

Manoj Kumar Vs. State

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Court : Delhi

Decided On : Oct-05-2006

Reported in : 2006(92)DRJ209

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 174, 207 and 428; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 666 of 2005

Appellant : Manoj Kumar

Respondent : State

Advocate for Def. : Ravinder Chadha, APP

Advocate for Pet/Ap. : D.C. Mathur, Sr. Adv. an; S.S. Chadha, Adv

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal No. 666 of 2005 seeks to challenge the judgment and order dated 19th July, 2005 in Sessions Case No. 49 of 2004 whereby the learned Judge has held the appellant guilty of the offence of jnurder of deceased, Surender, and further by order dated 25th July, 2006 sentenced him to

imprisonment for life and a fine of Rs. 3,000/- and in default further rigorous imprisonment for one year. Benefit of Section 428 Cr.P.C. was also extended to the appellant.

2. Brief facts of the case, as have been noted by the learned Additional Sessions Judge, are:

that on 26.2.03, DD No. 38A was recorded and was handed over to S.I., Rajesh Kumar for verification. According to DD No. 38A on 26.2.03 at 2210 hours at night a person Manoj Kumar son of Rattan Singh r/o Village Mundha, District Jhajhar aged about 30-32 years came to the police station. His clothes were blood stained and told that he has committed murder of his father in law Surinder and the dead body of Surinder is lying in his house in Sultan Garden, Najafgarh. Both the sleeves of his shirt were blood stained. Both legs of pant were also blood stained. He was wearing a sweater that was also blood stained. He told that blood had fallen on his clothes while committing murder of his father in law and he wanted to surrender into police custody. On that, S.I. Rajesh Kumar along with Ct. Ashvinder, Ct. Parmod, Ct. Chander along with driver Gt. rohtas, with official vehicle Tata 407 reached the spot on leading by Manoj Kumar and SHO was also informed. The SHO Insp. Mohd. Iqbal reached the spot and examined the spot and dead body. On that the SHO got registered the case vide FIR No. 75/03 under Section 302 of IPC vide rukka Ex. PW 15/A and took over the investigation of this case himself. Accused Manoj was arrested and his disclosure statement was recorded. The exhibits were lifted and got sent to FSL, the spot was examined where the dead body was lying. There at the spot he found the front portion of reti on the deewan and pieces of mobile phone lying scattered on the floor. The dead body was found in the pool of blood, its head was towards north direction and feet' towards south, his neck was cut with the help of sharp edge weapon. Lot of blood had flowed out. There was an empty bottle of wine on Deewan, one empty cup and steel lota and another cup on a chair. The crime team was called at the spot, accused got recovered the rear portion of reti fitted with wooden handle. The photographer took the photographs. No eye witness was found, the proceedings under Section 174 Cr.P.C. were held. The dead body was sent for post mortem, clothes and other exhibits from hospital were seized and sent for expert opinion to

FSL Malyiya Nagar. The statement of witnesses were recorded, the dead body after post mortem was handed over to the relatives and after completion of, investigation charge sheet was filed. The accused was sent to judicial custody who was subsequently released on bail.

After complying Section 207 Cr.P.C., the case was committed for trial to the court of sessions.

Hearing was given to the prosecution as well as to the accused and formal charge was framed against the accused on 17.9.2003 which was read over and explained to the accused to which he pleaded not guilty and claimed trial. Therefore, prosecution was directed to lead its evidence.

3. The Prosecution, in order to establish its case, examined as many as 14 witnesses. PW-1, Dr. MM. Narnaware, Chief Medical Officer, DDU Hospital, New Delhi, deposes that oft 28.2.2003 he conducted postmortem examination, on the dead body of the deceased, Surender, and found the following injuries:

One incised wound seen on right mastoid process size 6.5 cm x 2 cm x skin deep.

1. Two incised wounds found on right ear pinna size 1 cm x 2 cm x skin deep.
2. Skin flap missing on lower part anterior aspect of right pinna 4 cm x 5 cm x cartilage deep.
3. Incised wound on the right ear lobule 2 cm x 5 cm x skin deep.
4. Incised wound 1 cm in front of injury No. 4 size 5 cm x 5 cm x skin deep.
5. Incised wound on right mandibular angle size 2 cm x 1 cm x muscle deep.
6. Two linear incisions parallel to each other on right side of neck 2.5 cm below right ear lobule each 4 cm in length.
7. Incised wound on the right side of neck if cm below right mandibular angle and 8 cm from thyroid cartilage size 5.5 cm x 1.5 cm x muscle deep.
8. One incised wound 5 cm below injury No. 8 size 4 cm x 1 cm x skin deep.

