

Aas Mohd. Vs. State

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Court : Delhi

Decided On : Nov-03-2011

Judge : S. P. Garg, J.

Appeal No. : Crl.A.No.201 of 1999

Appellant : Aas Mohd.

Respondent : State

Judgement :

1. Vide impugned judgment dated 3.3.1999 the learned Trial Judge, in para 21 of the impugned decision, with reference to the evidence led has opined that following circumstances stand established:-

(i) On 25th of June, 1995 (in the morning hours) dead body of an unknown person was found lying in front of the house of witness Mustfa.

(ii) There was an incised stab wound over the back of the dead body.

(iii) The dead body was smeared with blood.

(iv) Blood trails led the police party to H.No.B-248, Gali No.2, Indra Vihar, Delhi.

(v) There was blood spot inside the house.

(vi) There was blood on the door of the house.

- (vii) Wooden piece Ex.P.1 was recovered from the said house.
- (viii) There was blood of 'A' group on the said wooden piece.
- (ix) That the said house belonged to the accused.
- (x) Exhibits were lifted from the spot as well as from the house of the accused.
- (xi) On 26.6.1995, accused was arrested.
- (xii) Shirt Ex.P.4 having blood stains of 'A' group was seized from him, which he was wearing at that time.
- (xiii) Knife Ex.P.3 was recovered at the instance of the accused, from his house.
- (xiv) Clothes of the deceased were seized and handed over to the police by Dr.Anil Kohli.
- (xv) Exhibits were kept intact at the malkhana and were sent to FSL.
- (xvi) Injuries mentioned in post-mortem report were possible by knife Ex.P.3.
- (xvii) There was human blood on knife Ex.P.3.
- (xviii) Human blood of 'A' group was on Ex.P.1 and Ex.P.4.
- (xix) Blood of the deceased was of 'A' group.

2. It is apparent that the incriminating circumstances against the appellant would be: (a) proof of the fact that blood trail from where the dead body was found led up to House No.B-248, Gali No.2, Indra Vihar, Delhi where the appellant lived; (b) blood spots noted inside the house where the appellant lived and the door of the house as also wood piece Ex.P-1 lifted from the house on which human blood of the same group i.e. 'A' as that of the deceased was detected; (c) knife Ex.P-3 on which human blood was detected being recovered pursuant to the disclosure statement made by the appellant and at his instance; and (d) shirt Ex.P-4 worn by the appellant when he was arrested being detected with human blood of the same group as that of the deceased.

3. The process of criminal law commenced when DD No.27 was recorded at 4:30 a.m. on 25th of June 1995 at police post Johripur under jurisdiction of P.S. Gokul Puri recording information that a dead body of a person was lying at the corner of the drain, near temple, Chaman Park, Indra Vihar, Delhi. As deposed to at the trial by HC Mangal Prasad PW-2 he was entrusted with copy of DD No.27, Ex.PW-2/A, and as he reached House No.B-71 Indra Vihar, in which Mustfa PW-1 resided he found a person lying dead in the street and he informed the SHO on wireless. As deposed to by Insp.Bharat Singh PW-8, the SHO, he reached the place of the crime accompanied by Ct.Raj Kumar PW-3 and by then, as deposed to by ASI Balwant Singh PW-5, while patrolling the area, even he reached the place of the crime.

4. Relevant would it be to note that all four i.e. HC Mangal Prasad PW-2, Insp.Bharat Singh PW-8, Ct.Raj Kumar PW-3 and ASI Balwant Singh PW-5 have deposed in sync with each other that from the place where the dead body was found they saw a trail of blood till House No.B-248 Indra Vihar in which appellant lived. But, whereas HC Mangal Prasad and Ct.Raj Kumar concluded their deposition by saying that they saw blood at the door of the house in which appellant lived, ASI Balwant Singh and Insp.Bharat Singh deposed that they saw blood spots inside the house as well.

5. Whereas HC Mangal Prasad and Ct.Raj Kumar have not deposed to any exhibit being lifted from inside the house, ASI Balwant Singh and Insp.Bharat Singh have deposed that the piece of wood Ex.P-1 and a pair of chappal Ex.P-2/1 and Ex.P-2/2 were seized from House No.B-248 Indra Vihar.

6. Further case of the prosecution before the learned trial court is that the wife of the appellant was found inside the house and on interrogation she revealed that the deceased was having objectionable relations with her and the appellant had stabbed him with a knife inside the house and had thrown the dead body outside the house of one Mr.Mustfa i.e. PW-1.

