

(2014) 10 DEL CK 0101**Delhi High Court****Case No:** Crl.A. 651/2012

Karma Agarwal

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision: Oct. 1, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 65B
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Pradeep Nandrajog, J; Mukta Gupta, J**Bench:** Division Bench**Advocate:** Neeraj Bhardwaj, Advocate for the Appellant; Aashaa Tiwari, APP and Satis Kumar, Inspector, Advocate for the Respondent**Judgement**

Mukta Gupta, J.

The law that a person cannot be convicted of his own murder is defied by Karma Agarwal. Karma Agarwal in order to avoid the liability of criminal cases he was undergoing killed a vagabond and left his driving license, purse, photocopies of the election I-card at the spot so that the dead body is treated to be that of Karma Agarwal and he is thus declared dead in the eyes of law. His wife and brother-in-law associated with him and identified the said dead body to be that of Karma Agarwal but for the beans being spilled over by his father-in-law PW-2 Rajpal, Karma Agarwal would have gone scot free easily as dead though living.

2. The process of law was set into motion on receipt of an information recorded as DD No.6A at 7.04 AM on May 22, 2010 at PS Bhalsawa Dairy that a dead body was lying near the MCD workshop at Bhalsawa Dairy Jheel. SI Sandeep Kumar PW-21 reached the spot with Constable Narender and found one dead body in burnt condition. He lifted the exhibits from the spot i.e. earth control, blood stained earth, one brown colour purse containing Rs. 230/-, two photocopies of election I-card of

Karma Agarwal, three photographs and one driving license in the name of Karma Agarwal and burnt cloth pieces. The same were taken in possession in four separate pullandas and sealed. One paper on which number 9910291584 was written was also found lying near the purse and was seized vide memo Ex.PW-21/B. Contact was made on the telephone number noted on the slip recovered from near the dead body and one Babbi responded. He was told about the recovery of the dead body. Babbi the brother-in-law and Karuna the wife of Karma Agarwal came to the mortuary and identified the dead body to be of Karma Agarwal. Thereafter post-mortem was conducted on the dead body and a case FIR No. 97/2010 under Section 302 IPC was registered.

3. Dr.V.K.Jha conducted the post-mortem on the dead body on May 23, 2010 and noticed superficial to deep burns present over scalp hair, left thigh, left leg, right thigh, abdomen, both hands, scalp hair burnt. On internal examination of the head he found sub scalp hematoma over frontal region, subarachnoid haemorrhage and subdural haemorrhage over frontal region. He opined the cause of death as neurogenic shock as a result of ante-mortem burn and in view of the head injury assault before death could not be ruled out. The time since death was approximately 34 hours. He exhibited his report as Ex.PW-27/A. Subsequently on receipt of the blood and viscera report which noted presence of ethyl alcohol, it was opined that viscera reports were consistent with intoxication of alcohol before death.

4. On June 27, 2010 Rajpal came to the Police Station and informed the Police that on June 26, 2010 Karma Agarwal and Sattu came to his house and told him that they had killed one unknown person sitting on the patri, put his own clothes on him and burnt him so as to escape from the cases pending against Karma Agarwal. On this information Karma Agarwal and Satnam @ Sattu were apprehended on August 28, 2010. Rajpal PW-2 deposed before the Court that Karma Agarwal was his son-in-law with whom he had married his daughter Karuna at Sarhand Punjab about 5-6 years ago. Two boys were born from the said wedlock. At the time of marriage, he was informed that Karma was a property dealer, however later he came to know that Karma Agarwal was dealing in Narcotics i.e. afeem and its derivatives like fuki etc. Karma Agarwal had been arrested number of times and lodged in Patiala and Sarhand Jail. This fact was told to him by his daughter Karuna around two years ago. The house of Karma was raided but he did not allow the Police to enter and threw stones. When his daughter called up he advised Karma Agarwal to surrender. Since stone pelting continued the Police later entered the house of Karma and Karuna, when his daughter Karuna, Jogita and one Ajay friend of Karma were arrested. On May 23, 2010 he received a telephone call from his daughter Karuna who told him "Papa kisi ne karma ko jala kar marr diya hai." She told him that she was coming to Delhi. She came to Delhi and thereafter Rajpal, his son- in-law Babbi, daughter Karuna along with his wife and some other persons reached at Jagjeewan Ram Hospital. There they saw one dead body which was badly burnt and it was dark

inside the mortuary. First of all Babbi entered the mortuary and thereafter Karuna entered. They both identified the body to be that of Karma Agarwal on the basis of the collar and colour of the shirt and other documents. He further stated that he identified the dead body on the basis of clothes and documents recovered from near the body especially the driving license.

