

\$~R-10.

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

+

Date of Decision: 29.08.2018

% **CRL.A. 421/2017**

DINESH DASS

..... Appellant

Through: Mr. S.B. Dandapani, Advocate

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Rajat Katyal, APP

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S. MEHTA

VIPIN SANGHI, J. (ORAL)

1. The present appeal is directed against the judgment dated 07.01.2017 rendered by the learned ASJ/Pilot Court/ North District, Rohini Courts, Delhi in SC No.57615/2016 arising out of FIR No.123/2012 under Section 302 IPC registered at PS Bawana. The appellant stands convicted under Section 302 IPC and sentenced to imprisonment for life with fine of Rs.10,000/-. In default of

payment of fine, he has been directed to undergo simple imprisonment for a period of one month.

2. The Trial Court has noticed the relevant background facts in para 1 of the impugned judgment. We produce the same here under:

“On 09.04.2012 at 7:40 am an information was received that a dead body is lying on Narela road Industrial area near Chhoti nehar. On this information Tilak Chand Inspector Investigation, Inspector Satish Kumar SHO Bawana along with the staff reached the spot. SI Ramesh Chand and HC Virender Ct. Angrez, Ct. Sandeep were already present there. On the spot in the ground in the middle of bushes near the bushes a male dead body was lying. The throat was found cut deeply. The body and clothes were found blood stained. Blood in large quantity was found lying on the ground. Near the body one black colour pair of sleepers was lying. One blue colour striped T-shirt, blue colour lower and brown colour underwear was found on the body. There was a tatoo of shape heart on right hand with some letters written but due to blood those letters could not be read. No weapon was found on the spot. Many persons were present on the spot. Out of that one Hira Dass identified the dead body as of Shambhu Dass. Along with Hira Dass, Kumud Dass and Santosh were also present. Statement of Santosh was recorded. He told that he is residing in Bawana in a tenanted room and working with Vinod Thekedar. On 09.04.2012 when he was getting ready to go for work, he received phone call on his mobile No. 8586952309 from his father who asked him to find out that Shambhu son of Uchit Dass who resides in Bawana killed. He made a call to Kumud along with whom Shambhu was residing and Kumud told him that Shambhu has been murdered and his dead body is lying near Dry canal, DSIDC in the ground. He came on the spot to see the dead body. He also said that yesterday on 08.04.2012 at about 7 pm he had seen

Shambu Dass last time on Delhi road Bawana in the subzi mandi along with Dinesh on the rehdi of Chowmin. Dinesh is Sadhu of Shambu Dass. This witness has gone there at that time to purchase vegetables. He purchased vegetables and at that time he did not talk to them. Dinesh Dass is residing in the post office wali gali on rent in some room. Crime team was called. Photographs were taken. Exhibits were lifted. The police searched for Dinesh Dass but he was not found on his room. On 21.04.2012 on a secret information Dinesh Dass was apprehended who admitted his crime. He got recovered the weapon used in the commission of offence and his pants and shirt which were already washed. The subsequent opinion of the doctor was obtained with respect to weapon of offence and doctor opined that the injuries found on the person could be inflicted by this weapon. After completion of investigation the charge sheet was filed. Ld. MM after complying with the provisions of section 207 Cr.PC committed the case to the Sessions Court as the offence punishable u/s 302 IPC is exclusively triable by the Sessions Court”.

3. Thus, it would be seen that the present is a case based on circumstantial evidence, since there was no eye witness to the commission of the offence of culpable homicide of the deceased Shambu Dass. The Trial Court has convicted the appellant on the premise that the deceased was lastly seen in the company of the appellant at about 7:00 p.m. by PW-1 Santosh in the vegetable market on 08.04.2012 near the Chowmein Thela. On the next day morning i.e. 09.04.2012, his dead body was found lying in an open plot. The post mortem on the dead body was conducted on 11.04.2012 between 12:15 p.m. to 1:15 p.m., and the doctor estimated the time since death as 2 ½ days. Consequently, the approximate time of death was around 12:15 a.m. on the night between

08/09.04.2012. Thus, the time lag between the time- when the accused was seen with the deceased, and when he was done to death, was about 5 hours and 15 minutes. The accused and the deceased were seen in an open area in the vegetable market. The post mortem report also found 400 CC undigested food. Pieces of potato were also found in the undigested food.

