

Dharmender Kumar Paswan Vs. State

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Court : Delhi

Decided On : Sep-29-2014

Judge : Pradeep Nandrajog

Appellant : Dharmender Kumar Paswan

Respondent : State

Judgement :

§~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: September 29, 2014 + CRL.A. 1140/2014 DHARMENDER KUMAR PASWAN Appellant Represented by: Mr.Chetan Lokur, Advocate versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP Insp.Girish Kumar Singh, ATO, PS Okhla Industrial Area CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) 1. Dharmender Kumar Paswan the appellant, has been convicted vide impugned decision dated July 23, 2013 for the offence of having murdered his live-in partner Sudha. He has also been convicted for causing evidence of the commission of the offence to disappear with the intention to screen himself as an offender. Vide order on sentence dated August 01, 2013, for the offence of murder he has been sentenced to undergo imprisonment for life and pay fine in sum of `10,000/-, in default of payment of fine, to undergo simple imprisonment for three months. For the offence punishable under Section 201 IPC he has been

sentenced to undergo imprisonment for three years and pay fine in sum of ` 1,000/- , in default of payment of fine, to undergo simple imprisonment for one month.

2. The testimony of Master Ayush PW-5 who claimed to be an eye witness has been believed. The next incriminating evidence in returning the verdict of guilt is the testimony of Rajender PW-7, the landlord, as per which the appellant and the deceased were last seen at their residence on August 10, 2010, and that was when the deceased was seen last alive. The next incriminating evidence is a linear, healed scar mark of size 4.5 x 2 cm present over anterior aspect of left side of the appellants chest which as per Dr.Hari Prasad PW-21 who has examined the appellant could be the result of a finger nail or a nail like object. Lastly absconsion of the appellant.

3. While cross-examining Sujita PW-4, the sister of the deceased Sudha, and Rajender Prakash PW-7, the landlord of E-26, Harkesh Nagar, Okhla Industrial Area, Phase II, the line of defence which emerges is that the appellant was not residing, as a tenant, in a room in the building E-26, Harkesh Nagar, New Delhi, but ultimately the stand taken by the appellant, evidenced by his answers given to incriminating circumstances put under Section 313 Cr.P.C. followed by appellant examining himself as DW-2, is that the appellant and the deceased resided together in a room taken on rent at E-26, Harkesh Nagar, Okhla Industrial Area, New Delhi but the two parted company when Sudha left the room at 9:00 AM on August 10, 2010 with her sister Sujita PW-4 and the appellant vacated the tenanted premises thereafter.

4. We note that while examining himself as DW-2, the defence set up by the appellant was that Sudha was his colleague at Gautam Budh Hospital, Naland District, Bihar where both worked as compounders. Sudha was married to one Mukesh and had two children born to her, one was a son named Ayush and the other was a daughter named Alka. Mukesh was a drunkard and used to beat Sudha and therefore she left her husband and children and came with him to Delhi in July, 2008. Being on friendly terms, they first resided at C-45, Harkesh Nagar. Suchita Sudhas sister and her husband Kamlesh started visiting them at Delhi but threatened him to leave Sudha. They left the tenanted premises at C-45, Harkesh

Nagar and shifted to E-26, Harkesh Nagar. Ayush son of Sudha was three years old and used to call him Papa. He had no physical relationship with Sudha though they lived together in the same room. What happened on August 10, 2010 and thereafter needs to be noted by us in the language used by the appellant himself. We thus quote from his testimony. (But need to highlight that the appellant has referred to Sujita as Suchita and at places has referred to Ayush as Ashu). He said:

At about 9:00 AM, on 10.08.2010, Suchita alone came at my residence. At that time, Sudha was getting ready to go to her place of work. Suchita asked Sudha to accompany her to their residence at Jaitpur and told her that her, husband Mukesh had also come there to take her away. Sudha packed her luggage. She kept all her sarees and clothes and Ashus clothes and accompanied Suchita and also took away Ashu her son with her. She left my house at about 10:00 AM with Suchita. My duty hours at that time were 02:00 Pm to 10:00 PM and I was working at M/s.Pencity Express, A-133, Phase-II, OIA. Since, Sudha had left me therefore, I had become sad and had not gone to my place of work and remained at home. I was not inclined to further stay at my room and at about 08:00/09:00 PM went to Harola, Noida to meet my friends namely Ram Kumar and Jitender. For two days, I resided with my friends and thereafter, on 14/15.08.2010, I took on rent a room in Harola, Noida in the neighbourhood of my friends room. I joined M/s.Elephonta Export at Noida at a salary of `5,200/-, whereas I getting a salary of `4,500/- in M/s.Pencity, where I was earlier working. I brought all my belongings from E-26, Harkesh Nagar to Room No.28, Sector-5, Harola, Noida, the tenanted premises, where I started residing. Thereafter, I had no concern or any link or any talk with Sudha or the child Ayush or with her sister Suchita or any of her relative.

