2008 Gemelli Supreme Court Decision on Raffaele Sollecito's Appeal (English)

This is an English language translation of the ruling, thanks to Catnip for translating. Original on the Wiki was from the Diritto.it site.

Summary

Held: the decision to continue pre-trial prison detention for the suspect was reasonable.

THE REPUBLIC OF ITALY

IN THE NAME OF THE ITALIAN PEOPLE

THE SUPREME COURT OF CASSATION

SECTION 1 CRIMINAL DIVISION

Comprised of the most Honourable Justices:

Dr Torquato GEMELLI - President -
Dr Emilio Giovanni GIRONI - Member -
Dr Maria Cristina SIOTTO - Member -
Dr Umberto ZAMPETTI - Member -
Dr Margherita CASSANO - Member -

have pronounced the following

JUDGMENT

on the appeal lodged by:

(1) RS, born on X, against Order of 30/11/2007 Liberty Court of Perugia;
having heard the relation made by Member Emilio Giovanni Gironi;
having heard the conclusions of the Prosecutor-General Dr Consolo for its rejection;
having heard the defence advocates G and T (substituting for advocate M).

REASONS FOR THE DECISION

The order referred to in opening confirmed, at the Re-examination stage, the one by which the GIP [the Preliminary Investigation Magistrate] had applied pre-trial prison detention of RS for participation in the murder of MSCK, the which occurring in Perugia on the evening of the 1st of November 2007 by means of a cutting weapon, in an alleged context of sexual assault by a group, in which there would have taken part, in addition to S, his girlfriend AK and a RHG, who had left behind a palm print on the bloodied pillow on which the victim’s body was resting and

whose DNA was found on the vaginal swab taken from the body of the same and on faecal traces found in a bathroom of the house that the victim was sharing with Ms AK and two Italian students.

The picture of circumstantial evidence specifically concerning S consists of the identification of a print left in haematic material present at the scene of the crime of a sports shoe held to be compatible, because its dimensions and configuration of the sole, with the type of footwear, "N" brand size 42.5, used by the suspect; of the recovery – in the kitchen of his house – of a kitchen knife bearing traces of Ms AK's DNA on the handle and on the blade traces of Ms MK's DNA; and of the collapse of the alibi put up by the young man (having been disproven by technical investigations carried out), in which, as asserted by him, he had interacted with his computer during the hours in which, according to the forensic pathologist's reconstruction, the criminal fact would have occurred, that is between 22:00 and 23:00 of the 1st November 2007; from the investigations carried out up until now it would appear, in fact, that the last interaction with the machine on 1 November occurred at 21:10 and that the subsequent one took place at 5:32 the day after, when S also reactivated his mobile phone, acts witnessing thereby an agitated and sleepless night. Equally disproven was that the young man had received a phone call from his father at 23:00 on the night of the murder, it resulting, instead, that said call had happened at 20:40.

Against S, caught at the time of arrest with a switchblade initially considered compatible with the wounds found on the neck of the victim, would line up, in addition, the mutability of the stories given to the investigators by the same and by his girlfriend, having initially maintained they had remained the whole evening and night in the young man's house, later to state, instead, that at a certain point Ms AK would have left to meet the Ivorian [sic] citizen PDL, manager of a pub in which Ms AK was undertaking casual employment, she making a returning to her boyfriend's house only around one in the morning.

It must, finally, be added that the same Ms AK had, amongst other things, initially referred (not confirming, in any case, the thesis in confused and contradictory subsequent versions) to having taken herself to her own house with L, where this latter (he also was struck with a custody order, later revoked after the previously mentioned identification of G's DNA) had had sexual relations with Ms MK, and to having, while she herself was in the kitchen, heard her friend scream, without, further, remembering anything else of the subsequent events, up until the occurrences of the day after, marked by the discovery of traces of blood in the small bathroom next to Ms MK's room and culminating in the discovery of the body, after the intervention of the forces of law and order (the police appear, in particular, to have intervened prior to the call to 112 effected by S); in particular, the young woman was specifically pointing out not being able to remember whether S were also present in the victim's house on the occasion of the events just described.

The Re-examination Court concluded recognizing, for the purposes of maintaining pre-trial detention, the persistence of all the types of pre-trial exigencies mentioned by Article 274 Criminal Procedure Code.

The S defence has indicated an appeal, on the grounds of, with new reasons as well:

* reference to Ms AK alone of the circumstantial evidence constituted by the presence of biological traces from her and from the victim on the knife found at S's house;

* absence, at the scene of the crime, of biological traces attributable to the suspect [ndr: note, this was before the bra-clasp tests had been done];

* arbitrary transference onto S of the weighty circumstantial evidence against Ms AK, on the unfounded assumption that the pair could not have been anything but together at the moment of the homicidal fact;

* inexistent evidential value of the phases relative to the discovery of the body;

* absence of blood traces from the soles of the "N" shoes worn by the suspect even at the moment of his arrest;

* absence of any evidential value of merit, alleged failure of the alibi, constituting the use of his computer, of which the falsity has not in any case been ascertained, of the lack of interaction by the subject with the machine after the last operation at 21:10 not permitting the inference that the computer was not, however, engaged in downloading files (being, to be specific, films);

* irrelevancy of the mistake revealed between the indicated time of the phone call to the father furnished by S and the actual time of the call, given the uncertainty of the time of death of the victim, depending on the time, otherwise uncertain, of the consumption of the dinner (according to various witness statements coinciding with 18:00), it being well able, therefore, for the time indicated by the forensic pathologist (23:00) to be revised backwards to 21:00, a little before which time the witness P had referred to having made a visit to S, finding him at home and not on the verge of going out;

* interpretability of the so-called unlikelihood of the versions supplied by the suspect as attempts to cover for (aid and abet) another subject;

* attribution of the victim's biological traces found on the knife seized at S's house to chance contamination not related to the homicidal fact;

* insufficiency of the pre-trial exigencies, having diminished in a probative sense after the return to Italy of G; those relating to risk of flight lacking in specificity and concreteness; and with reference to the conventional content of blogs posted on the internet by the suspect, those relating to danger to society illogically reasoned;

* missing appearance of the young man's walk, via security cameras installed along the route that the aforesaid would have had to traverse to go from his house to that of the victim's.

