

Ramesh Kumar @ Rameshwar Vs. State

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Court : Delhi

Decided On : Jul-24-2009

Reported in : 2010CriLJ85

Judge : Pradeep Nandrajog and; Indermeet Kaur, JJ.

Acts : Evidence Act - Sections 3 and 8; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Cri.A. No. 304/2001

Appellant : Ramesh Kumar @ Rameshwar

Respondent : State

Advocate for Def. : Richa Kapoor, APP

Advocate for Pet/Ap. : L.K. Upadhyay,; Devesh Vikram Shukla and; Sandeep Chauhan

Disposition : Appeal dismissed

Judgement :

Pradeep Nandrajog, J.

1. The appellant has been convicted for the offence of having murdered his wife.

2. At the hearing of the appeal, the learned Counsel for the appellant did not dispute that the wife of the appellant was brutally murdered in her matrimonial house in the intervening night of 30th and 31st March 1997; the fact that she was murdered is evidenced by the post-mortem report Ex.PW-10/A as per which the deceased had received 8 injuries, of which, injury No. 1 was caused by a hard blunt force and the remaining were caused by a sharp edged weapon. Further, it was not disputed by learned Counsel for the appellant that the deceased died due to injury No. 4 which had cut the neck of the deceased and that the said injury by itself was sufficient in the ordinary course to cause death. It was further admitted that there is no evidence of any forced entry into the house or of the presence of any other family member in the house when the wife of the appellant was murdered.

3. To put it pithily, the contentions urged by learned Counsel for the appellant centered on the issue: Whether from the evidence on record a finding of guilt could be returned against the appellant

4. The learned Trial Judge has returned a finding of guilt on the basis of four circumstances against the appellant. The same are:

a. That the post-mortem report of the deceased conclusively established a case of homicide.

b. The place where the deceased was killed was the matrimonial house of the deceased.

c. The appellant was absconding and said conduct of absconding was suggestive of the guilt of the appellant.

d. A knife, a darat (straight sickle) and a darati (curved sickle), Ex.P-12, Ex.P-13 and Ex.P-14 recovered pursuant to the disclosure statement of the appellant as also a kurta Ex.P-15 and a pyjama Ex.P-16 recovered pursuant to the disclosure statement of the appellant were stained with human blood and the blood on the pyjama, on reaction, revealed it to be of group A which was the blood group of the deceased; and hair recovered from the darati was similar to the hair of the

deceased in morphological and microscopical characteristics.

5. It was urged at the hearing of the appeal that the recoveries of Exs.P-12 to P-16 were from an open field and no public witness was associated with the recovery and hence the recoveries were highly tainted. It was further submitted that mere presence of human blood on four articles recovered and presence of human blood of group A from the fifth was not conclusive of the fact that the said blood was that of the deceased. Pertaining to the forensic examination of the hair of the deceased and the hair found on the darati, learned Counsel urged that in the absence of a DNA analysis it could not be said with certainty that the hair recovered from the darati was that of the deceased. Pertaining to the circumstance that the deceased was found murdered in her house, learned Counsel urged that there was no evidence that the appellant was seen in his house in the intervening night when his wife was murdered. On the contrary, learned Counsel urged, that the testimony of DW-1 established that the appellant stayed in the house of his uncle Jaipal DW-1, in the intervening night of 30th and 31st March 1997. Thus, it was urged that firstly there was evidence of the appellant not being in his matrimonial house in the night when the murder took place; alternatively it was urged that in the absence of any evidence led by the prosecution that the appellant was seen in his house in the intervening night when the murder took place, from the sole circumstance of the appellants wife being murdered in her matrimonial house, no inference of guilt could be drawn against the appellant. With respect to the circumstance of absconding, learned Counsel urged that the testimony of DW-1 established that the appellant was not absconding and that prior to the night when his wife was murdered the appellant was with DW-1 and lived with him till 1st April 1997 and left in the evening of said day to go to his house.

6. To appreciate the reasoning of the learned Trial Judge and the challenge thereto, a brief resume of the evidence brought on record may be penned.

