

AlimuddIn Vs. State of Delhi

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SooperKanoon Citation : sooperkanoon.com/922026

Court : Delhi

Decided On : Aug-29-2011

Judge : Pradeep Nandrajog; Sunil Gaur, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 34, 201

Appeal No. : Crl.A.154/1999

Appellant : Alimuddin

Respondent : State of Delhi

Advocate for Def. : Mr.Pawan Sharma, Adv.

Advocate for Pet/Ap. : Mr.K.B.Andley; Mr.M.L.Yadav; Mohd. Shamik; Mr.Lokesh Chandra, Advs.

Judgement :

1. In this double murder case, conviction of appellant- Alimuddin son of Amiruddin is solely based upon circumstantial evidence. Law regarding appreciation of evidence in cases purely resting upon circumstantial evidence is well known and needs no reiteration.

2. Appellant- Alimuddin along with one Kaleem @ Ikramuddin was tried on the charge of having murdered Shahbuddin and Mohd. Hanif by administering poison and of having removed their dead bodies to conceal the offence of murder

committed by them on 17.3.1995.

3. Impugned judgment of 3.2.1999 holds the appellant and co-accused Kaleem @ Ikramuddin guilty of committing the offence punishable under Section 302/34 of the IPC as well as for the offence punishable under Section 201/34 of the IPC and vide order of 6.2.1999 they have been sentenced by the trial court to imprisonment for life with a fine of `25,000/- each and for the offence under Section 201/34 of the IPC, the sentence imposed upon them is of rigorous imprisonment for 5 years with fine of `5,000/- each.

4. In this appeal, appellant - Alimuddin alone has challenged his aforesaid conviction and sentence. At the hearing, it was brought to our notice that co-accused Kaleem @ Ikramuddin who had been also convicted along with the appellant by the trial Court, is not longer in this world. It is unfortunate.

5. We do not find it necessary to recapitulate minutely the factual details as the same have been noted in the impugned judgment. The subtractum of the prosecution case as noticed in the impugned judgement is as follows:-

"Deceased Shahabuddin was getting Ruhani Treatment from accused person-Tantrik Alimuddin and Kalim @ Ikramuddin since a long time earlier to 17.3.1995. On 17.3.1995 deceased Shahbuddin left his house situate in Haveli Azam Khan Delhi at about 4-5 p.m. to the place of the accused persons. The deceased took with him Rs.2,000/- and some gold ornaments. Deceased Shahbuddin did not return that day and a search started. On 18.3.1995 deceased Mohd. Hanif, a relation of deceased Shahbuddin went to the place of Tantrik accused Alimuddin searching for deceased Shahbuddin, but he also did not come back. On the night of 18.3.1995 an information came from Madhukheri Railway Station Hathras that Mohd. Hanif was found lying dead near Madhukheri Railway Station. His body was brought to Delhi and it was buried in the Kabristan at Delhi Gate, Delhi. Not finding, deceased Shahbuddin till 20.3.1995, missing report was lodged with P.S. Chandni Mahal, Delhi which was entered against DD No. 19 A dated 20.3.1995. Accused persons Alimuddin and Kalim @ Ikramuddin were traced by the relations of deceased Shahbuddin and deceased Mohd. Hanif and both were brought to the house of the deceased Shahbuddin in Haveli Azam Khan Delhi. The accused

persons were asked about the whereabouts of Shahabuddi, who told the complainant and other family members that Shahbuddin might be dead and his body could be found near Kalkaji Mandir, Delhi. This information was given by these two accused on the basis of some Tantrik Kirya performed at the house of deceased Shahbuddin. Some relations of the complainant thereafter went to Kalkaji Mandir and were informed that a dead body was found lying there and it was taken away by the police. The local police was contacted which confirmed the removal of a dead body from near Kalkaji Mandir on 18.3.95. This dead body had not yet been identified. On being shown this dead body in the mortuary of AIIMS it was found to be of deceased Shahbuddin. Report thereafter was lodged with P.S. Chandni Mahal suspecting the hand of these two accused in the killing of deceased Shahbuddin and Mohd. Hanif. Both the accused were arrested who made disclosure statement and led to the recovery of gold ornaments which were identified being those which were taken away by the deceased from his house while leaving for the house of accused persons on the evening of 17.3.95. The accused persons also got recovered some chemicals/ drugs, some books on Tantrik Kirya and bones and eyes of some birds and animals. As this case was found to be within the jurisdiction of P.S. Seelampur, Seelampur police was informed and copy of FIR was sent there on which the present FIR was registered and further investigations were carried out by the Seelampur police. In pursuance to the disclosure statements and some information collected through the investigations the dead body of Mohd. Hanif was exhumed from its grave on 27.3.95 in the presence of an S.D.M.. Post mortems were conducted on the dead bodies and viscera were sent to CFSL. The post-mortem report coupled with the CFSL reports finally opined that deceased Shahbuddin and Mohd. Hanif had died due to Cyanide poisoning. It is under these allegations and circumstances that accused Alimuddin and Kalim @ Ikramuddin were challaned by the police for offences under Sections 302/201 I.P.C."

