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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 501/2003**

RAM BABU

..... Appellant

Through: Mr. Pramod Kumar Dubey,
Advocate/Amicus Curiae,
Mr.Saurabh Kumar and Ms.
Harpreet Kalsi, Advs.

versus

STATE

.....Respondent

Through: Mr. Hirein Sharma, APP.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL

JUDGMENT
17.09.2018

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Dr. S. Muralidhar, J.:

1. This is an appeal directed against the Judgment dated 22nd May, 2003 passed by the learned Additional Sessions Judge, New Delhi (hereafter the 'trial Court') in Sessions Case No. 47/2002 arising out of FIR No. 698/2001 registered at Police Station (PS) Mehrauli convicting the Appellant for the offence under Section 302/34 IPC and the order on sentence dated 27th May, 2003 sentencing to him to imprisonment for life and fine of Rs. 10,000/- in default to undergo rigorous imprisonment for six months.

2. The Appellant was charged for having murdered the deceased Kallu on the intervening night of 30th/31st December, 2001 along with co-accused, who was a juvenile in conflict with law (JCL), in furtherance of their common intention near Wireless Monitoring Organization, International Monitoring Station, Mehrauli.

3. At the outset, it requires to be noticed that JCL was sent for trial separately before the Juvenile Justice Board. As far as the Appellant is concerned, he was tried here and convicted by the trial court in the manner indicated thereafter.

4. The case of the prosecution is that the deceased was the nephew of Ram Khilavan (PW1). The Appellant was married to Rekha, the niece of PW1. According to PW1 the deceased and said Rekha had normal relations of brother and deceased and Rekha used to tie *rakhi* on the deceased.

5. PW1 worked in a factory. According to PW1 at around 6 pm on 30th December, 2001 he had seen the Appellant and the deceased together near Village Ghitorni. When he asked them what they were doing there, they replied that they were arranging for food and drinks. PW1 thereafter returned to his house. The next morning PW1 went to as usual to his factory.

6. At around 2 pm, PW-1 received information about a dead body lying in the jungle of Ghitorni. He reached there and found several

public persons already there. The police had also reached there. PW-1 identified the dead body being that of the deceased.

7. Sub Inspector (SI) Vikram Singh (PW15) stated that the police first received information by DD 14A (Ex.PW12/A) about a dead body being found near Paras Farm. When they reached the spot they found the body there in slit throat with green pant-shirt apart from underwear etc. Blood was lying near the body. PW15 also noticed a comb, a wrist watch, a cigarette packet, a matchbox, a pair of chappals along with a monkey cap in an around the area. There were injuries marks on the face. At that time, no eye witnesses were found. A *rukka* (Ex.PW15/A) was drawn up and sent to the PS through a constable for registration of the FIR. The crime team was also summoned.

8. PW15 confirmed that several people then gathered there. While he was investigating, from the crowd PW1 came forward to identify the dead body of the deceased. PW15 then recorded the statement of PW1 and then sent the body to the mortuary at the All India Institute of Medical Sciences (AIIMS).

9. The post mortem was conducted on 1st January, 2002 by Doctor Millo Tabin (PW9). He found at least 5 incised wounds i.e. Injury Nos. 1 to 4 and 7, on the neck, face, chin, the occipital region, the deltoid region and the glutial region. Injuries No.5 and 6 were abrasions. There were also multiple linear incised wounds in the left hand, thumb on the dorsal aspect and on the right hand over the index

finger and middle finger. Death was opined to be shock due to injury No.1 which was sufficient to cause death in ordinary course of nature. Except injuries No.5 and 6, the other injuries were said to have been caused by a sharp object. PW9 was not cross examined.

10. Meanwhile, PW15 accompanied by PW1 went in search of the accused. At around 4.20 pm on 3rd January, 2002 he received information from an informer about the Appellant and the co-accused (JCL) being near the Mehrauli bus-stand. On pointing out by the informer, the Appellant and the JCL were arrested. The Appellant is stated to have made a disclosure and led the police to recover the knife used by him in the murder and his washed blood stained clothes, all in the presence of PW1. These were then sealed and sent to the *malkhana*. Subsequently, they were sent for examination by the Forensic Science Laboratory (FSL).