7. DD No. 9, Ex.PW-7/A was recorded by the duty constable at police post Kapashera under the jurisdiction of PS Najafgarh at 8:35 AM on 31.3.1997 that a wireless message has been received from the police control room informing that a murder has taken place in a house in village Amrahi and that blood was flowing

out.

8. SI Lalit Mohan PW-7 and HC Kailash Chand PW-6 were at the police post. They left for the village and took along with them a copy of DD No. 9. Inspector Mahesh Kumar PW-13 was posted as the Addl. SHO at PS Najafgarh. Said information was conveyed to him. Even he left for the village. All the three police officers reached the village. Outside the house of the appellant a crowd had gathered. The grill door and the wooden door of the house were locked and blood was flowing out. The locks Ex.P-1 and P-2 were broken and along with a chain Ex.P-3 were seized as recorded in the memo Ex.PW-7/B. Entry was made in the house. Nobody was present in the house. The dead body of the wife of the appellant was inside the room. She was brutally murdered. Pieces of broken glass bangles Ex.P-5 and strands of human hair Ex.P-7 as also a pair of ear rings Ex.P-8 were seen on the floor. The glass bangles were seized as recorded in the memo Ex.PW-7/D. Strands of hair were seized as recorded in the memo Ex.PW-7/E and the ear rings were seized as recorded in the memo Ex.PW-7/G. Three parcels were prepared and sealed at the spot. There was blood on small pieces of stone in the room. The stone pieces Ex.P-5 were seized as recorded in the memo Ex.PW-7/D. A shirt Ex.P-9 of a child having blood stains was seized as recorded in the memo Ex.PW-7/H. A chunni Ex.P-4 was seized at the spot as recorded in the memo Ex.PW-7/K.

9. HC Jagdish PW-3, a photographer was summoned. He took photographs Ex.PX-1 to Ex.PX-14 of the dead body.

10. Inspector Mahesh Kumar PW-13 recorded the statement Ex.PW-4/A of Brahm Prakash, the brother of the deceased who resided in a village nearby, namely, Jharoda Kalan and had reached the spot. As per the statement he stated that the appellant was demanding money and that since he did not pay the money, he suspected that the appellant had murdered his sister. After making an endorsement Ex.PW-13/B, Inspector Mahesh Kumar got the FIR registered.

11. The dead body of the deceased named Santosh was sent to Subzi Mandi mortuary where Dr. K.L.Sharma PW-10 conducted the post-mortem and prepared the post-mortem report Ex.PW-10/A recording therein that the deceased had 8 injuries of which 7 were caused by a sharp-edged weapon of offence and that

injury No. 4 which had cut the neck was sufficient in the ordinary course to cause death. After the post-mortem the doctor handed over the blood sample of the deceased on a piece of gauze to the investigating officer. Relevant would it be to note that the knife, the darat and the darati recovered by the investigation officer at the instance of the appellant were sent to Dr. K.L.Sharma for his opinion on 28.4.1997; opinion being whether the injuries on the body of the deceased could be caused by the said three articles. He gave his opinion that injury No. 4 could be caused by the darati; injury No. 1, 2 and 3 could possibly be caused by the knife and injury No. 5, 6 and 7 could be possibly caused by the darat.

12. Satbir Singh PW-1, a villager residing in the village Amrahi told the investigation officer, as recorded in his statement under Section 161 Cr.P.C. that around 12:00 midnight he had seen the appellant leave his house in a perplexed state of mind.

13. The appellant was apprehended on 2nd April 1997 and was interrogated. His confessional-cum-disclosure statement Ex.PW-7/N was recorded by Inspector Mahesh Kumar in presence of SI Lalit Mohan and HC Kailash Chand PW-6, as per which he stated that the kurta and the pyjama which he was wearing when he committed the offence as also the knife, darat and darati used by him to commit the crime were hidden by him and he could get the same recovered. Thereafter, he led the police officers to Gauda Farm House, Old Pochan Pur Road and from within the bushes (lying concealed) got recovered the knife Ex.P-12, the darat Ex.P-13, the darati Ex.P- 14, the kurta Ex.P-15 and the pyjama Ex.P-16. The said articles were taken into possession as recorded in the seizure memo Ex.PW-7/P (pertaining to Ex.P-12, Ex.P-13 and Ex.P-14) and Ex.PW-7/Q (pertaining to Ex.P-15 and Ex.P-16) sealed and deposited in the malkhana.