4. The next circumstance relied upon by the Trial Court is the recovery of the weapon of offence, namely, a knife on the disclosure of the appellant/ convict on 22.04.2012 i.e. after a lapse of nearly 14 days from the date of occurrence. The recovery was made from the bushes in an open place vide recovery memo Ex. PW-24/F. The opinion of the doctor was taken vide Ex. PW-2/B, who opined that the said knife could have been the one used for the commission of the crime.

5. The third circumstance relied upon by the Trial Court is the conduct of the appellant. The appellant and the deceased were co-brothers (sadoos). They regularly met and interacted with each other. Despite that being the position, the accused did not reach the spot where the dead body of the deceased was found lying, even though several other relatives had reached the spot. Moreover, he went missing and could not be found by the police at his residence on 09.04.2012. Pertinently, the FIR came to be registered on the statement of PW-1 Santosh. In his statement recorded under Section 161 Cr PC (rukka) Ex. PW-1/A, he disclosed that the deceased was seen by him along with the accused on 08.04.2012 at about 7:00 p.m. at the Sabzi Mandi situated at Delhi Road, Bawana near the Chowmein Thela. The CDR of the mobile

phone of the accused Ex. PW-10/C showed that the accused had switched off his mobile phone on 09.04.2012 at about 5:00 p.m. This was another circumstance taken against the accused.

6. Though the police claim to have recovered the clothes of the accused with the involvement of an independent witness PW-6 Arun Kumar vide Ex. PW-6/G, PW-6 during his examination before the Court did not support the said recovery since he turned hostile. Moreover, the FSL report Ex. PW-26/A and PW-26/B shows that no human blood was found on the recovered clothes of the accused.

7. The Trial Court held that the motive for commission of the offence had been established by the prosecution by producing PW-4 and PW-14, namely, Hira Das (the younger brother of the deceased), and PW-4 Sonia Devi (the widow of the deceased). These witnesses, particularly, PW-14 had stated that the accused doubted the deceased of having an illicit relationship with the wife of the accused viz. Poonam, since the deceased used to have lighthearted conversation, and used to joke with Poonam. She stated that on 2-3 earlier occasions, quarrel had taken place on this issue and she and her husband i.e. the deceased had explained to the accused that they used to crack jokes with each other even before the marriage of Poonam with the accused.

8. The submission of Mr. Dandapani, learned counsel for the appellant is that since the present case is based on circumstantial evidence, it was essential for the prosecution to establish the complete chain of circumstances, which

pointed only to the guilt of the accused, and all other possibilities were ruled out. Mr. Dandapani submits that the prosecution has failed to establish the complete chain of circumstances and, thus, the appellant is entitled to the benefit of the doubt.

9. Mr. Dandapani submits that the time lag between the last seen evidence of PW-1, and the estimated time of death is about 5 hours 15 minutes, which is substantial. Moreover, the accused and the deceased were lastly seen on the road in an open market, and it cannot be concluded with certainty beyond reasonable doubt, that they remained together till the time of death of the deceased over 5 hours later. The possibility of the deceased having met someone else cannot be ruled out. He further submits that the post mortem report also found undigested food in the stomach of the deceased, which shows that he must have consumed food. The prosecution has not led any evidence to establish as to where; at what time, and; with whom he may have consumed his food prior to his demise. Thus, the last seen evidence is weak and cannot be relied upon by the prosecution. He further submits that the recovery of the knife has taken place only on 22.04.2012 i.e. after about two weeks of the commission of the offence. Secondly, the knife has been recovered from an open plot which was accessible to the public. Thirdly, the knife, upon examination by FSL, could not be connected with the crime, since the blood group of the human blood found on the knife could not be connected with the blood group of the deceased. He submits that no independent witness was associated with the said recovery. He further submits that the prosecution has

not established as to how, and wherefrom, the weapon of offence was secured by the appellant. Thus, the recovery of the knife at the instance of the accused is doubtful.

