



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 17th August, 2022
Decided on: 20th September, 2022

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CRL.A. 331/2021

OMID HUSSAIN KHILL @ OMED MILAD Appellant

Represented by: Mr. Mukesh Kalia, Mr. Sunny
Sharma, Advs.

versus

THE STATE (N.C.T OF DELHI) Respondent

Represented by: Mr. Prithu Garg, APP for the State
with Insp. Rajesh Kumar, PS Hazrat
Nizamuddin.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

1. By the present appeal the appellant challenges the impugned judgment dated 28th September, 2021 whereby the appellant was convicted for offence punishable under Section 302 IPC and order on sentence dated 5th October, 2021 directing him to undergo imprisonment for life and to pay a fine of ₹20,810/- as cost incurred by the State in prosecuting the present case. In default of payment of fine, the appellant was required to undergo simple imprisonment for a period of 15 days.

2. Challenging the conviction and order on sentence, learned counsel for the appellant contends that no direct evidence has been led by the prosecution to prove that the appellant committed murder of Paimana and the case is based on circumstantial evidence only. He states that the chain of circumstances sought to be proved by the prosecution is incomplete and does not establish the guilt of the appellant beyond reasonable doubt. There are



material contradiction in the testimony of three material witnesses i.e. Sonia (PW-1), Latifa (PW-2) and Nooria (PW-3) which do not prove either the motive or the last seen theory. Case of the prosecution that Paimana went to meet the appellant in his room at the guest house is not supported by documentary evidence for the reason as per the register of the hotel Ex.PW-16/C the appellant left the hotel prior to Paimana coming to the room. In his statement under Section 313 Cr.P.C. appellant proved the version that the appellant was to leave for Afghanistan on the said date and had left the hotel to meet his friend from where he directly went to the airport. Though the prosecution claims that when the appellant was apprehended at the airport, his shoe was bloodstained with the blood of the deceased, the same is highly improbable for the reason nobody would travel to the airport in bloodstained shoes. Further, the CCTV footages of the guest house cannot be looked into as the same is unaccompanied by certificate under Section 65B of the Indian Evidence Act and hence inadmissible in evidence. Be that as it may, the CCTV footages also support the version of the appellant that he arrived at the guest house at 9:45:44 PM and left the guest house at 9:57:06 PM and within a short span of 7 minutes it was not possible for the appellant to have inflicted the injuries as were found on the deceased. As per the prosecution version, the deceased was murdered between 10.10 PM to 10.30 PM, thus, as the appellant had left the guest house, the appellant was not present when the offence was committed. Though all the travel documents and passport etc., of the appellant were seized from the airport itself, the said seizure memo did not bear the signature of Surender Singh, the immigration officer who handed-over the passport and other travel documents to the investigating officer. The so-called bloodstained chappal and the clothes from which it is



claimed that they had bloodstains were seized by the Police, however there are contradictions in the version of the officers on this count as well. Further, despite the chappal being blood-stained the same was not taken into possession at the time of arrest at IGI Airport. Further, along with the documents the mobile phone of the appellant was also seized. The clothes i.e. grey shirt and half trouser allegedly recovered from the appellant were planted. No effort has been made to lift the finger-prints from the knife which was recovered from the spot. Despite the FSL report opining that the quantity of ethyl alcohol in the viscera of deceased was 37.8 mg, no investigation qua the same was carried out nor any liquor bottle seized. There is no motive to commit the offence. Even as per the version of Sonia, Latifa & Nooria the deceased and the appellant were having good relations, were in deep love with each other and were determined to marry. In view of these material contradictions and as the foundational facts have not been proved, the appellant be acquitted.

