

(2014) 08 DEL CK 0024

Delhi High Court

Case No: Crl.A. 1209/2013

Rajeev Kumar

APPELLANT

Vs

State (Govt. of NCT) of Delhi

RESPONDENT

Date of Decision: Aug. 28, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 106
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Pradeep Nandrajog, J; Mukta Gupta, J**Bench:** Division Bench**Advocate:** Alpana Pandey, Advocate for the Appellant; Lovkesh Sawhney, APP, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Mukta Gupta, J.

Rajeev Kumar challenges the judgment dated November 27, 2012 convicting him for offence punishable u/s 302 IPC and the order on sentence dated December 03, 2012 directing him to undergo imprisonment for life and a fine of Rs. 10,000/- and in default of payment of fine to further undergo Simple Imprisonment for a period of two years.

2. Rajeev assails the judgement on the ground that his conviction for Ravi, which is based on circumstantial evidence, is contrary to the principles of law laid down for basing a conviction on circumstantial evidence. The last seen evidence of Suresh Kumar PW-1 was a day prior to the day of alleged incident and thus cannot be termed as last seen evidence. The finger prints used by the learned Trial Court have been held to be admissible contrary to the law laid down by the Supreme Court and of this Court. Further, since Rajeev was the care taker of the property his finger prints would have naturally been found in the house. No motive has been attributed

to Rajeev Kumar for causing murder of Ravi. Nitesh Sharma PW-2 in his examination though stated that the deceased was residing with Rajeev Kumar however, in cross-examination admitted that he had no personal knowledge about this fact and that he had never seen the deceased residing with Rajeev Kumar. Even PW-3 in cross-examination stated that he did not know Rajeev Kumar. The alleged recovery of the dead body does not show any link of the appellant with the deceased. The so called extra judicial confession cannot be relied upon. The defence of Rajeev Kumar has not been taken into consideration by the learned Trial Court. Hence the appeal be allowed.

3. Though no defence evidence has been led, the explanation of Rajeev Kumar in his statement u/s 313 Cr.P.C. is:

"It is false case. In the morning of 29.9.10 I left the premises in question leaving behind deceased Ravi who woke up and closed the door from inside when I left for Tuglakabad to the house of my employer Sanjay for collecting my salary. Ravi was alive at that time. When I reached the house of my employer Sanjay he told me to come to his office and there I waited till 4/5.00 PM and at the end he told me to come another day to collect my salary. I returned to my house and found the police present there. I entered the house and saw the dead body of deceased Ravi and thereafter I was taken to the PS and I was told to call Sanjay and thereafter I was kept in PS and on the very next day I was made to sign some documents and blank papers. I was medically examined and produced before the court, there I came to know that I have been arrested in a case of murder of deceased Ravi. My father and mother are old aged person and living at my native place, no one else is there to pursue my case. When my case is committed in the sessions court I was granted a lawyer by the court and I told him every fact of this case. He advised me to tell everything about this case during my testimony u/s 313 Cr.PC. "

4. The case of the prosecution is that on September 29, 2010 Sanjay PW-14 came to the Police Station, North Rohini along with Rajeev and got recorded his statement vide DD No.20A at 6.05 PM that Rajeev Kumar came to him at Tuglakabad and informed that he had murdered his friend Ravi by slitting his neck at house No.D-14/188-189, Sector-7, Rohini and the dead body was lying in a room in the said house. On the basis of this information police officers along with Sanjay and Rajeev went to the spot where they found the dead body of Ravi. Thus a rukka was sent for registration of FIR on the statement of Sanjay who stated that he was working as Supervisor in Sterling Security Service. His co-brother Sudhir had bought House No.D-14/188-189, Sector-7, Rohini, Delhi for which he needed a security guard. Thus around two months ago he had kept a boy namely Rajeev Kumar s/o Tirpit Narayan Singh, r/o Village-Burma, PO- Kethma, PS and District-Shekhpora, Bihar on the job of security guard. On that day around 4.00 PM Rajeev Kumar came to meet him at the office of Sterling Security Service, Tuglakabad and informed him that he had committed a mistake. He stated that he had murdered his friend Ravi by slitting his

neck in the house of Sudhir ji situated at Rohini and now he is repenting. He was feeling the burden and asked him as to what he should do. On this Sanjay made him understand that he has committed a mistake and that now he could not do anything and he should surrender to the police. Rajeev accompanied Sanjay to the Police Station. After this, along with the police officials Sanjay and Rajeev Kumar went to the House No.D-14/188- 189, Sector-7, Rohini, Delhi where the shutter at the ground floor was locked. Rajeev Kumar took out a key from his pocket and opened the shutter. He went to the first floor and took them to inside room. There they found a dead body lying on the floor which Rajeev Kumar identified to be the dead body of his friend Ravi whom he had murdered at around 3.00-4.00 AM in the morning by slitting the neck with a knife and thereafter he left after closing the shutter at the ground floor.