14. Along with Ex.P-12 to Ex.P-16, the various articles seized from the room where the deceased had been killed as also her blood sample was sent to the serologist and for forensic examination of the hair found sticking on the darati with reference to the strands of hair Ex.P-7. As per the report Ex.PW-11/B it was opined that the hair recovered from the darati were similar to the hair Ex.P-5 in their morphological and microscopical characteristics. It was further opined that

the blood group of the deceased was A and that human blood of same group was detected on the pyjama Ex.P-16 and that human blood was detected on the knife Ex.P-12, the darat Ex.P-13, the darati Ex.P-14 but group thereon could not be detected. Similar was the report qua the kurta Ex.P-15. Human blood was detected on the glass bangles, bunch of hair and stone pieces recovered from the room and the ear rings recovered from the room. Human blood was detected on the shirt and the chunni recovered from the room. The blood group, being A, was detected on the chunni, pieces of glass bangles, the shirt and the stone pieces. The blood group could not be detected on the other articles.

15. In view of the submissions made by learned Counsel for the appellant which have been noted by us in para 5 above, we need not trouble ourselves by noting the testimony of the police officers pertaining to registration of the FIR and the conduct of officials who were associated with the safe custody of the various articles seized/recovered during investigation as also the evidence of police officers who took the articles seized from the room where the crime was committed and articles seized during investigation to the CFSL laboratory and re-deposited the same in the malkhana after they were examined by experts. We note that no allegations of tampering have been made in the instant case.

16. A very vital witness of the prosecution namely PW-1 Satbir Singh resiled from his statement recorded by the investigating officer, of having last seen the appellant leaving his house at around 12:00 midnight and being in a perplexed state of mind. However, it would be important to note that he deposed: I also knew the deceased Santosh, who was wife of accused Ramesh. She died about 2 - 3 years ago. I identified the body of deceased Santosh in the dead house, Delhi. When I had seen the body of Santosh then the accused Ramesh was absconding from his house. We searched him in his relation but could not trace him out. We may note that Satbir has not been cross-examined with respect to said testimony of his, which has obviously gone unrebutted.

17. We may also note that SI Lalit Mohan PW-7 and Inspector Mahesh Kumar PW-11 have deposed of having apprehended the appellant from Shahbad Railway Crossing on 2.4.1997. We note that a bald suggestion has been made to both

police officers that the appellant voluntarily went to the police station on 2.4.1997 when he learnt about his wife having died and wanted to enquire from the police as to what had happened. We may also note that when he was examined under Section 313 Cr.P.C., the appellant stated: After coming back from my mamas house at late night on 1.4.1997 I got to know about the murder of my wife and on next day on 2.4.1997 I myself went to concerned police station and asked the police official present in PS regarding the murder of my wife. The police officials arrested me there in the thana and nothing was recovered from me.

18. The mama i.e. the maternal uncle in whose house the appellant claimed of having stayed in the intervening night of 30th and 31st March 1997 was examined as DW-1. He deposed that the appellant was his nephew and had stayed in his house in the intervening night of 30th and 31st March 1997 and had left his house in the evening on 1.4.1997.

19. On being cross-examined, Jaipal DW-1, said that he did not know the name of the wife of the appellant nor he was aware as to how many children were born to the appellant and his wife.

20. The learned Trial Judge has held that it was doubtful whether Jaipal was a relative, much less the maternal uncle of the appellant. We concur with said view taken by the learned Trial Judge for the reason as per Jaipal he is the maternal uncle of the appellant. He is not a distant relative. Surely, a maternal uncle would remember the name of the wife of his nephew and would also know the number of children born to his nephew. It is clear that Jaipal has deposed at the behest of the appellant and that the testimony of Jaipal is not even worth the paper on which it is typed. We hold that the appellant has not been able to successfully prove alibi for the reason his sole witness to establish the same is a worthless witness and so is his testimony.

