

Goverdhan @ Amit Vs. State

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Court : Delhi

Decided On : May-15-2009

Reported in : 2009CriLJ3349

Judge : Pradeep Nandrajog and; Aruna Suresh, JJ.

Acts : Evidence Act - Sections 27; Indian Penal Code (IPC) - Sections 34, 201 and 302

Appeal No. : Crl. A. 410/2008

Appellant : Goverdhan @ Amit

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mukesh Jain, Adv

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. The appellant was charged for the offence of having murdered Gopal, his brother-in-law, at around 10:00 PM on 15.3.2000 in house No. B-474, Aman Vihar Delhi, as also for the offence of causing destruction of evidence with the intention

of screening the offender. Appellant's sister Saroj, the wife of the deceased, was charged for the offence of causing destruction of evidence with the intention of screening the offender.

2. Vide impugned judgment and order dated 20.11.2004, the appellant and Saroj have been convicted for having committed the respective offences they were charged of. Probably, for the reason, Saroj has undergone the sentence imposed, she has not filed any appeal against the impugned order convicting her for the offence punishable under Section 201/34 IPC. The appellant has filed the above captioned appeal challenging the impugned order.

3. After noting the evidence on record, the learned Trial Judge has discussed the evidence and concluded the finding in paras 24 to 26 of the impugned decision, which read as under:

24. The relationship between the deceased and the accused is not in dispute and the aspect of their living together as told by PW-1, is corroborated by the say of PW-4. Though PW-1 had stated that he did not see the deceased and the accused number 1 together on 15.3.2000, the evidence of PW-4 would go to show that deceased Gopal, was very much present in the house in the night of 15th day of 2000. There is nothing to disbelieve the say of PW-4 about the presence of accused No. 1 and 2 with the deceased on the fateful day. Having now so held, it is to be seen that the dead body of Gopal, was recovered from the H. No. B-473, Aman Vihar, which is fully corroborated by the oral testimony of PW-12, 11 and 14. The contention of the Ld. Defence Cl. that the recovery of the dead body is doubtful for non- production of negative of the photographs taken by PW-13, does not sound logical in view of the oral testimony of the members of the investigation, who had removed the dead body from the house. The second offence is thus established.

25. The case is on the pedestal of recoveries made from the spot i.e. the house of accused number 2 in this case at the instance of accused number 2. The bichhona which was wrapped over the dead body and the blood stains dari is another strong circumstance that can be connected to the incident. The arrest of Accused No. 1 on 18.3.2000 would show that this accused was not available or absconded after

15.3.2000. This link and the factum of his non-availability after 15.3.2000, in the family of Accused No. 2 where he was living is yet another strong circumstance and a link which cannot easily be winked at. The subsequent recoveries consequent to the arrest of Accused No. 1, namely, a Kulhari Ex.P-1, and the T-Shirt and Pajama, worn by the accused, connects another link to the annihilation of the said Gopal. It is to be also seen that the scientific evidence available on record namely, Ex.PR where the serology report confirms the presence of Group A human blood on Bed Sheet, Dari, Shirt, Pant and Underwear, Sweater, A Piece of cloth and also the same blood on the weapon Axe. The presence of the same blood group detected and confirmed by the Scientific examination as per the report at Ex.PR, further confirms corroborating and establishing an unbroken chain of links to the dead body which was that of Gopal. It is to be also seen that the external injuries found on the dead body and the evidence of PW-2 is to be reckoned. When viewed through the documentary and oral testimony of PW-2, it can be easily said that the commission of the murder of Gopal, was committed by the weapon at Ex.P1. Since, every link is connected making the entire chain of links of circumstances pointing to the culpability of this accused, I have no hesitation to hold that this accused was present on the fateful day and exhibit P1 Kulhari is used for inflicting the injuries found on deceased Gopal. The disappearance of accused number 1 after the incident would, further, establish that it is this accused alone and none other else who had committed the said homicide of Gopal. It is on the record that when the incident happened the accused number 2 had gone out to fetch money for her husband. It is also established on record that when she returned the unexpected annihilation of Gopal, was a fiat accomplice. On coming to know, this ghastly incident, A-2 Saroj, had participated in concealing the dead body, further, had taken part to cause the disappearance of the evidence concerning the murder of Gopal. Under the abovenoted circumstances, it is needless to say that for the reasons discussed above, the prosecution was able to establish the guilt of the accused beyond reasonable doubt.

