

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 610/2001**

% **Judgment reserved on : 30.04.2008**
Date of Pronouncement : 22.07.2008

RAMESH @ RAMOO

..... Appellant
Through : Ms.Charu Verma,
Advocate

versus

STATE

..... Respondent
Through : Ms. Richa Kapoor, APP

CORAM :

Hon'ble Mr. Justice B N Chaturvedi
Hon'ble Mr. Justice Rajiv Shakdher

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Rajiv Shakdher, J.

1. This is an Appeal under Section 374 (2) of the Criminal Procedure Code (hereinafter referred to in short as 'Cr P C') against the judgment dated 26.2.2001 and sentence dated 26.2.2001 passed by the Additional Sessions Judge Shri R.L.Chugh, Karkardooma Court, Shahadra, Delhi (hereinafter

referred to in short as the 'Trial Court'). The Appellant has been convicted under Section 302 of Indian Penal Code (in short 'IPC') and has been sentenced to imprisonment for life and a fine of Rs.1,000/-. In default of payment of fine, the Appellant is required to undergo a further simple imprisonment for one month.

2. Before we deal with submissions made and issues raised in the Appeal it would be important to detail out the case set up by the prosecution.

3. On 30.4.2000 police received information that one Smt Rajan wife of the Appellant i.e Ramesh alias Ramoo residing in House No. 3/322 Trilok Puri; Delhi (hereinafter referred to in short as the said premises) had been murdered.

4. Based on the information received the duty officer concerned at Police Station Kalyan Puri recorded a daily diary entry (DD) no.26A. A copy of the said DD entry 26A was handed over to the sub-Inspector Janki Prasad for investigation. The sub-Inspector Janki Prasad alongwith two Constables reached the said premises where the Appellant was residing with his wife, Smt Rajan i.e the deceased.

5. On receipt of information the concerned Station House Officer Inspector Shri Virender Kumar also reached the spot. There they found the dead body of the victim Smt Rajan wife of the Appellant. The body was found lying on a cot on the first floor of the said premises. A prima facie examination of the dead body revealed that the victim had sustained an injury on the head. Blood was found on the ground beneath the cot on which the body was found, on the same side towards which the head of the victim was rested. Bruises were also found on the neck of the deceased which had turned bluish. Based on the statement of the father of the deceased Smt Rajan, an FIR was registered on 30.4.2000 at about 9.30 am.

6. Consequently, investigation was carried out which ultimately led to the Appellant being charged on 22.9.2000. The charge framed against the Appellant reads as follows:-

“That on the night intervening 29/30-4-2000, at the roof of your H.No.3/322, Trilok Puri, Delhi within the jurisdiction of PS Kalyan Puri you committed murder by intentionally causing death of your wife Smt Rajan and thereby committed an offence punishable U/s 302 IPC and within the cognizance of this court.”

7. Before the Trial Court the prosecution examined fifteen (15) witnesses, while the defense examined one (1)

witness. After recording the evidence of the various witnesses and upon perusal of the same and after hearing submissions of the counsel for the State, as well as, the Appellant the Trial Court came to the conclusion that based on circumstantial evidence the prosecution had been able to establish beyond reasonable doubt that the Appellant was guilty of the offence charged with and that there was no other hypothesis of the innocence of the Appellant/accused plausible. The Appellant was, thus, held guilty of committing an offence under Section 302 of IPC and sentenced accordingly.

8. Aggrieved by the judgment of the Trial Court, an Appeal under Section 374(2) of the Cr.P.C has been preferred in this Court. In support of the Appeal the counsel for the Appellant Ms.Charu Verma has contended as follows:

- (i) that there being no eye witness to the murder of the Appellant's wife, the entire case is based on circumstantial evidence. The law with respect to conviction based on circumstantial evidence is well settled; which is, that it requires the Court to look at various facts and circumstances as links in a chain which lead to only one conclusion, that is, to

the guilt of the accused, and offer no other explainable theory or hypothesis pointing to innocence of the accused. The learned counsel submitted that a close scrutiny of the testimony of the witnesses of the prosecution and evidence placed on record would show that there are several major contradictions and inconsistencies, which when, taken together could not have led to the conclusion that the Appellant was guilty of an offence as charged.