5. Process of criminal law was set into motion when at 9:45 AM on August 12, 2010 Ravi Sharma PW-17 was told by some children when he was going to his office that they had seen a dead body in a drain near school at C-50, Harkesh Nagar. He rang up the police control room and conveyed said information which was passed on to the Duty Officer ASI Jawahar Singh PW-6 PS Okhla Industrial Area who made the DD entry 6A, Ex.PW1/A recording said fact.

6. Investigation was entrusted to ASI Vinod, who accompanied by Ct.Mahender PW-13 went to the place in question. Insp.Pradeep Kumar PW-19, the SHO of the Police Station also learnt about the dead body being seen in a drain near the school at Harkesh Nagar and therefore even he proceeded to the spot.

7. Crime team was summoned. Photograph Ex.PW-1/A-24 was taken. The body could not be identified and was sent to the mortuary with a request that post mortem be kept pending. A hue and cry notice Ex.PW-1/A-15 and Ex.PW-1/A-16 was extensively published in the area showing the photograph of the dead body.

8. Rajender Prakash PW-7 gave the breakthrough on August 19, 2010. He told the Investigating Officer that the deceased was Sudha married to Dharmender. The two were his tenants and he had last seen them on August 10, 2010. He identified the dead body on the basis of the clothes, which we note are a red coloured salwar kameez, and as per Rajender Prakash were gifted to Sudha by Monika the daughter of Rajender Prakash.

9. The post mortem of the dead body of Sudha was thereafter got conducted after the body was identified on August 19, 2010. The external injuries in the form of a ligature mark on the neck evidence a homicidal death because the ligature mark was transversally placed encircling the entire neck. There was extravasation in the inner tissue. Sub-facial haemorrhage with thyroid cartilage fracture was detected. As per the postmortem report time of death was 8 to 9 days prior to when the post-mortem was conducted, which we note was at 3:00 PM on August 19, 2010; meaning thereby the death took place either on the 10th or the 11th day of August, 2010.

10. It is apparent that the appellant was a suspect. But the problem was to locate him. The Investigating Officer managed to get the lead that the appellant was from District Nalanda in Bihar and did manage to make a contact with Sudhas mother Smt.Jano Devi PW-2, but could elicit hardly any worthwhile information regarding whereabouts of the appellant because of the reason Sudha was married to one Mukesh (the person named by the appellant when he examined himself as DW-2). Mukesh had suffered an injury due to which he was rendered useless. Sudha took her son Ayush and started residing with the appellant as his wife and this was not

to the liking of Sudhas family members and thus they were disinterested in what had happened.

11. Things moved when probably Sujitas (PW-4) conscience compelled her to meet the Investigating Officer and disclose to him where the appellant could probably be located. The appellant was finally apprehended on July 12, 2011 from Noida.

12. At the trial various witnesses were examined to prove the facts which we have noted hereinabove, and in view of the final stand taken by the appellant when he was examined under Section 313 Cr.P.C. and in respect of which stand he even examined himself as his defence witness, we propose not to burden our decision by noting the testimony of various witnesses, save and except to note such evidence required to deal with the contentions urged by learned counsel for the appellant during arguments in the appeal.

13. Jano Devi PW-2, Sudhas mother deposed that after leaving Mukesh who had got injured, Sudha started living with the appellant along with her son Ayush and that after sometime somebody left Ayush in their village. Her son-in-law Kamlesh Prashad (husband of Sujita PW-4) informed her of her daughters death. The police showed to her the photograph Ex.PW-1/A24 and she identified Sudha as the one whose dead body could be seen in the photograph. She claimed that Ayush had told her that his papa i.e. the appellant had left him in the village.

14. Sujita PW-4 deposed that on July 17, 2011 her husband learnt about Sudha being killed as he had seen some poster in Delhi. She and her husband went to the police station and identified, from the photograph, that it was Sudhas dead body. That Sudha and appellant were married after Sudha left Mukesh.

15. Master Ayush PW-5, a child witness, claimed to have heard his mothers shrieks and saw his father throttle his mother to death. He referred to the appellant as his father. He disclaimed that his father had left him in the village.

16. Rajender Prakash PW-7 deposed that there were seven or eight tenants in his house E-26, Harkesh Nagar in the year 2010. Appellant, his wife Sudha and son

Ayush were residing in a room taken on rent by the appellant on the first floor. He had last seen appellant and Sudha in their residence in the evening of August 10, 2010 and learnt a few days thereafter that Sudhas dead body was found on August 12, 2010. That on August 19, 2010 he identified Sudhas dead body by seeing the clothes which were gifted to Sudha by his daughter.

17. During cross-examination Rajender said that there was no written rent agreement and that he never issued any receipt while accepting the rent. He said that he had not got done the tenant verification from the police and that when he enquired from his wife as to where has the appellant, his wife and son disappeared, his wife told him that they had gone to their native place to celebrate Raksha Bandhan.

18. Time to deal with the contentions advanced.

19. It is firstly urged that Ayush, whose testimony as an eye witness was believed, was a tutored witness and thus the learned Trial Judge erred in accepting his testimony.