5. On the basis of statement of Sanjay FIR No.256/2010 u/s 302 IPC was registered at PS North Rohini. The crime team was called at the spot which took the photographs of the spot and prepared the inspection memo Ex.PW-4/A. From the spot bed sheets, gamchha (towel), four pieces of granite stone, blood sample, blood earth control and earth control were seized. Three chance prints were also detected from the granite stones which were black in colour. Rajeev also led to an almirah from which he took out two blood stained knives tied together and his clothes i.e. a T-shirt and underwear which were also blood stained.

6. The dead body was sent for post-mortem. Dr.Manoj Dhingra PW-18 conducted the post mortem and noticed the following injuries:

"External injuries:

Sharp incised wound 19x6 cm x 6 cm deep present horizontally over front and sides of neck, wound is placed 9 cm below left ear. 6 cm below tip of chin, 8 cm below right ear, maximum width is 6 cm in centre of chin, with tailing towards right side where tailing is 1 cm long above and 1.2 c.m below placed. 0.4 cm apart. Wound is placed 5.5 cm above sterna notch in centre of neck.

2. Abrasions 1x04 c.m soft brown present just lateral end of right eyebrow.

Internal Examination:

1. Head-on reflection of scalp effusion of blood present over occipital and parietal region. Both sides of scalp liner fracture of left and right parietal bone present. Brain weight is 1040 gms. SAH over parietal and occipital region present.

Neck- on fine dissection of neck muscles effusion of blood present in soft tissue on interior part of neck. Depth of injury is 6 cm with sharply cutting of underlying trachea, oesophagus, blood vessels and muscles of interior part of neck."

7. He exhibited his post-mortem report vide Ex.PW-18/A and opined that the death was due to asphyxia and shock consequent upon injury No.1. He also opined that

the injury No.1 was caused by sharp edged weapon and was ante mortem in nature. An application Ex.PW-18/B dated November 10, 2010 was moved by the Investigating Officer before Dr.Manoj Dhingra seeking a subsequent opinion qua the injury on the deceased along with two single edged knives with plastic handle, one with red handle and the other with blue, tied together with a cloth. After examination of the knives and going through the post mortem report Ex.PW-18/A Dr.Manoj Dhingra opined that the injury No.1 mentioned in the post-mortem report could have been caused by the examined knife or any other such knife. He exhibited his subsequent opinion as Ex.PW-18/C. The knives recovered from the spot were blood stained and on examination at the FSL it was opined that both the knives had human blood of "B" group origin vide Ex.PY. Even the blood of the deceased was of "B" group origin. Pursuant to the disclosure statement of Rajeev his clothes i.e. pant, shirt and underwear were also seized vide seizure memo Ex.PW-14/J. As per the report Ex.PY the blood on the t-shirt of Rajeev Kumar was also of human origin "B" group which tallied with that of the deceased whereas the blood on the underwear was of human origin but gave no reaction. At the instance of appellant four granite stones coloured black which were as pieces were recovered vide Ex.PW-14/G. The said granite stones were also blood stained and had human blood of "B" group origin. The chance prints recovered from the granite stones were sent for examination and as per the finger print report Ex.PW-9/B the chance finger prints tallied with that of Rajeev Kumar.

8. During trial the prosecution examined Suresh Kumar PW-1, Nitesh Sharma PW-2 and Neeraj Sharma PW-3, the witnesses who had last seen Ravi in the company of Rajeev Kumar. Suresh Kumar deposed that he was running a tea stall in front of House No.D-14/188-189, Sector-7, Rohini where Ravi had been murdered. Ravi used to work at Saini Electronics and used to sleep on the roof of the shop of Saini Electronics. Ravi used to come to his tea stall for having tea. Around 20-25 days prior to the incident Ravi had left the job at Saini Electronics. The House No.D-14/188-189, Sector-7, Rohini was a vacant house and Rajeev Kumar was working as chowkidar in the aforesaid house. Rajeev Kumar also used to come to the shop of Suresh Kumar for tea. Ravi started living with Rajeev Kumar at House No.D- 14/188-189, Sector-7, Rohini after he left the job from Saini Electronics. Rajeev and Ravi were well known to him as they both used to have tea from his shop. On September 29, 2010 he was called by the police at the said house where he found the dead body of Ravi lying on the floor. His neck was slit. He also told the police that he saw Ravi and Rajeev Kumar together on September 28, 2010 when they had come to his shop together.

9. Learned counsel for the appellant has sought to assail the testimony of Suresh Kumar PW-1 on the ground that he had stated that in the morning of 29.09.2010 he had not seen Ravi and Rajeev and main door (grill door) of house No.D-14/188-189 remained closed whole day and thus this witness cannot be stated to have last seen the deceased with Rajeev. Suresh Kumar has stated that both Rajeev and Ravi had come to his stall to take tea on his shop a day before i.e. on September 28, 2010 and

he had seen Rajeev and Ravi in the night on September 28, 2010 as well after he closed the shop but denied seeing them in the morning of September 29, 2010.

10. Nitesh Sharma PW-2 and Neeraj Sharma are not the witnesses of last seen. They only stated that they were partners in Saini Electronics where the deceased was working as a helper/servant for the last four years and used to sleep on the roof of the electronic shop. One month prior to his murder he had left the job and started living with Rajeev at House No.D-14/188-189, Sector-7, Rohini.

