



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

% **Reserved on: 2nd March, 2023**
Decided on: 26th June, 2023

+ **CRL.A. 38/2019**

LIYAKAT ALI

..... Appellant

Represented by: Mr. Rakesh Chander Agrawal, Mr.
Sandeep Dhanuka, Mr. Kartik Kumar
Agarwal, Mr. Amar Nath, Advs.

versus

THE STATE OF NCT DELHI

..... Respondent

Represented by: Mr. Laksh Khanna, APP for State
with Inspector Dalip Singh, PS Crime
Branch.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By way of this appeal, the appellant challenges the judgment of the learned Trial Court dated 7th July, 2018 whereby the appellant was held guilty for murder of his daughter Gulshama (“deceased”) and was directed to undergo rigorous imprisonment for life along with fine of ₹5,000/- in default whereof simple imprisonment for six months for offence punishable under Section 302 of the Indian Penal Code, 1860 (“IPC”) and was also held guilty for offence punishable under Section 201 IPC for which the appellant was directed to undergo rigorous imprisonment for three years along with fine of ₹2,000/- and in default whereof simple imprisonment for three months. Accused Aashiq Ali was acquitted of all charges.



2. Briefly case of the prosecution is that on 10th May, 2013, information was given to the police about a dead body in a gunny bag in a nullah near Auliya Masjid, Ward No.8, Mehrauli which was recorded vide DD No.34A (Ex.PW-1/E) which was marked to SI Pushpender (PW-28). SI Pushpender reached the spot along with Ct. Praveen (PW-21) from where one plastic bag containing human skeleton was found in the presence of Mohd. Ishtiaq @ Laddo (PW-7) and Rustam (PW-2). From the bag a skeleton, one lady's shirt, salwar and undergarments worn by the skeleton were recovered. The dead body was around five feet in height but could not be identified and thereafter, was sent for post-mortem examination. Thereafter, PW-28 prepared the *rukka* (Ex.PW-28/A) on which FIR No.280/2013 dated 10th May, 2013 under Sections 302/201 IPC was got registered at PS Mehrauli (Ex.PW-1/C).

3. Dr.Hans Raj Singh and Dr.Akhilesh Raj conducted the post-mortem examination on the dead body and prepared the post-mortem report No.587/2013 dated 17th May, 2013 (Ex.PW-26/A). As per the post-mortem report:

"Post-Mortem changes:

1. *Rigor Mortis: Advanced Decomposition*
2. *Lividity: Advanced Decomposition*
3. *Decomposition Changes: Face. Neck, Chest, Upper Limbs, Upper Abdomen and both legs are skeletonised. Adipocere formation is present over lower abdomen, both thighs and pelvis, live maggots of length about 0.5 to 1.5 cm are present.*
4. *External appearance: Internal organs absent due to decomposition, external genitalia of female type (vagina present) right radius and ulna absent, left ulna absent.*



Both foot and hand absent. Weeds are present. Left humerus, right and left tibia and fibula are disarticulated.

- a. Eyes: Advanced decomposition.*
- b. Mouth: Advanced decomposition.*
- c. Nostrils: Advanced decomposition.*
- d. Ears: Advanced decomposition.*
- e. Nails: Advanced decomposition.*
- f. Condition of orifices: NAD*
- 5. Injuries (Type, size, shape, location and direction etc.)
No antemortem injury appreciated over the body
(Advanced decomposition) ”*

