

THE MYSTERIOUS PROSECUTION OF AARUSHI TALWAR...

Joyjoti Hore*

Abstract

India holds the credit to be the second largest populated country across the world. But again when it comes to economic standing, India though considered to be the most evolving economy, has a lot to cover to meet the standards of the First world countries. Thus as, the ratio

High Population: Fair Economy => Increases the Incidence of Crimes in the Society,

The crime rates in India are always on higher note. Having said that, there has been a noticeable increase in crimes which are female eccentric. The early onset of the 21st Century witnessed such horrible instances which as if challenged the foundation of our balanced society.

One of such instance was the murder of a 14 year old girl in her own flat in the summers of 2008. However, on progress of the prosecution it appeared that, a small child's death got overshadowed by the high-profiled depiction of the untoward incident.

The below stated analysis of the Judgment given in the Aarushi Talwar murder case, is an attempt to prove onto ourselves, whether we could bring JUSTICE to the loss of life of a little girl, Aarushi.

* Legal Manager @ ICICI
joyjoti.hore@icicilombard.com

Lombard, Kolkata; Contact: +91-8336934891; Email –

BRIEF FACT OF THE CASE¹

In the morning of 16/05/2008 in a flat at Jalvayu Vihar, Sector 25, N.O.I.D.A., a suburb of New Delhi, a girl was found dead in her bedroom. Aarushi Talwar died at the age of only 14 years. The dead body of her was first seen by her parents, Dr Rajesh Talwar and Dr Nupur Talwar who were sleeping in the adjacent room.

Initially, the murder of their only daughter were alleged by Dr. Rajesh Talwar, to have been made by their domestic help, Hemraj, the dead body of whom was later recovered in the terrace lying in a pool of blood.

The case was taken up for investigation by the local police of Noida, who after the course of Investigation declared in a press conference that the double murder of Aarushi and Hemraj were committed by the Dr Rajesh Talwar and Dr. Nupur Talwar.

Thereon this case was transferred over by The Government of Uttar Pradesh through a Notification No. 1937-VI-P-3-2008-15(48) P/2008 dated 29.05.2008 to C.B.I. The investigation was taken up by Mr. Vijay Kumar, the then S.P., C.B.I./SCR-III New Delhi. Three new names surfaced up Krishna, Raj Kumar and Vijay Mandal, who were arrested and later subjected to Brain-mapping, Narco-analysis and Polygraph. On the basis of these findings on 11.07.2008 C.B.I. filed report under section 169 Cr.P.C. in the Hon'ble Court of Learned Special Judicial Magistrate (C.B.I.), Ghaziabad and accordingly Dr. Rajesh Talwar was released from custody.

Thereafter the stated Investigating officer, Vijay Kumar was bit off the case, the investigation changed many hands and ultimately went on to Mr. A.G.L. Kaul, Dy. S.P., C.B.I., SC-III.

After completing the investigation Mr. Kaul reached to the conclusion that these twin murders were committed by the accused persons and not by Krishna, Rajkumar and Vijay Mandal or any other outsider. However, on account lack of substantial proof, a closure report was laid by Mr. Kaul in the Hon'ble Court of Learned Special Judicial Magistrate (C.B.I.), Ghaziabad on 29.12.2010/01.01.2011.

¹ Sessions Trial No. 477 of 2012, **The State of U.P. Through the C.B.I. v. Rajesh Talwar & Other**, In the Court of Additional Sessions Judge/Special Judge, Anti-Corruption, C.B.I., Ghaziabad (U.P.)

Dr. Rajesh Talwar, who being aggrieved by and dissatisfied with the closure report filed protest petition seeking impetratory relief to direct C.B.I. for carrying out further investigation but the same was rejected.

The closure report was also rejected by the Learned Magistrate on 09.02.2011, who took cognizance of the offence under section 190 (1)(b) of the code of criminal procedure and summoned both the accused persons to stand trial for offences punishable under sections 302/34 and 201/34 IPC.