10. Mr. Dandapani submits that the recovery of the clothes relied upon by the prosecution has not been accepted by the Trial Court itself. Thus, the said circumstance, in any event, has not been established. He submits that since the deceased suffered three incise wound, one lacerated wound and abrasions, it was most unlikely that the blood of the deceased would not have spilled over on the clothes of the accused.

11. So far as the appellant not being found at his residential address after the commission of the crime is concerned, Mr. Dandapani submits that the accused had himself stated— while recording his statement under Section 313 Cr PC, that he had gone to Lucknow— at the house of his maternal aunt (mausi).

12. On the other hand, the submission of Mr. Katyal, the learned APP is that the name of the accused was disclosed by PW-1 in the very first statement made by him (Ex. PW-1/A). Thus, it was not a case where the accused was named subsequently as an afterthought, and with a view to falsely implicate him. He further submits that the circumstance of the accused absconding and not being available after the demise of his co-brother, and of the accused not attending the last rites of the deceased is a strong circumstance, which points to his guilt. He further submits that the fact that the accused had switched off his mobile phone at about 7:05 p.m. on 09.04.2012 is also an incriminating

circumstance and the accused does not explain the said conduct of his. Mr. Katyal also relies upon the statement of PW-4 and, particularly, PW-14 to submit that the motive for commission of the offence was duly established by the prosecution.

13. Mr. Katyal submits that the plea of alibi taken by the accused that he was at Lucknow was not established by leading any evidence. He draws the attention of the Court to the CDR of the accused Ex. PW-10/C, which shows that the location of the mobile phone of the accused was continuously around the same cell tower for the whole month of April 2012, which rules out the possibility of his proceeding to Lucknow after the commission of the crime.

14. We have considered the submissions of learned counsels and examined the evidence led by the prosecution. So far as the evidence relating to the accused being lastly seen with the deceased is concerned, in our view, the same is a weak piece of evidence considering the substantial time lag of about 5 hours 15 minutes between the time that the appellant and deceased were lastly seen together at about 7:00 p.m., and the approximate time when the deceased was done to death. Moreover, PW-1 had seen the accused and the deceased in an open market on a public street. Thus, it is anybody's guess as to when and how they may have parted ways and gone their own way. We find merit in the submission of Mr. Dandapani that the prosecution has not been able to establish that the accused and the deceased remained together till the approximate time of death of the deceased at 12:15 a.m. on 09.04.2012.

15. We also find merit in the submission of Mr. Dandapani that there is no investigation conducted with regard to the time, place and the persons, if any, with whom the deceased had his last meal. Since undigested food of about 400 CC was found in the stomach of the deceased during the post mortem, the same shows that the deceased would have consumed his dinner after the accused was lastly seen with the deceased at 07:00 p.m. by PW-1. Thus, the last seen evidence in the present case is of a weak character.

16. So far as the recovery of the weapon of offence is concerned, the same was recovered on 22.04.2012. The accused was arrested on 21.04.2012, since he was not found by the police at his residence on 09.04.2012 and thereafter. Thus, the time lag between the time when PW-1 named accused as the person with whom the deceased was lastly seen, and arrest of the accused appears to have been satisfactorily explained. We may mention that Mr. Katyal has also narrated to the Court the entries found in the case diary in this regard, which show that, from time to time, an endeavor was made to locate the accused from 09.04.2012 onwards and he was eventually shown to have been arrested on 21.04.2012 at the railway station at Delhi vide arrest memo Ex.PW24/A.

17. Though, the delay in recovery of the weapon of offence may have been satisfactorily explained by the prosecution, the fact remains that the recovered knife was not found to contain blood of the same group as that of the deceased. Ex.PW-24/G is the site plan of the place where the recovery of the knife was affected. The same shows that the recovery was made from the bushes. Thus, even though the recovery may have been made from an open ground accessible

to the public, the knife itself was hidden in the bushes and the said recovery cannot be questioned for this reason. However, as noticed hereinabove, the blood group of the blood found on the knife could not be matched with that of the deceased. Thus, it has not been established with certainty that the same knife had been used in the commission of the offence. The only fact discovered on this disclosure is the knowledge of the accused that a knife lay hidden in the bushes from where it was recovered. That does not translate to his knowledge that the said knife was used to commit a culpable homicide much less the culpable homicide of the deceased.