(ii) To buttress the aforesaid submission, the learned counsel for the Appellant referred to the following contradictions and inconsistencies which, according to her would impact the final conclusion of guilt arrived at by the Trial Court:-

(a) the father of the victim Smt Rajan i.e Nathi (PW4) has contradicted most of his deposition given in chief when cross examined by the counsel for the defence, in particular, his denial of the alleged threat met out by the Appellant/accused on 28.4.2000 to the effect “YA TO RAJAN KO SAMJHA

DO VARNA ME USE KHATAM KAR DOONGA”;

- (b) daily diary (DD) Entry No.2A which was preceded by daily diary (DD) Entry No.26A is ante timed and fabricated for the reason that it is neither in seriatum nor is the time recorded in the said daily diary (DD) entry No. 2A. Resultantly, it is not known as to whether DD No.2A was recorded in the morning at 7.05 am as per the prosecution’s case or during later part of the day, and;
 - (c) the forensic report which is Ex.PW14/2A clearly opines that no blood was found on the axe which allegedly is the weapon which was used in inflicting head injury on the victim;
- (iii) there was no motive established for murder of the deceased Smt. Rajan by the Appellant nor was the Appellant present on the roof of the premises where the murder of the deceased took place. In support of her submission the learned counsel for the Appellant placed reliance also on the testimony of Smt Daya (DW1), the sister-in-law of the Appellant. The particular part of the testimony

which is relied upon is where Smt Daya (DW1) has stated to have said that the Appellant and deceased occasionally had fights between themselves, as usually happens between a husband and wife; and also to her deposition to the effect that the Appellant alongwith her husband and herself was at the relevant time sleeping on the ground floor, while the victim Smt Rajan was sleeping alone on the roof of the said premises;

- (iv) the duty officer and the investigating officer made no attempt to locate or identify the person who is said to have informed the Police Station at Kalyan Puri about the alleged incident of murder;
- (v) and lastly, despite the fact that the murder had taken place in a locality which had large number of residents no attempt whatsoever was made in involving independent public witnesses to the seizure made.

9. In the background of the submissions made, it would be important to closely examine the case of the prosecution in

the light of the testimony of witnesses and other evidence relied upon to ascertain the truthfulness, the veracity and reliability of the same to know whether the prosecution has been able to establish the guilt of the Appellant beyond reasonable doubt.

10. The case of the prosecution is that the relationship between the Appellant and his wife had deteriorated over a period of time. Resultantly, they quarreled quite often between themselves. One such domestic quarrel which took place on 28.04.2000 compelled the deceased Smt Rajan to leave her house for her parent's house. The Appellant shortly thereafter followed the deceased Rajan to the house of her parents. On arriving there the Appellant in the presence of her father Shri Nathi (PW4) and her brothers Shri Ramesh (PW11) and Shri Suresh (PW12) threatened the deceased. It is alleged that the Appellant is stated to have uttered the following threat '*Ya to Rajan ko samjha do, nahi to me use khatam ker dunga*'. It is the case of the prosecution that in the early hours of 30.04.2000 the Appellant and his wife, Smt Rajan were once again engaged in an altercation which resulted in the Appellant using an axe to inflict the injuries on the head of the victim. Smt Rajan was finally done to death by the manual strangulation by the

Appellant.

The Prosecution with the permission of the Court, cross examined Shri Nathi, (PW4) wherein he deposed to the effect that there were differences between the deceased and the Accused / Appellant and specifically referred to the threat held out by the Appellant to the deceased '*Ya to Rajan ko samjha do, nahi to mai use khatam ker dunga*'.

11. The prosecution in order to establish its case relied upon the testimony of fifteen (15) witnesses. Out of said witnesses the testimony of the following witnesses being crucial to the case are particularly relied upon:-

Shri Nathi (PW4) i.e. father of the victim Smt. Rajan deposed that there were differences between the Appellant and the deceased Smt Rajan with regard to the family issues and house construction. He further went on to say that on account of quarrel between the Appellant and his daughter, she arrived at his house on 28.04.2000 alongwith her children, who were shortly followed by the Appellant with an axe in his hand. He states in his deposition that after some heated exchange, tempers cooled down, whereupon both the Appellant and deceased returned to their house. He also deposed that at about

7.00am in the morning, on 30.04.2000, he was informed by a neighbour of the Appellant, that the Appellant had murdered his daughter. He further deposed that he alongwith his wife and his sons Shri Suresh and Shri Ramesh went to the house of the Appellant where, on the roof of the house he saw his daughter lying dead on the cot with injury marks on her head and bruises on her neck, below the chin.

