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Divuligation Of The Double Murder Case - **The Talwars**

Authored By-Keval Pankaj Khona & Ritika Ghosh

Abstract

The murder of Aarushi Talwar, a 14-year-old girl, and Hemraj Banjade, a 45-year-old male domestic staff employed by her family, famously known as the “Double murder case” is still a mystery. This research paper not only makes people understand the present case in detail but also analyzes some of the most crucial issues that have subsequently arisen in the due course of the investigation. This research paper also points out irregularities in the investigation and gives a wide interpretation of the same.

Introduction

The Aarushi Talwar Double Murder case has left the entire country in despair. Filled with loopholes and mysteries, this case is well known for its stake in the double murder investigation. Let us understand explicitly the double murder. The basic two essential ingredients of crime are mens rea and actus reus. Mens rea is guilty mind i.e., the intention of committing a crime, while actus reus refers to the guilty act, which is a necessity to prove that a criminal act was committed. The guilty act can either be a commission of an unlawful act, or an omission of an act that a person was legally bound to do. Murder comes under offenses committed against human life. Murder is defined under Section 300 of the Indian Penal Code, 1860. According to this Act, culpable homicide is considered murder if the following conditions are met:

1. The act is carried out to cause death.
2. The conduct is committed with the aim to cause such bodily damage that the perpetrator knows would result in death.

3. If a person is aware that his act is risky and likely to result in death or physical damage but yet goes ahead and does it, this is considered murder.¹

Murder, under section 302 of the India Penal Code, 1860 states “Whoever kills any person, shall be punished with death or with imprisonment for life, as well as with fine.”² One such form of murder is Double Murder.

A double murder is a murder or unlawful death of two victims by one perpetrator. It is typically a description of a circumstance, rather than a formal legal term, in which a person is accused of killing two people and is charged with two counts of homicide or murder, rather than a single charge that includes both deaths. In a nutshell, a double murder occurs when two individuals are killed in the same place, or when two people are slain as part of the same action or scenario.

Let us proceed with the present case for highlighting the event of a double murder.

Factual Background

Dr. Rajesh and Nupur Talwar are the main suspects in the murders of their only daughter Aarushi Talwar and their domestic assistant Hemraj. The following are the essential details of the case:

- 1) Only days before her 14th birthday, Aarushi Talwar was discovered dead at her parents' house in Jalvayu Vihar, Noida. Hemraj, the primary suspect, has gone missing. Hemraj stayed in Talwars' apartment.
- 2) May 17, 2008: Hemraj is discovered dead on the roof the next day.
- 3) On May 23, 2008, the Noida Police mishandled the investigation on multiple fronts, including giving media access to the crime scene before collecting evidence. Dr. Rajesh Talwar, Aarushi's father, was also arrested by Noida police for the double murder.
- 4) Senior Noida police officers indicated after Rajesh Talwar's arrest that Dr. Rajesh and Nupur Talwar were of questionable character; the deceased Aarushi was not spared, and she is accused of being of questionable character as well.
- 5) June 1, 2008: Aarushi's parents seek that the matter be turned over to the CBI. Neither the murder weapon nor Aarushi and Hemraj's smartphones have been found.

¹ The Indian Penal Code, 1860, § 300, No. 45, Acts of Parliament, 1860 (India).

² The Indian Penal Code, 1860, § 302, No. 45, Acts of Parliament, 1860 (India).

- 6) June 2008: CBI arrests four guys who work as domestic assistants for the Talwars or their friends and neighbors. Tests on narcotics are inconclusive, and the four are later released due to a lack of evidence.
- 7) July 2008: The CBI declares that there is no evidence against Dr. Rajesh Talwar, and he is released from prison.
- 8) The CBI retrieves Aarushi's smartphone, but it contains no evidence that points to the perpetrator.
- 9) Narco- Analysis tests were conducted for the accused parents and fellow friends of Late Hemraj.
- 10) December 29, 2010: The CBI submits a closure report in a Ghaziabad court. Even though the CBI has no proof to place the murders on one individual, the report claims that Dr. Rajesh Talwar is the key suspect in both cases.
- 11) Based on the report, the court orders Rajesh and Nupur Talwar's trial, charging them with murder and evidence destruction.
- 12) On January 6, 2012: The Talwars filed a motion with the Supreme Court to have the trial dismissed since they claim there is no evidence against them. The Supreme Court permits the trial to proceed.³

Based on the facts mentioned hereinabove, certain pertinent issues have arisen that are worth a ponder, they are:

ISSUE 1

Whether the Magistrate's issuance of the procedure under Section 204 of the Criminal Procedure Code was lawful after the highest investigating agency, the Central Bureau of Investigation, asked for the case's closure owing to a lack of substantial evidence in its conclusion report?