3. Refuting the arguments of learned counsel for the appellant, learned APP for the State submits that even as per the CCTV footages after the appellant entered his room in the guest house, after some time Paimana followed him to the room. Though Sonia, Latifa and Nooria have proved that both of them wanted to marry earlier, however now the deceased did not want to marry the appellant due to which he committed the offence thereby proving the motive to commit the murder. The dead body was found lying with multiple stab injuries in the room of the appellant in the hotel and the appellant was already present in his room when the deceased reached there. Hence the onus shifts to the appellant to explain how Paimana died with number of stab injuries in his room in the guest house.



4. Heard learned counsel for the parties and perused the record.
5. Investigation was set into motion on a telephonic information received at Police Post Jungpura on 3rd March, 2012 at 11.55 PM vide DD No. 42 from one Kartik, receptionist at Shamsheer Home Stay, 2134, Double story, Jangpura extension regarding murder of a girl in room No. 105. The said DD entry was assigned to SI Sanjay Kumar, in-charge of the Police Post, Jungpura who along with SI Sanjeev Kumar, Const. Satbir and Const. Ashish reached the spot. In the room No.105 they noted a dead body of a girl, aged 20 – 22 years lying close to bed on the floor in a pool of blood. A knife was embedded in her chest. She was also having injury mark below her chin, on her left hand and her tongue was protruding from her mouth. In the room blood was found on the bed and floor, besides pieces of broken bangles and one ear ring on the bed. Crime team was called who inspected the scene and exhibits were collected. Kartik who was later examined as PW-16 before the Court produced the copy of the passport of appellant which had been furnished by the appellant at the time of booking of the room.
6. Statement of Sonia who was present at the spot was recorded on whose statement FIR was registered. Sonia stated that she belonged to Kabul, Afghanistan and resides with her mother in a rented house. One more lady, namely, Nooria lived with them. Nooria's sister's daughter Paimana, who was living in America and was engaged to a Afghani boy, namely, Omed Milad in Afghanistan itself had also come to Delhi 7 – 8 days ago and was residing in their house along with her aunt (Mausi Nooria). Paimana was not happy with her engagement. Omed Milad had studied from some college in Russia. Even Omed Milad had come from Afghanistan 8 -9 days



ago. The day he came to India he stayed with them and the next day he booked room in Shamsher Home Stay and Paimana continued to stay in their house. However, she used to often go to meet Omed at the guest house. Omed used to quarrel with Paimana on the issue of marriage as Paimana did not want to marry Omed. There was a talk of counselling between both of them by a Maulvi in relation to the marriage. However, Paimana refused for the same on which Omed stated that she had broken his heart and he loved her a lot. On the day of incident at around 5.00 PM she along with her mother Latifa, Paimana, Paimana's aunt Nooria and Omed went to Amar Colony for shopping and returned home around 8.00 PM. Everybody chat for sometime. Around 10.10 PM Paimana went to guest house for taking a shower and Omed also went with her. Paimana told her mother, asking her to send Sonia after an hour. When she went to room No.105, Shamsher Home Stay guest house at around 11.30 PM, she saw Paimana covered with blood and lying dead. She stated that Paimana had been killed by her fiancée Omed by stabbing her with a knife because she did not want to marry him and action be taken against Omed Milad. On the basis of statement of Sonia, FIR No. 68/2012 under Section 302 IPC was registered at 1.30 AM on 4th March, 2012 at PS Hazrat Nizamuddin.

7. As Omed was a foreign national and copy of his passport was available immediately his LOC was opened and he was stopped at the airport while taking the flight to Afghanistan at 4:00 AM on the 4th March, 2012 by the immigration officer. Omed was interrogated and brought to the place of incident. At the instance of appellant a grey colour shirt and half trouser both stained in blood that he was wearing at the time of incident were recovered from room No.105 of the guest house and duly sealed. In the meantime



crime team which had been summoned examined the spot. The blood-stained articles like blanket, bed-sheet, slippers (female), shoes, broken bangles and one bracelet were also sealed. Sketch of knife was prepared. The exhibits were sent to FSL. On completion of investigation, charge-sheet was filed. The prosecution examined 27 witnesses, however the appellant did not lead any defence evidence.

