

Shivji Singh Vs. State

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Court : Delhi

Decided On : Oct-29-2014

Judge : Mukta Gupta

Appellant : Shivji Singh

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision : October 29, 2014 + CRL.A. 1153/2014 SHIVJI SINGH Represented by: Appellant Mr.Rahul Tyagi, Mr.VVP Singh, Mr.Sandeep Singh, Advs. versus STATE Represented by: Respondent Mr.Lovkesh Sawhney, APP with Insp. Vijay Kumar PS Mandawali. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Shivji Singh impugns the judgment dated April 29, 2014 by which he is convicted for the offence of murder of Ms.Neha and the order on sentence dated May 02, 2014 by which he has been directed to undergo imprisonment for life and to pay a fine of `50,000/- and in default of payment of fine to further undergo simple imprisonment for one year.

2. Learned counsel for the appellant contends that the husband/fiance of the deceased Amar Singh who was a material witness has not been examined. No date has been mentioned in the seizure memo of the pant and shirt allegedly

seized from the appellant. Despite the house being fourstoried no public witness was associated while opening the door of the house and the entire case is based on the testimony of Police witnesses who have not witnessed the incident. There being no eye-witness to the incident the appellant having been falsely implicated he is entitled to be acquitted.

3. The process of law commenced on receipt of DD No.49B regarding a quarrel at House No.D/25-A, Ganesh Nagar, Delhi on which HC Satish PW-12 and Constable Murlidhar PW-17 reached the spot. While they were trying to get opened the door of 2nd floor flat, Inspector Keshav Kumar PW18 also reached the spot. When the door was sought to be broken open appellant who was present in the house opened the door and came out. Inside the house a dead body of a lady smeared with blood was found. Appellant was interrogated, however he revealed nothing. The crime team took the photographs and finger prints. The name of the deceased was revealed as Neha Sharma. The body was preserved as no relative of Neha Sharma was present. From the kitchen of the house one blood stained knife which was in bent condition was lifted and sealed after preparing the sketch PW-12/C. A blood stained iron pipe was also lifted from the other room of the house and the same was also seized. The clothes of the appellant i.e. blood stained shirt and pant worn by him were also seized and sealed and finally the appellant was arrested when on further interrogation he disclosed about the commission of the offence. Since no recovery was made pursuant to the statement of the appellant the same is not admissible in evidence. Dead body was identified by Krishan Dev Sharma and Pinki Sharma and was handed over to them. At the time of post-mortem examination the clothes of the deceased were also seized and two vaginal swabs were also prepared and sealed by the doctor. Pursuant to a request for permission to take blood and semen sample of the appellant on December 17, 2009 he was taken to the hospital where blood sample of the appellant was collected however no semen could be given by him.

4. Dr.Vinay Kumar PW-5 conducted the post-mortem of Neha Sharma and noticed the following injuries:

1. Face was deformed with dried blood stains present all over face, three teeth, two upper central incisor and one lateral incisor were uprooted/missing.
2. Labia minora was enlarged, anal canal, funnel shape with loss of rugosities and anal fissure present at 7 o'clock position. External injuries:
 1. Lacerated wound of 4 x 3.4 cm present over right eyebrow, 3 cm from midline, margins irregular and bone deep.
 2. Lacerated wound of 2.5 x 0.9 cm, bone deep 0.2 cm above medial end of right eyebrow, 2.5 cm from midline, right frontal bone fractured underneath obliquely placed.
 3. Lacerated wound of 4.3 x 1.2 cm, bone deep 0.2 mm above right eyebrow, 2.3 cm midline.
 4. Lacerated wound of 2 x 0.7 cm present over right side of forehead 2 cm from midline and 1.8 cm above injury No.3 obliquely placed.
 5. Lacerated wound 2.7 x 1 cm present over right side of forehead 1.6 cm from midline and 0.2 cm above injury no.4 obliquely placed.
 6. Lacerated wound of 3 x 1 cm present over left side of forehead 5 cm from midline, 1 cm above left eyebrow obliquely placed.
 7. Lacerated wound 1.7 x 0.5 cm present over left side of forehead 0.8 cm above and lateral to injury no.6 obliquely placed.
 8. Lacerated wound 3.5 x 1.6 cm present over left parietal region 4 cm above left ear oblique bone deep.
 9. Lacerated wound 6.6 x 1 cm present 7 cm above left ear 7 cm above over left ear over parietal region 3 cm above injury no.8 oblique bone deep.
 - 5.
 10. Fracture of both bones, left radius and ulna 6 cm above wrist joint on dissection haemorrhage in surrounding tissue.

11. Fracture of both bones right radius and ulna 10 cm below elbow joint with haemorrhage in surrounding tissue.
12. Lacerated wound 1 x 0.5 cm present over right forearm 11.5 cm below elbow joint oblique muscle deep.
13. Contusion 6 x 5 cm present over outer side of right wrist joint.
14. Contusion 6 x 4 cm present over lateral aspect of right knee joint 2 cm above over thigh.
15. Abrasion 3 x 2 cm present over left leg 3 cm below knee joint over front.
16. Lacerated wound 2 x 0.8 cm placed 6 cm above elbow joint over right arm.
17. Lacerated wound 2 x 0.5 cm present at right side of chin 1.5 cm from midline.
18. Abrasion 8 x 5 cm just below chin.
19. Abrasion 7 x 2 cm over lateral aspect of left side of neck 3 cm from midline.
20. Lacerated wound 0.6 x 0.2 cm at upper lip 1.5 cm from midline, buccal mucosa was lacerated, size 1 x 0.6 cm over right side.
21. Lacerated wound 7.5 x 1.5 cm, 7 cm above mid clavicular line over lateral part of right side of neck.