HON'BLE COURT'S VERDICT

The Observations of The Hon'ble Court and Analyzing the Parameter

Findings

- 1) That in the night of 15/16.05.2008 both the accused were last seen with both the deceased in Flat No. L-32, Jalvayu Vihar at about 9.30 P.M. by Umesh Sharma, the driver of Dr. Rajesh Talwar;
- 2) That there is nothing to show that an outsider(s) came inside the house in the said night after 9.30 P.M.
- 3) That no person was seen loitering near the flats in suspicious circumstances in that night;
- 4) That there is no evidence of forcible entry of any outsider(s) in the flat in the night of occurrence;
- 5) That there is no evidence of any larcenous act in the flat;
- 6) That there is a close proximity between the point of time when both the accused and the deceased persons were last seen together alive and the deceased were murdered in the intervening night of 15/16.05.2008 and as such the time is so small that possibility of any other person(s) other than the accused being the authors of the crime becomes impossible;
- 7) That in the morning of 16th may 2008 when the maid came to flat for the purpose of cleaning and moping a false pretext was made by Dr. Nupur Talwar that door might have been locked from outside by the servant Hemraj although it was not locked or latched from outside;

- i. **Inference by Hon'ble Court:** The first seven observations have been interpreted to conclude that on the night of 16/05/2008, there was none other than four people in the flat.

Analysis of the Inference: It is a well-known that the parameter to prove a criminal case is to deduce the most probable inference which appears to be almost the only possible surmise.

Now the sole basis of this assumption ought to have been dependable on the witness of the Night guards of the complex that no intruder from outside has entered the complex, but what about the internal movements made within the complex of Jalvayu Vihar for example from Flat L-32 to Servant quarter, that is, L-14 or other way round.

Query: Is it also most probable for the night guard Virender Singh to have taken note of ?

- ii. **Inference by Hon'ble Court:** The second ground wherein the finding of the maid servant who was the first outsider to visit the crime scene, that the grill door was open and the flat entrance gate was latched from outside.

Analyzing the Inference: The insight to this incident has been given by CBI as: That during the time taken (about 3- 4 mins) by the Maid servant to go downstairs and collect the keys of the outside door from Nupur Talwar, Dr Nupur Talwar opened the adjoining door of Hemraj's room which opened between the grill door and flat entrance door, which usually remained closed, as a fridge was placed against it, unlatched it and again closed the door and placed back the fridge against it.

Query: Can a person, here Dr. Nupur Talwar, if engaged in all such activities as stated by CBI, does it appears probable, that she at the same time also made herself available at the balcony to deliver keys to the maid-servant?

Surmise: Does this probabilities appear to any extent as even remotely probable leave apart the most probable inference which can be drawn.

Finding:

- 8) That in the morning of 16.05.2008 at about 6.00 A.M. Ms. Aarushi was found murdered in her bed-room which was adjacent to the bedroom of the accused and there was only partition wall between two bed-rooms;

Inference by Hon'ble Court: The 8th Observation has been deduced to conclude that, as the victim was found murdered in her bed-room which was adjacent to the bedroom of the accused, divided only by a partition wall, thus the accused ought to have known of any forced entry or act of larceny.

Analyzing the Inference: It is herein refreshed that the Air conditioner of the accused's room is reported to make a noise of 85 to 90 db (decibels) compared to 50 to 60db of a normal A/C. As it is on record that the sound created by the A/C was 80 – 90db, which if continuously is played in a closed confined area (room of the accused) can easily hinder any other noise from reaching to them.

Query: Now if one goes by the report of the technician of the A/C, does not it corroborates the statement of the accused made u/s 313 crpc, that the A/C if being on, it is impossible for any sound to be heard from within the room?

Surmise: Thus again it can be observed that the inference drawn by the Hon'ble trial court falls far from the parameter of “most probable inference.”

On the other hand from the above statements the impossibility of hearing of any noise from within the room seems the most inferable viewpoint.

Findings:

- 9) That the door of the terrace was never locked prior to the occurrence as it was found in the morning of 16.05.2008 and the accused did not hand over the key to the police despite of being asked to;
- 10) That the dead body of the servant Hemraj was found lying in the pool of blood on the terrace of the flat and the door of terrace was found locked from inside;

Inference by Hon'ble Court: The 9th and 10th observation of the Judgment has been inferred to conclude from the locked door of the terrace and the recovery of body therein, that such act can only be done by the accused. From the above stated findings it has been presumed that the accused has injured Hemraj and has taken his injured body to the terrace whereof he was being killed. The door of the terrace on being found locked, it was also presumed to have done so to conceal the alleged murder.