12. The prosecution further relied upon the testimony of the brothers of deceased Shri Ramesh (PW11) and Shri Suresh (PW12) to establish that there were differences between the Appellant and his wife i.e deceased. The brothers also reiterated the fact that they received the information of the murder of their sister through a neighbour of the Appellant at about 7.00 am on 30.04.2000, whereupon they visited the said premises where they found the dead body of their sister lying on a cot with injury on her head and bluish mark on her neck below the chin and the blood splattered on the floor.

13. The other important witness from the point of view of issues raised in the Appeal is Head Constable (HC) Kashmiri Lal (PW7) who was present at Police Station Kalyan Puri on 29.04.2000 from 12.00 pm till 8.00am on 30.04.2000. In his

testimony HC Kashmiri Lal deposed that at about 6.30am in the morning he received a telephonic information that a murder had occurred at the said premises. This information was recorded by him as (DD) No.26A Ex.PW7/A, which was transmitted to sub-Inspector, Janaki Parsad who alongwith Constable Lakhu Ram and Constable Manoj proceeded to the place of occurrence of the incident. He further deposed that at about 7.05 am, the Appellant came to the Police Station holding an Axe and informed him that he had murdered his wife Smt. Rajan and that he had therefore, decided to surrender. In his deposition he further stated that after measuring the axe he sealed the same and handed over to Constable Surat Singh, while the accused / Appellant was taken into custody by Constable Kashmir Singh. This factum was recorded in DD No. 2A which is Ex.PW7/B. In his cross examination he denied the suggestion that DD entry no. 2A was back dated or fabricated. He denied the suggestion that because DD entry no. 2A did not disclose the time recorded hence, it was fabricated. He, however, maintained that DD entry No. 2A was recorded in the morning. He further deposed that upon surrender of Appellant at the Police Station, he informed the Station House Officer, Inspector Virender Kumar. He also

deposed that he was responsible for taking into custody the axe handed over by the Appellant. He, however, denied the suggestion made to him in his cross examination that the signature of Constable Surat Singh on the DD no. 2A were not appended contemporaneously or that Constable Surat Singh was not present in the Police Station at the relevant time. He asserted that both the personal search and the disclosure statement were recorded by the Investigating Officer. He denied the suggestion that the accused had not surrendered or not made a confessional statement to the Police or that the Appellant and his brother were brought to the Police Station by the Investigating Officer in connivance with the father of the deceased Shri Nathi (PW4). He categorically denied the fact that the axe was handed over by the father of the victim Nathi and the same was planted.

14. The Post Mortem on the deceased was conducted by Dr. Ashok Jaiswal, (PW1) who proved the Post Mortem report which is marked as Ex.PW1/A. In his testimony he detailed out the fact there were external injuries, in particular, there was a wound on the head which on internal examination revealed "blood under the scalp tissue on frontal and right occipital

parietal region with contusion and depressed fracture of frontal bone over an area 3 x 2 inches.....” He also deposed that the external injuries were ante mortem and at least four injury marks were caused with application of a blunt object. He deposed that abrasions were found below the chin; oval shaped bruise was found on the left side of the neck below the angle of mandible with abrasion on the right sub mandibular region. In the opinion of Dr.Ashok Jaiswal (PW1) the cause of death was asphyxia on account of manual strangulation; which, according to him, had occurred thirty six (36) hours prior to the date and time of the post mortem.