4. As the skeleton could not be identified, the same was got electrically cremated by HC Jaiveer vide receipt Ex.PW-55/I. On receipt of secret information on 6th June, 2013, it came to the knowledge of IO/Insp.Dalip Kumar (PW-55) that the appellant had committed murder of his daughter and dumped the body in the *nala* as the appellant had become aware of his daughter/deceased's illicit relationship with someone. The said secret information was recorded vide DD No.37A (Ex.PW-55/J). The secret informer led the IO and his team to house of the appellant. Appellant was asked about his children and as he could not give satisfactory replies, he was taken to the police station for sustained interrogation. Thereafter, he was arrested vide memo Ex.PW-33/B and his disclosure statement Ex.PW-8/B was got recorded. On 7th June, 2013, the appellant led the police party to a room of his house where he throttled his daughter/deceased and thereafter to the *nala* where he had thrown the body of his daughter/deceased. Supplementary disclosure statement of the appellant (Ex.PW-35/C) was also got recorded wherein the appellant had disclosed that his son Ashiq Ali had



assisted him in disposing of the body. Blood samples of the appellant and his wife were taken and sent for DNA profiling and matching the same with the DNA of the deceased to CFSL, CBI. As per the CFSL Report (Ex.PW-50/B) dated 20th November, 2013, the DNA profile generated from the bone of the deceased (Ex.3) was found to be human female in origin as biological child of the appellant. It was opined:

“8. *Result of examination:*

8.1 DNA profile generated from the source of exhibit-3 (Bone) is found to be of human female in origin and consistent as biological child of Liyakat Ali S/o Mohd. Sadeeq (source of exhibit-2: Blood Stained Gauze) and Smt. Shakeela W/o Liyakat Ali (source of exhibit-3: Blood Stained Gauze) forwarded to this laboratory vide memo no.: 1989-R/S/O/Mehraul/ New Delhi Dated: 13.06.2013 (Refer Report No.; CFSL-2013/B-0660 Dated: 11.09.2013).

....”

5. Upon completion of investigation, charge-sheet was filed and the appellant was charged for offences punishable under Sections 302, 120B read with 201 and 201 read with 120B IPC. Accused Aashiq Ali (since acquitted) was charged for offence punishable under Section 120B read with 201 IPC and Section 201 read with 120B IPC. To prove its case the prosecution examined 55 witnesses.

6. Learned counsel appearing on behalf of the appellant assails the impugned judgment and order on sentence on the ground that the prosecution failed to prove any circumstance against the appellant. It was submitted that the prosecution neither proved that the deceased was in custody of the appellant on the date of incident nor that the deceased had



illicit relationship with Tehsin (PW-17). It was also pointed out that all the independent witnesses turned hostile and did not support the case of the prosecution. It was further submitted that even otherwise, there are material discrepancies and contradictions in the testimony of the witnesses.

7. On the other hand, learned APP for the State submits that the impugned judgment of learned Trial Court is based on proper appreciation of facts and evidences against the appellant and that the appellant has been rightly convicted and therefore, the present appeal is liable to be dismissed. To support his submission, he relies upon the following chain of circumstantial evidence proved by the prosecution:

- i. That the deceased was in an illicit relationship with Tehsin (PW-17) for which the deceased had absconded from her house on the night of 3rd April, 2013 towards Aurangabad and she was found on her way by Miterpal (PW-4) and Omprakash (PW-9). Thereafter, PW-4 made a call to the appellant, upon which Ashiq Ali came and took the deceased. The CDR of PW-4 and appellant (Ex.PW-29/C and Ex.PW-23/H respectively) duly prove the call made by PW-4 to the appellant on 4th April, 2013.
- ii. The dead body of the deceased was recovered in the presence of two public persons PW-7 and PW-2 and the dead body was found wearing ladies clothes.
- iii. The post-mortem report (Ex.PW-26/A) and subsequent opinion (Ex.PW-26/B) as also the FSL report (Ex.PW-26/C) and CFSL report (Ex.PW-51/A) clearly indicate that the dead body was



found in the form of a skeleton and that the death of deceased was homicidal in nature.

- iv. As per CFSL Report (Ex.PW-50/B), the DNA profile generated from the source of bone was found to be of human female in origin as the biological child of appellant and Shakeela.