7. As per the prosecution, on 26.06.1995 i.e. the next day, on receipt of secret information about the presence of appellant at his house, HC Rishi Pal PW-6 and Insp.Bharat Singh PW-8 reached there and apprehended the appellant outside his

house and upon interrogation made a disclosure statement stating that he could get recovered the knife used by him to stab the deceased and thereafter from under a bed in the room of his house got recovered the knife Ex.P-3. Shirt Ex.P-4 worn by the appellant was noticed with blood stains thereon and hence was seized.

8. As per FSL report Ex.PW-16/A and Ex.PW-16/B human blood having 'A' group i.e. the blood group of the deceased was detected on the piece of wood and the shirt. Human blood was detected on the knife, group whereof could not be ascertained.

9. Mustfa PW-1 the stated witness to the seizure of the wood piece Ex.P-1 and the pair of chappals Ex.P-2/1 and Ex.P-2, denied seizure thereof in his presence.

10. Photographer Ct.Ravinder Singh PW-4 took the photographs Ex.P-5 to Ex.P-11, and unfortunately save and except Ex.P-8 all pertain to the place outside the house where appellant statedly resided and Ex.P-8 throws no light on any blood stain inside the house.

11. Dr.Anil Kohli PW-7 who conducted the post-mortem proved the post-mortem report Ex.P-7/A as per which a solitary stab wound at the middle centre of the sternal notch pierced the upper lobe of the right lung causing death resulting from haemorrhagic shock and as per his opinion Ex.P-7/B, if the tip of the knife Ex.P-3 was not bent, the injury which caused the death could have been inflicted by the knife in question.

12. Having perused the evidence led it strikes us that during investigation, no attempt was made to ascertain the identity of the deceased. ASI Balwant Singh PW-5 in the cross- examination admitted that name of the deceased could not be ascertained though they had interrogated people from the locality about the identity of the deceased. Wife of the appellant also did not give name of the deceased. The witness further admitted that till date the identity of the deceased could not be established. None of the person in the locality knew the deceased. None of them informed the police that the deceased was ever seen in the locality.

13. The prosecution has failed to render plausible explanation as to why the identity of the deceased could not be established during investigation. Nothing has come on record as to what was the name of the deceased and the place where he used to reside. Nothing has come on record as to how and under what circumstances the deceased happened to be present there to be stabbed by someone. No sincere efforts seem to have been made by the police to ascertain the identity of the deceased during investigation. Identity of the deceased becomes relevant because as per the prosecution, the deceased was having intimate relationship with the wife of the appellant. Had it been so, the wife of the appellant must have disclosed the identity of the deceased. An unknown stranger is not imagined to have intimate relation with the wife of the appellant or to have dare to go inside the house of the appellant during odd hours at night and that too with the appellant present inside the house. Inaction/negligence of the police to establish the identity of the deceased is an adverse circumstance against the prosecution to establish the motive of the appellant to commit murder. There is nothing on record to show if the appellant had suspected fidelity of his wife at any time or that he had ever suspected the deceased to visit his house to have objectionable relation with his wife. No quarrel is alleged to have taken place of the appellant with his wife of her having any relations with the deceased. The appellant was not aware about the visit of the deceased to his house to make a plan in advance to stab him on the intervening night of 25th and 26th of June, 1995.

14. Appellant's wife has not been examined as a witness, notwithstanding she being a relevant witness if we accept the testimony of the four police officers who, as per their testimony had reached the place where the murder took place.

15. Mustfa PW-1 has not deposed of having seen blood inside the house where appellant lived. As noted herein above, two of the four police officers who had reached the place of the crime have not deposed to have seen blood inside the house of the appellant. Only two police officers, namely, ASI Balwant Singh PW-5 and Insp.Bharat Singh PW-8 have deposed to have seen blood spots inside the house where the appellant lived, but for reasons best known to them, they did not bother to lift the blood on a piece of gauze or swab of cotton. In fact, Insp.Bharat

Singh PW-8 has categorically admitted during cross-examination that no blood was lifted from inside the house of the accused. This seriously dents the credit of the version of the prosecution that there were blood spots inside the house where the appellant lived.