21. As noted above, the appellant claims to have left his uncles house for his house in the evening of 1.4.1997. The distance from the house of Jaipal to the village of the appellant where the appellant resided, as deposed to by Jaipal is 65 km. Obviously, having left the house of his uncle in the evening of 1.4.1997, travelling whether by road or by rail, the appellant would have reached his village

by late evening or early night. In fact, as noted above in para 17 the appellant claims to have reached his house late night. If this was so, the natural reaction of the appellant would be to immediately go to the police station and enquire about the investigation pertaining to his wife's death because when the appellant reached his house he would not have found his wife and the fellow villagers would certainly have told him that his wife was found murdered and the police has removed her body. The appellant has done nothing of the sort.

22. It is obviously a false defence that the appellant went voluntarily to the police station on 2.4.1997. The reason for the false defence is that the appellant was arrested on 2.4.1997 and he wants to project his custody with the police as not being the result of his being arrested but on his voluntarily going to the police station. In this manner, the appellant desires to explain that he did not abscond.

23. With reference to the testimony of PW-1 we have noted that the appellant has not challenged his testimony pertaining to the appellant absconding and not being found in the house of his relatives.

24. We concur with the view taken by the learned Trial Judge that the evidence on record establishes that the appellant was absconding from his house and said act of absconding is incriminatory against the appellant as was the view taken in the decisions reported as AIR 1971 SC 1050 *Matru v. State* and : AIR 1971 SC 2156 *Raghubir Singh v. State*. We clarify that mere absconding by itself would not be enough to sustain a finding of guilt. But, the act of absconding is a relevant piece of evidence to be considered along with other evidence and that its incriminatory value would depend on the circumstances of each case.

25. Pertaining to the recovery of Ex.P-12 to Ex.P-16, merely because a public witness was not associated with the recovery does not render untruthful the testimony of the police officers viz. SI Lalit Mohan and Inspector Mahesh Kumar who have proved the information given by the appellant which led to the recovery of the said articles. The recovery memos Ex.PW-7/P and Ex.PW-7/Q pertaining to the said articles show that each one of them was not visible to the naked eye and was hidden in the bushes and the appellant himself retrieved the same from within the bushes. Thus, we hold that the recoveries are not tainted and inspire

confidence because but for the appellant the Investigating Officer could not have laid his hand thereon. Human blood being detected on all the exhibits with further fact of blood group being detected as A on Ex.P-16, which was the blood group of the deceased, are facts which are relevant and incriminatory, albeit with minimal weightage to be given to them. It is settled law that issue of what weightage has to be given to a piece of evidence is distinct from the issue whether the evidence is relevant, admissible and incriminatory. Similarly, same would be the position with respect to the FSL report Ex.PW-11/B as per which hair recovered from the darati were similar to the hair Ex.P-5. Though not conclusive evidence that either the blood on the pyjama recovered at the instance of the appellant or the hair on the darati recovered at the instance of the appellant were positively those of the deceased, the report is suggestive of the possibility of the same being the blood and the hair respectively of the deceased and in relation to the weightage to be given, same is determinative of a lesser degree of inculpatory evidence requiring less weightage to be given to said evidence.

26. It is not in dispute that the place where the deceased was murdered was her matrimonial house. Notwithstanding the fact that there is no evidence that the appellant was last seen by anybody in or around the house in the intervening night when the deceased was murdered, it still remains a fact that the wife was murdered in her matrimonial house and that there is no evidence that any stranger or an outsider made a forcible entry into the house. As noted by us, the house was locked from outside when the police reached and the locks had to be broken open. If the appellant was not in the house, his wife who was alone in the house would have certainly locked the same from within before she slept in the night. In said eventuality the assailant would have had to force his entry into the house.

27. If a housewife is murdered inside her matrimonial house and there is no evidence of a forced entry inside the house and the time of the murder is night time and if the husband is not able to satisfactorily explain his being absent from the house, it would constitute an incriminating circumstance of very high inculpatory value against the husband.

28. The trinity of circumstances; of the deceased being murdered at her matrimonial house; forced entry into the house being ruled out; and the conduct of the husband absconding are sufficient to reach to a conclusion of guilt qua the husband.