Analyzing the Inference: Now if we consider the statement made by the accused under Section 313 CrPC, that for about 8-10 days before the occurrence, painting of cluster had started and the navvies used to take water from water tank placed on the terrace of the flat and then Hemraj had started locking the door of the terrace and the key of that lock remained with him.

Query: Since the police investigation did not reveal any other version by seeking witness of the inmates of other flats why the accused's statement u/s 313 Crpc was not considered?

The ground on which such inference has been drawn that the terrace as was not locked previous to the occasion and the accused inspite of having the key did not hand over the same to conceal the dead body of Hemraj has been left unexplained?

Surmise: Although the body of Hemraj was recovered from the terrace, but again there was no blood mark of Hemraj found either in flat or in the stairs to the terrace, it is highly unlikely to assume that Hemraj was probably injured in the flat.

Moreover, the inference that Hemraj was taken to the terrace in an injured state, significantly depends on the existence of a time-gap between Hemraj's injury and death but again the post-mortem report adduced before the Hon'ble Court clearly don't throws any light on the stated aspect.

Finding:

- 11) That the door of Ms. Aarushi's bed-room was fitted with automatic click-shut lock which was locked from outside. Both the accused have admitted that door of Ms. Aarushi's bed-room was having automatic-click shut lock like that of a hotel, which can be opened without key only from inside and Dr Talwar has admitted that he had gone to sleep with the key after locking the door of Ms. Aarushi's bed-room from outside.

Inference by Hon'ble Court: The 11th observation has been inferred to hold that, the door of Aarushi, being locked from outside and the same being a click-shut lock, there remains no scope for any outsider to enter the room.

Analyzing the Inference: It is again emphasized that accused in their statement has stated that the key of the door was left hanging with the lock. The same was reiterated in the lie detector test.

Query: On what findings of the police investigation the statement made by the accused were not admitted?

Surmise: The Statements made during a lie detector test may not be used to incriminate a person, but can very well be used to corroborate a fact.

Finding:

12) That the internet remained active in the night of the gory incident suggesting that at least one of the accused remained awake;

Inference by Hon'ble Court: The 12th observation, one of the important observation, to uphold the accusation by the Hon'ble Court, is the fact that the Internet router was in a working state in the night of 16/05/2016, which has been held to be suggestive that at least one of the accused remained awake throughout the night.

Analyzing the Inference: This is one of the sole evidence which can be found in pen and paper but again when the same is proved to be flawed or rather not flawless, is it legally viable to depend on such finding? The router is stated to be in the like phase even on 16.05.2016 from 6.00 A.M. to 1.00 P.M. a time when computers were shut down. Thus there is an existing disparity in the above two findings which is again enough to create a doubt as to the accuracy of the stated finding.

Query: How forth the prosecution without seeking record of the previous seven days to deduce the working of the Internet router, hold that the accused were awake all the night on 16/05/2008?

Surmise: From the above chronology of incidents, there seem to float another probability that starting off or switching off of Router has nothing to do with the use of Laptops or Computers.

Finding:

- 13) That it is not possible that an outsider(s) after committing the murders will muster courage to take the Ballentine Scotch Bottle knowing that the parents of the deceased, Ms. Aarushi are in the nearby room and his top priority will be to run away from the crime scene immediately;

Inference by Hon'ble Court: The 13th observation was made from the fact that as Ballentine Scotch bottle been recovered from the dining table, the stated liquor therein ought to be consumed by the accused.

Analyzing the Inference: Again the ground for drawing of such inference has been left unexplained as nothing on record suggest that either the finger prints on the Ballentine Scotch bottle has been derived or the DNA samples of saliva content on the stated bottle were examined. Besides, no expert opinion of Forensic department was sought to analyze the veracity of the findings.

Query: The ground on which the prosecution has made such apprehension?

Surmise: Had it been so that the liquor has been consumed by the accused, then considering the time of murder to be maximum at 2 a.m., there was an extended gap of four hours before the arrival of the house maid, to keep the bottle back in the shelf.