16. The post-mortem report Ex.P-7/A does not show any injury being caused on the person of the deceased with a blunt object and thus it remains a mystery as to how a blood-stained piece of wood Ex.P-1 was found inside the house of the appellant. The post-mortem report, to which we have referred to herein above with respect to the situs of the injury on the person of the deceased would reveal that the plural cavity contained two litres of blood; the reason was obvious: the solitary stab wound had pierced the upper lobe of the right lung of the deceased. The injury is of a kind where it was the internal bleeding which was profuse and not the muscular bleeding of the chest muscles and tissue which was profuse. The trail of blood from outside House No.B-248, Indra Vihar up to House No.B-71 Indra Vihar, covering a fairly large distance of probably about 200 metres, as per rough site plan Ex.P-8/B throws light on the fact that the deceased stumbled towards House No.B-71 Indra Vihar. There being no bruises on the dead body rules out either the dead body being dragged or the injured victim being dragged from outside House No.B-248 to House No.B-71. Under the circumstances it would be doubtful whether a solitary stab wound of the kind which we have noticed in the instant case would result in blood spilling at the place where the stab was inflicted thereby staining a piece of wood lying nearby.

17. We need to speak a word about the shirt Ex.P-4 with blood stains thereon being recovered by the police when the appellant was apprehended the next day after the crime was committed. The appellant is not a vagabond. He lived in his own house with his wife. It is most improbable that he would continue to wear a blood stained shirt which he was wearing when he committed the crime, if at all. We also need to speak a word about appellant being arrested the next day from his house. If indeed, he had committed the offence and having knowledge that the police knows about the crime being committed and that there was a trail of blood between his house and the place where the dead body was recovered, it is most unnatural for him to be in his house, to be arrested by the police.

18. The only evidence with respect to the blood of the deceased would therefore be the trail of blood from outside the house of the appellant till the house of Mustfa. Now, the time when the crime took place assumes importance. It was around 4:30 a.m. of 25th June 1995. Dawn was just about breaking. People would be in their slumber by and large and that explains nobody hearing the shrieks of the deceased and this does not rule out the possibility of anybody stabbing the deceased on the street outside the house of the appellant and the deceased walking towards a place where he could find rescue. Unfortunately, the prosecution has made no attempt to find out the identity of the deceased or the place where he lived. The rough site plan Ex.P-8/B shows that to reach from House No.B-248 one has to walk first towards the North and at the T-junction towards the east and at the next T-junction, once again towards the North and at the first lane towards the West to reach House No.B-71. The trail of blood would show that in an injured condition, the deceased first moved towards the left from outside House No.B-248, then towards the right, followed by a movement in the left direction and once again, in the left direction by taking a 90 degrees turn. This also establishes, in any case does not rule out the possibility, of the deceased, whilst he was injured, proceeding to a place where he could find a rescue.

19. There are traces of contrivance pertaining to the recovery of the knife Ex.P-3 at the instance of the appellant. Apart from Mustfa PW-1 categorically deposing that no recovery or seizure of a knife, much less Ex.P-3 was effected in his presence we find Mustfa's signatures on the seizure memo Ex.PW-6/D pertaining to the seizure of the knife, but on the seizure memo Ex.PW-6/E whereunder the shirt Ex.P-4 was seized, we find Mustfa not being a witness although the Investigating Officer claims both seizures made in presence of Mustfa. That apart, as held by the Supreme Court in various decisions and we may only note a few, JT 2008 (1) SC 191 Mani vs. State of Tamilnadu, 1994 (4) SCC 110 Surjit Singh vs. State of Punjab, and AIR 1963 SC 113 Prabhu vs. State of U.P., recoveries of ordinary articles such as a knife or a piece of clothing is always considered as very weak evidence.

20. Therefore, the only incriminating evidence we have is a trail of blood from outside the house of the appellant till the house of PW-1 and at best the recovery

of a knife and that too also with a taint, which was the possible weapon of offence and the recovery, that too with a taint, of the shirt which the appellant was wearing when he was apprehended the next day on which human blood of the same group as that of the deceased was detected, the said circumstantial evidence may only point the finger of guilt towards the appellant but does not rule out the possibility of his innocence and hence the appellant would be entitled to the benefit of a doubt.

21. The appeal is allowed. Impugned judgment and order dated 3.3.1999 convicting the appellant for the offence of murder is set aside and the appellant is acquitted of the charge framed against him. Needless to state, the order on sentence dated 8.3.1999 is also quashed.

22. Since the appellant is on bail, the bail bond and surety bonds furnished by him are discharged.

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