

Pradeep Vs. State (Govt. of Nct) Delhi

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Court : Delhi

Decided On : Nov-27-2014

Judge : Mukta Gupta

Appellant : Pradeep

Respondent : State (Govt. of Nct) Delhi

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision : November 27, 2014 + CRL.A. 130/2012 PRADEEP Represented by: Appellant Ms.Saahila Lamba, Adv. versus STATE (GOVT. OF NCT) DELHI Represented by: Respondent Mr.Lovkesh Sawhney, APP with Girdhari Lal, Intelligence Officer, NCB Sub-zone Ajmer. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

1. Suspicion howsoever grave cannot be treated as proof and to base a conviction for offence under Section 302 and 201 IPC the prosecution is required to prove beyond reasonable doubt that the accused not only committed murder of the deceased but also caused disappearance of the evidence of crime. This onus of the prosecution can be discharged either by leading direct evidence or circumstantial evidence. However, in the present case the learned Trial Court failed to notice that neither by direct evidence nor circumstantial, the prosecution has been able to prove that Pradeep committed murder of his wife and caused disappearance of the evidence of offence.

2. The evidence against Pradeep on the basis of which impugned judgment dated September 09, 2011 convicting him for offences punishable under Section 302 IPC and 201 IPC has been passed is that he cremated the dead body of his wife without informing his in-laws and only 8 to 10 people joined him in the cremation of his wife.

3. Process of law was set into motion on receipt of PCR call which was recorded vide DD No.47B at 2.35 PM on August 14, 2010 at PS Dwarka North on an information sent by the brother of the deceased stating that his sister has been burnt after her husband murdered her at night and the husband is saying that she was unwell. The SDM Rajeev Shukla PW-10 was called at the spot, since the information related a lady having been died and cremated by her husband in suspicious circumstances within 7 years of her marriage. Statements of Manoj Kumar PW-3 brother of the deceased, Ram Chander PW-12 cousin of the deceased and Gaya Nand, a relation of the deceased were recorded by Rajeev Shukla.

4. Manoj alleged that he was in a private job and living in Delhi for the last 5 years and at that time his father had gone to the village. His elder sister Renu aged 25 years was married to Pradeep on May 28, 2004. His brother-in-law had come to Delhi around 5 and a half years ago to do a job. During their wedded life, his sister had come to live at his place once or twice and from his sister he came to know that Pradeep had kept another woman Priyanka at the Pump House, Dwarka and used to say that Priyanka was Pradeeps second wife. His sister had a son aged 3 years. 15-20 days ago when he came to meet his sister Renu she cried and told that Pradeep was not keeping her properly. Pradeep used to abuse her and threaten to kill and would stay with his second wife only. He saw that his sister used to sleep in a corner of the room in the pump house and used to cook her own food. When he complained to Pradeep he stated that he could take away his sister. On coming back he informed his father and some relatives, however due to some family problem his father went away to village. He spoke to Pradeep on mobile, however Pradeep asked him to take away his sister or else he would get rid of her. He further stated that on August 14, 2010 at about 11.30 AM his father called up from village informing that Pradeep had called him from Delhi informing

that he had murdered Renu. His father asked him to go there along with relatives and find out the facts. When he reached the house of Pradeep, Pradeep informed that his sister had vomiting and loose motion at night at 11.00 PM due to which she died and thus in the morning at 10.00 AM he cremated her at Manglapuri Shamsan Ghat. Thus, he made a call to 100 number. On the basis of this statement of Manoj FIR No.249/2009 under Section 302/201 IPC was registered at PS Dwarka North.

5. Manoj Kumar appeared in the witness box and deposed in sync with his statement on the basis of which FIR was registered. However in crossexamination he admitted that his sister used to have some pain in her stomach off and on for about 6 months prior to her death, though he denied his sister was having any chronic stomach ailment for the last about 2 years. He further admitted that his father also used to get his sister treated in the village for her ailment but he could not say as to what kind of ailment she was suffering from. In further cross-examination he admitted that on August 13, 2010 at about 11.00 PM Pradeep had called him and told that his sister had passed away due to some illness and that Pradeep used to take care of his sister properly. However, he denied that his statement Ex.PW3/A on the basis of which FIR was registered was false or that he did not give it voluntarily.

6. Vinod Bhagat the father of the deceased Renu was also examined as PW-4 and he stated that his daughter was married in the year 2004 and after marriage she usually stayed with them for longer periods and went to stay with the accused for brief periods. According to him she used to complaint that she was not given sufficient food to eat by Pradeep and he used to harass her regularly. He further stated that Pradeep used to inflict cruelties upon his daughter and had kept a lady at the pump station. On his daughter asking why he had kept the said lady, Pradeep used to reply that the other lady had been kept as a helper at a salary of `2000/- per month at the tea stall. Further that lady used to stay with Pradeep in his room along with his daughter. In cross-examination even Vinod Bhagat admitted that his daughter Renu was suffering from stomach ailment from the time when she was unmarried and she continued to suffer the stomach ailment even after marriage. He also admitted that Pradeep informed Manoj on phone during

the night itself regarding Renu having died after vomiting and diarrhoea.