8. Having heard both the parties at length and perusing the record the following evidence emerges.

9. Rustam (PW-2) deposed that he came to know that one dead body was seen in the drain near *Jharna* and Auliya Majid, Mehrauli where beat officials Bhagwan Das and Sanjay were present. He stated that he along with one other person took out a plastic bag from the drain at the request of the aforesaid beat officials and on opening the bag, it was found to contain a dead body. On seeing the dead body, he felt giddiness and did not try to identify the body and thereafter left from the spot. Thereafter, he was declared hostile as he was resiling from his previous statement.

10. Miterpal (PW-4) deposed that on 3rd April, 2013, he was returning from Sugar Mill, Brijnathpur and at about 1.00 or 2.00 AM, one girl aged about 16-17 years met him on the way near Vaidic Inter College. He took her to his house as she requested and he left her along with other ladies at his house. He took phone number of her relative and informed them and in the early morning, three relatives came to his house and took the girl away. He identified accused Aashiq Ali as one of the persons who came to his house on that day. Thereafter, he was declared hostile as he was resiling



from his previous statement. In his cross-examination he identified the girl in the photo (Mark-XX) as the same girl who had met him.

11. Mohd.Ishtiyag @ Laddo (PW-7) deposed that on that day (he does not remember the date) at about 6.00-6.30 PM, one beat Ct.Sanjay came to him and took him near *nala* and one dead body/skeleton was lying in the *nala* near *jharna*. He took out the dead body with the help of one Rustam at the request of police. Dead body could not be identified by any person present at the spot. Thereafter, learned APP sought permission to cross-examine the witness on some material points. In his cross-examination, he stated that he had noticed black coloured clothes on the dead body.

12. Om Prakash (PW-9) deposed that on 3rd April, 2013, at about 11.00-12.00 in the midnight, he was coming back to his house by a tractor and near village Bhatona, one tyre of his tractor burst on which he called his brother Miterpal from his house. Thereafter, after getting the tyre fixed from a nearby shop, on their way at about 1.00 AM, near Vaidic Inter College, Village Aurangabad, a girl gave signal to stop the tractor. After making inquiries from the said girl, they took her to their house and his brother Miterpal took phone number and made a call to her parents at about 2.00 AM. He further stated that in between 3.00 AM to 4.00 AM, three persons came to his house and stated to be brothers of the said girl and took away the girl. He further stated that family member of brother of that girl were extending threats to him and his brother Miterpal. Thereafter, learned APP submitted that he wish to cross-examine the witness as he was concealing material facts. He denied the suggestion that accused Aashiq Ali



present in the Court was one of the three brothers who came to his house to take away the girl.

13. Naeim Ahmad (PW-16) deposed that on 19th May, 2013 at about 5.30 PM, he was present at his house when some persons raised an alarm that one dead body was lying near *nala* near *jharna*. He went to the spot and confirmed that dead body was present after which he made call to police at number 100.

14. Tehsin (PW-17) deposed that he used to visit the house of the appellant on the occasions of marriage and festivals. He stated that he was not in constant touch with the deceased on phone and that he was unaware about the facts of the case. Thereafter, he was declared hostile as he was resiling from his previous statement. In his cross-examination, he denied that he used to love or talk with the deceased and was confronted with his previous statement (Ex.Pw-17/A). He also stated that he identified the case property in judicial TIP as per the directions of the IO.

15. SI Pushpinder (PW-28) stated that DD No. 34A was assigned to him on 10th May, 2013 and he alongwith Ct. Praveen reached the spot i.e. *nala* near Auliya Masjid, Ward No.8, Mehrauli and noticed a bag lying in the *nala*. Head of the skeleton was visible and a *mehndi* color shirt was also visible over the skeleton. The bag was taken out with the help of two public persons namely Ladoo and Rustam, which was kept at the bank of the *nala* and was found tied with a black rope. Skeleton was taken out from the bag and thereafter, he prepared the *rukka* (Ex.PW-28/A) and got the FIR registered.



