

Kamla Devi Vs State of Delhi

Criminal Appeal 204 of 1998

Court: Delhi High Court

Date of Decision: May 3, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Penal Code, 1860 (IPC) â€” Section 302, 34

Citation: (2012) 2 JCC 1457

Hon'ble Judges: S.P. Garg, J; S. Ravindra Bhat, J

Bench: Division Bench

Advocate: Dharmesh Thanai, for the Appellant; Sanjay Lao, APP., for the Respondent

Final Decision: Allowed

Judgement

S.P. Garg, J.

Kamla Devi and her father Akbar were arrested and charge-sheeted for committing the murder of Kanwar Pal Singh on the

night intervening 16/17.11.1986 at Shastri Park, opposite C-Block within the jurisdiction of police station Seelampur. The Trial Court by the

impugned judgment dated 29.04.1998 acquitted Akbar of the charges and convicted Kamla for committing the offence punishable u/s 302/34 IPC

and sentenced her to undergo imprisonment for life with fine of `2000/- by order on sentence dated 30.04.1998. The prosecution alleged that the

deceased (Kanwar Pal Singh) and Kamla (accused) had illicit relations and used to live together at Gulabi Bagh, Delhi. In November 1985, the

wife and children of deceased went to stay with him at Delhi. Thereafter, the deceased and his family started living in a rented house at Kartar

Nagar. The accused did not like his rejection of her and hatched a conspiracy to murder him.

2. The deceased used to work in a liquor shop at Shakarpur. On 16.11.1986, at noon time the accused reached his office and picked a quarrel

with him. The deceased pacified her and promised to return in the evening to her at Gulabi Bagh. The deceased participated in a social function at

R.K. Sharma's residence in the evening and from there left for Gulabi Bagh with his colleague Devender Kumar (PW-11). On 17.11.1986, when

he did not report for duty at the liquor shop, R.K. Sharma (PW-10) went to the house of the accused and inquired about Kunwar Pal Singh.

When he did not get any satisfactory answer, he reported the matter to the higher authorities.

3. On 18.11.1986, at about 10.00 A.M. the deceased's body was found in a gunny bag at Nai Sarak, opposite C-Block, Shastri Park,

Seelampur. Daily Diary (DD) entry No. 2-A (Ex.PW-13/A) was recorded at PS Seelampur, Delhi in this regard and the investigation was assigned

to SI Raj Kumar who reached the spot and conducted the necessary proceedings. He sent the body for post-mortem. Dr. L.T. Ramani conducted

the post-mortem. On 05.12.1986, Rajeshwar and Mahipal Singh (deceased's brothers) visited the deceased's office and were informed that he

(K.P. Singh) had not reported for duty since 17.11.1986. On 06.12.1986, they visited the police station Seelampur and on seeing the photos,

came to know about his death. The accused Kamla was arrested on 12.12.1986 and pursuant to her disclosure statement, the police recovered at

her instance the weapon of offence i.e. Saria; deceased's clothes and keys. On 19.01.1987, the accused Akbar was arrested and interrogated.

After completion of the investigation both the accused were charge-sheeted and brought to trial.

4. To prove the charges, the prosecution examined twenty nine witnesses. In their statements u/s 313 Cr.P.C., they denied complicity in the crime

and pleaded false implication. After appreciation of the evidence and after considering rival contentions of the parties, the Trial Court convicted the

accused (Kamla) for committing the offence u/s 302 IPC and acquitted her father co-accused (Akbar Singh).

5. We have heard learned counsel for the parties and have considered the Trial Court records. The entire case of the prosecution is based upon

circumstantial evidence. The prosecution mainly relied upon the circumstance of last seen; motive and recovery of incriminating articles to establish

the guilt of the accused.

6. In a case based upon circumstantial evidence, motive assumes greater importance. The motive alleged in the case is that the accused and the

deceased were in a live-in relationship and when the deceased started living separate from her and joined his family, she became agitated and

planned to kill him. The prosecution, however, did not examine any witness to prove if both were in live-in relationship and if so, since when. PW-

16 Dalbir Singh's narration on this aspect has no evidentiary value as his knowledge is based upon the information given by his sister who was not

examined during trial. No other witness testified that they both used to live together. No complaint was ever lodged by the deceased's family

objecting to the alleged illicit relations with the accused. It is unbelievable that accused's father would encourage any such relation. It is also unclear

whether the deceased resided with his family at Delhi for any duration. PW-3 (Rajbir), owner of the premises in Kartar Nagar did not depose that

the deceased had stayed with his wife and children in his house. He merely stated that he had resided for a month in his house and thereafter, left

for Faridabad. He was declared hostile and was cross-examined by learned APP after Court's permission. The witness denied the contents of the

statement Ex.PW-3/DA made to the police. It is uncertain if the accused ever objected to the deceased's living with his family at Delhi or she

picked up any quarrel with him at that time and insisted him to join her. The prosecution did not examine any family members of the deceased to

prove her behaviour and conduct during their stay in Delhi. The prosecution thus, failed to produce credible and clinching evidence to prove

motive.

