the court that the accused was guilty of the offence charged with. But it has to be remembered that **the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime.**” (emphasis supplied)

35. The fact that A-1 was in relationship with the deceased has been proved beyond reasonable doubt. The fact that she gave a call to the police between 3 and 3.30 pm and that he was seen proceeding towards the *gali* has also been proved. The recovery of bloodstains from the wall of the house, which matched the blood group of the deceased, has also been proved. The attempt of disposing of the dead body by packing it in a suitcase, wrapped in a quilt and leaving it on a *rehri* 3 kms away has also been proved beyond reasonable doubt. The fact that A-1 was seen burning the articles belonging to the deceased, which contained blood stains, in an open plot in front of her

house has been proved through the evidence of her neighbours. All these circumstances, which have been comprehensively proved by the prosecution, point unerringly only to the guilt of the accused beyond all reasonable doubt.

36. In the circumstances, the Court finds that no grounds have been made out to interfere with the impugned judgment of the learned trial Court.

37. The appeals are accordingly dismissed. The bail bonds of Rakesh (A-2) are hereby cancelled and he is directed to surrender forthwith.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 13, 2017

Vm/rm/rd