11. The FSL report dated 28th March, 2002 (Ex.15/H) was in two parts. One described the Exhibits sent to the FSL for examination which included, *inter-alia*, the pant and shirt (Ex.11 a and Ex.11 b) of the Appellant as well as the knife (Ex.10). The serological report of the Biology Division of the same date indicated that human blood was found on the knife and the clothes of the appellant. However, the blood group was inconclusive.

12. After its recovery, the knife was shown to PW9 who confirmed that injuries No.1 to 4 and 7 could have been caused by it.

13. After the filing of the charge-sheet, the trial Court by order dated 16th August, 2000 framed the charge against the Appellant as indicated hereinbefore.

14. On behalf of the prosecution, 15 witnesses were examined. The witness as regards the last seen was PW1. The wife of the deceased Kushma was examined as PW10. She, *inter-alia*, adverted to the fact that the Appellant had threatened the deceased 15 days before the incident not to continue his illicit relationship with Rekha. The only question in the cross-examination of PW5 was whether she had informed the police about the quarrel between the Appellant and herself on the day of *holi*. The Appellant supposedly asked PW10 to advise the deceased not to have an evil eye on his wife (Rekha). PW10 answered this question by stating that “no quarrel had taken place in my presence” meaning thereby she was not a witness to quarrel between the Appellant and the deceased. What is significant, however, is that no question was actually put to her about her (PW10) having told the police about the deceased having an illicit relationship with wife of the Appellant.

15. When the incriminating circumstances were put to the appellant under Section 313 Cr PC, he denied them. In particular, he also denied that the deceased had any illicit relationship with the wife of the

Appellant or that he had threatened the deceased over it. When asked whether he had anything else to say the Appellant answered as under:

“I was living with my wife and two children happily. I had no doubt on the relationship of my wife Rekha & Kallu. I knew that Rekha was treating Kallu as her brother. I had not killed Kallu, I do not know why I had been falsely implicated. I was informed by Ram Khilawan about death of Kallu on 2.08.2002 at about 9/9.30 am and I was told to participate in the cremation, Kallu was cremated in Gadaipur and I had participated in cremation. After cremation was over, I went to stay in Gadaipur to stay at my in-laws’ house. When I was sleeping at my in-laws’ house, police came at about 1.37 a.m. and took me along with them. I was forced to sign some blank papers and was told that I have to sign these papers as proof of my innocence, thereafter, I was not released and falsely implicated.”

16. No defence witness was examined.

17. In the impugned judgment, the trial Court culled out nine circumstances which according to it completed the chain. These were as under:

“1. Ram Babu’s wife Rekha and deceased Kallu were known to each other and used to behave as brother and sister.

2. Ram Babu had doubt on the relations between Rekha and Kallu.

3. The JCL , a trainee under Ram Babu, who was living with Ram Babu in his premises, gave telephone call to Kallu in the factory at about 4.00-4.15 pm on 30-12-2001 and asked him to meet in the evening.

4. Kallu, after factory hours, went home and after taking tea at home he left the home.

5. Kallu and Ram Babu were seen together by PW Ram Khilawan who is related to both of them, on 30-12-2001 at about 6.00-6.30 pm in village Ghitorini.

6. Kallu did not come back home on that night and his dead body was found next day in Ghitorini jungle. There were marks of struggle at the place where dead body was found. Kallu was killed by slitting his throat.

7. Ram Babu was arrested by the police and he made disclosure and lead police to his house and got recovered the knife (used in the crime) and the clothes which he was wearing on the night intervening 30th and 31st December, 2001 at the time of crime which he had washed with warm water. Similarly other accused Anil Gupta also lead to recovery of his clothes.

8. CFSL examination of knife shows that knife recovered at instance of Ram Babu had blood stains of human origin.

9. CFSL examination of washed clothes of Ram Babu and JCL show that the clothes had blood stains of human origin.”

18. After discussing the evidence in respect of each of the above circumstances in sufficient detail, the trial Court came to the conclusion that each of them have been proved by the prosecution beyond reasonable doubt and that the chain of circumstances pointed unerringly to the guilt of the Appellant.