11. Thus the only witness who had last seen the deceased with Rajeev is Suresh Kumar, the owner of the tea stall in front of the house where the dead body was found lying on the night prior to the murder of Ravi. Even in his cross-examination this witness has clarified that a day prior to the incident he had seen both Ravi and Rajeev together.

12. However, more than the last seen, Rajeev is accountable for the murder of Ravi on the count that Ravi was living with him and his dead body was found lying in the house which was in the custody of Rajeev. Further the said house was a vacant house duly locked with the keys in the possession of Rajeev. The death of Ravi is homicidal and not suicidal. In view of the fact that the house was locked where the dead body was found and the key was in the possession of Rajeev, the onus shifts on Rajeev u/s 106 of the Evidence Act to explain as to how the death of Ravi took place. Though Rajeev admits in his statement that Ravi was staying with him in the house where he was the guard however, he has not been able to give any satisfactory explanation as to how the death took place in a house which was locked by him.

13. The extra judicial confession made by Rajeev to Sanjay PW-14, the first informant, is also an incriminating evidence proved against Rajeev. The house belonged to the co-brother of Sanjay and Sanjay had employed Rajeev for the safety and security of the house as a security guard. He has narrated the extra judicial confession made by Rajeev to Sanjay on September 29, 2010 when he came to his office. This witness has also deposed that the house was locked and Rajeev was having the keys and with the help of those keys the house was opened where the dead body was lying in one room on the first floor. Though he did not depose about some of the recoveries made in the first instance however, in the cross-examination by the learned APP he stated that blood stained clothes of the accused were seized and taken into possession and exhibited the same memo Ex.PW-14/J. He has also deposed that the lock and key of the house were also seized vide memo Ex.PW-14/K. He also identified the knives recovered from the almirah and seized vide memo Ex.PW-14/A.

14. Sanjay denied the suggestion that the accused was forced to confess by the police or that the accused had not confessed about the involvement of the death of Ravi. Even in the cross-examination this witness has withstood to the extent of extra

judicial confession made to him by Rajeev. The extra judicial confession to Sanjay is also corroborated, from the fact that the police machinery was set into motion by Sanjay only by getting his statement recorded on the basis of the extra judicial confession made by Rajeev which led the police to the scene of occurrence where the dead body was found.

15. The principles relating to extra judicial confession have been analysed by the Supreme Court in [Sahadevan and another Vs. State of Tamil Nadu](#), . It was laid down:

"16. Upon a proper analysis of the above - referred judgments of this Court, it will be appropriate to state the principles which would make an extra judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra - judicial confession alleged to have been made by the accused:

(i) The extra - judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

(ii) It should be made voluntarily and should be truthful.

(iii) It should inspire confidence.

(iv) An extra - judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra - judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.

16. The prosecution has also proved that from the four pieces of granite slabs recovered chance finger prints of Rajeev were found. As per the finger print report Ex.PW-9/B. However, since the specimen finger prints of Rajeev were not taken in the presence of Magistrate in view of the decision reported as [Mohd. Aman, Babu Khan and another Vs. State of Rajasthan](#), and the Full Bench decision of this Court in [Sapan Haldar and Another Vs. State](#), we are not inclined to consider the said evidence incriminating towards the appellant.

17. Thus the prosecution has proved on record the following circumstances:

i. That the House No.D-14/188-189, Sector-7, Rohini, Delhi belonged to Sudhir, co-brother of Sanjay PW-14 and was lying vacant.

ii. Rajeev was employed as the security guard for House No.D-14/188- 189, Sector-7, Rohini, Delhi.

iii. Rajeev and Ravi were living together in the said house for nearly one month after Ravi left his job with Saini Electronics.

iv. Rajeev made an extra judicial confession before Sanjay PW-14 resulting in the recovery of the dead body from the House No.D- 14/188-189, Sector-7, Rohin, Delhi.

v. The recovery of weapon of offence i.e. knives from the almirah at the instance of Rajeev.

vi. The knives were found to be blood stained with human blood of group "B" origin which tallied with the deceased.

vii. Recovery of T-shirt and underwear of Rajeev at his instance which were blood stained.

viii. The shirt and underwear of Rajeev were stained with human blood of "B" group origin which tallied with that of the deceased.

ix. The post-mortem report which opines that death was due to asphyxia and shock consequent upon injury No.1, which was a sharp incised wound on the neck. Injury No.1 was caused by sharp edged weapon and was ante mortem in nature.

x. The subsequent opinion of Dr.Manoj Dhingra that the injury No.1 could have been caused by the knives recovered or such other knife.

xi. The extra judicial confession made by Rajeev to Sanjay PW-14.

18. In view of the aforesaid circumstances proved beyond reasonable doubt by the prosecution and Rajeev having not explained as to how the dead body came to be present in the house where he was posted as guard and the keys of the said house were in his possession, we are of the considered opinion that the prosecution has proved beyond reasonable doubt that Rajeev committed the murder of Ravi. Consequently, we find no illegality in the judgment of conviction and order on sentence.

19. The appeal is dismissed. The appellant will suffer the remaining sentence.

20. T.C.R. be returned.

21. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.