The appeal is unfounded.

As regards what this Court is permitted to appreciate, not being able here to proceed with a re-reading of the investigative results nor with an alternative interpretation of the factual data referred to in the custody order, the appellant defence substantially contests the recognition, as against S, of the necessary requisite of grave indicia of culpability. The question thus posed and submitted for scrutiny by this bench of the well-known limits of the competence of the court of merit, it must be held that the finding expressed by the Re-examination judges concerning the gravity of the frame of circumstantial evidence is not susceptible to censure.

Not upheld, in the first place, is the defence submission according to which the knife bearing the genetic prints of Ms AK and of Ms MK found in S's house would constitute a piece of evidence relevant solely as against the young woman, even if privy of traces attributable to the suspect, the utensil has as always been found in the young man's house, and the testimony acquired up until now has led to the exclusion that it formed part of the inventory of the house inhabited by the victim, and which, at the time, and until proved to the contrary, must be held to be the same available for use by the suspect and which had been used in MK's house, there being contested no access by her to S's house.

Given the multitude of group contributive possibilities, the fact is not significative, then, in itself being a neutral element, that on the scene of the crime there are no biological traces attributable to S, to which, in any case, is attributable the "N" brand shoe print considered compatible, by dimensions and sole configuration, with the footwear worn by the suspect at the time of arrest. Although having the same impugned order excluded, at the time, the certainty of the identification constitutes as, in any case, a certain datum that the print in question had been made in haematic material found in Ms MK's room by a shoe of the kind and of the dimensions of those possessed by the appellant, while it remains to be excluded that this could have originated from G's shoe, who wore a size 45 and, therefore, dimensions notably larger. The revealed coincidence, notwithstanding the residual uncertainty on the identification, assumes particular valency in relation to the restricted circle of subjects gravitating to the scene of the homicide, with not even Ms AK, who made admissions about her presence on site at the same time as the execution of the offence, excluding the presence of her boyfriend in the victim's house in the same circumstance; nor can it be held that the print could have been left by S the following morning, he never having claimed to have entered into the room wherein the body was lying.

It does not answer, therefore, to verity that, as against the young man, there had been recognized, by a phenomenon of transference, items of circumstantial evidence in reality pointing solely to Ms AK.

The last finding held unfavourable to S is constituted by the failed proof of the alibi constituted by the argument of the suspect as having remained at home on the computer until late at night; it being a matter of, properly speaking, an alibi failing up till now and not of a false alibi and the defence, correctly, does not refute the technico-judicial valency of the circumstantial evidence, but it remains, in any case, acquired into the case file that the accused had not been able to prove his absence from the locus of the crime at the same time. An item up until now assumed as certain is, instead, the fact that S had interacted with his computer at 5:32 the morning following the murder, at around the same time reactivating his own mobile phone, a contradiction of the

assumption of a waking up only at 10:00 and a symptomatic tell-tale of a more or less sleepless night; likewise as symptomatic was held to be the nearly simultaneous cessation of telephonic traffic as much by Ms AK, in his company the evening of 1 November 2007.

The proof of a permanent stay in his house by the suspect can, all told, be considered as acquired up until 20:40 – coincident with P's visit – who confirmed his presence, or up until 21:10, the last interaction time on the computer, but this does not cover the time of the homicide, located between 22:00 and 23:00.

As for the proposed argument that S's conduct were interpreted as aiding and abetting, this does not result, in the event, as being supported by anything emerging from the investigations and its plausibility cannot be verified by the judges of merit.

In conclusion, the Re-examination Court's evaluation as to the gravity of the circumstantial evidence picture are removed from the audit of this court.

There remains, finally, the finding that for what concerns the pre-trial exigencies, those of a probative nature are not able to be considered as ceasing from the sole fact of G's re-entry into Italy (amongst other things significantly never invoked in the statements by the suspect and by his girlfriend, who instead co-involved L in the proceedings), given the existence of an investigative picture in continual evolution, in which the positions of the various protagonists so far remain unclear, the changing versions of which are marked by reticence and mendaciousness (the same suspect had, in truth, admitted to having, at least initially, told 'a load of balls'); but the permanence of pre-trial exigencies had been held reasonablely even under the aspect of flight risk, in relation to the gravity of the charges and of the potential sanctions, not to mention danger to society, given the revealed fragility of character and the specific personal traits of the subject, – which would narrowly evaluate as innocuous youthful stereotypes –, in a context the more connoted by the noted habitual use of drugs.

FOR THESE REASONS

Rejects the appeal and sentences the appellant to payment of costs of the proceedings. Article 94 para 1 ter, and activating provisions, Criminal Procedure Code, applies.

Rome, 1.4.2008.

DEPOSITED IN THE REGISTRY ON 21 APRIL 2008