7. The investigating agency collected no evidence from either the room or from the neighbours as to any incident happening at night which could have thrown some light as to whether the deceased died a natural death or was murdered. One Rajesh PW-11 who was examined from the neighbourhood deposed that he was a rickshaw puller and was residing with Pradeep at the pump house in Sector-11, Dwarka wherein Rajender, Dulesh, Sanjeet and Deepak were also residing. Pradeep had two wives and he did not know their names. One of his wives had died and the other was alive. He stated that Pradeeps wife was ill for 3 to 4 days before her death and then she expired but he did not know the exact reason of her death. Pradeep had asked him to accompany him for the cremation of his wife, so on 14 th day of that month he accompanied Pradeep to Manglapuri Shamshan Ghat for cremation of his wife. She was cremated at 8.00 AM. In cross-examination by learned APP on the point as to whether Renu's brother was present at the time of cremation he stated that Manoj was not present and when Rajesh asked Pradeep as to why Manoj was not present he told him that he had been calling Manoj but he could not get the call through. This witness has not deposed about any injury on the deceased or anything unnatural about the death of Renu.

8. The prosecution also examined Rajeev Sharma PW-8, the priest who performed the last rites of the deceased at Manglapuri Shamshan Ghat and Sunil Kumar PW-9 who provided 325 Kg of wood for the purposes of cremation. Even from their evidence it is not revealed that they found something untoward in the death of Renu. Rajeev Sharma however stated that when he found that only 8 to 10 persons were accompanying Pradeep to the Shamshan Ghat he asked him about the thin attendance on which Pradeep stated that he was a poor person due to which only a few persons were accompanying him.

9. Learned Trial Court while analysing the evidence of PW-3 and PW-4 i.e. brother and father (Manoj Kumar and Vinod Bhagat respectively) came to the conclusion that the testimony of these two witnesses leads to the inference that deceased Renu did not die a natural death. It was observed that the exact nature of the

ailment of Renu and the treatment given for the said prolong ailment was neither known to father of the deceased nor the accused stated anything in this regard in his examination under Section 313 Cr.P.C. The Court went to hold that the deceased had been staying with accused for about two months before her death and thus he would be knowing about the treatment given to the deceased and it was for the accused to disclose and prove these facts which he failed to do so. It is further noted that if the condition of the deceased had worsened on that fateful night the same would have prompted Pradeep either to call a doctor or to take his wife to the doctor immediately to save her life, but he did neither. The learned Trial Court also used the conduct of Pradeep in not informing the brother or the father of the deceased about Renu's death and cremating Renu in the morning on August 14, 2010 in a surreptitious manner without informing the relatives or without awaiting for them. The learned Trial Court also noted that the post-event conduct of Pradeep was also not in consonance with his innocence, as after he had been arrested he told the witness PW-11 Rajesh that if somebody asks about the reasons of Renu's death he should say that they were taking Renu to a hospital in an auto-rickshaw and she died on the way.

10. It is trite law that the prosecution has to prove its case beyond reasonable doubt and the onus under Section 106 of the Evidence Act shifts on the accused only after the prosecution has proved its case and only for those facts which are exclusively in the knowledge of the accused. It is the case of prosecution itself that during her matrimonial life the deceased was staying for long periods at her parental home and the father of deceased was getting her treated for the stomach ailment which she had even prior to the marriage. Thus the factum of ailment of the deceased was not in the exclusive knowledge of the appellant which onus he was required to discharge. The learned Trial Court thus grossly erred on shifting the onus on the accused to prove this fact.

11. The father of the deceased has admitted in cross-examination that he had received a phone call at night from Pradeep informing about the death of Renu. Further Pradeep did not cremate the dead body of Renu in a hushhush manner in the night itself. He waited for the morning and then cremated the dead body at around 8.00 AM and in the presence of 8-10 public persons and the priest. None

of the persons present during cremation raised any suspicion about deceased Renu having been murdered or dying an unnatural death.

12. Thus the only evidence against the appellant is that he cremated his wife without waiting for her parents and brothers to bid her the last farewell. This would at best cast a suspicion. This Suspicion howsoever grave cannot form the basis of proof and it is for the prosecution to travel the distance from may-be to must-be which it has miserably failed to do in the present case.

13. Consequently, the impugned judgment of conviction and order on sentence are set aside. Superintendent Central Jail Tihar is directed to set free Pradeep from custody if not required in any other case.

14. Appeal is disposed of.

15. T.C.R. be returned.

16. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE NOVEMBER27 2014 ga

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