

\$~

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

6 to 8

+ **CRL.A. 913/2016**

RAVI KUMAR SINHA

..... Appellant

Through: Mr Dhan Mohan, Ms. Tanu B. Mishra
and Mr Jitendra, Advocates

Versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State with
Inspector Satender Pal Singh PS Anand Vihar

+ **CRL.A. 1047/2016**

SANJAY RANG

.... Appellant

Through: Mr Gaurav Vashistha, Advocate

Versus

THE STATE (GOVT. OF NCT) DELHI

..... Respondent

Through: Ms. Kusum Dhalla, APP for State with
Inspector Satender Pal Singh PS Anand Vihar

+ **CRL.A. 255/2017**

HEMANT KUMAR

..... Appellant

Through: Mr Naresh Kumar, Advocate for Mr
Azhar Qayum, Advocate

Versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP for State with
Inspector Satender Pal Singh PS Anand Vihar

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

JUDGMENT

%

13.12.2017

1. These three appeals are directed against the judgment dated 9th July, 2016 passed by the learned Special Judge ('ASJ')-02 (East), Karkardooma Courts in Sessions Case No.1181/16 arising out of an FIR No.58/09 registered at Police Station ('PS') Anand Vihar convicting the Appellant Ravi Kumar Sinha (Accused No.1 – A1) and Hemant Kumar (Accused No.2 – A2) for the offence under Sections 302/34, 392/34 read with Section 397 Indian Penal Code ('IPC') and also under Section 411 IPC and Sanjay Rang (Accused No.3-A3) was convicted for the offence under Section 411 IPC.

2. The appeals are also directed against the order on sentence dated 11th July, 2016 whereby A-3 was sentenced to undergo rigorous imprisonment ('RI') for two years with fine of Rs.10,000/-, and in default, to undergo RI for six months for the offence under Section 411 IPC. Both A-1 and A-2 were sentenced as under:

- (i) Imprisonment for life with fine of Rs.10,000/- each, and in default of payment of fine, to undergo six months RI for the offence under Section 302 IPC;
- (ii) Seven years RI with fine of Rs.10,000/- each, and in default of payment of fine, to undergo six months RI for the offence under Section 392/34 read with Section 397 IPC; and
- (iii) Two years RI with fine of Rs.10,000/- each, and in default of payment of fine, to undergo six months RI for the offence under Section 411 IPC.

3. The case of the prosecution is that at around 8.49 pm on 11th February, 2009, information was received at Police Station ('PS') Anand Vihar that a lady had been murdered at 162, Saini Enclave. On receipt of the information Assistant Sub Inspector ('ASI') Arvind along with Constable Nagender went to the spot where they found a lady lying in a pool of blood. A pair of scissors was lying near the body. A needle, thread and the reel meant for repair of the sofa were lying at a little distance from the body. There were marks of struggle on the right hand of the body. The goods in the house had been ransacked. Two glasses were lying on a serving tray on the table in the drawing room. Two tea cups and a glass-type cup were lying in the kitchen. There were two stab injuries on the right side of the abdomen, four stab injuries on the back and a cut mark injury on the right arm of the body. It appeared that there had been a friendly entry into the house.

4. The statement of Mr. Kuldeep Singh Gill (PW-1), the husband of the deceased, was recorded. He stated that at around 8.30 pm when he returned home from office, he found his wife lying in a pool of blood in the drawing room. He came down, called his neighbour Smt. Suman Malhotra and also telephoned the doctor. In the meanwhile, Dr. K.B. Bhatia, who lived in the neighbourhood, arrived there and declared that his wife was already dead. PW-1 then called the police.

5. PW-1 stated that he had engaged A-1 and A-2 for repair of sofa and dinning-chairs and only some stitching work remained to be done, which the two of them had promised to finish on some later day. On 10th February, 2009, both A-1 and A-2 visited his house to see how much work was left

and informed the deceased that they would return on 11th February, 2009 at 4 pm. PW-1 further stated that on 11th February, 2009, his neighbour Madhu Malhotra (PW-9) informed him that at around 4.15 pm A-1 and A-2 had come to her house to take a wooden *gatti* from her.

6. On searching the house, the purse of the deceased containing her passport, jewellery and foreign currency was found missing. A Philips DVD Player and a Samsung Digital Camera were also missing. An FIR was registered. Crime Team inspected the spot and a finger print expert lifted the finger prints. During further search, a jacket was recovered from the second floor bedroom of house no.162. PW-1 identified it to be the jacket belonging to A-2. Four photographs in a polythene bag were recovered from the bedroom, identified by PW-1 to be that of A-1, the helper of A-2.

