

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.09.2012

+ **CRL.A. No.372/1997**

AJAY KUMAR ... Appellant

versus

STATE ... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Avninder Singh, Advocate

For the Respondent : Mr Pawan Narang, APP

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

VEENA BIRBAL, J

1. The present appeal is directed against the judgment and order on sentence both dated 31.10.1996 passed by the learned Addl. Sessions Judge, New Delhi, in a case arising out of FIR no. 3/1993, P.S. Okhla Industrial Area, registered under Section 302 IPC wherein the appellant had been convicted under Section 302 IPC and had been sentence to undergo imprisonment for life.

2. The case of the prosecution is that on 03.01.1993 a DD No. 60B i.e. Ex.PW1/B was recorded at P.S. Okhla Industrial Area on the information given by the PCR. A copy of the said DD was handed over to Constable Mahipal PW-1, who handed over the same to Inspector Satpal Singh PW-15 who thereupon along with other police officials i.e. constable Mahipal PW-1 and constable Chander Bhan PW-12 went to the place of occurrence i.e. RZ 192, Gali no. 16, Tuglakabad Extension at 7.15 AM. The door of the house was open and a dead body stained with blood was lying on the bed. The complainant Om Parkash PW-7 had met the IO PW-15 and made a statement Ex. PW7/A to him wherein it was alleged that he was a government servant and was resident of RZ 192, Gali no. 16, Tuglakabad Extension. On 07.12.1992 he had rented out one room of his house on rent to Ajay i.e. appellant and Kuldeep i.e. the deceased. They had been residing there since then. On 03.01.1993 at about 6.45 AM, he heard loud shrieks coming from the room which he had given on rent. At that time, he was in the house. On hearing the shrieks, he along with his wife Omvati came out and saw that the persons of neighbourhood had also collected near the house. When he had called the appellant, the light of the room was switched off. He had felt something wrong in the room. Thereupon Om Prakash (PW7) had knocked at the door repeatedly. The appellant slightly opened the room and told that his colleague Kuldeep was prone to 'fits'. The complainant PW-7 had noticed some blood stains on his clothes. Thereupon, he pushed the door and tried to look inside, however, the appellant had pushed him back and fled outside. Thereupon, he raised

the alarm '*pakro pakro*' and ran after Ajay i.e. the appellant. The other persons of neighbourhood also ran after appellant. The appellant was apprehended by Ran Singh PW6, a neighbour after a distance of about 125 paces from his house. He along with his neighbour Ran Singh, PW-6 brought him to the rented room. On going inside the room, they found that the deceased was lying in a pool of blood on the bed. He had deep wounds on the neck and his head. A closed knife was also lying there. The blood was also lying on the floor. The persons collected had started beating the appellant. The appellant had told them that the deceased had wanted to kill him. The appellant had also told that he had an apprehension that deceased had murdered his mother. In the meantime, the police came and the appellant was handed over to police. On the aforesaid statement Ex.PW7/A, Inspector Satpal Singh PW-15 had put his endorsement Ex.PW 1/V and got FIR Ex.PW15/A registered by sending a *ruqqa* to the police station through Constable Mahipal PW-1.

3. The complainant Om Parkash PW-7 and other persons of public who were present there, had handed over the appellant to the IO PW-15. He had prepared site plan Ex. PW15/B. The crime team was also called at the spot. During the course of investigation, IO PW15 had lifted the blood from the spot. The blood stained floor was broken and a piece of blood stained earth was lifted from the spot and seized vide memo Ex.PW 6/C. The blood stained mattress and bed sheet were also seized vide seizure memo Ex.PW6/C. Before seizing, the necessary formalities concerning seizure were completed. A part of