26. For the aforesaid reasons, I have no hesitation to hold out a conviction and, therefore, I hereby convict accused No. 1 Goverdhan, for the offence Under Section 302 of IPC r/w Section 201 of IPC and accused No. 2 Saroj, for the offence Under Section 201 of IPC in so far as the offence Under Section 302/201

of IPC appearing against accused number 1.

4. Case of the prosecution was that the appellant was residing in the house of his sister Saroj i.e. house No. B-473, Aman Vihar. On 17.3.2000 an unknown person informed the police that Gopal had been killed by his wife and his brother-in-law and they had dumped his body in the septic tank of the house. SI Raghubir Singh and Const.Jagjeet Singh reached the house and on removing the slab covering the septic tank found the dead body of a male (Gopal) aged about 40 years. The body was seized and sent for post-mortem. Inspector Ranbir Singh reached the spot and took over the investigation.

5. Saroj was interrogated at the spot and she made a disclosure statement Ex.PW-4/A in which she stated that on 15.3.2000, around 10:00 PM, in a drunken condition, her husband came home and demanded money from her. At that time her brother Goverdhan came home. She left for the bakery where her son Sunil works and when she returned she saw her husband lying dead on the bed and her brother Goverdhan besides him. Goverdhan said that her husband used to trouble her and used to even trouble him by alleging that he was having an illicit relation with their daughter and for this reason he has removed Gopal from their path. Both i.e. she and Goverdhan wrapped the body in a bichona and dumped it in the gutter. On 16.3.2000 her brother left the house. Since the walls of the room got stained with blood she purchased limestone from the shop of Ganesh and whitewashed the wall to conceal the blood stains.

6. The appellant was apprehended on 18.3.2000 and as per the prosecution made a disclosure statement informing that he can get recovered the axe with which he had inflicted injuries on his brother-in-law. Thereafter, the appellant led the police to the house of his sister and from under a table got recovered an axe which was stained with blood.

7. The post-mortem of the deceased was conducted by Dr. Komal Singh who noted three injuries in the occipital region. The injuries were caused by a blunt object. Internal injuries noted were the second and third right side rib being fractured. The injuries on the head were opined to be fatal. After the post-mortem the clothes of the deceased and his blood sample on a gauze were handed over to

the police.

8. After the appellant was arrested, a pajama and a T- shirt were picked up from the room where the appellant used to stay with his sister for the reason, as per the police, the appellant stated that he was wearing the pajama and the T- shirt when he committed the offence.

9. As per FSL report Ex.PR, the blood group of the deceased was opined to be 'A.. No blood was detected on the pajama and the T-shirt recovered from the room of the appellant. On the axe which was recovered from under the table, at the instance of the appellant, human blood of group 'A. was detected.

10. At the trial Sunil Kumar PW-4 the son of the deceased deposed that the appellant used to stay in their house and on 15.3.2000 was present in the house. He i.e. Sunil Kumar, his brother and sister went to sleep in an adjoining room at 10:00 PM and that he did not see the appellant thereafter. He saw fresh whitewash on the wall of the room where his father used to sleep and that he learnt on 17th that his father had been murdered. That on 16th his maternal grandmother had come from Jalandhar and in her presence her mother confessed having murdered his father. That the police interrogated his mother in his presence.

11. Sunil Kumar was declared hostile by the Court at the request of the learned APP and on being cross examined by the learned APP admitted that when his mother was interrogated she told the police that the dead body of his father was wrapped in a bichona and put inside the septic tank and that his mother also told the police that she had purchased limestone from the shop of Ganesh to whitewash the blood stains on the wall.

12. Rajesh owner of Ganesh Paints who appeared as PW-14 did not support the case of the prosecution i.e. did not state that Saroj purchased limestone from his shop.