20. We agree with the argument advanced for the reason Ayush claims that his mother was manually throttled and he heard her shrieks. It is not possible to believe him for if the deceased was strangulated in the one room tenement and there being at least six other tenants around it is not possible that somebody would not have heard the shrieks. Secondly if after killing the deceased in the room the appellant fled, in all probability Ayush would have been left behind to be noted by the other inhabitants of the building. Further, the post-mortem report of Sudha evinces strangulation by a ligature material. Lastly the young boy fairly admitted that his mausi and nani had brought him to Court and had tutored him to speak as he was saying. To the pertinent question : whether they had told what he had to speak in Court, the young lad truthfully acknowledged in the affirmative.

21. Unfortunately, the learned Trial Judge has overlooked these vital aspects.

22. It appears that the learned Trial Judge was influenced by the fact that young Ayush aged around 5 years when his mother died could not have reached his

village on his own and obviously somebody known to him left him there.

23. It may be true that, that somebody is most likely the appellant, but it is trite that suspicion howsoever strong cannot take the place of proof. The young lad being left with somebody known to the family in the village by the appellant, who for reasons we shall hereinafter be dealing with is the proved assailant of Sudha, and that person leaving Ayush in his village cannot be ruled out. For if Ayush had seen his mother being throttled to death by his father and he had heard her screams as claimed by him, he would have immediately told said fact to his nani in the village who would have immediately contacted the police, howsoever strong was the ranker in her mind on the perceived unsocial behaviour of Sudha who left her husband and lived an immoral life (perceived from the eyes of a common villager) with the appellant.

24. The incriminating evidence in the MLC of the appellant of having a scar mark which possibly could have been caused by a human nail which has been used by the learned Trial Judge has rightly been attacked as a case of undue importance given to trivial evidence for the reason the appellant was apprehended nearly 1 year after Sudhas dead body was found and the doctor who examined the appellant could not determinatively say that the scar mark was the result of an injury caused by a nail alone. Any sharp edged object could have caused the injury which resulted in the scar mark.

25. The fact of the appellant absconding from the tenanted premises without surrendering the tenancy is proof of his guilt. While discussing the evidence on this issue we note the argument advanced. The argument was that so decomposed was Sudhas dead body that the landlord, who had no knowledge of any particular identification mark on the body of Sudha, could not have identified the dead body as that of Sudha and thus the body recovered not being proved to be that of Sudha; there is no evidence that Sudha died on or after August 10, 2010.

26. As we have noted in the testimony of Rajender Prakash PW-7, he identified the dead body from the clothes which were gifted to Sudha by his daughter Monika. This testimony has gone unchallenged. Further, we have seen the photograph Ex.PW-1/A-24 and we find that the state of decomposition has not

reached the stage where the body is in an unrecognizable form. A person who had been seeing Sudha every day, which the landlord would be, would be in a position to identify the dead body as that of Sudha empirical facts from the features noticeable of the dead bodys face make us say so.

27. While cross-examining Rajender Prakash, no suggestion was put to him that the appellant returned to the tenanted premises on August 14, 2010 or August 15, 2010 and shifted out. As noted above, while examining himself as his witness the appellant claimed that Sujita (referred to as Suchita) and her husband took away Sudha and Ayush (referred to as Ashu) who left with their luggage. If this had happened, Sudha would have bid farewell to the other occupants in the building where she and the appellant had resided for a few months. The landlord would have knowledge of said fact. As per the appellant he felt sad when Sudha left him in the morning at 9:00 AM on August 10, 2010 and he decided to leave the room and went in the evening to his friends Ram Kumar and Jitender in Noida where he resided with them for two days. He then took a room on rent in Noida on either August 14 or August 15, 2010 in the neighbourhood of his friends and thereafter he brought his belongings from E-26, Harkesh Nagar to the place taken on rent in Noida. No such line of cross-examination was adopted when Rajender Prakash PW-7 was in the witness box.

28. The post-mortem of Sudhas dead body conclusively establishes that she died either on the 10th or the 11th day of August, 2010. The testimony of PW-7 establishes that appellant and the deceased as also Master Ayush were present at E-26, Harkesh Nagar. Thereafter the tenanted room was found locked. Appellant did not surrender the tenancy. Appellant absconded. Sudhas dead body was seen in the morning of 12th August, 2010. The appellant has to render an explanation as to when did he part company with Sudha. Appellants claim that Sudha parted company with him in the morning on August 10, 2010 is false for the reason he claims that Sujita and her husband took away Sudha and Ayush, but no such defence has been put to Sujita. Sujita has not been even given a suggestion that she took with her Sudha and her son Ayush in the morning of August 10, 2010.

29. It may be true that the evidence i.e. the motive being Sudha being in illegal relationship with PW-20, Ram Kumar Bhagat has not been proved; and indeed motive of the kind i.e. a female having illicit relationship with a male is very difficult to be proved. But the circumstantial evidence of the conduct of the appellant i.e. absconsion around the time when Sudha suffered a homicidal death, in the facts and circumstances of the instant case, is sufficient evidence to hold that the charge against the appellant is proved.

30. The appeal is dismissed.

31. TCR be returned.

32. Two copies of the present decision be sent to the Superintendent Central Jail Tihar for necessary action. CrI.M.B.No.10341/2014 Dismissed as infructuous. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE SEPTEMBER29 2014 mamta

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