29. Unfortunately for the prosecution, the brother of the deceased namely Brahm Prakash resiled from his statement Ex.PW-4/A pursuant where to the FIR was registered. The result is the prosecution not being able to prove the motive. But, it is settled law that even in case of circumstantial evidence, where generally proof of motive becomes a fairly incriminating circumstance, absence of proof of motive becomes irrelevant where the strength of other circumstantial evidence is sufficient wherefrom a conclusion of guilt can be drawn.

30. As held in the decision reported as AIR 2004 SC 3249 Narender Singh v. State of Punjab strict proof is required to prove the plea of alibi. In the decisions reported as : 1971 Cri.L.J. 1764 Mohinder Singh v. State of Punjab and ILR 1972 Cut.1181 Hadibandhu Jali v. State as also 1954 Cri.L.J. 1303 Madhuwa Pyarelal Kurmi v. State of V-Pra where a defence of alibi utterly breaks down, it is a strong inference that, if the prisoner was not in fact where he says he was, then in all probability he was where the prosecution says he was. In the decision reported as : 1996 Cri.L.J. 244 (Del) Kuldeep Sharma v. State it was observed that the disappearance of the accused after the occurrence is a relevant circumstance which in the absence of any plausible explanation can be taken into consideration as conduct. Indeed, where an accused attempts to create false evidence to prove alibi the same is strong evidence to show that he was conscious of some great danger impending and that he was actuated by a strong desire to escape. The mental condition of a person is a fact under Section 3 of the Evidence Act. In the decision reported as : 2003 (9) SCC 86 Babudas v. State of M.P. it was held that a plea of false alibi, though by itself cannot be the sole link or the sole circumstance based on which a conviction can be sustained, but certainly is a link in the chain of circumstances. We may lodge a caveat here. Where the defence of alibi is not proved due to insufficiency of evidence, such an inference need not be drawn. But where it stands established that the defence of alibi is predicated on false evidence, said fact would be relevant as the conduct of the accused to bring on record evidence

favourable to him; which evidence is false. The legal principle being, that conduct of an accused is relevant and admissible evidence under Section 8 of the Evidence Act. Where the accused tries to shield himself by producing false evidence, the very production of false evidence is indicative of a guilty mind. With respect to the application of this principle of law, it is necessary to highlight that DW-1 who claims to be the maternal uncle of the appellant, by being ignorant of the family of the appellant, in that, not even knowing the name of the wife of the appellant or the number of children born to the appellant, shows that he is not the maternal uncle of the appellant. It is not a case of defence of alibi failing due to insufficiency of evidence but is a case where the plea of alibi has failed due to false evidence.

31. We concur with the reasoning of the learned Trial Judge that the circumstance of the wife of the appellant being murdered inside her matrimonial house; there being no forced entry into the house rules out the hand of any outsider; the appellant absconding from his house till he was arrested, the recoveries made pursuant to the disclosure statement of the appellant and the post-mortem report of the deceased and the opinion of the doctor who conducted the post-mortem as also the report of the serologist and forensic analysis are a chain of circumstances wherefrom it can safely be said that the appellant is the murderer.

32. In Babudass case (supra) contradictory and inconsistent stand taken by an accused was held to be akin to false answers given and providing another link in the chain of circumstances against the accused. In the instant case the appellant, while attempting to prove alibi (which has been found to be false) stated that he returned to his house late night on 1.4.1997 and himself went to the police on 2.4.1997 to enquire about the murder of his wife. As held above, by so stating, the appellant was not only trying to prove alibi but was also attempting to cast a doubt on his being apprehended as claimed by the prosecution on 2.4.1997. While giving said explanation the appellant has spun a web around himself, which has trapped the appellant, for the reason, as held by us, it is a most unnatural conduct for a husband to return home late in the night and find his wife missing; the first reaction, which would be the normal reaction of the husband would be to immediately report the matter to the police and not wait for the morning. The

falsity of the version of the appellant supplies another ring in the chain of incriminating circumstances against him.

33. We find no merit in the appeal which is dismissed.

34. The appellant is on bail. His bail bond and surety bonds are cancelled.

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