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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 15.11.2025*

+ CRL.A. 874/2004

GURDEEP KAUR

.....Appellant

Through: Mr. Vivek K. Thakur, Mr. Gagan Oberoi, Ms. Mehak Bedi & Mr. Nirbhay Jha, Advocates.

Versus

STATE

.....Respondent

Through: Mr. Aman Usman, APP for the State with Insp Arvind Kumar, PS Mandir Marg.

CORAM:**HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE MR. JUSTICE VIMAL KUMAR YADAV****DINESH MEHTA, J. (ORAL)**

1. The instant appeal under Section 374 of the Code of Criminal Procedure, 1973 has been filed against the judgment dated 21.09.2004 and the Order on Sentence dated 24.09.2004 in Session Case No. 40/03, passed by the Additional Sessions Judge, New Delhi (hereinafter referred to as "Trial Court"), whereby the accused-Gurdeep Kaur, so also co-accused Amandeep have been convicted and sentenced as under :

"2. Keeping in view the facts and circumstances of the case, I sentence the accused to undergo life imprisonment and to pay a fine of Rs. 5000/- each failing which they shall further undergo rigorous imprisonment for six months for the offence u/s 302 read with section 34 IPC. Copy be given to the accused free of costs. File be consigned to the record room."

2. Learned counsel for the appellant-Gurdeep Kaur, at the outset, submitted that the main accused has since passed away and the appeal of the present appellant alone survives. He, firstly, submitted that the prosecution



case is based upon circumstantial evidence and so far as the appellant is concerned, the circumstance brought before the Court, was only recovery of shawl and sweater (Article Q-1) as per Recovery Memo (Ex. PW-6/A). The Trial Court *vide* the impugned judgment has observed as under :

“13. I have heard the counsel for the parties and marshalled the evidence on record. The entire case of the prosecution swirls around the circumstantial evidence. Ld counsel for the parties have discussed the following circumstances before me. I will decide these circumstances one by one.

- 1. Seizure of knife in question and blood stained clothes from the houses of Gurdeep Kaur and Amandeep Singh.*
- 2. Conduct and explanation of the accused.*
- 3. Defence of the accused.*
- 4. Motive.*
- 5. Recovery of dead body at the spot.*
- 6. Delay in lodging FIR and delay in delivering its copy to the concerned MM.*

I. Seizure of knife in question and blood stained clothes from the houses of Gurdeep Kaur and Amandeep Singh.

The ld defence counsel vehemently argued that the abovesaid recoveries do not stand proved. The key argument urged by the ld defence counsel was that, although, the CFSL report found human blood on the knife and other articles, yet it failed to determine the blood grouping or the origin of the blood. It was also pointed out that human blood too, was found only on few articles. In order to understand her point clearly, it would be worthwhile to reproduce the result given by CFSL in Ex. PW20/G2 as here under:-

<i>Exhibits</i>	<i>Species of Origin</i>	<i>ABO Group/Remark</i>
<i>' 1' Gauze cloth piece</i>	<i>Human</i>	<i>'B' Group</i>
<i>'2' Earth</i>	<i>No Reaction</i>	<i>---</i>
<i>'3' piece of leaf</i>	<i>Human</i>	<i>'B' Group</i>
<i>'4'Earth</i>	<i>No Reaction</i>	<i>---</i>
<i>'5' piece of leaf</i>	<i>Human</i>	<i>'B' Group</i>



'6' Earth	No Reaction	---
'7' Piece of cemented material	Human	Inconclusive
'8' Concrete material	No Reaction	---
'9' Concrete material	No Reaction	---
'10' Concrete material	Human	Inconclusive
'11' Gauze cloth piece	Human	'B' Group
'S-2' Pants	Human	'B' Group
'S-4a' Sweater	Human	'B' Group
'S-4b' T-shirt	Human	'B' Group
'S-5' Gauze cloth piece	Human	'B' Group
'Q-2' Shawl	Human	No Reaction
'Q-3' Cloth piece	Human	Inconclusive
'Q-4' Trousers	Human	'B' Group
'Q-6' Upper tack suit	Human	'B' Group
'Q-8' Shirt	Human	'B' Group
'Q-9' Knife	Human	'B' Group
'Q-10' Shoe	Human	'B' Group