The grounds for issuing process are not required to be recorded under Section 204 of the CrPC. It says any Magistrate can take notice of an offense and issue the process if he believes there is adequate reason for proceeding. The Magistrate who issued the summons, on the other hand, issued a reasoned order.

³Dr. (Smt.) Nupur Talwar vs state of U.P. and ANR. , <https://indiankanoon.org/doc/16210461/> (last visited June 5, 2022).

According to Section 204, the Magistrate must develop an opinion that there is adequate justification for proceeding, and the view must be formed judicially. The court concluded in *Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal and Ors*⁴ that the only criteria for determining whether or not a process should be issued are that the Magistrate must be satisfied that there is good justification for proceeding but not an adequate ground for conviction, it was also decided in the case of *Kanti Bhadra Saha v. State of West Bengal*⁵ that the Trial Court is not required to draught an order stating the reasons for filing a charge. Giving explanations for issuing the procedure is entirely superfluous.

When a revision is filed against an order issuing process against an accused person, the Supreme Court has stated that the Revisional Court cannot consider whether the grounds offered by the Magistrate were excellent or poor, adequate or insufficient.

In the present case:

The parents of Aarushi Talwar were called by the magistrate; they responded by submitting a review petition to Allahabad High Court; however, after the High Court denied the case, a special leave plea was filed in the Hon'ble Supreme Court. When S.L.P was dismissed, the parents filed an instant review petition, which was granted, in which the parents wished to have the order in S.L.P reviewed.

ISSUE 2

Whether the investigation conducted by the Investigating Agency was questionable?

Yes, definitely the investigation conducted by the investigating agency was questionable. There were many instances where the investigation can be termed faulty. In totality, two investigation teams were investigating the same case one after the other. It is pertinent to see that the second investigation team relied on the finding of the Noida police. However, the police investigation was itself very faulty and irregular. For instance, The Scotch bottle, blood-stained bedsheets and pillow covers, and the bedsheet that covered Hemraj's body were recovered by the Noida police, but they have labeled in such a way that the forensic results were confusing. They were unable to obtain a clean fingerprint from the Scotch bottle.⁶

⁴Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal and Ors, (2003) 4 SCC 139

⁵ Kanti Bhadra Saha v. State of West Bengal, (2000)1 SCC 722

⁶ Marco Margaritoff, SEX, SERVANTS, AND SLIT THROATS: THE UNSOLVED MURDER OF 13-YEAR-OLD AARUSHI

The blood traces heading to Talwar's terrace were pointed out by his neighbors. Initially, authorities rejected the stains, referring to them as "paan stains," which may have been the victims' or the murderer's blood. They were cleaned and wiped down. The media were free to stroll about the terrace and take pictures, corrupting the evidence.

The blood of Hemraj found on the pillow cover caused a lot of consternation among the investigators. The pillow cover was retrieved from Krishna's room (friend of Hemraj), according to the defense, while it was recovered from Aarushi's room, according to the prosecution. The police never took a sample of a wall between the victim's room and her parents' room, therefore the idea that the parents could hear or couldn't hear the sound from their daughter's room was never proven. Even the post-mortem report was not properly taken.

Owing to so many irregularities, it was very clear that the Police investigation was not an authentic investigation and the second CBI team should not have relied on the police's story. However, the first CBI team did an investigation on its own. But because of the blunder created by the Noida police, it was very difficult for them to carry out a swift investigation. However, CBI team 1 and team 2 both had their own stories and theories. It is questionable because both the investigations that were conducted did not succeed in gathering sufficient evidence to prove their contentions.