8. Sonia in her deposition before the Court reiterated her statement on which rukka was sent. Her version was duly supported by her mother Latifa and Paimana's aunt Nooria, who were examined as PW-2 and PW-3 respectively. Besides these three witnesses stating that from the house of Sonia both Paimana and thereafter Omed left for the guest house at around 10.00 to 10.10 PM, two other witnesses of the prosecution i.e. Mahavir Paswan (PW-11), attendant and Kartik (PW-16) the receptionist confirmed the appellant coming to the room. Statement of Kartik was also recorded who gave the copy of his passport etc. Since the appellant was a foreign national immediately a LOC was opened and the appellant was detained at the IGI Airport on 4th March, 2012 at 4:00 AM.

9. Mahavir Paswan stated that he was working as a safai karamchari for the last two years in the guest house. He identified Omed in the Court and stated that he had taken room No.105 on rent and was in the room for about 6-7 days. One girl named Paimana used to come at the room of Omed. The relatives of Paimana, namely, Sonia, her aunt and Mausai also used to come to the room of Omed. One day Paimana came to the room at around 11.00 PM and after some time Omed also came there. After some time, Sonia relative of Paimana came to the guest house. Sonia on reaching the room saw the dead body of Paimana. Paimana was lying dead in the room.



10. Kartik deposed that for the last one and a half year prior to the incident he was working as a receptionist at Shamsheer Stay Home. His job was to make entries in the register regarding the guests who used to come to stay in the guest house and to look after the guest house. On 26th February, 2012 at about 11.00 – 11.30 AM appellant came to their guest house. He made an entry in the register maintained by him regarding his arrival in the guest house. The appellant was allotted room No.105 in the guest house, against a tariff of ₹1000/- per day. He had taken photocopy of the passport and visa of the appellant as I.D. proof. He issued the original receipt of ₹5000/- deposited by the appellant on 26th February, 2012 and ₹2000/- on 3rd March, 2012 which were issued under his signatures and were exhibited as Ex.P-1 and P-2. He further stated that one girl, namely, Paimana used to frequently visit the room of the appellant at the hotel. Paimana was staying at the place of her Mausi near the guest house. One more lady Sonia, friend of Paimana's aunt also used to visit. On 3rd March, 2012 at about 10.00 – 10.30 PM Omed and Paimana came to the guest house. Appellant was wearing shirt and nikkar. After about 30 minutes/ an hour, the appellant came out from the guest house alone. At that time he was walking outside after taking meal. At about 11.30 PM Sonia came to the guest house and went to the room of the accused where she found Paimana lying dead with the knife stabbed into her stomach. She called him and when he went to the room No.105 he saw Paimana lying on the floor in the pool of blood with a knife in her abdomen. He immediately made a call to the Police. On arrival of the Police he handed-over the register and also gave the photocopy of the passport along with visa of the accused running into four pages and exhibited the same as Ex.PW-16/B. Relevant entry qua the check-in of the appellant



was on 26th February, 2012 at serial No.1132 and the register with the entry was exhibited as Ex.PW-16/C, which he also filed. Thereafter, the Police removed the dead body from room No.105 and closed the room under the supervision of Police staff. Blood-stained blanket, sheet, mattress, ladies slippers, shoes, etc. were taken into possession and seized. The I.O. also collected articles of the deceased like bangles, bracelets, etc. which were seized vide memo Ex.PW-1/C both of which were signed by him. The bag containing ladies make-up articles and wearing apparels were also seized vide Ex.PW-1/D. The Police also seized the other articles like, socks, towel, trousers, etc., vide Ex.PW-1/E. The Police brought appellant to the hotel on 4th March, 2012 whom he identified when he got recovered one shirt of grey colour and one half trouser which he was wearing at the time of incident which were seized vide memo Ex.PW-16/F. He also identified the pair of chappals vide Ex.MO2 as also other articles recovered from the spot, and the knife vide Ex.MO9.