7. On 12th February, 2009, A-2 was arrested and some of the articles robbed from the house were recovered at his instance and seized vide a memo (Ex.PW1/B). Subsequently during the investigation, A-1 was arrested and at his instance some robbed goods were recovered and the memos (Ex.PW1/N to O). On the pointing out of A-2, the weapons used in the murder, namely, a knife and *kirpan* were also recovered. The recovered weapons and clothes were shown to Dr. Yogesh Tyagi (PW-3), who conducted the post-mortem of the deceased. He confirmed that the injuries could have been caused by those weapons. The finger prints of the accused were sent for comparison with the chance prints recovered from the spot.

8. A-1 disclosed that he had sold the robbed jewellery to one Vinod. On the basis of said disclosure statement, accused Vinod Kumar Soni (originally A-

4 but since expired) was arrested and the robbed jewellery was recovered from his possession under memo Ex.PW1/T. Vinod Kumar in turn disclosed that he had sold four bangles for Rs.20,000/- to A-3. A-3 was then arrested and the robbed jewellery of the deceased was recovered at the instance of A-3 under memo Ex.PW1/S. The recovered articles were identified by PW-1.

9. The prosecution examined 24 witnesses, whereas A-1 and A-2 produced four witnesses in their defence.

10. As far as A-1 was concerned, in his statement under Section 313 Code of Criminal Procedure ('Cr.PC') he claimed to have been falsely implicated by the collusion of PW-1 with the police. He claimed not to have been present at the time of the alleged incident and that he was illegally arrested by the police and during his custody, his signatures, thumb impressions were obtained on various blank papers under coercion and threat. He claimed that his arrest was ante-dated and no recovery had taken place at his instance at any point in time. He claimed not to have known how to repair a sofa. As far as A-2 is concerned, he too claimed to have been falsely implicated and denied committing the offence. He too claimed that his arrest is illegal; that his signatures were forcibly taken on various blank papers; that his arrest was ante-dated and no recovery had taken place at his instance.

11. The stand of Sanjay (A-3) was that he had been lifted by the police officials from his shop; wrongfully detained for a day; forced to sign blank papers under coercion. He claimed that no recovery had been made at his instance.

12. Suresh Chand (DW-1), who was the father of A-1, claimed that A-1 had been arrested from his house at around 1.30 am on 11th February, 2009 and that no recovery had taken place from him. Although he claimed that A-1 was in fact residing in Mumbai and was a taxi driver there, he could not produce any document to prove it and so he could not say as to whose taxi was being driven by A-1 while he was in Mumbai.

13. Raj Kumar (DW-2), the father of A-2, stated that A-2 had been picked up by the police between 10th and 11th February, 2009. In his cross-examination, he admitted that he was a painter who used to leave home at about 7 am in the morning and come back in the evening and would not be aware as to what happened at home or who came there during the day. Smt. Rajni (DW-3), the mother of A-2 claimed that A-2 was innocent and had been falsely implicated. She denied that any recovery of a knife or robbed articles was made on the disclosure of A-2. Smt. Sheela (DW-4), the mother of A-1 also claimed that A-1 had been falsely implicated. She too was unable to produce any document to show that A-1 lived in Mumbai and he was driving a taxi there during the relevant time.

14. What weighed with the trial Court in confirming the conviction of A-1 and A-2 was the unimpeachable evidence of PW-1 himself. With the help of learned counsel for the parties, this Court has again examined in detail the evidence of Mr. Kuldeep Singh (PW-1).

15. It is seen that PW-1 was consistent throughout on how when he came back from work around 8.30 pm and found the door open, he noticed that his wife lying dead in a pool of blood. Learned counsel for the Appellants

sought to raise doubts as to why PW-1 first called the neighbours and not the police. Merely because PW-1 did not call the police first cannot raise any doubts as to his *bonafide* intent. He must have been perplexed and confused and first sought help from the neighbours, which is quite natural. In fact, one of them who was a doctor came and certified that the wife of PW-1 was dead. In the manner in which the events unfolded, it cannot be said that there is anything suspicious about the conduct of PW-1.