19. With the help of Mr. Pramod Kumar Dubey, the learned counsel for the Appellant and Mr. Hirein Sharma, the learned APP, this Court has again examined the entire evidence carefully.

20. Mr. Dubey sought to point out the contradictions in the deposition of PW1 which according to him made PW1 an unreliable witness. One contradiction was regarding the time of which he noticed the Appellant and the deceased together. While in his earlier statement to the police he mentioned the time to be around 8:30 pm, in the Court he mentioned the time to be around 6:30 pm. This witness in his cross-examination further stated that “when I saw them there was natural light and darkness had not completely come.” Considering that this was the month in December this answer in the cross-examination is consistent with his earlier statement of having seen them at around 6 pm. The Court, therefore, does not find this to be a material contradiction.

21. The other contradiction pointed out by Mr. Dubey was that in her deposition PW10 spoke about the Appellant asking her to prepare dinner and then telling her that he would return shortly, whereas PW1 spoke about both the deceased and the Appellant telling him that when he met them at village Ghitorini that they were arranging for “food and drinks.” The Court again does not find this to be a contradiction at all. Arranging for drinks and then food that goes with the drinks is

different from asking PW10 to prepare the dinner for the evening. This again, therefore, is not a material contradiction.

22. It was then pointed out that PW1 spoke about reaching the spot first and the police coming there later whereas according to PW15 the crowd gathered after the police reached there. When the depositions of PW1 and PW15 are carefully perused, it is plain that the police first got information about a dead body lying in the Ghitorni Jungle. PW15 reached there first and did not find any eye-witness. Subsequently, a crowd gathered while he was still investigating the matter. PW1 also speaks about getting information about the dead body lying in the jungle at around 2 pm while he was at the factory. He then reached the spot and told the police that he could identify the dead body to be that of the deceased. Consequently, the Court does not find any contradiction on this aspect as well.

23. PW1 is a witness to not only the arrest but to the disclosure statement and the recovery of the knife and the blood stained clothes at the instance of the Appellant. PW1, although related to the deceased, was related to the Appellant himself. There was no reason why PW1, being the uncle of the Appellant, would want to falsely implicate him in the case. PW1 comes across as a reliable witness who has remained by and large consistent throughout.

24. It is then pointed by Mr Dubey that the FSL Report did not corroborate the case of the prosecution as regards the use of the knife by the Appellant for the commission of the crime. Here the Court finds that although the blood group of the blood stains found on a knife and the clothes could not be confirmed as 'A group', which was the blood group of the deceased, the FSL report does confirm that human blood was found both on the knife and the clothes of the deceased. The Appellant apparently did not have any satisfactory explanation for human blood being found on his clothes. Although this by itself may not have being sufficient for the prosecution to bring home the guilt of the Appellant, when it is read in the context of the other links in the chain of circumstances as pointed out by the trial Court, it certainly points towards the guilt of the Appellant.

25. As regards motive for the crime, this Court has already adverted to the evidence of PW10, who again was not challenged in the cross-examination as regards her statement that the Appellant was unhappy with the deceased since he suspected the deceased of having an illicit relationship with the Appellant's wife. As rightly pointed out by the trial Court the prosecution has, through the evidence of PW10 established the motive for the commission of the crime.

26. The Court concurs with the reasoning and analysis of the evidence by the trial Court as well as the conclusion reached by it that each link in the chain of circumstances, outlined hereinbefore, in the present

case has been proved by the prosecution beyond reasonable doubt and that all the circumstances taken together unmistakably point to the guilt of the Appellant.

27. There is no ground made out for interference with either the order on conviction or the order on sentence.

28. Consequently the appeal is dismissed. The bail bond and surety bond furnished by the Appellant stand cancelled. He shall be taken into custody to serve the remainder of his sentence. The trial Court record be returned together with a certified copy of this judgment.

29. *Dasti* under the signatures of the Court Master to the parties.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 17, 2018

"sandeep/shailendra/pv"