11. In his cross-examination Kartik stated that they take identity proof from the guests before they allow them to stay in the guest house. The guest house has six rooms having numbers 101 to 106. There is a gallery in the middle and three rooms are on the right side and three rooms on the left side of the gallery. Each room has attached toilet-bath facility. He was shown entry No. 1132 where name of both appellant and Paimana was mentioned, which he stated to be in the handwriting of the appellant. In his cross-examination he was queried about an entry of 8.00 PM in column No.13 which he stated that he could not clarify. He clarified that in the room only Omed was residing and Paimana, Sonia and her Mausi used to visit him. He clarified that in the guest house there were only two people, himself and the



other one was Mahavir Paswan and in his absence he used to take care of the guests. He also admitted that in the receipt the name of the accused was not mentioned, however he denied that the receipt Ex.P-1 and P-2 were subsequently fabricated. He also clarified that the Police had collected the bag from the spot and made an inventory of the same. He denied the suggestion that Omed left the guest house at 8.00 PM on 3rd March, 2012 and has paid the tariff of the room up to 12.00 PM on 4th March, 2012, and Paimana alone came to the room for staying where she was killed by someone else.

12. It may be noted that guest house was a small stay room with six rooms and with two persons running the same. Hence merely because an 8.00 PM entry had been noted therein, the same will not be sufficient to prove that the appellant left the guest house at 8.00 PM as suggested by him. Further, if the appellant had checked out at 8.00 PM, his articles and wearing apparels would not have been found in the room and the seizure memo Ex.PW-1/E showed recovery of 5 gents shirts, two trousers, two waists and one lower which Kartik identified to be the clothes of the appellant as he had been staying there for the last 7 days. Thus, the seizure of the clothes of the appellant from the room falsifies his defence that he has checked-out from the room and it was the deceased who was staying alone there.

13. From the place of incident, the Senior Scientific Officer, FSL, Harinder Pratap who appeared as PW-9 and had examined the spot, lifted blood-stained footwear prints marked Q1 to Q5 from the floor of the room which was photographed by P.K. Gautam/ PW-13 and as per report Ex.PW-9/B the questioned footwear prints marked Q2, Q3 and Q4 were similar to the specimen of the right sole footwear print (chappal) marked RSP-I with



respect to the shape, size, pattern and in general appearance. Further, the questioned footwear prints marked Q1 and Q5 were similar to the specimen of left sole footwear print (chappal) marked LSP-4 with respect to shape, size, pattern and in general appearance. The specimen chappals were the ones which were worn by the appellant when he was apprehended from the airport, as was deposed by Insp. Sanjeev Kumar (PW-19), Insp. Sunil Kumar (PW-26) and Insp. Om Prakash (PW-27). Further, Nooria the aunt of the deceased also identified the said chappals stating that they were worn by the appellant when he left the house of Sonia and Latifa after having dinner on the night of the incident. Thus, it was proved that the blood-stained footwear prints found on the spot matched with the chappals of the appellant which he was found wearing at the time of his apprehension at the airport.

14. Contention of learned counsel for the appellant that the chappals were planted on him as they were not seized from the airport deserves to be rejected for the reason the Police would not have brought him bare-footed from the airport and seized the same on reaching the place of incident, at the time of his formal arrest and sealed the same. Further, in his cross-examination the appellant suggested that the Police officials applied the blood of the deceased on his chappals after seizing them and falsely implicated thereby indicating that the foot-print at the spot were of his chappals. Further, the mark of the chappal Q1 to Q5 was photographed by PW-15 at 1.20 AM on 4th March, 2012 much before the appellant was apprehended at the airport at around 4.00 AM on 4th March, 2012 while leaving for Afghanistan. Further, Const. Satbir (PW-17) and SI Sanjay (PW-23) deposed that they guarded the room from 3.00 AM to 8.00 PM on 4th



March, 2012 and nothing contrary has been elicited in their cross-examination.