13. It may be noted that SI Raghubir Singh who had initially gone to the house when information was received about Gopal being murdered and body being

dumped in the septic tank was joined soon after by Inspector Ranbir Singh PW-15 and the investigation at the spot was continued by Inspector Ranbir Singh after the dead body was seized.

14. Ranbir Singh PW-15 deposed that he had noted Saroj's disclosure statement Ex.PW-4/A. He also deposed:

She revealed further that she came to know that the deceased was killed with the stroke of a kulhari (axe). She further disclosed that the dead body was wrapped with a bichona by her and accused Goverdhan. She further disclosed that the blood stained clothes and the kulhari, dari are recoverable and disclosed that they were concealed.

15. We need not note any further evidence for the reason, on going through paras 24 to 26 of the impugned decision it is apparent that the reasons given by the learned Trial Judge to convict the appellant are: (i) the appellant was present in the house on 15.3.2000 and absconded till he was arrested on 18.3.2000. (ii) The recovery of the kulhari Ex.P-1 and the T-shirt and pajama worn by the appellant was another link to connect the appellant with the crime and that the report Ex.PR showed presence of human blood of group 'A. on the shirt, pant and the axe.

16. We are surprised at the reasoning of the learned Trial Judge. The first and the fore most error, rather a blunder, is the fact that the report Ex.PR categorically opines that no blood was detected on the pajama and the T-shirt recovered at the instance of the appellant from his room. It is a clear case where the learned Trial Judge has just not bothered to go through the report Ex.PR.

17. It is no doubt true that the axe Ex.P-1 has been shown to be recovered at the instance of the appellant, but the learned Trial Judge has failed to take note of the testimony of Inspector Ranbir Singh PW-15 who has categorically stated that on 17th itself, Saroj had informed him that the axe used to murder her husband was hidden in the house. Further, the recovery memo Ex.PW-4/F pertaining to the axe simply records that it was picked up from under a table in the room. No witness of the prosecution has deposed that the axe was hidden. There is yet another piece of evidence ignored by the learned Trial Judge. The rough site plan Ex.PW-15/A

prepared by Inspector Ranbir Singh PW-15 does not show any table in any room; it be noted that the family of the deceased was residing in two rooms. The said site plan shows two boxes towards the eastern wall of the larger room. The site plan to scale Ex.PW-3/A has inserted a table between the two boxes. The spot of the table has been shown at serial No. 3. There is obviously a hiatus between the rough site plan and the site plan to scale. The former which was prepared on 17th itself has to be given credence over the later, because by then, the police had to show the existence of a table in the room.

18. Law pertaining to Section 27 of the Evidence Act is clear. Only such statements made by an accused to the police are admissible in evidence pursuant whereto a fact, hitherto fore not in the knowledge of the police, is discovered.

19. The existence of the axe in the house was known to the police on 17th itself. The appellant was arrested on 18th. Further, the axe was recovered, as claimed by the police, not hidden beneath or within any container in the house. Thus, the recovery of the axe is meaningless.

20. The only incriminating evidence left is the conduct of the appellant of absconding. The participative role of the appellant as per the disclosure statement of Saroj is again no evidence because Saroj herself is an accused and nothing told by her to the police is admissible in evidence save and except if it led to the discovery of a fact. In the instant case, no such fact has been discovered.

21. Conduct of absconding by itself can never be evidenced wherefrom chain of circumstances become complete to infer the guilt of an accused.

22. Pertaining to the destruction of evidence, except for the disclosure statement of Saroj and the testimony of PW-4, there is no evidence to show that the appellant dumped the body of the deceased. Qua the testimony of PW-4, it has to be noted that pertaining to the destruction of evidence, he has not deposed having seen anything. He has deposed that in his presence his mother disclosed to the investigating officer that the appellant and his mother had dumped the body of the deceased in the septic tank. Obviously, said testimony is not admissible evidence for the reason anything said by Saroj to the police would be inadmissible in

evidence as Saroj is an accused. The narrative thereof has also to be inadmissible.

23. The appeal is allowed. The appellant is acquitted of the charges framed against him.

24. The appellant is directed to be set free forthwith unless required in custody in some other matter.

25. Copy of this order be sent to the Superintendent Central Jail Tihar for compliance.

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