scissors measuring 10½”, the handle of which was made of brass was also found at the spot. There was blood on the blade of the scissors and some hair were also struck on it. A knife Ex.P1 was also lying at the spot. The knife Ex.P-1 and part of scissors Ex.P2 were also seized vide aforesaid memo. Before seizing necessary formalities were done. On interrogation, the appellant had made disclosure statement Ex. PW6/B. Pursuant to his disclosure statement Ex. PW 6/B, the other unused part of the scissors Ex.P4 was recovered by the appellant from his “*attachi*” which was lying in the room. The same was seized vide memo Ex.PW6/F. The appellant was sent for medical examination. His clothes were also seized during the investigation. The scene of occurrence was got photographed. The statement of other PWs were also recorded. The inquest proceedings were conducted before the body was sent for post mortem examination. After post mortem examination, nobody claimed the dead body. As such, the body was cremated by the police. The articles seized were first deposited in the *malkhana* and during the course of investigation were sent to CFSL for examination. After completion of necessary investigation, a report under Section 173 Cr.P.C. was prepared and was filed against the appellant before the concerned MM, New Delhi. Thereafter, it was assigned to the court of Id. Addl. Sessions Judge, New Delhi. A charge was framed against the appellant for having committed offence punishable under Section 302 IPC. The appellant pleaded not guilty to the same and claimed trial and was tried before Ld. Addl. Sessions Judge, Delhi.

4. The prosecution case is based on circumstantial evidence. To prove its case, the prosecution in all had examined 17 witnesses. Out of which Om Parkash PW-7 is the landlord/complainant, Ran Singh PW-6 is the neighbour who along with PW-7 Om Parkash had apprehended the appellant when he had made an attempt to escape from the spot. Dr. D.N. Bhardwaj PW-5 had conducted the post mortem examination on the body of the deceased. The remaining evidence relates to police officials.

5. The incriminating evidence was put to the appellant in the statement under Section 313 Cr.P.C. wherein he had denied the same and had stated that he was an innocent person. He had stated that the deceased was his *ustad* who had trained him in tailoring job and cutting. On the day of occurrence, he had gone out on the call of nature. When he returned to his room, he saw that the deceased had been murdered. Thereupon, he cried '*murder ho gaya, murder ho gaya*'. He had stated that one Raju @ Rajesh was also sleeping with the deceased in the night. The said Raju @ Rajesh was not found in the morning. On his cries, the police was informed. Public also came and they suspected that crime was committed by him and had caught hold of him. He had also stated that deceased Kuldeep was a 'wrong' man who used to bring 2/4 persons daily and had been asking him to do various things. The police had apprehended him on the pretext that he would be saved after few days. He had narrated to the police about Raju @ Rajesh but no investigation was done. The appellant stated that he had also told that the deceased had remained in Delhi jail as

well as in Sonapat jail and was absconding from his house. He denied that he got the other part of the unused scissors Ex.P4 recovered from his *attachi* (suit case) as is alleged. He had further stated that his clothes were stained with blood on account of his fall in the room on returning from natural call. He was an innocent person and police had falsely implicated him. No evidence was led by him in defence.

6. Taking into consideration, the evidence of Om Prakash, PW-7, Ran Singh, PW-6, recoveries effected at the spot, medical evidence including the opinion of Dr. D.N. Bhardwaj PW-5 about cause of death, CFSL reports Ex.PA to Ex.PC and other circumstantial evidence relied upon by the prosecution, Id. trial court held that the prosecution has been able to prove the circumstantial evidence relied upon against the appellant and accordingly held the appellant guilty of the occurrence and convicted him under Section 302 IPC.