16. PW-1 was also able to clearly place the last seen evidence. With the deceased herself telling him about the visit of A-1 and A-2 on the previous day, their visit on the subsequent day on 11th February, 2009 stood proved. This has been corroborated in good measure - both by Jaspal Singh (PW-8) and Madhu Malhotra (PW-9), the neighbours of PW-1. There is neither any great inconsistency nor material contradictions in the versions of all three witnesses, each of whom was subjected to extensive cross-examination. The medical evidence proves beyond reasonable doubt that the death was homicidal. There was nothing in the evidence of the recovery of weapons of offence or the robbed articles which can raise any doubt on the case of the prosecution.

17. The trial Court has, in paragraphs 21 to 28 of the impugned judgment culled out the circumstances that have been proved by the prosecution beyond all reasonable doubts as under:

“i) entry into the house was friendly;

ii) recovery of finger prints of the accused persons from the scene of crime;

- iii) recovery of scissor, needle and thread from the spot which are invariably used for the repair of sofa;
- iv) recovery of blood stained clothes at the instance of both the accused persons;
- v) recovery of weapons i.e. blood stained knife at the instance of accused Hemant and recovery of blood stained Kirpan belonging to the deceased at the instance of accused Ravi Kumar Sinha;
- vi) recovery of clothes and ornaments, foreign currency, Visa Card at the instance of accused Hemant;
- vii) recovery of stolen mobile phone make Samsung and a digital camera make Casio and a DVD player make Philips at the instance of accused Ravi Kumar Sinha.
- viii) motive for murder was theft/robbery.”

18. This Court on examining the record finds that the reasoning and conclusion of the trial Court as regards each of the above circumstances having been proved beyond reasonable doubt suffers from no legal infirmity.

19. As far as the appeal by A-3 is concerned, the Court finds that there is merit in the contention of learned counsel appearing for A-3 that the evidence on record does not prove the guilt of A-3 for the offence under Section 411 IPC beyond all reasonable doubt.

20. In paragraph 29 of the impugned judgment, the trial Court notes that in his disclosure statement, A-2 did not state that the stolen goods were handed over to A-3. Likewise the disclosure statement of A-1 does not name A-3. No proof of the ownership of the jewellery has been produced. The

goldsmith who prepared the jewellery was also not examined. Importantly, no TIP of the case property was conducted and no sketches of the stolen articles were prepared. Further, A-3 was called to the PS at 11 am, but the arrest memo shows his time of arrest as 7 pm.

21. The trial Court nevertheless proceeded to rely on the testimony of Inspector Ghanshyam (PW-24) regarding the disclosure made by A-1 to the effect that he and A-2 had sold four stolen gold rings to Vinod (a co-accused, who died during the pendency of the trial) and the remaining jewellery was also kept with Vinod.

22. The Court finds that in fact the recovery was made, even according to the Trial Court, from Vinod. It was noted that upon interrogation, Vinod gave a disclosure statement (Ex.PW21/C) and got recovered one gold necklace and ear rings of the deceased, which were identified by PW-1 at the spot itself. Therefore, there was actually no recovery made at the instance of or from A-3.

23. The evidence of PWs 21 and 24, which has been referred to by the trial Court, also does not support the case of the prosecution. PW-21 also states that after Vinod was arrested, the police along with PW-1 went to a shop at Shahibabad and there Vinod opened the almirah and took out one gold necklace and *balli* belonging to the deceased. Therefore, it cannot be said the recoveries of the robbed jewellery were made from A-3. Inspector Ghanshyam (PW-24) further states that it was Vinod who got the jewellery namely the gold necklace and earrings identified and recovered.

24. Consequently, the Court is not satisfied that the evidence produced by the prosecution was sufficient to prove the case against A-3 beyond all reasonable doubts as far as the offence under Section 411 IPC is concerned. A-3 is, therefore, entitled to the benefit of doubt.

25. Crl. Appeal Nos.913/2016 and 255/2017 filed by Ravi Kumar Sinha (A-1) and Hemant Kumar (A-2) are dismissed.

26. Crl. Appeal No. 1047/2016 filed by Sanjay Rang (A-3) is allowed. The Court sets aside his conviction and the corresponding sentence awarded to him by the trial Court for the offence under Section 411 IPC.

27. The bail bonds and surety bonds of Sanjay Rang (A-3) stand discharged and, unless wanted in some other case, he is directed to be set at liberty forthwith, subject to his fulfilling the requirements of Section 437 A Cr PC to the satisfaction of the trial Court.

28. The trial Court record be returned along with a certified copy of this judgment to the Trial Court forthwith.

S. MURALIDHAR, J.

I.S. MEHTA, J.

DECEMBER 13, 2017

rd