9. One incised wound 5 cm below injury No. 1 size 5 cm x 5 cm x skin deep.
10. Incised wound on interior aspect of neck crossing at the level of thyroid cartilage horizontally placed size 8 cm x 2.5 cm x skin deep at thyroid level and muscle deep on right side.
11. One incised wound 5 cm below injury No. 11 horizontally placed, size 4 cm x 1 cm x muscle deep.
12. Multiple linear incisions seen on lower neck and both clavicular areas. Total area involved 14 cm x 8 cm x skin deeps.
13. Incised wound on lateral aspect of left-eye brow 1.5 cm x 3 cm x skin deep.
14. Incised wound seen two cm away from lateral angle of left eye 2 cm x 5 cm x skin deep.
15. Incised wound 1.5 cm below injury No. 15 on left cheek size 3 cm x .5 cm x skin deep.
16. Incised wound 2.5 cm below injury No, 16 on left cheek size 6 cm x .5 cm x muscle deep.

He further found large blood vessel right carotid severed. He proved his post mortem report Ex. PW 1/A prepared in his hand bearing his signature at point A and B. He stated that clothes of deceased and blood sample were sealed with the seal of L.K.B and handed over to 10 along with sample seal. He received eight papers which bear his initial. Ld. Defence counsel did not choose to cross examine this witness.

4. PW-2, Smt. Jeet Kaur, is the wife of the deceased. She deposes that her daughter, Sunita, was married to the accused, Manoj. This was Manoj's second marriage. The relationship between Manoj and her daughter were cordial. There was no dispute between them. Accused, Manoj, has never given any threat to her husband. On 25.2.2003, accused, Manoj, and her daughter, Sunita, had come to their house at about 2/3.00 p.m. and requested her to sleep in their house for the night on 25/26.2.2003 as Sunita and Manoj were going to visit Manoj's sister. On

25.2.2003 Smt. Jeet Kaur sent her husband, the deceased, to spend night at the house of Manoj. On 26.2.2003, someone informed her that an incident had taken place at the house of Manoj. The witness was declared hostile; and cross-examined by the Public Prosecutor. The witness does not support the Prosecution's case.

5. In cross-examination by counsel for the accused, this witness states that the deceased never smoked nor drank liquor. She also states that on 25.2.2003, Manoj and her daughter, Sunita, handed over keys of their house before going to the house of Manoj's sister in District Sonipat. She denied that her husband wore hawai chappals.

6. PW-3 is Sunita, wife of the accused, Manoj. She deposes to the effect that accused, Manoj, is her husband. They were married about two-and-half years ago. It was the second marriage of Manoj and that Manoj has a son from his first wife. The witness deposes that she used to reside with her husband, Manoj, at RZ-79, Sultan Garden, Dhiahaoun Road, Najafgarh. There was no quarrel between her father and her husband. Nor was there any quarrel about money. She also deposes that there was no threat given out by Manoj to her father, the deceased. The witness goes on to say that on 25.2.2003, she along with the accused had gone to the house of her husband's sister at Kharkhoda in District Sonipat. On 26.2.2003, she along with her husband had taken her father to their house. The witness was declared hostile and cross-examined by the Public Prosecutor. The witness does not support the Prosecution's case.

7. In cross-examination by counsel for the Accused, she states that on 26.2.2003 she and the accused left the village of her husband at about 7.30 p.m. and when they came back at about 9.30 p.m., they found the door of the house unbolted. On opening the door, they found the deceased lying on the bed and bleeding. The accused tried to lift him and in that process his clothes got the blood stains. Manoj immediately called the neighbours and asked them to inform PW-2 and Manoj then went to the Police Station to inform the Police.

8. PW-5, Randhir Singh, is the brother of the deceased who identified the dead body. PW-11, Constable Virender Singh, took the sample to CFSL while PW-15,

Inspector Mohd. Iqbal, is the Investigating Officer. The trial court was impressed by the fact that the accused lived in the same house where the deceased was murdered; articles found in the house belong to the accused; the mobile phone used; the cigarette and the hawai chappals belong to the accused and consequently there is no possibility that the offence might have been committed by some other person.

9. We have given our careful consideration to the material placed before us and find that the trial court has, with great respect, completely misdirected itself in evaluating the circumstances which the Prosecution has sought to prove to link the accused with the murder. There is evidence on record to show that the accused and his wife had gone out of station and in order to ensure safety of the house had requested PW-2 to take care of the house in their absence. It was PW-2 who convinced the deceased to go and take care of the house of the accused and his wife while they were out of town. This fact is supported by the statement of PW-2 as also PW-3, both are Prosecution witnesses. There is nothing on record to show that the liquor bottle bore the finger prints of the accused or that he was instrumental in giving liquor to the deceased. There is nothing on record to show that the mobile phone or the cigarette or the hawai chappals belong to the accused. The evidence on record does not show that the reti was recovered at the instance of the accused. On the contrary, it was recovered from the spot the time when the Crime Team visited the spot along with the local Police. There also appears to be some fabrication/interpolation in Ex. PW-6/1 which is the Mobile Crime Team Report. We hardly need to go into all this when, on the face of it, we find that the Prosecution has not been able to link any action of the accused to the murder. This is a case where, it appears to us, the accused has been convicted on 'no evidence'. We are left with no option but to set aside the impugned judgment and order. Accordingly, we set aside the impugned judgment and order dated 19th July, 2005 and 25th July, 2005 and acquit the appellant of all charges. The appellant, who is in custody, shall be released forthwith, if not wanted in any other case.