18. We have already taken note of herein above the fact that the clothes of the accused allegedly recovered upon his disclosure could not be connected with the crime, as no human blood was found on that by the FSL.

19. The fact that the accused absconded from the time the offence was discovered, and the circumstance that his mobile phone was switched off on 07:05 P.M. on 09.04.2012 are, no doubt, circumstances which raise a doubt with regard to his involvement in the commission of the offence. The issue is whether this circumstance, in the light of the other evidence brought on record, is sufficient to find the appellant guilty of the commission of the offence.

20. So far as the motive is concerned, Mr. Dandapani has argued and, in our view, rightly so, that the same is also extremely weak. From the statement of PW-14 Sonia Devi, it emerges that the accused did not like the fact that his wife Poonam and the deceased, who were Saali and Jija would joke around.

She stated that on 2-3 earlier occasions, there had been some altercation for this reason and the accused was explained that on account of the said relationship, the two used to have lighthearted conversation and used to joke with each other, and there was no illicit relationship between them.

21. Mr. Dandapani has argued that the accused and the deceased were both working as labourers in Delhi, while their respective wives were living at their matrimonial homes in their native village. There was, thus, no occasion for triggering such an offence at the hands of the accused, particularly when the accused and the deceased were on friendly terms, and they used to interact with each other and visit each others place of residence. In this regard, he has referred to the testimonies of PW-1 Santosh, PW-3 Kumud Das and PW-4 Hira Das.

22. We find merit in the submissions of Mr. Dandapani. In the Indian culture and society, the relationship between the sister-in-law (saali) and the brother-in-law (jija) is known to evoke playful and funfilled conversation, and it is not uncommon to see persons in that relationship indulging in lighthearted jokes and pranks. That does not mean that they are in an illicit relationship. This is a fact which even the accused would have been aware of. Even if one were to accept that he did not appreciate such interactions between his wife-Poonam and the deceased, there was no immediate provocation prior to the murder of the deceased, to trigger such an act on his part as to commit the murder of the deceased. This is for the reason that both the accused and the deceased were residing and working in Delhi as labourers, while their

respective wives were in their native village. Thus, in our view, the motive alleged in the commission of crime has not been sufficiently established.

23. It is well established in law that in a case founded upon circumstantial evidence, the prosecution should establish the complete chain of circumstances, and the circumstances when looked at together should point only to the guilt of the accused. The circumstances established by the prosecution, in the present case, in our view, do not complete the said chain, and there are serious gaping holes in the story of the prosecution. As noticed hereinabove, the last seen evidence is weak, and it does not rule out the possibility of the deceased having interacted with some other person and having been done to death by some other person; the weapon of offence has not been connected with the offence since the blood group of the deceased could not be matched with the blood on the knife recovered; the clothes of the accused were not found to contain human blood stains, and; the motive for commission of offence could not be sufficiently established. The only incriminating circumstance established by the prosecution is the conduct of the accused in absconding after the deceased was killed and of his switching of his mobile phone. These, by themselves do not complete the chain of circumstances and this circumstance— though raises suspicion, does not conclusively establish the commission of the offence by the accused.

24. In view of the aforesaid, this Court is of the considered view that the appellant is entitled to the benefit of the doubt. Accordingly, the appellant

stands acquitted. He shall be released forthwith unless he is required to be detained in any other case.

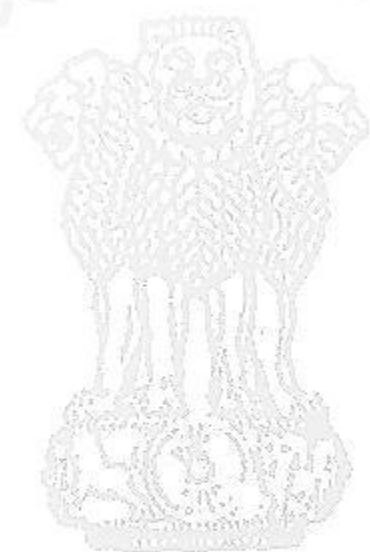
25. A copy of this judgment be communicated to the Jail Superintendent forthwith.

VIPIN SANGHI, J

I.S.MEHTA, J

AUGUST 29, 2018

sr



न्यायमेव जयते