Finding:

- 14) That it is not possible that after commission of the crime an outsider(s) will dress-up the crime scene;

Inference by Hon'ble Court: The 14th observation has been inferred to as the crime scene being dressed up which could presumably be done by the accused and not by an outsider

Analyzing the Inference: But again it is refreshed herein that the alleged murder has taken place after midnight, a time when one is presumed to go to sleep and dressing-up the bed-sheet is a usual practice that is done before going to sleep.

Query: By adducing no evidence of combat to distort the attributes of the room what made the prosecution to infer that Aarushi's room was ransacked prior to her murder to be subsequently dressed up?

Surmise: On the contrary, the story of the prosecution states Aarushi to be involved in a voluntary act with Hemraj which made Dr. Rajesh Talwar to lose control over himself. Thus going by this angle of the prosecution, there appears no scope for any distortion of Aarushi's room.

Finding:

- 15) i) That golf-club no. 5 was thrown in the loft after commission of the crime and the same was produced after many months by the accused Dr. Rajesh Talwar;
- ii) That pattern of head and neck injuries of both the accused persons is almost similar in nature and can be caused by golf-club and scalpel respectively;
- iii) That the accused Dr. Rajesh Talwar was a member of the Golf-Club, N.O.I.D.A. and golf-clubs were produced by him before the C.B.I. and scalpel is used by the dentists and both the accused are dentists by profession;

Inference by Hon'ble Court: The 15th observation, flows from the inference whereby a Golf-stick is presumed to be one of the probable murdering weapon.

Analyzing the Inference: This finding of the prosecution stands in sharp contradiction to the opinion of Experts as Dr. R.K. Sharma, who stated, that if an injury is caused by the golf stick, then a depressed fracture will be caused and the bone will have a depression; concept based on Locard's Principle of Exchange. But on perusal of Hemraj's postmortem report, nowhere one will find mentioning of any injuries to the extent of depressed fractures. Neither the injury on the head of Ms. Aarushi which again has been classified by experts as simple fracture, could not have been the probable outcome, if was done by a golf club.

Query: What made the prosecution belief the murder to have been committed by the Golf-club, more so when the same has been produced by the accused himself?

Surmise: It is further stated as per the report of Dr. Mahapatra, that no blood stains were found on the golf-club.

Finding:

- 16) That the motive of commission of the crime has been established;

Inference by Hon'ble Court: The 16th observation as to the motive of the murder is stated to be "Grave and sudden provocation." Dr. Rajesh Talwar, who when found Aarushi and Hemraj in a compromising position lost control on himself and murdered both the victims.

Analyzing the Inference: This finding stands to be the most vital, at the same time the most uncorroborated thread of the prosecution. If we go by the above narrated findings then:

- i) Hemraj ought to have been killed/injured in the room of Aarushi.

Query: If that be so how can there be not be a single blood content of Hemraj found in the room, when blood contents of Aarushi were found therein?

- ii) Hemraj would have been subjected to more than one blow.

Query: When an action results out of such uncontrollable rage, then is it possible to control or regulate such outcome?

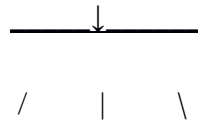
If not then how can the accused in such a state of provocation start and stop by hitting only once and that too without much force only to cause a simple fracture?

Surmise: The closure report filed by Mr. A.G.L. Kaul of CBI wherein he himself mentioned that no blood of Hemraj was found on the bed-sheet and pillow of Aarushi and that there is no evidence to suggest that Hemraj was killed in room of Aarushi, or no biological fluid, sputum, body hair, pubic hair of Hemraj were found in Ayushi's room, goes on to negate the prosecution's story of both the victims be involved in any such stated activities.

DECIPHERING THE OBSERVATIONS OF THE JUDGMENT

The crime which occurred in the night of 16/05/2008 was a barbarous act, as it created suspicion to the involvement of father in the murder of his only daughter of 14 years. Such presumption should only have been incurred after a detailed investigation and proper appreciation of evidence adhered to.

As the prosecution of the case was framed on circumstantial evidence, it required the fulfillment of three basic parameters, namely:



Motive Modus Method

None of the above findings of the prosecution has been corroborated with substantial evidence. On bare perusal of the above findings it becomes apparent that the whole story of the prosecution has been drawn relying on “4 – 2” theory, meaning, four people were last seen, of which two were found dead, thus all the acts committed were done by the other two, who are alive.