6. Upon being charged for committing the offence under Section 302/201 read with Section 34 of the IPC in FIR 192/1995 registered at police station Seelampur, Delhi, appellant and his co-accused had claimed trial.

7. At trial evidence of 2 dozen witnesses was recorded. Evidence of material witnesses comprises of deposition of PW- 6 - Rais Ahmed son of the deceased Shahbuddin, who is the author of the FIR of this case and he has deposed not only in support thereof but has also deposed regarding the arrest of the accused and the recoveries being effected at the instance of accused in pursuance to their disclosure statements.

8. PW-5 - Babu Khan, father of deceased Mohd.Hanif has deposed regarding his son Mohd.Hanif having gone to the house of the appellant/accused on the fateful day and thereafter about learning about the death of his son Mohd.Hanif.

9. PW-13 - Faimuddin son of deceased Shahbuddin and PW-7 - Raissuddin a relation of the deceased supports the prosecution case from the beginning till the end.

10. PW-11 - Smt. Rabia wife of deceased Shahbuddin has testified regarding her husband Shahabuddin getting 'ruhani treatment from a Tantrik, i.e., appellant/accused and of the deceased Shahabuddin taking away few gold ornaments and `2,000/- while leaving his house on 17.3.1995 to go to the house of the appellant/accused and upon her gold ornaments being recovered from the house of the appellant/accused, she has identified the same to be hers.

11. The cause of death of both the deceased has been opined to be due to cyanide poisoning. Dr.B.N.Bhardwaj (PW- 10) has proved the Post Mortem Report (Ex.PW-10) of deceased Shahabuddin, whereas Dr.A.P.Singh (PW-9) has proved the post mortem report of deceased Mohd.Hanif.

12. Regarding the inquest proceedings pertaining to deceased Shahabuddin, there is deposition of SI Sunil Srivastava (PW-8). Inspector Aas Mohd. (PW-21) is the main Investigating Officer of this case, who was assisted by SI Rajpal Singh (PW-22) in the investigation of this case.

13. When confronted with the incriminating evidence, the stand of the appellant/accused was of bald denial and no evidence in defence was led before the trial court. The trial concluded with the conviction of the appellant which is

being assailed in this appeal.

14. Learned counsel for the parties were heard and with their assistance, a critical scrutiny of the evidence on record was undertaken. In the impugned judgment, the trial judge has enumerated the 10 circumstances, to highlight the chain of circumstantial evidence, which are as follows:-

i) Deceased Shahabuddin and Hanif left Shahabuddins house on 17.3.1995, and, deceased Shahabuddin had taken with him a cash amount of Rs.2,000/- and some gold ornaments;

ii) Deceased Shahabuddin had been getting 'Ruhani treatment from the two accused who had also visited the house of deceased Shahabuddin 2-3 times earlier to 17.3.1995;

iii) Non-return of deceased Shahabuddin on 17.3.1995 and going to deceased Hanif to bring him back from the house of the accused persons on 18.3.1995;

iv) Deceased Hanif having been seen in the company of the accused persons at Bhramपुरi, Jafrabad on 18.3.1995 and then his being found dead at Hathras Railway Station, Hathras;

v) Bringing of the two accused persons to the house of deceased Shahabuddin by his son and some relations on 21.3.1995, and, performing of a Tantrik Kriya by the two accused at Shahabuddins house and telling his family members that Shahabuddins body could be found near Kalkaji Mandir. I may add here that the defence was totally mum and silent to this specific deposition by PW-6 and PW-13 about some Tantrik Kirya having been performed by the two accused in the house of deceased Shahabuddin after being brought there on 21.3.1995, and had told them that (Shahabuddin) his body could be found near Kalkaji Mandir. The silence on the part of the accused persons on this fact is not an admission only of the fact of their having been brought to the house of Shahabuddin on 21.3.1995 but also of the fact that these two accused had been practising as Tantriks and they knew it that body of deceased Shahabuddin was lying, or, had been left, or, thrown somewhere near Kalkaji Mandir which fact was never in the knowledge of any

member of the complainants family or even the police of P.S. Chandni Mahal since the body of deceased Shahabuddin lay unidentified in the mortuary of AIIMS after being recovered from near Kalkaji Mandir by the police of P.S. Kalkaji on 18.3.1995.