16. IO/Insp. Dalip Kumar (PW-55) stated that on 10th May, 2013, DD No. 34A was marked to SI Pushpinder and thereafter, he was also directed by the SHO to reach the spot. At the spot, crime team was present and the white color bag was taken out by two public persons namely Md. Ishtiyak and Rustam. On opening the bag, one human skeleton was found and the lower jaw of the skeleton was missing and there were ladies clothes over the skeleton. Attempt was made to get the skeleton identified, but no one gathered there could identify the skeleton. He prepared the site plan (Ex.PW-55/A) and sent the skeleton to the mortuary. He seized the white color plastic bag and two black color nylon rope pieces (Ex.PW-28/B). Attempts were again made to get the skeleton identified but as the same could not be identified, on 17th May, 2013, he went to the mortuary at AIIMS, at got the post-mortem conducted. Thereafter, the skeleton was handed over to HC Jaiveer for getting the same cremated. In the evening of 6th June, 2013, one secret informer told him that the appellant had committed the murder of the deceased as the appellant got to know about the illicit relationship of the deceased with someone; and that the appellant hailed from Village Bisaich, Tehsil Gulawati, Distt. Bulandshehr, U.P. The said information was recorded vide DD No. 37A (Ex.PW-55/J). Thereafter, he went to H.No. T-899, Ward No.8, Auliya Masjid, Mehrauli, and the informer took him to the house of the appellant. Upon identification by the informer, he interrogated the appellant and as the appellant was unable to give satisfactory answers, he was taken to the police station for sustained interrogation and was thereafter, arrested (Ex.PW-33/B). After completion of investigation, he filed the charge-sheet. In his cross-examination, he



stated that the cause of death in this case had not been concluded by the autopsy surgeon and that DNA could not be generated from tooth and radius bone.

17. As per the FSL report tendered by Sh. BK Mohapatra (Ex.PW-50/B), DNA generated from the Bone of deceased was found to be of a human female and of biological child of appellant and Smt. Shakeela.

18. In his statement under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C."), appellant stated he was innocent and falsely implicated in the present case. Further, he had not committed the murder of his daughter and he has been falsely implicated in the present case by the police in order to solve the case of the skeleton found lying in the nala.

19. As noted above, the case of the prosecution is based on the purported evidence of motive of the appellant to be annoyed by the relationship of the deceased with one Tehsin, however, as regards the motive, neither Tehsin (PW-17) nor any of the other witnesses namely Abbas (PW-10), Brahm Singh, Vijay Singh (PW-12), Zahida (PW-15), Asso (PW-18), Shamshad (PW-19) and Shajad (PW-20) supported the case of the prosecution. Further, the two witnesses examined by the prosecution namely Mitterpal (PW-4) and his brother Om Prakash (PW-9) only deposed that when they were returning in the night of 3rd April 2013, at about 1 or 2 a.m., they saw one girl aged 15 to 17 years near Vedic Inter College who asked them to stop and that they stopped their vehicle, brought the girl to the 3-4 ladies of their family and informed her family members. None of the two witnesses have identified the appellant as the person to whom the girl was handed over on the night of 3rd April 2013.



20. Prosecution also relied upon the call details duly exhibited to show that call was made from PW-4 on 4th April 2013 at 3:23:11 and 3:29:04 hours. The call details of phone number 9358769914 have been exhibited as Ex.PW-23/H1 to H35, however, CAF details showing that this number belonged to Liyakat Ali have not been exhibited though CAF details of mobile numbers 9313984655, 9350815404, 9312848679, 9313941062 and 938769914 have been exhibited. The prosecution further claims that the appellant lodged the missing report creating a false defence on 12th April 2013 that his daughter was missing and then, an application dated 3rd May 2013 along with an affidavit was filed stating that she herself came back on 28th April 2013. No evidence has been led by the prosecution to show that what happened to the deceased after 4th April 2013, much less proving that on that date, Miterpal and Om Prakash handed over the girl to the appellant. Had the prosecution proved that the girl was in the custody of the appellant till 12th April 2013, the contention of the prosecution that a false complaint had been lodged and a false defence raised, would have been fortified. In view of the evidence from record, the prosecution has neither been able to prove the motive nor the fact that soon before her death, the custody of the deceased was handed over to the appellant or that the deceased was in custody of the appellant, whereafter the onus would have shifted on the appellant to explain the special circumstances within his knowledge under Section 106 of the Indian Evidence Act, how the deceased died. Further, the exact time since death also could not be proved, which was essential to shift the onus under Section 106 of the Indian Evidence Act on the appellant.