The ld defence counsel argued that the B blood grouping found on the abovesaid articles do not connect accused persons with the crime. She also pointed out that S-2 pants, S4a Sweater, S4b T-shirt, S-5 gauge cloth piece, relate to the clothes of deceased Deepak Kapoor and same can not connect the accused persons with the crime. Again Q-2 one black shawl of Gurdeep Kaur, although, showed human blood, yet, the blood group was not detected and it can not be said that there was blood of deceased Deepak Kapoor. Same is the position with Gurdeep Kaur's cloth piece, Q-3. Q-4 Trousers of Gurdeep Kaur showed human blood B group. She urged that there is no evidence that it was recovered at the



instance of Gurdeep Kaur or from her residence because only a shawl and a sweater were alleged to have been recovered at her instance. This is not the case of the prosecution that Gurdeep Kaur had gone to the house of Amandeep or Gurdeep Kaur handed over the clothes to Amandeep. Upper track suit Q6, one full sleeves shirt Q8 and sports shoes Q10 of Amandeep including knife showed blood B group. According to the prosecution story Amandeep alleged to be on the back side of deceased Deepak Kapoor and the blood oozed out from the front side of the deceased and there could have no blood stains on the upper track suit or shirt or shoes of Amandeep.”

3. Mr. Vivek Thakur, learned counsel argued that so far as the accused-appellant is concerned, she was charge sheeted under Section 302 read with Section 34 of the Indian Penal Code, 1860. The incriminating circumstances found against her were recovery of shawl and sweater and so called animosity with the deceased. The learned counsel submitted that neither any evidence of last seen nor any other recovery (except for the shawl and sweater) was made from the appellant.

4. Taking the court through the recovery at the first place, learned counsel highlighted that recovery of sweater (Q-1) and shawl (Q-2) was made pursuant to the information given by the appellant under Section 27 of the Indian Evidence Act, 1872, qua which PW6-Gaurav Sardana & PW12-Rakesh Kumar who were friends of the deceased, were the witnesses.

5. PW6- Gaurav Sardana and PW12- Rakesh Kumar appeared in the dock to prove the recovery so also gave their oral testimony. In relation to statement of PW-6, the learned counsel pointed out that the said witness has stated that the recovery of the aforesaid clothes from the accused-appellant was made from the first floor, whereas the actual recovery was made from the second floor and even as per the prosecution, the appellant used to live on the



second floor. Learned counsel submitted that so far as PW-12 is concerned, a simple look at his testimony shows that he had stated that the shawl and the sweater were recovered by the Police and were shown to him later on and therefore, the recovery cannot be said to be proved.

6. Having highlighted such discrepancies, learned counsel argued that pursuant to the statements of both the witnesses, the recovery of the sweater and the shawl cannot be made a basis for appellant's conviction.

7. His substantial argument qua the recovery, was that the shawl and the sweater which were recovered at the instance of the appellant, were marked as Article Q1 & Q2 and the FSL report dated 24.09.2003 shows that no blood stain was found on Q1 while on Q2, though blood, was detected but it was not conclusive.

8. Learned counsel submitted that at best, what the prosecution witnesses PW6 and PW12 brought before the Court was, the appellant's relationship with Deepak Kumar, alleged to be her lover, got strained due to some reason, for which the appellant called the deceased in Talkatora Stadium and she along with the co-accused murdered him.

9. In relation to such stand of the prosecution, learned counsel argued that in spite of the prosecution's case alleging that the appellant had called the deceased telephonically, the police did not obtain call details or call location. He highlighted that PW6 and PW12 only stated that the deceased had informed them that he was going to meet Gurudeep Kaur, but neither these witnesses nor anybody has been produced, who had seen the deceased with the appellant and therefore, it cannot be said to be a circumstance of last seen.