vi) The recovery of gold ornaments from the house of accused Alimuddin and recovery of the locket from the house of accused Kalimuddin, the ornaments being the same which deceased Shahabuddin had taken away with him while leaving his house on 17.3.1995, and, these recoveries remaining almost unrebutted - specially from the testimony of PW-7.;

vii) The recovery of some books related to tantric Kriyas, eyes and bones of birds/animals and some chemicals including Potash and Cyanide;

viii) The accused persons having been seen in the company of the deceased Hanif on 18.3.1995;

ix) Another unchallenged and fully established factum that these two accused had been practising as Tantriks from the deposition of PW-15 who categorically testified that these two accused were known to him and they were working as Tantriks. Not even a word was said in rebuttal to this factum;

x) The post mortem report, subsequent opinion regarding cause of death coupled with the reports Ex.PA-1 and Ex.PW-22/B - having given clear opinions that death of both these deceased occurred due to cyanide poisoning. Ex.4 is the part of the recovered chemicals and this has been opined as giving positive test for Cyanide vide report Ex.PA-1.

15. At the hearing before us, the endeavour of the learned senior counsel for the appellant was to demolish the evidence of appellant having made disclosure statement (Ex.PW-7/C) to the police, which eventually led to the recovery of the incriminating articles. In this regard, our attention was drawn to the deposition of PW-13 - Fahimuddin, who in his cross- examination does state that he cannot tell as to what was contained in his disclosure statement. This stray line cannot be read in isolation. When deposition of PW-13 - Fahimuddin is read as a whole, it

reveals that this witness has explained that the disclosure statement was written in his presence. Regarding the contents of the disclosure statement (Ex.PW- 7/C), this witness has already deposed in his chief examination and there is no worthwhile cross-examination about it in the cross-examination by the defence counsel. So the appellant cannot derive any mileage out of it. On no other count, the testimony of material witness PW-13 - Fahimuddin could be assailed before us.

16. To assail the recovery of the ornaments etc., effected from the house of the appellant as detailed in the Recovery Memo (Ex.PW-13/A) in pursuance to his disclosure statement, learned senior counsel for the appellant had drawn our attention to the so-called infirmity in the deposition of PW-7 - Raissuddin regarding his disclosing on the 1st day of his deposition that he had accompanied the police party upto Brahmpuri Crossing, near the house of the appellant, to suggest that PW-7 - Raissuddin had actually not witnessed the alleged recovery. After having read the testimony of PW-7 - Raissuddin in its entirety, we find that this witness in chief examination has clearly deposed as under:-

"I had got down at Chowk Brahampuri because my legs had gone almost num but I had gone upto the house of Alimuddin in Gali No.19 wherefrom a suitcase was recovered containing some books, three small bottles containing Potash, Chloroform, some bones of animals owl etc. were also found and gold ornaments numbering about fifteen."

17. In the cross-examination this witness PW-7 - Raissuddin has not been cross-examined regarding the veracity of the aforesaid recoveries as detailed in Recovery Memo (Ex.PW- 13/A), which were made from the house of the appellant in pursuance to his disclosure statement. Infact, there is no cross-examination of this witness PW-7 - Raissuddin by the defence regarding the aforesaid so-called infirmity in his deposition.

18. Prosecution version is sought to be dented by the appellants counsel while pointing out that PW-7 - Raissuddin has admitted that the accused persons were not interrogated in the police station on 21.3.1995 in his presence. In our opinion, this would be of no consequence, for the reason that the disclosure statement

(Ex.PW-7/C) was made by the appellant on 22.3.1995 and not on 21.3.1995. There is no worthwhile challenge to the deposition of PW-7 - Raissuddin which has been found by us to be unassailable.

19. It is only in the appeal, for the first time, it is highlighted that on 18.03.1995 the dead body of Shahabuddin was identified by his son Rahimuddin and his nephew - Nafees, as it appears from the Inquest Report of Shahabuddin (Ex.PW- 8/B) and thus it was urged that the testimony of Raissuddin PW-7 and Faimuddin PW-13 of they having learnt of the death of Shahabuddin on 22.3.1995 is a concocted version and extending the argument further it is urged that the statement of Raees Ahmed on the basis whereof FIR was registered on 22.3.1995; the statement made on 22.3.1995 is false.

