
(2010) 05 DEL CK 0256

Delhi High Court

Case No: Criminal Appeal 1022 of 2008

Mohd. Jabbar

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 21, 2010

Acts Referred:

- Evidence Act, 1872 - Section 27

Hon'ble Judges: Suresh Kait, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: S.M. Chopra, for the Appellant; M.N. Dudeja, APP, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Nandrajog, J.

At 9:40 PM on 13.10.2004, information was received at PS Kapashera which was noted vide DD No. 14A, Ex.PW-13/A. Information noted was that a light as also a computer was on at a flat in Himhit Apartments, Pocket-8, Sector-22 Dwarka, but a lock was noted on the main door.

2. It is apparent that it was an unnatural event for somebody to be inside the flat with a computer on and the flat being locked from outside.

3. SI Jagpal Singh PW-18 left the police station and took along with him Ct. Prithi Singh. On reaching flat No. B-605 Plot No. 18, Himhit Apartments, Sector-22 Dwarka, which happened to be on the 6th floor, the door was found locked with some foul smell detected outside the flat.

4. As deposed to by SI Jagpal Singh, repeated knocks on the flat got no response and he peeped from the window and saw a computer inside the flat. Detecting foul smell, he broke open the door and preserved the broken lock Ex.P-3 and on making entry, saw the dead body of a male on the floor of the drawing room with blood all over. Two knives Ex.P-11 and Ex.P-12 were found near the dead body. A nylon rope

Ex.P-10 was found around the neck. It appeared that the dead body was 2-3 days old.

5. Making an endorsement Ex.PW-18/A beneath Ex.PW-13/A, SI Jagpal Singh sent Ct.Prithi Singh to the police station for FIR to be registered. At the police station, FIR Ex.PW-17/A, was recorded at 12:30 in the mid-night as noted vide DD No. 19A, Ex.PW-17/B.

6. Inspector Balbir Singh PW-19, the SHO of the police station received information of a crime being committed at the flat in question and thus he proceeded to the flat where with the assistance of SI Jagpal Singh PW-18, he conducted the spot proceedings. Crime team was summoned. The photographer took various photographs of the scene of the crime. No chance prints could be lifted. Various blood stained articles as also blood control concrete were seized as recorded in the various seizure memos. The two knives were seized vide memo Ex.PW-18/D. Sketch Ex.PW-18/C was drawn. Rough site plan was prepared. The broken lock was seized vide memo Ex.PW-18/J. Nylon rope was seized vide memo Ex.PW-18/G. The dead body was taken into possession and along with the inquest papers was sent to the mortuary for post-mortem.

7. Dr. M.M. Narnaware conducted the post-mortem and prepared the post-mortem report Ex.PW-6/A. As per the report, which was proved at the trial by Dr. Lalit Kumar PW-6, a colleague and a person familiar with the handwriting and signatures of Dr. M.M. Narnaware, a deep cut injury on the neck with a sharp edged weapon was detected. It is apparent that the deceased died a homicidal death and whosoever caused the injury intended to murder the deceased for the reason the neck was cut till deep within. It was opined that the death was approximately 3 1/2 days prior to the day when the post-mortem was conducted, and this probablizes the time of death somewhere after 8:00 PM on 10.10.2004.

8. During investigation it transpired that the deceased was enrolled as a member of a scheme called Cross Roads by Sanjay Kumar @ Pappu who had been visiting the flat of the deceased and had also visited the flat in the night of 10.10.2004. The register Ex.PW-10/A maintained at the entry gate of the Group Housing Complex, in a flat whereof the crime was committed, was seized. An entry at serial No. 60 showed that one Pappu had made said entry to visit the flat of the deceased. Further investigation, as claims the prosecution, led to the involvement of the appellant along with Saroj Kumar in the commission of the crime. As per the prosecution, the appellant used to visit the society complex to do POP work in the flats and has conspired with Saroj Kumar to commit robbery and to do so, if need be, kill the deceased.