15. After arrest of the appellant he was brought to the room where he got recovered a grey colour shirt and a half trouser which were both blood-stained which was seized vide seizure memo Ex.PW-16/F. After the said blood-stained clothes were lying on the bed in room No.105 and since by the time the appellant was apprehended and brought to the spot the Police had already seized the blood-stained clothes, the said recovery cannot be attributed to the appellant under Section 27 of the Indian Evidence Act. However, what connects the appellant to the said clothes is the testimony of Kartik who identified the said clothes as the one worn by appellant at the time when he came to the guest house at around 10:00 PM.

16. Dr. B.K. Mahapatra (PW-12), Senior Scientific officer, CFSL, CBI performed the DNA analysis and submitted report vide Ex.PW-12/B as per which DNA generated from the source of exhibits 2 (slippers), 4A (shirt) 4B (short pant) of the appellant are consistent with each other and are consistent with the DNA profile of the deceased Paimana (source of Ex.10: blood stained gauze).

17. From the deposition of Nooria, aunt of the deceased it is evident that initially it was decided to cut a cake at Taj Mahal and thereafter register the marriage at Delhi but the plan did not materialize due to a verbal altercation between the appellant and the deceased. On cross-examination she clarified that that the altercation took place because the deceased wanted to go to Shimla whereas the appellant was not willing to go there. Thereafter, the appellant threw his mobile on the wall, due to which deceased got scarred. According to Nooria, the said incident took place two days prior to the



murder. She further deposed that the deceased was a U.S. citizen and had come to India to marry the appellant, obtain a marriage certificate and then take the appellant to U.S. along with her. However, due to the conduct of the appellant she was unhappy about her proposed marriage with the appellant, which failed the appellant's plan to move to USA. Thus the evidence of Nooria also clarifies the motive behind the offence of murder.

18. PW-18/ Dr. Akhilesh Raj who conducted the post-mortem of the deceased Paimana on 5th March, 2012 found 11 injuries on the deceased and opined that the cause of death was shock due to hemorrhage as a result of injuries mentioned in the report. Individually the injury No.11 was sufficient to cause death and collectively also injuries No. 1 to 11 were sufficient to cause death in the ordinary course of nature. All injuries were ante-mortem in nature. Dr. Akhilesh Raj found the following injuries on the deceased:

- i. A Stab wound present over left temple of 2x 1 cm (spindle shape). It was muscle deep and associated with Hematoma. It was 2 cm lateral to outer canthus. Margins were clean cut.
- ii. An incised wound present 4 cm below chin over left side of [5x1cm) (muscle deep)] Submandibular region. Margins were clean cut with Hematoma.
- iii. An incised wound present over lateral aspect of left thigh of 4x 1 cm (margins were clean cut with hematoma). It was 53 cms above left heel. It was muscular deep.
- iv. Six superficial (muscular and subcutaneous fat deep) spindle shape stab wound present over mammary and intermammary region (Margins were clean cut with (depth were 2.5 to 3 cm) hematoma]
- v. A spindle shape stab wound present over supraclavicular region of neck (2x0.5 cm) depth in muscle deep (2.2 cm). Margins were clean cut associated with hematoma (140 cm from left heel)