20. The testimony of SI Sunil Srivastava PW-8 is important to be noted on said aspect of the matter and we highlight that he was not subjected to any cross-examination. He has deposed that posted at PS Nehru Place on 18.3.1995 on receipt of DD No.3 he reached Kalkaji Mandir and seized a dead body of a middle aged person. He got the body photographed and sent to the mortuary of AIIMS with a request Ex.PW-8/A to preserve the body for 72 hours. The dead body was identified on 22.3.1995 by Rahimuddin and Nafees and he got the post-mortem done and that inquest papers Ex.PW-8/B are in the handwriting of ASI Tara Chand. Upon scrutiny of the record, we further find that in the Inquest Report (Ex.PW-8/B), against the name of the deceased, it was initially recorded as 'unknown and then 'unknown was scored off and in its place the name of the deceased was written as 'Shahabuddin. Inquest Report (Ex.PW-8/B) as well as the application (Ex.PW-8/A) for preservation of the dead body of 'unknown person is of the even date, i.e., 18.03.1995. In respect of these 2 documents, there is deposition of SI Sunil Srivastava (PW-8). It becomes apparent from the perusal of the application for preservation of the dead body of 'unknown person (Ex.PW-8/A) that till then, i.e., 18.03.1995 it was not known that the dead body was of Shahabuddin. It is clearly recorded in the said application (Ex.PW-8/A) it is of an 'unknown person. It emerges from the

deposition of SI Sunil Srivastava (PW-8) that the said dead body of 'unknown person was identified by Rahimuddin and Nafees on 22.03.1995 as to be of Shahabuddin. The said evidence remains unchallenged in cross-examination. In fact the entire evidence of SI Sunil Srivastava (PW-8) cannot be disbelieved in view of the Inquest Report (Ex.PW-8/B) because this witness has not been confronted with it. What has happened is obvious. SI Sunil Srivastava has acted negligently. The inquest papers which he prepared on 18.3.1995 and on which he wrote that the dead body was of an unknown person were used by him on 22.3.1995 when the dead body was identified. He scored off the word 'unknown and wrote the name of the deceased and filled up the columns pertaining to identification but did not bother to change the date. In fact, the correct thing for him to have done was not to have tinkered with the inquest papers which he had already submitted on 18.3.1995, he should have written an application stating therein that he had found 2 witnesses who could have identified the dead body and on the said application the correct date should have been written. It is settled law that negligence by a police officer has to be ignored if otherwise satisfactory evidence emerges with respect to an issue which arises for consideration.

21. It is elementary rule of law that no one can be taken by surprise. If the testimony of SI Sunil Srivastava (PW-8) regarding identification of the dead body of Shahabuddin on 22.03.1995 was sought to be dislodged in view of the Inquest Report (Ex.PW-8/B) then he ought to have been confronted with it. Having not done so, appellant cannot be heard to say now that the entire prosecution case is rendered unacceptable in view of the Inquest Report (Ex.PW-8/B). Not even a suggestion has been given to SI Sunil Srivastava (PW- 8) that his deposition regarding relative of Shahabuddin identifying the dead body of Shahabuddin on 22.03.1995 is false. Had SI Sunil Srivastava (PW-8) been confronted with the Inquest Report (Ex.PW-8/B) then he could have explained as to under what circumstances the name of the deceased as 'unknown in the Inquest Report (Ex.PW-8/B) was scored off and the name of the deceased was written as 'Shahabuddin and the names of two relatives of deceased Shahabuddin, who had identified his dead body finds mention therein. In this view of the matter, we are not inclined to disbelieve SI Sunil Srivastava (PW-8) regarding relatives of Shahabuddin identifying the dead body on 22.03.1995.

22. Upon independently analysing the evidence on record, we find the circumstances which unerringly point towards the guilt of the appellant are:-

i) In the evening of 17.3.1995, Shahabuddin while leaving his house to go to the house of the appellant for getting 'ruhani treatment from the tantriks, i.e., appellant and his co-accused and had taken some gold ornaments and cash of `2,000/- and had not returned back till late in night and so, Haneef was sent to trace out Shahabuddin and even he had not returned back.

ii) Recovery of gold ornaments of Smt. Rabia (PW-11) wife of the deceased Shahabuddin, i.e., 3 Gold Rings (Ex.P-1/1-3), 6 Gold Earrings (Ex.P-2/1-6), 1 Gold Chain (Ex.P-3), 4 Jhumkas/Ear tops (Ex.P-4/1- 4) from the house of the appellant upon his disclosure.

iii) Recovery of some chemical and other articles from the house of the appellant in pursuance to his disclosure statement and the fact of the recovered chemical being analysed to be 'cyanide as per Forensic Science Laboratory Report and the cause of death of Shahabuddin and Mohd.Hanif being also due to 'cyanide poisoning.

23. We are of the considered view that the aforesaid circumstances are firmly established on the strength of the evidence on record and the afore-noted circumstances are consistent with the hypothesis of the guilt of the appellant. We are satisfied that above said chain of events conclusively establish the guilt of the appellant and rule out every likelihood of appellant being innocent. Consequently, finding no merits in this appeal we dismiss it while cancelling the bail bonds of the appellant, with direction to the trial court to take the appellant into custody for serving the sentence awarded to him.