7. Learned counsel for appellant has argued that there is no direct/ocular evidence in the present case. The entire case is based on circumstantial evidence. It is contended that the circumstances relied upon by the prosecution do not tend to establish the case against the appellant beyond reasonable doubt. It is contended that on the day of occurrence in the early hours of the day, the appellant had gone to attend the natural call. When he returned, he had found the deceased in a pool of blood and on entering the room, he had a fall as a result of which his clothes were stained with blood. It is further contended that

the appellant had also stated to the police about the deceased having animosity with one Rajesh, tailor. No investigation is done by the police qua that person. It is further contended that the other part of scissors Ex.P4 was not recovered at the instance of appellant. It is contended that Dr. D.N. Bhardwaj PW5 has categorically deposed in his evidence that the depth of injuries on deceased were not possible with Ex.P2. It is further contended that as per post mortem report Ex. PW-5/A possibility of more than one person could not be ruled out. It is further contended that the alleged statement of appellant to PW6 i.e., extra judicial confession made by him to PW6 to the effect that the deceased was having illicit relations with his mother and due to that reason he had committed murder of appellant cannot be used against him as the same was not put to him in his statement under Section 313 Cr.P.C. It is contended that the circumstances relied upon by the prosecution cannot be said to be sufficient to prove the guilt alleged against the appellant beyond reasonable doubt. It is further contended that it has come in the evidence that when PW7 had come on hearing the shrieks, the door of the room was open. In these circumstances, the possibility of somebody entering the room cannot be ruled out.

8. On the other hand, learned APP for State has argued that the circumstances relied upon are that the appellant and the deceased were living together at house No. RL 192-B, Tughlakabad Extn. as tenants in the house of Om Parkash PW7. The dead body of Kuldeep was

found lying in a pool of blood on the bed in the said room in the tenanted premises having deep injuries on neck and near the head. The blood was flowing on the floor of the said room. It is submitted that the aforesaid circumstances are admitted by the appellant in his statement under Section 313 Cr.P.C. The other circumstantial evidence relied upon by the prosecution is that when the landlord Om Parkash PW7 on hearing the shrieks had called the appellant, he had put off the light of the room and when the door of the room was pushed by the landlord, PW-7, appellant ran out of the house. At that time, the clothes of the appellants were stained with blood. The other circumstance relied upon is that the appellant was apprehended while he was running by Ram Singh, PW 6 and landlord Om Prakash, PW-7 who had also run after him. The evidence on record establishes that they had brought him to his room. Other persons of public had also come. It is further contended that the evidence on record also establishes that the deceased was found along with the appellant on the last night. It is contended that pursuant to disclosure statement Ex.PW6/B, appellant had also got recovered one part of the scissors Ex.P4 which was from an *attachi* lying in that room. It is contended that evidence on record also establishes that clothes of appellant i.e., Ex.P5, P6 & P7 were stained with blood. As per CFSL report Ex.PB, the blood found at the spot has matched with blood of the appellant. It is also stated that as per evidence on record, the appellant had the motive to commit the crime on account of alleged illicit relations of the deceased with the appellant's mother. It is contended that the prosecution witnesses have proved all the circumstantial evidence

relied against the appellant beyond any reasonable doubt and the same point out towards the guilt of the appellant.

9. We have heard Mr.Avninder Singh, learned counsel for the appellant and Mr.Pawan Narang, learned APP for the State.

10. The entire case of prosecution is based on the circumstantial evidence. The approach to be adopted and the test to be applied by the court in cases based on circumstantial evidence, was examined by the Supreme Court in *Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh; : 1953 Cri.L.J. 129.* The court in that case observed:-

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.”

The above position of law has stood the test of time and has been reiterated in numerous subsequent decisions of the Supreme Court. Reference in this regard is made to the decisions in *Sharad*

Birdhichand Sarda v. State of Maharashtra : 1984 Crl.L.J. 1738
and **State of Haryana v. Ved Prakash: 1994 Crl.L.J. 140.**

11. The Supreme Court in **Md. Mannan @ Abdul Mannan v. State of Bihar; (2011) 5 SCC 317** held as under:-

“In our opinion to bring home the guilt on the basis of the circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner. In order to sustain conviction circumstantial evidence must be complete and must point towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard and fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case.”