- vi. An incised wound of 3x1 cm [margins were clean cut with hematoma present over lateral aspect of left forearm (2 cm below elbow)]
- vii. An incised wound of 2.5 x 1 cm (margins were clean cut with hematoma) present over medial aspect of left forearm (2.2 cm below elbow)
- viii. Two incised wound were present over palmar aspect of index (right) finger (1x0.5 cm 1 X 0.4 cm), muscle deep, margins were clean cut with hematoma.
- ix. A Spindle shape stab wound (depth 5.4 cm, muscular, cavity deep (penetrating) present 3 x 1 cm present in left side [per umbicus (4 cm from midline)] 92 cm from left heel, margins are clean cut with hematoma.
- x. A spindle shape stab wound (depth 5 cm, muscular cavity deep) present in abdomen 3x1 cm, margins were clean cut, hematoma present. It was 103 cm above left heel and 8 cm from midline.
- xi. A perforating (through and though) wound, wedge shape on midline of chest present after pulling out the weapon (knife) length was 5 cm, Maximum, width at the centre was 3.2 cm. It was 107 cm from left heel and 10 cm below right nipple. Direction was oblique, lateral and posteriorly. It pierces through thoracic wall, intercostals spaces, stomach (funds part), pancreas, venous structure, vessels, back (thoracic vertebrae (5.2 cm lateral to midline)- Exit wound (0.5 x 0.5 cm) margins were clean cut) associated with hematoma Food coming out from injury no.11.

19. In view of the evidence led by the prosecution it is evident that the prosecution has proved the motive for commission of offence, the fact that the appellant was last seen with the deceased, the murder of the deceased was committed in the room which was rented out to the appellant where he had been staying for the last 7 days and though the appellant left before Sonia came, however he had not vacated the room as is evident from the recovery of his clothes from the room, thus, the onus shifts on the appellant



to explain under Section 106 Indian Evidence Act as to how Paimana died in his room.

20. In his statement under Section 313 Cr.P.C. the reply to the question No. 76 by the appellant is:

“I along with Nooria, Paimana, Sonia and Latifa went for shopping in the evening on 03.03.2012. From there, we went to the house of Sonia and Latifa. I left all of them there and went to my guest house without taking any meal there. Paimana came to me in my room, I do not remember the time. I told her that I have to go hospital. I left for hospital, leaving Paimana there. I remained in hospital for around one hour and thereafter met one of my friend at Saket. I remained with him whole night and since I had a flight in the next morning for Afghanistan (I had already booked a to and fro ticket), therefore I had gone to airport from my friend’s house. At airport, I was apprehended by Police.”

21. Though the appellant stated that he would lead defence evidence, however he led no defence evidence. According to the appellant he had gone to the hospital, however no document of the hospital was produced nor did he examine his friends whom he had purportedly gone to meet at Saket. Thus, the appellant failed to discharge onus shifted to him under Section 106 Indian Evidence Act after the prosecution proved the foundational facts and thus this has to be treated as an additional link in the chain of circumstances.

22. Supreme Court in the decision reported as (2019) 10 SCC 623 Rajender & Ors. Vs. State (NCT of Delhi) held as under:

“11.2 Having observed so, it is crucial to note that the reasonableness of the explanation offered by the Accused as to how and when he/she parted company with the deceased has a bearing on the effect of the last seen in a case. Section 106 of the Indian Evidence Act, 1872 provides that the burden of proof



for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the Court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him Under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the Accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the Accused. Such burden always rests on the prosecution. Section 106 only lays down the Rule that when the Accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances.

Notably, a circumstance of last seen does not, by itself, necessarily lead to an inference that the Accused committed the crime. There must be something more that establishes a connection between the Accused and the crime. For instance, there may be cases where close proximity between the event of last seen and the factum of death may persuade a rational mind to reach the irresistible conclusion that the last seen of the deceased is material and merits an explanation from the Accused”.

23. In view of the discussion aforesaid the prosecution has proved beyond reasonable doubt that the appellant committed the murder of Paimana in room no.105, Shamsher Guest House thereby committing the offence punishable under Section 302 IPC. There being no error in the impugned



judgment of conviction and order on sentence, appeal is accordingly dismissed.

24. Copy of the judgment be uploaded on the website of this Court and be also sent to the Superintendent Tihar Jail for updation of record and intimation to the appellant.

(MUKTA GUPTA)
JUDGE

(ANISH DAYAL)
JUDGE

SEPTEMBER 20, 2022
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