ISSUE 3

Whether a person can be convicted based on the last seen theory without substantial evidence?

The burden of proof for an accused is placed on him under Section 106 of the Evidence Act of 1872, which states that he must prove facts that are within his knowledge. Before you begin, review the meanings of proved, disproved, and not proven. Assume you were spotted entering a room alone with a friend, who was assassinated minutes later by a fleeing assassin. The cops don't believe you and accuse you of murdering someone. At trial, how the death occurred will be established as a fact, based on your unique information. You bear the burden

TALWAR ALL THAT'S INTERESTING (2019), <https://allthatsinteresting.com/aarushi-talwar> (last visited June 6, 2022).

of proving that the death occurred in the manner you claim, but not beyond a reasonable doubt, which constitutes to be the theory of last seen⁷. What if you don't succeed? Your fact is disproved if the Court believes the prosecution. The fact remains unproven if neither party can persuade the judge.

How does the prosecution present the theory of the last seen? It must establish (a) the time when the accused was last seen with the deceased, (b) the time of death, and (c) a strong link between the two to rule out any outside intervention [For example, Bodhraj v. State of Jammu & Kashmir⁸; Mohd. Azad v. State of West Bengal⁹; Shyamal Ghosh v. State of West Bengal.¹⁰]

Applying It To This Case-

The prosecution's case was to show a specific chain of events that could only lead to one conclusion: the accused's guilt. The last seen theory was used to try to fill a big gap. Because there was no other person in the residence that night, the accused must explain what transpired.

Were the initial conditions met, however, for the last seen theory to be pursued? On May 15, 2008, around 9.30 p.m., everyone was last seen together. Between this and Aarushi's death, there might have been a three-hour gap. An uncertain time of death causes a possible 4–5-hour gap for Hemraj. This is significant, especially since there was no security officer on duty to check if someone entered the property late at night.

Even if this were adequate, what about the accused's explanation? They claimed they were sound sleeping, and that any noise was drowned out by the air conditioning. Perhaps because it made too much logic, the court chose not to trust it. The prosecution's arguments in the Aarushi Talwar murder case overlapped because there was only one main hypothesis and several supporting hypotheses. The prosecution's explanations that were added to its arguments were too vague.

First off, it was impossible to choose the most appropriate murder weapon to utilize. Second, the medical results eliminated any chance that Hemraj had had any sexual relations with or

⁷ Sawal Das v. State of Bihar, AIR 1974 SC 2276

⁸ Bodhraj v. State of Jammu & Kashmir (2002) 8 SCC 45

⁹ Mohd. Azad v. State of West Bengal (2008) 15 SCC 449

¹⁰ Shyamal Ghosh v. State of West Bengal (2012) 7 SCC 6

assaulted the deceased victim.

The Sound Simulation Test and Crime Scene Reconstruction Report were considered by the Allahabad High Court, which concluded that both were in line with the defense of the accused since the C.B.I. had neglected to produce the report before the trial court. These reports made it abundantly evident that even if the accused were sleeping with their air conditioners on at night, the couple could not have noticed the arrival of the outsiders due to the noisy and obtrusive sounds the air conditioners were making.

Following this, the prosecution's version of events suffered a severe blow, and the sequence of events proving the accused's guilt was severely disrupted. Instead, it was believed that a 14-year-old girl had willingly opened her chamber to allow her 45-year-old servant for intercourse, only to be found in the act by her father, who killed both of them.

Mistakes About The Law?

The decision is laden with case law citations and discussion. The Court explains on Page 86, *“Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would, undoubtedly, be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. **The burden would be comparatively lighter. Given section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed.** The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation”¹¹*

Here, I believe the Judge reveals himself. He incorrectly puts the prosecution to a lower standard just because the accused was not there. He further conflates the convincing burden of proving the accusation with the burden of proving facts under Section 106. It is an acquittal if the accused can show that the deaths happened as they claimed. Is it always the end if you can't prove your case? No. Either side may not be able to prove the fact.

¹¹ Trimukh Maroti Kirkan v. State of Maharashtra reported in (2006) 10 SCC 681

That is to say, while the facts reveal that the victims were murdered, neither side has been able to explain how it happened. As a result, the accused persons cannot be judged guilty of murder.