12. Om Parkash PW7 is the landlord of the appellant and the deceased. He has deposed that appellant and deceased became his tenant only 15-20 days prior to the incident. On 03.01.1993, at around 6.45 p.m. he had heard the shrieks. When he and his wife came out they saw a number of persons standing outside the house and were trying to find out from where the shrieks were coming. He had a

doubt that the same were coming from the tenanted room. He had called the appellant. Thereupon, the appellant had switched off the light. When he pushed the door, appellant came out and escaped from the room. At that time, his clothes were stained with blood. The public ran after him. Ran Singh PW6 and his neighbours also ran after him. The appellant was apprehended at a little distance from the house. The public started beating him and brought him back to his room. The moment the room was opened, it was seen that Kuldeep i.e., deceased, was lying dead in a pool of blood on the bed. A knife Ex.P1 was lying near the dead body and one part of scissors Ex.P2 was also lying there. He had deposed having given statement Ex.PW7/A to the police.

13. On being cross-examined, he had stated that the knife Ex.P1 was lying near his head and the same was closed. He has denied that the appellant was not there when he had reached on hearing the shrieks. He had denied that some Rajesh was involved in the crime. He had deposed that he did not know any Rajesh. He had deposed that a day before the occurrence he had seen deceased Kuldeep in the room.

14. Another neighbour Ran Singh PW6 has also deposed that on 03.01.1993 at about 6.45 a.m. he heard the voice of “*pakro pakro*”. He was standing in the *gali*. He had seen the appellant running. When the appellant had passed through him while running, he had caught hold of him. His clothes were stained with blood. Om Parkash

PW7 was also running after him. He also deposed that appellant was a tenant of Om Parkash PW7. They had brought him to the house of Om Parkash PW7 where many people had collected and a dead body in a pool of blood was lying in the room in the house of Om Parkash PW7. In the meantime, police also reached there. Before arrival of the police, the appellant had told Ran Singh, PW-6 that the deceased was having illicit relations with his mother. The personal search of appellant was conducted vide memo Ex.PW6/A. He has proved his signatures on the said memo. The police had also seized one knife Ex.P1, one part of scissors Ex.P2, blood stained clothes P5, P6 & P7. In his presence the police recorded disclosure statement Ex.PW6/B of appellant. In pursuance thereof the appellant got recovered the other part of the scissors Ex. P4 from an *attachi* lying in that room.

15. The evidence of Om Parkash PW7 establishes that the appellant and deceased were his tenants and on the day of occurrence they both were residing in his house. The appellant has also admitted the same in the statement under Section 313 Cr.P.C. The evidence of Om Parkash PW7 also establishes that on hearing the shrieks, when he went and called the appellant, the light was switched off by him. When Om Prakash (PW7) had pushed the door, appellant ran away and while he was running, Ran Singh PW6 had apprehended him and was brought to the spot by the persons of public where blood was seen on the floor and the dead body of the deceased was lying on a bed in the room. The evidence of Om Parkash PW7 and Ran Singh PW6 as is stated above is not demolished in cross-examination. They have

also deposed that when they had seen the appellant, his clothes were stained with blood.

16. The evidence of Om Parkash PW7, Ran Singh PW6 also establishes that when the appellant was running, his clothes were stained with blood. Appellant had admitted the blood stains on his clothes Ex.P5 to Ex.P7 in statement under Section 313 Cr.P.C. However, as per him, the same were on account of a fall on return from natural call as there was blood in all directions, on the body as well as on the floor. The explanation given by him is not reasonable and probable. Had the blood been there on his clothes i.e. pant (Ex. P5), shirt (Ex. P6) and full sleeves sweater (Ex. P7) on account of fall as alleged, then blood would have been at one stretch and not at scattered places as is the position in the present case. The CFSL report Ex.PB shows that pant (Ex. P5), shirt (Ex. P6) and full sleeves sweater (Ex. P7) had numerous dark brown stains at places. The Id. trial court has also noted the same and found the explanation given by him under Section 313 Cr.P.C. was not reasonable and probable. The circumstance that the appellant was apprehended immediately after the occurrence while wearing blood stained clothes i.e. P5, P6 & P7, stands proved against him. The blood group on the clothes of deceased, the blood lifted from the spot as well as blood on the clothes of appellant i.e. Ex. P5 to Ex.P7 was found to be of the same group i.e. 'AB' group as per CFSL report Ex. PB.