The primary three findings of the prosecution are:

1. That the accused persons were sleeping, when such inhuman act was carried out in the adjacent room. This finding if made in isolation fulfills the criteria of the “only probable conclusion” of the accused being involved in such heinous act. But when we speculate the same after taking in the working condition of the A/C in the accused room, do this inference still holds enough ground?
2. The router of internet showing start and stop activity throughout the whole night suggested that the accused persons were awake. But when the same phase is observed even on 16.05.2016 from 6.00 A.M. to 1.00 P.M, do the previous finding still holds enough ground?
3. The next important finding is the murdering weapon which again was presumed by the prosecution to be a Golf-club as the same was missing from the Golf Bag. But again when the reports of expert if considered, how probable this inference appears? And lastly,
4. The Motive which has been classified to be “grave and sudden provocation.” But again none of the evidence goes on to corroborate or fortify the presumptions made in this like manner, whether be it non-finding of Hemraj's blood samples in Aarushi's room or absence of any biological fluid. Even the much talked about finding of “swollen penis” of Hemraj which also added to the above imagination was also negated by the experts stating the same to an obnoxious result of putrefaction.

The aspects on which the prosecution failed to take note of the gap in the investigation:

1. According to the report of Dr. Naresh Raj who conducted Post-mortem examination of the dead body of Hemraj, stated Hemraj to have been in a state of shock before death. This frame of mind is only possible when one can perceive the coming danger, a situation very different from that as stated by prosecution, whereby before he being alert, was hit by Dr. Rajesh Talwar from back.
2. The post-mortem report of Hemraj revealed no presence of liquor in his digestive system, when a Sula wine bottle, an empty Kingfisher beer bottle were seized from his room. Who had consumed it?
3. Why prosecution failed to appreciate the finding of the hand print found in the roof top...Exhibit-24 (piece of wall having impression of palm print) at the amplified loci and send the same to countries with advanced forensic findings?
4. Why the Narco-test of Krishna and other accused were not appreciated, as was done in Nithari Killings², when the same revealed information as:
 - Another probable murdering weapon which the expert committee report by Dr. Dohre on 06.09.2008 stated to be “Khukri.”
 - The song which was a common find in the narco-test of both Krishna and Rajkumar, at what time it was telecasted, so as to analyse if it provides a connection to the time of murder of Ms.Aarushi?

CONCLUSION

Thus to sum up, the accusation for such an unfathomable instance was done on the below stated findings:

- a) Non-ascertainment of time of murder: Autopsy Report stated death to have occurred 12 to 18 hrs before the time of autopsy, a time span of six hours enough to draw a probable inference?
- b) No Cogent Evidence(whether documentary/oral witness): The most important witness to the whole prosecution, Bharti Mandal, the maid servant, also turned out to be hostile, as she alleged to have been forced to change her testimony and add to statements made by her initially u/s 161 CrPC;
- c) Flawful investigation: Hon'ble Judge's own observation as to “the cooler panel has not been taken into possession by S.I. Data Ram Naunaria and he has not directed

² Surendra Koli v. State of UP (2011) 4 SCC 80

constable Chunni Lal Gautam to take photographs and finger-prints of panel then it is merely a negligence on the part of Mr. Naunaria but it is well settled law that on account of *negligence or defective investigation of I.O.* the prosecution case cannot be thrown away,” whereby the Hon'ble court also admits the investigation to be defective.

- d) Non-finding of Proper murdering weapon: The Golf-stick which the accused has himself produced and the scalpel which is only presumed, but again not discovered.
- e) No explanation as how the act was committed: Hemraj's dead body found found with slippers on it, but again Hemraj stated to be injured/murdered in the flat itself. And lastly,
- f) No proper motive established: The motive stated is nothing but a pigmented imagination without a single on record evidence to provide authenticity to it.

Henceforth the prosecution of Aarushi murder case puts forth such gamut of unanswered queries which clearly fails to meet the standard of “*even preponderance of probability*” the parameter to determine liability in a civil case.

But again deducing on the above highlighted inferences the accused persons were sentenced to life imprisonment u/s 302 of IPC.

Thus after going through the epilogue of events can it be said with certainty JUSTICE has been done to Aarushi?