10. Mr. Aman Usman, learned Additional Public Prosecutor on the other



hand submitted that the testimony of PW6 and PW12 is enough to conclude that the appellant and the deceased had a love affair and the relationship between them got sour for last one year, prior to the murder and therefore, if the oral testimony and the evidence on record is taken into account, the appellant alone could be the person, who had murdered the deceased with the help of the co-accused Amandeep.

11. He submitted that simply because one of the witness of the recovery, namely PW12 said that he did not see the police recovering the shawl and sweater from the house of the appellant, recovery cannot be said to be not proved, particularly, when the other witness of recovery, namely PW6 and IO have clearly proved the recovery.

12. Learned APP further submitted that the shawl and sweater being woolen article, may or may not contain blood remains and the blood group may be inconclusive but such FSL report cannot be a reason enough to acquit the appellant.

13. He further submitted that it was incumbent upon the appellant to explain the evidence of having traces of blood on her clothes during the trial but she had failed to explain the same.

14. Heard learned counsel for the parties and carefully sifted through the record.

15. So far as the case in hand is concerned, the same is based upon circumstantial evidence. Out of the possible circumstances, two circumstances slightly point towards involvement of the appellant-Gurdeep Kaur. According to us, the prosecution has failed to prove none of the circumstances beyond pale of doubt. True it is that, PW6-Gaurav Sardana had



not stated the correct floor of the house, but for that, recovery cannot be said to be 'not proved'. Such minor discrepancy cannot be taken to be a discrepancy serious enough to discard the recovery. The same cannot be fatal to the recovery so as to conclude that recovery was sham, or false, particularly, when PW-6 in his statement had stated that the recovery was made in his presence. A person may have a bonafide doubt or confusion about the first floor and the second floor, being unaware of the practice that the ground floor is never considered as the first floor.

16. The testimony of PW-12 cannot be read as proof of recovery, but other the witness of recovery, the IO, has aptly proved the recovery. Hence, the recovery part of the clothes of the appellant is aptly proved by the testimony of the IO & PW-6.

17. With respect to the second argument, in relation to the blood on the recovered sweater and the shawl, the FSL report clearly shows that Q-1 (sweater) did not have blood stains, and even though the shawl, Q-2 did have blood stains, but the same was inconclusive. According to us, it would be very unsafe to use the recovery of sweater and shawl to convict the appellant. So far as other two clothes namely cloth piece Q-3 and black trouser of the appellant Q-4 are concerned, it is noteworthy that they have been reported to be blood stained, (Q-3 inconclusive and Q-4 Group 'B') but were not recovered from the possession of the appellant.

18. PW-6 appeared in the witness box and has aptly proved the recovery but has said nothing substantial for which, the alleged felony of the appellant can be said to be proved. His version that he was aware of the estranged relationship between the appellant and the deceased does not help the



prosecution story at all.

19. So far as testimony of PW12 is concerned, having gone through the entire statement, we find that he had not seen the appellant and the deceased lastly. That apart, prosecution has not brought on record any other witness, who could say that he had seen the deceased and the appellant together in or around the place of occurrence. Nobody has seen them together even during whole day.

20. The motive alleged by prosecution is, that the appellant and the deceased who were having love affair, got estranged. Such fact can be inferred from the testimony of PW-6 and PW-12, but that is not sufficient to implicate and convict the appellant. Sour relationship can be a reason but not motive, more particularly when the same was sour for more than a year. Logically thinking, simple strained relationship, in absence of incriminating material cannot be taken to be a motive.

21. In view of the discussion foregoing, we are firmly of the view that the Trial Court has committed a grave error of law, so also of appreciation of evidence while convicting the appellant for the offence under Section 302 read with Section 34 IPC. On the basis of the material available on record it cannot be said that it was the appellant and appellant alone, who had murdered the deceased.

22. The appeal therefore succeeds.

23. The Impugned Judgment dated 21.09.2004 and the Order of Sentence dated 24.09.2004 are hereby quashed and set aside.

24. We are told that the appellant is on bail, her bail bond stands discharged.



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25. A copy of the Judgment be sent to the Trial Court for the purpose of record.

DINESH MEHTA, J.

VIMAL KUMAR YADAV, J.

NOVEMBER 15, 2025/nk