9. Whereas Saroj Kumar @ Pappu could never be apprehended, and remains a proclaimed offender till date; appellant was apprehended from within a park nearby the complex on 17.10.2004. As entered in the recovery memo Ex.PW-10/D, at the

time when he was apprehended, upon personal search being made, an ATM card Ex.P-5 issued by ABN Amro Bank, another ATM card Ex.P-6 issued by HDFC Bank and a visiting card Ex.P-7 belonging to the deceased were ostensibly recovered from the pocket of the appellant. The appellant made a confessional statement Ex.PW-3/A admitting to the crime and as per the said statement, while admitting to the commission of the crime, appellant stated that the T-shirt Ex.PW-4/P1 and the jeans Ex.PW-4/P2 which he was wearing when the crime was committed got stained with the blood of the deceased and hence he removed the same and wore the T-shirt Ex.PW-4/P3 and the jeans Ex.PW-4/P4 of the deceased and that he could get all 4 pieces of clothings recovered from the room where he resides. Thereafter, he led the investigating officer to a room in a building in Bhola Ram Enclave, Village Pochanpur and got recovered two T-shirts Ex.PW-4/P1 and Ex.PW-4/P3 and two jeans Ex.PW-4/P2 and Ex.PW-4/P4, which were seized as recorded in the memo Ex.PW-4/A.

10. Along with the blood sample of the deceased and the clothes of the deceased which were handed over to the investigating officer by the doctor who conducted the post-mortem, the various blood stained exhibits lifted from the room where the crime was committed as also the two T-shirts and the two pair of jeans got recovered by the appellant were sent for serological examination and as per the report Ex.PW-19/G and Ex.PW-19/H of the serologist, human blood of group "A" was detected on the T-shirt and the jean Ex.PW-4/P1 and Ex.PW-4/P2 respectively. This was the blood group of the deceased.

11. At the trial, the star witness of the prosecution, Tej Pratap PW-10, working as a security guard at Himhit Apartments, Sector-22 Dwarka i.e. the complex in a flat within which the crime was committed, deposed that he was on duty from 8:00 AM to 8:00 PM on 10.10.2004 but left duty at 7:45 PM since the relieving guard Arvind had arrived a little early. Denying ever having seen the appellant working in Himhit Apartments for POP work, he stated that the entry at point "X" at page No. 60 of the register Ex.PW-10/A was not made in his presence since the same was recorded at 8:15 PM when he had already left the gate.

12. This was the only witness of the prosecution who could have proved that at 8:15 PM on 10.10.2004, the appellant along with Pappu i.e. Saroj Kumar had accessed the complex in a flat wherein the crime had been committed.

13. It is obvious that the projected evidence of the appellant visiting the complex around the time when the crime was committed has failed.

14. The prosecution was thus left to prove the recoveries as entered in the recovery memo Ex.PW-10/D when the appellant was apprehended as also the recoveries as entered in the memo Ex.PW-4/A and the incriminating value attached thereto through the medium of the FSL reports Ex.PW-19/G and Ex.PW-19/H.

15. The witness to the recovery memo Ex.PW-10/D i.e. Tej Pratap PW-10, further let down the prosecution when he denied recovery of the two ATM cards and the visiting card of the deceased from the person of the appellant. But, he admitted his signatures on the recovery memo.

16. As regards the recoveries of the two T-shirts and two pairs of jeans, as entered in the memo Ex.PW-4/A, the star witness, Naresh PW-4, the owner of the house, from a room whereof the recoveries were made, while supporting the recoveries denied the same, by stating that being called by the police to his house, by the time he reached the house the police had already arrived and the various articles of clothings shown as recovered in the memo Ex.PW-4/A were already lying in the room when he entered the same.