ISSUE 4

"Can a crime be proven without the presence of mens rea or motive?"

Is it possible for a couple to be sentenced to life in prison despite the fact that there is no direct evidence against them and the investigating agency believes that no one else but them could have committed two murders? The Allahabad High Court, in acquitting Rajesh and Nupur Talwar for the sensational Aarushi-Hemraj murders, essentially answered this question in the negative.

In essence, the reason for the murders is unknown, the murder weapon is unknown, and forensic proof is lacking. The CBI's only goal was to prove that no outsiders could enter a 1300 square foot flat, conduct two murders, and even have a drink while the Talwar couple was sleeping in the next room. The HC required more evidence before convicting two defendants to life in prison. The tragedy is that, in light of this textbook case of inquiry bungling, no one may ever know who killed Aarushi and Hemraj.

ISSUE 5

"Whether the Narco-Analysis Test is admissible?"

The use of the Narco-investigation test includes the central inquiry relating to legal issues and Human Rights. The legitimate situation of applying this method as an insightful guide raises veritable issues like infringement of a person's privileges, freedoms, and opportunities.

In the event of *State Bombay v. Kathikalu*, it was held that it must be indicated that the accused was constrained to offer expression liable to be incriminative of himself. Impulse implies coercion, which incorporates undermining, beating, or detainment of the spouse, parent, or offspring of an individual. Hence where the charge makes an admission with no instigation, danger, or guarantee of workmanship 20(3) doesn't matter. In this way, the advantage against self-implication aids in the maintenance of human security and the acceptance of enlightened standards in the application of criminal justice.

The privilege against constrained self-implication, generally known as the Right to Silence, is cherished in the Code of Criminal Procedure (CrPC) and the Indian Constitution. It is said that Narco-examination comprises mental torment and hence abuses the privilege of life under Article 21 as it manages the right to protection. Once more, the law against interruption in the protection of individuals would not permit mind fingerprinting proof to be given in court.

The current criminal equity framework is hard with singular freedom and opportunity and in this setting, a protected entry is unavoidable to crooks because of shortcomings in the criminal equity framework prompting the weakening of proof. This move will achieve a subjective change in criminal equity. Be that as it may, unavoidable issue blemishes the legitimacy of the Narco-examination test when requesting equity by a denounced person.

The Narco test possibly can be inaccurate, when everything in exploring fizzles. Each person is blameless until proven guilty, and a similar mindset should be maintained throughout any criminal investigation. In a circumstance where the Narco investigation is increasing legal acknowledgements and supports despite being a questionable science, we need to seriously re-examine its legitimacy from a personal freedom point of view.

Our Views/ Conclusion

After reviewing the facts and circumstances of the case, it may be concluded that the CBI's special court was unable to perform its duties since the investigation branch failed to establish an explicit sequence of events. In addition, the major motive for the crime against Aarushi's parents has not been determined. The parents were also found not to have a clear motivation for the crime. There was no substantive evidence, and none of the prosecution's hypothetical scenarios could be proven.

We are of a firm opinion that the Police investigation should be carried out with proper scrutiny and attending rightly to the minute details for delivering timely justice and efficiently proving the investigation to be worthwhile. One careless mistake can cost someone their life. If Noida Police, being the first administrators of the crime scene here, were vigilant enough to cover all the pieces of evidence and aspects of the double murder, the true criminals would be behind bars without a doubt. CBI, being the superior investigating agency of India, shockingly failed to retrieve any supporting evidence and hereby walked on the paved way of the Noida Police's investigation, the one failing to cover the loopholes.

The murder case of Aarushi Talwar is regarded as one of the most perplexing situations the Indian judiciary has ever seen. This case has several defects and contradictions, which makes it an insoluble mystery to this day. One of the key features of this case was the investigations and law enforcement agencies' poor performance, which undermined public confidence in the pursuit of justice. Who killed Aarushi Talwar has not been determined, and it is worrying that no steps have been made to identify the person responsible for these crimes.

A high-profile case like this draws a lot of attention, and this case garnered a lot of it from the media and the public. The public's trust in the court system must be maintained for meaningful justice to be delivered to the victim.