Dr.Vinay exhibited the post-mortem report as Ex.PW-5/A and opined that the cause of death was due to cranio-cerebral damage consequent upon blunt force impact. All the injuries were ante-mortem in nature and recent in duration and sufficient to cause death in the ordinary course of nature.

6. Asha Sharma, the grand-mother of the deceased appeared as PW-6 and deposed that her grand-daughter was studying in Delhi and doing parttime job with one Amar Singh in his company at a salary of `5000/- per month. Neha had informed her that she had taken three rooms on rent and was residing at the place along with Amar Singh with whom he had entered into a partnership. On October 07, 2009 at about 9.30 PM she received a phone call from Amar Singh who

informed her that somebody had killed Neha. On enquiry Amar Singh told that Police was with him. She talked to the Police and was informed that they had apprehended the person who had killed Neha. She informed her son Vimal Sharma and daughter Pinki about this fact. She came to Delhi with her husband on October 08, 2009 when she identified the dead body which was handed over to her after postmortem. This witness was cross-examined on the aspect of relationship of Neha with Amar Singh and she stated that Neha was not engaged with Amar Singh nor was there any proposal for engagement. According to her Neha had told her that Amar Singh was her Boss and she wanted to be married at her native place. She further clarified that after the death of Neha Amar Singh never contacted her or any of the family members.

7. Inspector Keshav Kumar PW-18 deposed that after receipt of DD No.49B at PS Mandawali on which HC Satish attended, further information about the murder was also received and thus he reached the spot i.e. D/25-A, Ganesh Nagar. He found HC Satish and Ct. Murlidhar present and trying to get open the door of the said house but it could not be opened. Then he introduced himself and warned that in case door was not opened it would be broken open on which Shivji Singh present in the Court came outside after opening the door of the house. Inspector Keshav Kumar made enquiries from Shivji Singh. He noticed that there were two rooms in the said house with one hall between the said two rooms and a dead body of a lady smeared with blood was found in left side room. Shivji Singh was interrogated but he remained silent and disclosed nothing except his name. Crime team was summoned which prepared the report and photographed the place of occurrence. Chance prints were also lifted. The dead body was shifted to LBS mortuary with a request to preserve the same for 72 hours and rukka was sent for registration of FIR. Blood samples were lifted from the room, a blood stained kitchen knife in bent condition from the kitchen of the house and a blood stained iron pipe from another room of the said house which were all seized and sealed. The clothes of Shivji Singh were also got removed and converted into parcel and sealed. Shivji Singh was taken to Police station where the case property was deposited and he was again interrogated when he made the disclosure statement.

8. This version of Inspector Keshav Kumar is corroborated by HC Satish PW-12 and Ct.Murlidhar PW-17 and despite cross-examination nothing has been elicited. The appellant in cross-examination could not dent the version of these witnesses that he was not present in the room except that there is a suggestion that he was falsely implicated in this case and the actual culprit was Amar Singh who was left.

9. The version of Police witnesses is assailed by the learned counsel for the appellant on the ground that no public witnesses were associated. In the absence of public witness being associated with the search and seizures the evidence of these Police witnesses does not get vitiated and conviction can be based on the testimony of police officers if it found cogent and convincing. In the present case the version of HC Satish who first reached the spot along with Ct.Murlidhar is duly corroborated by Inspector Keshav Kumar and the report of the crime team and the photographs and hence even in the absence of any public witness being associated their version can be relied upon.

10. Though chance prints were lifted from the spot, however the report of the finger prints expert Ex.PW-18/B states that the chance prints marked Q1, Q2A and Q2B were not identical with the finger print of the person mentioned at Para I(C) i.e. the appellant as it further states that chance prints marked Q1, Q2A and Q2B were partial prints hence these cannot be searched on the record of the Bureau. If the chance prints marked Q1, Q2A and Q2B were partial prints than no definitive opinion could be given that the same did not match with that of the appellant.

11. The defence of the appellant is of denial. He has not led any defence evidence. In his statement under Section 313 Cr.P.C. he has also not given any explanation except stating that the witnesses are false and interested witnesses. Though the defence has sought to create a doubt on the prosecution case in view of the role of Amar Singh and that he never appeared in the witness box, however on the deposition of these three witnesses i.e. HC Satish, Ct. Murlidhar and Insp. Keshav Kumar the offence committed by the appellant is proved beyond reasonable doubt.

12. As per the FSL report the blood on the clothes of the appellants shirt and pant was of human origin O group which tallied with that of deceased. Further blood

sample of Shivji Singh was also collected and the same was of A group. Merely because the seizure memo of the clothes of the appellant does not bear the date the recovery of the blood stained clothes cannot be discarded.

13. Despite the appellant having been found in the room with the deceased soon after the incident with blood stained clothes he has not rendered any explanation as to how the incident took place except a bald denial. Since the appellant was found in the room with the deceased immediately after the death with the door of the float closed the onus shifts on him under Section 106 of the Evidence Act to prove the facts which were exclusively in his knowledge as to how the deceased died in which the appellant miserably failed.

14. In view of the evidence on record as discussed above the impugned judgment of conviction and order on sentence suffer from no illegality or perversity. The same are upheld.

15. Appeal is dismissed.

16. T.C.R. be returned.

17. 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 OCTOBER29 2014 ga

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