17. The post mortem report Ex. PW5/A is proved on record by

Dr.D.N.Bhardwaj. As per aforesaid report, the following ante-mortem injuries were there on the person of the deceased Kuldip Singh :-

- i) Incised wound on left side of forehead of size 2.5 x 5 x 1 C.M. with clean cut margins.
- ii) Incised wound on the left mastoid region. This wound was communicating with Pinna which also pierced. Size was 2.5 x 5 x 1 C.M.
- iii) Incised stab wound on the left side of neck of size 2.5 x 5 x 3.5 C.M. deep underneath muscles were cut.
- iv) Incised stab wound on the left side of neck 5 C.M. medial to injury No. 3. It was cutting Jugular vein, which connects brain, on the left side. Size was 2.5 x 5.4 C.M.
- v) Incised wound on the left side of neck 2.5 x 5 x 1.5 C.M.
- vi) Incised wound on left side of neck 1 C.M. medial to injury No. 5 of size 2.5 x 5 x 1.5 C.M.
- vii) Stab incised wound on the middle of neck placed transversely of size 2.5 x 6 x trachea deep. The trachea was exposed to the exterior with blood part in tracheal cavity.
- viii) Stab incised wound on the middle of neck .5 C.M. below injury No. 7 of size 2.5 x .5 x trachea deep.
- ix) Incised wound in the midline in the beck of size 2.5 x .5 x 1 C.M. cutting superficial muscles.
- x) Incised stab wound just below right ear lobule of size 2.5 x .5 x 3 C.M. It was also superficial.

There were other injuries 11 to 26 which were also incised wound but were superficial and caused by sharp edged weapon including injury No. 24, 25 and 26 which are as follows:-

- xxiv) Incised wound on the medial aspect of left palm.
- xxv) Amputation of left little finger.
- xxvi) Incised wound at the root of right thumb.

Dr. Bhardawaj PW-5 gave the opinion that injuries No. 4, 7 and 8 were sufficient to cause death individually as well as collectively in the ordinary course of nature. Injuries No. 24, 25 and 26 were received in defence in semi wound. All injuries were ante-mortem caused by sharp object. The cause of death was due to asphyxia due to tracheal injuries following multiple injury.

Dr. Bhardawaj PW-5 also gave the opinion that injuries were possible by knife Ex.P1 and not by Ex.P2. After cutting of trachea and jugular vein no cry is possible, until trachea injury is received, cry is possible. All injuries are possible from single person, if one who suffered is taken unaware. Possibility of more than one person cannot be ruled out. On the palm of deceased injuries were on both palms. When he received these wounds he was aware. The other person if he was present has not used weapon.

18. The knife Ex.P1 was found lying at the spot as per evidence of the same was seized during investigation vide memo Ex.PW6/C. The evidence as regards seizure of knife Ex.P1 is not demolished in cross-examination. As per the opinion of Dr D.N. Bhardwaj, PW-5, the injuries were possible with knife Ex.P1 and not by part of scissors Ex.P-2. The injuries are also on vital part of the body. Even if the injuries are not possible with portion of scissors Ex.P2, considering the other circumstantial evidence against him, the same does not demolish the case of the prosecution in any manner.