7. The prosecution claimed that the accused had visited the deceased's office on 16.11.1986 and picked up a quarrel with him to force him to

return to her. PW-10 (R.K. Sharma) merely deposed about Kamla's visit to the office that day. PW-11 (Devender Kumar) also deposed about

Kamla's visit to the office that day but he denied if there had been any verbal duel between them or the deceased had promised to return to her

residence at Gulabi Bagh in the evening. They were never seen together thereafter. Undisputedly, the deceased with PW-11 had attended the

function at the R.K. Sharma's residence in the evening. After the function was over, he (PW-10) came at the bus stop, Shahdara, to see them off,

and the deceased took the bus to go to Koria Bridge. There is no evidence on record to show that the deceased had informed him that he was

going to Gulabi Bagh at the residence of the accused. When PW-10 (R.K. Sharma) visited the accused's home on 17.11.1986 to enquire about

the deceased, she was present there and informed him that the deceased had not visited her. The body of the deceased was recovered on

18.11.1986 at 10.00 A.M. There was a long gap between the time when the accused was allegedly seen with the deceased on 16.11.1986 at

noon and when the death occurred. Again it is uncertain if he actually visited the accused at her residence or went to his family at Kartar Nagar.

No missing report was lodged by his family members. The investigation is silent as to when the wife and children left Delhi to go to their native.

8. Mere presence of accused with the deceased itself cannot be taken as a strong incriminating circumstance to connect her with the commission of

offence. Regarding law on the circumstance of last seen, the observation of Supreme Court in Mohibur Rahman and Another Vs. State of Assam,

are relevant:

The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime.

There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close

proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may

be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death

or should own the liability for the homicide. In the present case there is no such proximity of time and place.

9. In State of Goa Vs. Sanjay Thakran and Another, the Supreme Court noted general principles with reference to the principles of last seen

together in Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir, as under:

The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and

when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes

impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and

possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased

were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

32. In Ramreddy Rajeshkhanna Reddy and Another Vs. State of Andhra Pradesh, this Court further opined that even in the cases where time gap

between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that

possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.

10. The prosecution has thus failed to establish that the deceased was seen alive in the company of the accused or her father in close proximity of

time and place.

11. The deceased's brothers were unaware about his disappearance and absence from duties since 17.11.1986. Only on 06.12.1986, upon

identification of photographs shown to them by the police, they came to know about his death. Prior to that, the police had no clue who was the

perpetrator of the crime. The police apprehended the accused on 12.12.1986. The recoveries of the weapon i.e "saria" and the "clothes" are

inconsequential as no independent public witness was associated despite availability. It is not believable that the accused would conceal the "saria"

of insignificant value in her house. Moreover, since the blood group of the deceased was not found on the "saria", it cannot be inferred that it was

used as a crime weapon. PW-4 (Tanuja) did not support the prosecution and turned hostile and she categorically denied recovery of any article in

her presence. The prosecution did not prove where the deceased was done to death, how and in what manner his body was thrown at the spot.

12. The above discussion reveals that the prosecution failed to prove any strong incriminating circumstance against the accused Kamla to support a

conviction for the offence u/s 302 IPC. The impugned judgment is based upon surmises and conjectures. Suspicion, however, strong cannot take

the place of proof. On the same set of evidence the prosecution failed to establish the guilt against co-accused Akbar and it resulted in his acquittal.

13. It is well settled that when a case rests purely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from

which an inference of guilt is sought to be proved, must be cogently and firmly established. Secondly, the circumstances should be of a definite

tendency unerringly pointing towards the guilt of the accused. Thirdly, the circumstances taken cumulatively ,must form a chain so complete that

there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

14. In the light of the above discussion, we are of the considered view that the prosecution has failed to satisfy the above tests and thus, the

impugned judgment cannot be sustained and is set aside. The appeal is allowed. Trial court record be sent back forthwith.