17. Ignoring the dents qua the recoveries, suffice would it be to state that the ABN Amro ATM card and the HDFC Bank ATM Card as also the visiting card of the deceased i.e. Ex.P-5, Ex.P-6 and Ex.P-7 are such kind of objects which are easy to be planted upon a person. That they had no value or utility for the appellant is evidenced from the fact that the appellant did not have knowledge of the password to operate the two ATM cards and minus knowledge of the passwords, the two ATM cards were useless objects. As noted above, the crime was committed in the night of 10.10.2004. The appellant was apprehended on 17.10.2004. There is no evidence that using the ATM cards any cash was withdrawn from the bank accounts of the deceased maintained by ABN Amro Bank and HDFC Bank.

18. Way back in the year 1943, Justice Muneer, in the decision reported as AIR 1943 Null 5 Shera v. Emperor had cautioned Courts to be vigilant against the known practice of the police to plant ordinary objects on the accused persons to prove access by the accused to the place where the crime was committed.

19. In the decision reported as [Prabhu Vs. State of U.P.](#), the recovery of a blood stained shirt and a dhoti as also an axe on which human blood was detected was held to be weak evidence. In the decision reported as AIR 1977 SC 1753 Narsinhbhai Haribhai Prajapati etc. v. Chhatrasinh and Ors. the recovery of a blood stained shirt and a dhoti as also a dharia (weapon of offence) were held to be weak evidence. Similarly, in the decision reported [Surjit Singh and another Vs. State of Punjab](#), the recovery of a watch stated to be that of the deceased and a dagger stained with the blood of the same group as that of the deceased were held to be weak evidence. The latest in the line is the decision of the Supreme Court reported [Mani Vs. State of Tamil Nadu](#), in which recoveries of blood-stained clothes and the weapon of offence stained with human blood were held to be weak recoveries.

20. Instant case is that of circumstantial evidence. At best only two circumstances have been proved: (i) recovery of two ATM cards and the visiting card of the deceased from the person of the appellant when he was apprehended; and (ii) recovery of two jeans and two T-shirts at the instance of the appellant, out of which

on one jean and one T-shirt human blood of the same group as that of the deceased was detected.

21. The prosecution has led no evidence that the T-shirt Ex.PW-4/P3 and the jean Ex.PW-4/P4 belonged to the deceased. Suffice would it be to state that the part of the disclosure statement of the accused that the said T-shirt and the said jean were the ones which he picked up from the room where the crime was committed and wore them after removing from his person the T-shirt and the jean which he was wearing, since they got stained with the blood of the deceased, is inadmissible in evidence. We clarify, what is made admissible by virtue of Section 27 of the Evidence Act are the recoveries and no more. It was for the prosecution to have led further evidence to prove that the said T-shirt and the jean indeed belonged to the deceased and that the other T-shirt and the jean on which human blood of group "A" was detected was worn by the appellant.

22. In view of the four decisions of the Supreme Court noted herein above, the only evidence, being the recoveries as afore-noted, it would be unsafe to sustain the conviction of the appellant.

23. Before concluding, we may note that the learned Trial Judge has sustained the conviction of the appellant only on the basis of the recoveries of Ex.P-5, Ex.P-6 and Ex.P-7 at the time of the personal search of the appellant when he was apprehended as also the fact that he got recovered the T-shirt Ex.PW-4/P1 and the jean Ex.PW-4/P2 on which human blood of the same group as that of the deceased was detected.

24. We note that there is an error committed by the learned Trial Judge in noting that human blood was detected on both T-shirts and both jeans, got recovered by the appellant. This is contrary to the report Ex.PW-19/G and Ex.PW-19/H which categorically records that human blood of group "A" could only be detected on the T-shirt Ex.PW-4/P1 and the jean Ex.PW-4/P2. It is clearly recorded that no blood could be detected on the T-shirt Ex.PW-4/P3 and the jeans Ex.PW-4/P4.

25. The appeal is allowed.

26. The impugned judgment and order dated 7.8.2008 convicting the appellant for the offences he was charged of is set aside. The appellant is acquitted of the charges framed against him.

27. The order on sentence dated 14.8.2008 is quashed.

28. Since the appellant is still in jail we direct the Registry to send a copy of the present decision to the Superintendent, Central Jail, Tihar who is directed to forthwith set free the appellant unless he is required in custody in some other case.