

**State Vs. Deep Chand**

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**Court :** Delhi

**Decided On :** Aug-20-2014

**Judge :** Pradeep Nandrajog

**Appellant :** State

**Respondent :** Deep Chand

**Judgement :**

\$~29 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : August 20, 2014 + CRL.A. 695/2014 STATE Represented by: ..... Appellant Mr.Varun Goswami, APP Insp.Rakesh Kumar and ASI Pradeep Kumar, PS Aman Vihar versus DEEP CHAND Represented by: ..... Respondent Ms.Anu Narula, Advocate with Respondent in person CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Deep Chand (the respondent) and Arvind (a juvenile) were accused in FIR No.233/2010 PS Aman Vihar for an offence punishable under Section 302/34 IPC.

2. We are not concerned with Arvind who was referred to the Juvenile Justice Board for trial.

3. Vide decision dated October 03, 2012 Deep Chand has been acquitted.

4. The State has been granted leave to appeal on May 28, 2014.

5. It is urged by learned counsel for the State that the testimony of Sonu PW-1 and Anju Devi PW-2 would establish that the deceased Pandit Ji @ Pappu was seen in the company of Deep Chand and juvenile co-accused Arvind at around 7:30 PM when the three had purchased two quarters of liquor from the wife of Sonu on July 23, 2010. Deepak PW-3 has proved that around 6:00 PM the three were seen by Deepak at 6:00 PM at the house of the deceased.

6. Learned counsel urges that last seen being proved through the testimony of PW-1 and PW-2 and the time being around 7:30 PM, it assumes importance that a tile was got recovered by Deep Chand pursuant to his disclosure statement on which blood was detected and that the blunt injury on the person of the deceased could have been caused by the tile in question as opined by Dr.J.V.Kiran PW-5 as per his opinion Ex.PW-5/C. Lastly, counsel urges that a brown underwear having blood stains was produced by Deep Chand pursuant to his disclosure statement which was seized vide memo Ex.PW-9/E on which blood of the same group as that of the deceased was detected.

7. From the trinity of aforementioned circumstantial evidence it is urged that the learned Trial Judge seriously erred in acquitting Deep Chand.

8. The FSL Report Ex.PX would evidence that blood was detected on the underwear and group thereof was B. This was the blood group of the deceased.

9. The seizure memo Ex.PW-11/C of the tile bears the signatures of HC Harpool Singh and Ct.Suresh Kumar, whose testimony would reveal that the tile in question was recovered from the place of the crime on July 26, 2010. The dead body was seized from the same spot in the morning of July 23, 2010. The recovery of the tile which as per opinion of PW-5 could be the possible weapon of offence cannot thus be attributed to the disclosure and at the instance of Deep Chand. The possibility of the police personnel who visited the site in the morning of July 23, 2010 having noticed the tile having blood stains thereon and it being shown as having recovered at the instance of Deep Chand cannot be ruled out.

10. As regards the testimony of PW-1 and PW-2, it undoubtedly emerges that the prosecution has proved that the deceased was in the company of Deep Chand and Arvind at 7:30 PM. The three had purchased alcohol. Obviously to be consumed.

11. From the post-mortem report Ex.PW-5/A it is apparent that the deceased died to the combined effect of asphyxia and cerebral damage. The post-mortem report Ex.PW-5/A probablizes the time of death to be around 3:00 AM in the intervening night of July 22, 2010 and July 23, 2010.

12. As per post-mortem report, 100 ML of brownish fluid was found in the cavity of the stomach. The viscera report Ex.PQ would evidence that in the 15 ML blood sample of the deceased 91.4 mg/100ml of ethyl alcohol was detected. It is thus clear that the alcohol which was drunk by the deceased had been absorbed into the blood stream and this would mean that the deceased died after two to three hours of commencement of consumption of alcohol with Deep Chand.

13. Law is clear. Last seen evidence which is incriminating has to be of the kind when keeping in view the place where the deceased and the accused were last seen together, the place where dead body was recovered, the time lag between the last seen and recovery of the dead body, the possibility of a third person intervening and causing the fatal injuries to the deceased is ruled out and the finger of guilt points towards the accused.

14. In the instant case the place of last seen is the shop of the wife of PW- 1 who used to sell illicit liquor. The place where the dead body was found is far away. That apart, as we have reasoned hereinbefore, the viscera report of the deceased suggests that the entire alcohol consumed had been absorbed by the digestive system and was present in large quantity in the blood. It had yet to be broken down into sugar in the blood. The probable time gap between the commencement of the drinking session and the deceased dying would be between three to four hours. The place where the dead body was found is an open place. It is possible that after drinking session was over and the deceased and Deep Chand parted company, being in an inebriated condition, the deceased had an altercation with somebody. In the streets in the resettlement colonies in Delhi vagabonds are

found in plenty. The possibility of the deceased being subjected to a sexual assault cannot be ruled out evidenced from the fact that the body was stripped nude and clothes worn by the deceased i.e. the pant, the shirt and the underwear were thrown around.

15. That leaves only one incriminating evidence; being recovery of an underwear at the instance of Deep Chand which was detected with human blood of Group B. Deep Chands confessional statement that he was wearing the underwear at the time of the incident is not admissible in evidence.

16. It is trite that where a case rests on the circumstantial evidence, the evidence must meet the twin test. Firstly it must unerringly point towards the guilt of the accused and secondly must rule out the innocence. The circumstantial evidence produced by the prosecution, as noted above, fails both tests.

17. The appeal is dismissed.

18. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)  
JUDGE AUGUST20 2014 mamta

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