21. Admittedly, the dead body was not identified by any of the family members and the only evidence that the dead body was of the daughter of the appellant is based on the evidence of DNA. However, the said evidence is also suspect, for the reason, that from the femur bone the diatom could not be detected, however, subsequently, while performing the DNA analysis of fibula bone of the deceased, PW-50 opined that the DNA profile generated from the source Ex.3 was found to be human female in origin and consistent as biological child of Liyakat Ali son of Mohd. Sadiq and Smt.Shakeela, wife of Liyakat Ali. At this stage, it would be appropriate to note the two reports exhibited by PW-50 as PW-50/A and PW-50/B, as under:-

“Relevant portion of Ex.PW-50/A:

5.Date of Commencement of Examination: 29.07.2013

6.Description of Parcel(s)/Exhibits(s)

Parcel-1: One sealed cloth parcel sealed with the seals of “MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI”. It contained exhibit-1.

Exhibit-1: One long bone alongwith one tooth described as ‘radius bone & tooth of UIDB of the case’.

Parcel-2: One sealed paper envelope sealed with the seals of “MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI”. It contained exhibit-2.

Exhibit-2: Reddish brown stained gauze cloth piece described as ‘Blood in gauze for DNA test of Liyakat Ali S/o Mohd. Sadeeq’.

Parcel-3: One sealed paper envelope sealed with the seals of “MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI”. It contained exhibit-3.



Exhibit-3: Reddish brown stained gauze cloth piece described as 'Blood in gauze for DNA test of Smt. Shakeela W/o Liyakat Ali.'

7. *Laboratory Procedure: DNA isolation from the exhibits-1, 2 & 3 was carried out via organic extraction method and was subjected to multiplex PCR amplification for fifteen STR loci & amelogenin using AmpFISTR Identifier Plus Kit. Genotyping of the amplified products was carried out using automated DNA analyzer.*

8. *Results of Examination:*

8.1 *DNA profile could not be generated from the source of exhibit-1 (Bone). Hence no comparison could be established."*

Relevant portion of Ex.PW-50/B:

"5.Date of commencement of Examination: 23.10.2013

6.Description of Parcel(s)/Exhibit(s)

Parcel-1: One sealed cloth parcel sealed with the seals of "BKM SSO I (BIO) CFSL CBI N.D.". It contained two exhibits which were marked as exhibits-1a and 1b in the Biology Division of this laboratory.

Exhibit-1a: Two white plastic gunny bags having muddy deposits

Exhibit-1b: Two pieces of black coloured nylon ropes having muddy deposits.

Parcel-2: One sealed paper envelope sealed with the seals of "BKM SSO I (BIO) CFSL CBI N.D.". It contained five exhibits which were marked as exhibits-2a, 2b, 2c, 2d and 2e in the Biology division of this laboratory.

Exhibit-2a: One lady's shirt having dirty stains alongwith muddy deposits.

Exhibit-2b: One salwar having dirty stains alongwith muddy deposits



Exhibit-2c: One torn underwear having dirty stains alongwith muddy deposits

Exhibit-2d: One shameej having dirty stains along with muddy deposits.

Exhibit-2e: Pieces of torn clothes having dirty stains alongwith muddy deposits.