19. The extra judicial confession made by the appellant i.e., he had admitted before Ran Singh, PW-6 that the deceased was threatening to kill him and was having illicit relationship with his mother, was not put to him in statement u/s 313 Cr.P.C and the same was not taken into consideration. The said piece of evidence was relied upon by the prosecution to prove the motive of the appellant in committing the occurrence. The stand of learned counsel for the appellant is that the same cannot be taken into consideration as the same was not put to appellant in the statement under section 313 Cr.P.C. A similar submission was made before the Supreme Court in **Suresh Chandra Bahri v. State of Bihar: 1995 SCC (Cri) 60.** The Supreme Court rejected the said submission by observing as under:-

“As no question had been put to the accused on motive, no motive for the commission of the crime could be attributed to the accused nor the same could be reckoned as circumstance against him that it could not be pointed out as to what in fact was the real prejudice caused to the accused by omission to question the accused on the motive for the crime. No material was placed before the Court to show as to what and in what manner the prejudice, if any, was caused to the accused. More so, the appellant-accused was aware of the accusation and charge against him.”

20. In the present case, nothing has been placed on record by appellant to show in what manner prejudice has been caused to appellant by not putting the said statement. Further even if this piece of evidence regarding motive is ignored, the case of prosecution

cannot be thrown out considering the other circumstantial evidence proved against the appellant.

21. The stand of the appellant in the statement u/s 313 Cr.P.C is that the deceased was his *ustad* who had trained him in tailoring. On 03.01.1993 in the early morning he had gone to attend the natural call. When he had returned home, he saw that the deceased had been murdered. He cried “*murder ho gaya, murder ho gaya*”. One Raju was also sleeping on that night with him and when he came after attending the natural call, that Raju was not there, persons apprehended him on suspicion. We have examined this stand also. No evidence is led by him to substantiate the same. Perusal of evidence of Om Prakash PW-7 shows that no suggestion was given to him that Rajesh had committed the murder. Further as per appellant, the deceased was having animosity with Rajesh and he was responsible for the occurrence as Rajesh was sleeping with deceased on that night. The said stand is not believable. If Rajesh was having animosity with the deceased, in that event the question of his sleeping with deceased did not arise. Further, Om Parkash PW7 had stated in the evidence that when on hearing the shrieks he had pushed the door, appellant told him that the deceased was prone to fits and thereafter he ran away from the room. In these circumstances, defence taken is at variance and further the same is also not believable. Further there is nothing on record to substantiate the same.

22. The circumstantial evidence relied upon by the prosecution clearly establishes that the appellant and the deceased were living together as tenants in the house of Om Parkash PW-7. The same is also admitted by the appellant in his statement u/s 313 Cr.P.C. There is evidence of Om Parkash PW-7 that on the previous night of crime they were together in the room. The evidence on record also establishes that on the day of occurrence at about 6.45 AM when Om Parkash PW-7 had heard the shrieks and had come out with his wife and had called the appellant, the appellant had switched off the light. The evidence of Om Parkash also establishes that when he pushed the door, the appellant had come out and at that time he was wearing blood stained clothes. The other circumstantial evidence relied upon by the prosecution that the appellant was apprehended while escaping the spot at a distance of 100 yards or so from the house of Om Parkash by Ran Singh (PW6) also stands proved from the testimony of Ran Singh (PW6) and Om Parkash PW-7. The other circumstantial evidence about seizure of blood stained clothes of appellant Ex.P5 to P7 also stands proved against him. As per CFSL report Ex. PB, the blood group of blood found on his clothes is same as that of deceased. There is no animosity of PW7 and PW6 with the appellant. There is no reason why they would falsely depose against him. It has also been proved that the appellant had also put off the light when he was called by PW7 and had stated to him that the appellant was prone to fits. Further, the knife Ex.P1 was also found at the spot. As per opinion of doctor PW5, injuries on the deceased were possible with knife Ex.P1. The doctor PW-5 has also stated in the evidence that injuries on the

deceased were possible by one person. All the above circumstances clearly establish that it is the appellant who has committed the crime. As is discussed above, the explanation given by him in his statement under Section 313 Cr.P.C. is not found probable.

23. The circumstantial evidence established above are of conclusive nature and from the same no other hypothesis can be drawn except that of guilt of the appellant.

24. In view of the above discussion, the judgment of conviction and sentence of the appellant is upheld. The appeal stands dismissed.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

September 07, 2012

srb/kks