

Rani Mishra Vs. State and ors.

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Court : Delhi

Decided On : Aug-20-2014

Judge : Pradeep Nandrajog

Appellant : Rani Mishra

Respondent : State and ors.

Judgement :

\$~10 & 11 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : August 20, 2014 + CRL.A. 1410/2013 UDEY KANT MISHRA Represented by: Appellant Mr.Mukesh Kalia, Advocate with Mr.Bharat Kapoor and Mr.Karan Sachdeva, Advocates with Appellant in person versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP Insp.Rajesh Kumar Mishra, SHO and SI Mahender, Sultan Puri CRL.A. 187/2014 RANI MISHRA Represented by: Appellant Mr.R.K.Thakur, Advocate versus STATE & ORS. Represented by: Respondents Ms.Aashaa Tiwari, APP Insp.Rajesh Kumar Mishra, SHO and SI Mahender, Sultan Puri Mr.Mukesh Kalia, Advocate with Mr.Bharat Kapoor and Mr.Karan Sachdeva, Advocates for R-2 to R-4 with R-2 to R-4 in person CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Rani Mishra, wife of Kamlesh Mishra is aggrieved by the fact that vide impugned decision dated October 04, 2013, the learned Trial Judge has acquitted Uday Kant Mishra, his wife Rekha and one Janak Ram for the offence punishable

under Section 302/34 IPC. She is further aggrieved by the fact that Rekha and Janak Ram have been acquitted of the offence punishable under Section 201/304 IPC.

2. She challenges the decision in Crl.Appeal No.187/2014.

3. Uday Kant Mishra lays a challenge to the same decision vide Crl.Appeal No.1410/2013, being aggrieved by the fact that he has been convicted for the offence punishable under Section 201 IPC.

4. We may note at the outset that only Uday Kant Mishra and his wife Rekha were charged for the offence punishable under Section 302/34 IPC. Janak Ram was not charged for the said offence. Thus, Rani Mishra raising any grievance concerning the impugned decision relating to Janak Ram qua the murder of her husband is obviously misdirected.

5. Learned counsel for Rani Mishra would urge that the view taken by the learned Trial Judge in acquitting the accused for the offence punishable under Section 302/34 IPC is misplaced for the reason four incriminating circumstances have been overlooked; and cumulatively considered, the same are sufficient to nail the guilt of Uday Kant Mishra and his wife Rekha Mishra. The four circumstances pointed out are : (a) the place where dead body of Kamlesh Mishra was recovered is at a distance of about 150 meters from the residence of Uday Kant Mishra and his wife Rekha Mishra; (b) the two absconded after the dead body was discovered; (c) wire Ex.P-5 recovered at the instance of Uday Kant Mishra was the counter part of the wire Ex.P-4 which was the ligature material to strangulate the deceased; and (d) motive emanating from the testimony of Sumant Kant Jha PW-2, Rani Mishra PW-5 and Prashuram Mishra PW-9. Learned counsel urged that there was a serious contradiction in the impugned decision because concerning the wire Ex.P-5 recovered at the instance of Uday Kant Mishra the learned Trial Judge has accepted that it was the counter part of the remainder wire Ex.P-4 which was the ligature material with which the deceased was strangulated and in relation whereto Uday Kant Mishra has been convicted for the offence punishable under Section 201 IPC, ignoring that if a wire is used to strangulate somebody and it breaks, on proof that one broken part was recovered at the instance of the

accused which matched the other broken part found around the neck of the dead body, the only logical conclusion would be that unless the accused explained as to how he had knowledge of one broken part and got the same recovered, the accused was the person who strangulated the deceased.

6. There being considerable logic in the submission advanced concerning the wire Ex.P-5 and its alleged counterpart Ex.P-4, we consider the evidence relating to Ex.P-4 and P-5 at the first instance.

7. The scientific expert who had examined the wire Ex.P-4 and Ex.P-5, Sh.Parshuram Singh PW-32 in his cross-examination deposed as under:

It is correct that Ex.P4, is broken piece of Ex.P5 and it was not separated by any cutting instrument It depends on the body strength of the person as to whether this black wire can be broken with physical strength or any cutting instrument is required to make out a piece from the same. Without any testing I cannot tell how much force was required to break this black wire into two pieces. This aspect was not examined by me as was not asked. It is correct that remaining portion of this particular wire Ex.P4, if any, will be having the same characteristics as of this wire Ex-P4 in the said lot as mentioned by me at point 1 of my report. By word contour I mean the pattern of edges which forms at the time of separating one wire into two pieces by force. I did not examine both the wires Ex.P4 and Ex.P5 on comparison microscope. I examined both the wires physically and under microscope. It is wrong to suggest that due to elasticity of the material, in case of breaking of wire by force the pattern of edges cannot be fitted with each other in all case except few cases depending upon the degree of elasticity of material. There is a procedure to fit the pattern of edges at the time of framing opinion as to whether one part of material belongs to other part of the material. It is correct that point 1A of Ex.P4 is having copper wire till its broken point and is visible. It is correct that point 2A of Ex.P5 is having copper wire beyond its broken point having length of 2.5 inches approximately and is visible. Vol. There is a tendency of extraction of core wire of a cable at the time of breaking the same by force and because of this reason, the copper wire having length of 2.5 inches is visible at point 2A of Ex.P5. It is correct that I have not mentioned this fact in my report Ex.PW32/A.