5. We would like to note our observations on seeing the photographs of the deceased. Though the scalp is burnt there are no burn injuries on the face and even the moustache hairs are not singed. The face being clearly visible, the family members could have easily identified whether the dead body was of Karma Agarwal or not. Thus both Babbi and Karuna misled the investigating agency to believe it to be of Karma Agarwal until informed otherwise by Rajpal, father of Karuna.

6. On May 26, 2010 at about 6 AM Rajpal received a phone call from Karma asking him to meet him and to come to Nathu Pura and that he should not call him as Karma but as Vaaris. He reached at Nathu Pura and their Karma met him along with Sattu. There Karma told him that he along with Sattu killed one unknown person and burnt his dead body with the help of kerosene oil and to get rid of his previous cases he planted his driving license and other documents. He also informed that before killing the person he was made to drink liquor. The documents driving license and election I-card were got verified and were found to be issued in the name of Karma Agarwal.

7. The explanation of Karma Agarwal in his statement under Section 313 Cr.P.C. is:

"I am innocent and I have been falsely implicated in this case after obtaining my signatures on blank papers by the police under threat. My father-in-law Rajpal used to reside with us mostly and he used to instigate my wife Karuna that she should leave me as Rajpal desired that I should purchase a house at Ambala in the name of Karuna after I sold my house at Sarhand. After I purchased the house in the name of Karuna, she started residing at Delhi and she used to visit my house at Ambala only for one or two days. Rajpal used to ask me to reside at Delhi with him and leave Ambala. I was lodged in Nabha Jail, Punjab from 15.03.2010 and remained there for about one month and was released in the month of April 2010. I visited Delhi many times along with my wife Karuna, after I released from Nabha Jail and also visited Nathupura- house of Rajpal. Again said: I was lodged in Nabha Jail in March 2008 and released in April 2008. I visited Delhi on second or third month of 2010 to take my wife and thereafter, I did not visit Delhi. When I went to jail, all my documents were with my wife, but when Karuna and Yogita also went to jail in 2008, all documents remained with Rajpal. When I released from jail, I took back all my original documents from Rajpal."

8. Thus, from his statement under Section 313 Cr.P.C of Karma Agarwal it is evident that after he was released from jail he took back all his original documents from Rajpal. He has further stated that on being lodged in Nabha jail on 15th March, 2010

he was released in April, 2010. Thus, at the time of commission of offence in May, 2010, as per his own admission Karma Agarwal was in possession of all his original documents which would obviously include his original driving licence. Thus, the onus shifts on the appellant to prove how his original driving licence was found near the dead body on May 22, 2010.

9. The call details of mobile phone No.9910291584 though exhibited along with certificate under Section 65B of the Indian Evidence Act are however not relevant as the prosecution has not been able to prove that the said phone belonged to Babbi. Though SI Rajender Singh PW-11 in cross- examination says that this number belonged to Babbi but now he does not explain. In examination-in-chief he does not say that when he called on phone no.9910291584 Babbi spoke. He only says that he dialled that number from his cell phone and on May 23, 2010 one Babbi S/o Kharag Singh and Smt.Karuna W/o Karma Agarwal arrived at PS Bhalswa Dairy.

10. However, when Karma Agarwal was arrested from his possession three mobile phones were recovered. One of them was not bearing any SIM, the other two mobile phone numbers were 9355108260 and 9996425613 as deposed by Inspector Dharampal PW-26. The personal search memo Ex.PW-23/E of Karma Agarwal mentions of three mobile phones which was witnessed by HC Gayasuddin PW-23, Raj Kumar, PW-8 Assistant Nodal Officer, Reliance Communication Ltd. exhibited the call details from May 10, 2010 to June 24, 2010, Cell ID Chart, name and address of subscriber of mobile No.9355108260 along with certificate under Section 65B of the Indian Evidence Act vide Ex.PW-8/A, Ex.PW-8/B and Ex.PW-8/C. The said mobile phone was in the name of Karuna Rani, 2092, Part-2, Ward-6, Sirhind, House No.2775, Hari Palace Road, Ambala City, Sirhind. This witness was not cross-examined and thus his testimony has gone unchallenged. As per the record Karma Agarwal was in Delhi on the intervening night of May 21st and 22nd , 2010.

11. Be that as it may, in view of the conduct of appellant planting his documents including the original driving license, no complaint or FIR having been lodged thereof and his extra judicial confession made to Rajpal resulting in unearthing of the fact that Karma Agarwal was actually not dead, it can safely be held that prosecution has proved beyond reasonable doubt that Karma Agarwal committed the murder of an unidentified person after intoxicating him, assaulting him and thereafter burning his body and faked the same as that of his own. Thus, the impugned judgment of conviction and order on sentence are upheld.

12. Appeal is dismissed. Appellant will suffer the remaining sentence.

13. T.C.R. be returned.

14. 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.