Parcel-3: One sealed paper envelope sealed with the seals of "BKM SSO I (BIO) CFSL CBI N.D.". It contained exhibit-3

Exhibit-3: One long bone³ described as "fibula (bone) of deceased".

Parcel-4: One sealed paper envelope sealed with the seals of "BKM SSO I (BIO) CFSL CBI N.D.". It contained exhibit-4.

Exhibit-4: One printed pillow cover having few brown stains, described as 'pillow cover brown colour and dotted.'

Parcel-5: One sealed cardboard box sealed with the seals of "F.S.L. M.L.M. DELHIA". It contained TWO EXHIBITS WHICH WERE MARKED AS exhibits -5a and 5b in the Biology Division of this Laboratory.

Exhibit-5a: Tissue material, kept in a plastic container labeled as 'PM No.587/13 etc'

Exhibit-5b: One small empty plastic container labeled as '13/c-4731 PM No.587.13 etc.'

7.Laboratory Procedure: DNA isolation from the exhibit-1a, 1b,2a,2b,2c,2d,2e,3,4,5a and 5b was carried out via organic extraction method and was subjected to multiplex PCR amplification for fifteen STR loci & amelogenin using AmpFISTER Identifier Plus Kit as well as for eight STR loci & amelogenin using AmpFISTER Miniflier Kit. Genotyping of the amplified products was carried out using automated DNA Analyzer.



8. Results of Examination:

8.1 DNA profile generated from the source of exhibit-3 (Bone) is found to be of human female in origin and consistent as biological child of Liyakat Ali S/o Mohd. Sadeeq (source of exhibit-2: Blood Stained Gauze) and Smt. Shakeela W/o Liyakat Ali (source of exhibit-2: Blood stained gauze) forwarded to this laboratory vide memo No: 1989-R/S/O Mehrauli/New Delhi dated 13.06.2013 (Refer Report No.:CFSL-2013/B-0660 dated 11.09.2013).

8.2 The source of exhibits-1a,1b,2a,2b,2c,2d,2e,4,5a and 5b did not yield DNA for analysis.”

22. From Ex.PW-50/B, it is evident that the parcel was sealed with the seal of CFSL, CBI, New Delhi, thus, it is evident that the fibula bone on which subsequent examination was carried out, was already available with PW-50 when DNA analysis was done on 29th July 2013. Hence, it is not evident why the femur bone was not examined immediately when no DNA profile could be generated from the radius bone and the tooth of UIDB.

23. In view of the discussion aforesaid, this Court finds that merely based on the DNA analysis evidence as noted above, opining vide Ex.PW-50/B that the dead body was of the biological daughter of the appellant, it cannot be held that the prosecution has proved its case beyond reasonable doubt against the appellant of having committed the murder of Gulshama punishable under Section 302 IPC as also offence punishable under Section 201 IPC.

24. Consequently, the impugned judgment of conviction and order on sentence are set aside. The appellant who is in custody is directed to be released forthwith, if not required in any other case.

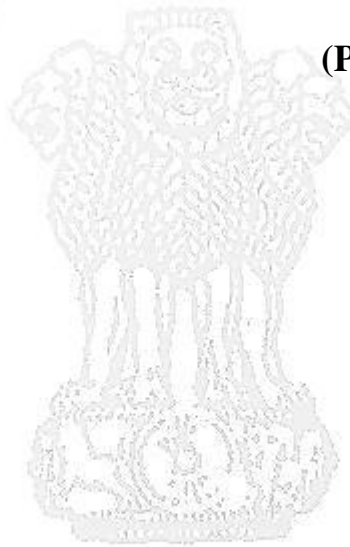


25. Copy of the judgment be uploaded on the website of this Court as also be sent to the Superintendent, Tihar Jail for intimation to the appellant, updation of records and necessary compliance.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023/‘vn’



न्यायमेव जयते