(Emphasis underlined) 8. Pertaining to evidentiary reliability of an expert opinion, the Fryes test has three fundamental components:(a) It has to be satisfactorily shown that the expert evidence/opinion relates to a scientific, technical or other specialized knowledge and that the theory or technique applicable to the science, technology or specialized field is based on a methodology, hypothesis or tests which has/have been subjected to peer review and publication i.e. there exists standards controlling the techniques operation and the same are generally accepted and additionally that it has been accepted that the relationship of the technique to methods has been established to be reliable keeping into account known or potential rate of error. (b) The author of the opinion qualifies to be called an expert; by knowledge, skill, experience, training or education. It has to be kept in mind that the level of expertise may not affect the admissibility of evidence of the expert but certainly affects the weight to be accorded to the opinion of the expert. (c) The proffered experts testimony must reveal that the methodology, hypothesis or techniques applicable and the theory behind the principles applicable have been applied by the expert and that the expert is mindful of the known or potential rate of error in the derivative of the technique or methodology to the subject thereof.

9. The testimony of the expert would evidence that the third limb of the Fryes test is not met by the expert. His opinion lacks credibility because he did not examine the wire Ex.P-4 and Ex.P-5 on comparison microscope. It needs hardly any emphasis to bring home the point that when a wire breaks due to tension resulting from the two ends of the wire being pulled, the point at which the wires snaps would cause an irregular shaped crosssection in the two faces of the snapped wire. Only if somebody examines the two broken parts on comparison microscope would he be able to see that one face fits into the other with such precision that it can safely be said that one is the component of the other.

10. That apart we find a serious flaw in the truncated opinion of the forensic expert. The flaw is that the seizure memo Ex.PW-16/D of the wire Ex.P-5 at the instance of Uday Kant Mishra makes a mention of the description of Ex.P-5 as follows: MODERN (R) REGD.NO.510203 COAXIAL CABLE75OAMO. The cable wire Ex.P-5 found around the neck of the deceased, as per the seizure memo

Ex.PW-19/A makes a mention of the description as follows: MODERN (R) REGD.NO.510203 AXIAL CABLE75JHMS.

11. It is apparent that the two cable wires were manufactured by the same manufacturer having same registration number but the difference in the two was that whereas one was CABLE75OAMO the other was CABLE75JHMS.

12. Under the circumstances it has to be held that there is no connection between Ex.P-4 and Ex.P-5 and it cannot be said that Ex.P-5 is the broken part of the cable, remainder part whereof is Ex.P-4.

13. The alleged incriminating circumstance premised on Ex.P-4 and Ex.P-5 is not established.

14. It may be true that the distance of the house of Uday Kant Mishra and his wife Rekha from where the dead body of Kamlesh Mishra was recovered is about 150 meters, but nothing turns thereon for the reason incrimination is sought to be urged on the ground that the residence of the deceased was about 15 kms from the place where his dead body was noted. The argument was that the deceased was found murdered around the house of Uday Kant Mishra and Rekha Mishra and 15 kms away from his house. The argument overlooks the fact that the deceased Kamlesh Mishra was the brother of Sumant Kumar PW-2, who admitted that he was residing about 500 meters away from the place where dead body of his brother was recovered. If the proximity of the residence to the place where dead body of deceased was recovered is an incriminating circumstance, it would be equally incriminating Sumant Kumar. Be that as it may, the deceased could be on his way to meet his brother when unexpected events overtook him causing his death.

15. On the issue of Uday Kant Mishra and his wife Rekha Mishra absconding, there is no clear evidence that the two absconded. The only pointer in said direction is the testimony of Sumant Kumar who said that on inquiry from the neighbourhood he learnt that Uday Kant Mishra and his wife were missing since the morning of November 07, 2005. We note that as per the prosecution the deceased was murdered on November 06, 2005. The dead body was noticed at a

vacant plot near Savitri Public School at about 10.00 A.M. on November 07, 2005. That apart, inasmuch as perpetrators of a crime abscond to flee from justice, innocent persons fearing falsely being arrested also flee to save themselves and thus by itself absconson by itself is neither here nor there.

16. On the subject of motive, the testimony of PW-2, PW-5 and PW-9 would suggest that the motive was a belief by Uday Kant Mishra and his wife that the deceased had an hand in the murder of their son in the State of Bihar. But we find that said motive is a probable fancy in the mind of the three witnesses for the reason concededly the police in Bihar had ostensibly located the assassins of the son of Uday Kant Mishra and his wife and had the two any suspicion that the deceased was responsible for the murder of their son, the two could have filed an application before the concerned Court of Sessions requiring the police in Bihar to further investigate the matter or the two could in their deposition named the deceased. Admittedly, they did not do so.

17. It is trite that in a case of circumstantial evidence each circumstance has to be proved beyond reasonable doubt before an inference can be inferred from the proved circumstance.

18. Criminal Appeal No.187/2014 filed by Rani Mishra is dismissed.

19. Criminal Appeal No.1410/2013 filed by Uday Kant Mishra is allowed. He is acquitted of the charge under Section 201 IPC. Sentence imposed upon him is set aside. Bail bond and surety bond furnished by him are discharged.

20. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)
JUDGE AUGUST20 2014 skb

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