15. The prosecution also examined both Investigating Officers i.e sub-Inspector Janaki Parsad (PW13) and Inspector, Prem Singh (PW14). Sub-Inspector Janaki Parsad (PW13) deposed that on receipt of DD no. 2A he alongwith Constable Lakhu Ram and Constable Manoj went to the crime scene where they found the dead body of Smt Rajan lying on the cot with head injury and bluish mark on neck with blood splattered on the floor below the cot. He also deposed that the Station House Officer (SHO), Inspector, Virender Kumar recorded the statement of Complainant Shri Nathi and sent the requisite information

alongwith Constable Manoj Kumar for registration of the case. He also deposed that a Photographer was also sent for who on arriving at the crime scene took the necessary photographs. In his deposition he stated that the samples of earth were lifted from the floor and it was sealed and seized. He further deposed that both the personal search of the accused as well as his disclosure statement were carried out in his presence and bear his signatures. He has further deposed that after the Post Mortem carried out on 01.05.2000, the body was handed over to the relatives of the deceased and that parcel containing the clothes of the deceased, as well as, blood sample of the deceased was sealed vide memo which is marked Ex.PW10/A and the same were deposited in Malkhana. He has also deposed that thereafter the investigation was handed over to the Inspector Prem Singh (PW14). In his cross examination he affirmed the case of the prosecution that after completing the investigation on the spot, when he reached the Police Station he came to know that the Appellant had surrendered at the Police Station. He confirmed that the accused was thereafter arrested by the Investigating Officer. He has also deposed in his cross examination that the personal search of the Appellant was

conducted in his presence and that of the brother of the Appellant. He confirmed that both his signatures and that of the Appellant were taken on the personal search memo. He denied in cross-examination the suggestion that the personal search was not conducted in his presence or that his signature on the memo were ante timed.

16. Inspector Prem Singh (PW14) deposed that on 02.05.2008 he was posted at Police Station Kalyan Puri as Station House Officer and that he conducted the investigation thereon. He has also deposed to the effect that on 13.07.2000 he alongwith SI Mukesh Jain visited the site of the crime where he prepared rough notes, and measurement were taken by him alongwith SI Janaki Parsad (PW13). He further deposed that he collected the Post Mortem Report Ex.PW1/A and he further sent the case property and the exhibits to the Central Forensic Scientific Laboratory (in short CFSL), Calcutta through Constable Raj Kumar vide RC No. 83/21. He confirmed in his deposition that the said CFSL Report and case property were received back which are marked Ex.PW14/A and Ex.PW14/B.

17. The Appellant in his statement under Section 313 Cr. P C admitted in response to the question that when in point of

time the Investigating Officer, sub-Inspector Janaki Parsad alongwith Constable Lakhu Ram and Constable Manoj visited the spot and they found the dead body of Smt Rajan on the first floor of the said house. The accused / Appellant thus admitted the fact that the body was lying on the first floor of the said premises.

18. Having perused the evidence on record, to our mind, the essential ingredients of an offence of murder, though based on circumstantial evidence are clearly established. The circumstance which instigated the Appellant to commit the brutal murder is clearly established from the testimony of the father of the PW4 (i.e. Shri Nathi) and brothers Shri Ramesh (PW11) and Shri Suresh (PW12). The close scrutiny of the testimony of said witnesses clearly establishes the fact that:-

(i) acrimony had set in, in the relationship, between the Appellant and his deceased wife, Smt Rajan

(ii) proximate to the date and time of death, a quarrel took place between the Appellant and the deceased Smt Rajan, on 28.4.2000 which compelled Smt Rajan to visit her parental home

(iii) on said date 28.4.2000 Appellant followed Smt Rajan with an axe in hand, to her parental home, where they quarreled once

again and after tempers had cooled down returned home.

19. In order to examine whether or not there are any major variations or contradictions in Shri Nathi (PW4) deposition, his examination-in-chief, as well as, his cross-examination when confronted with his statement made under Section 161 of Cr P C was closely scrutinised. A close perusal of the deposition of Shri Nathi (PW4) in substance establishes that there were no material variations or inconsistency in his stand. It is however, a fact that in his cross examination, the witness Shri Nathi (PW4) when confronted with the statement made under Section 161 Cr P C, clearly stated that he had not told the police that the Appellant had met out the aforementioned specific threat i.e *“Ya to Rajan ko samjha do, nahi to mai use khatam ker dung”*. He went on to say that these words were inserted by the Investigating Officer. He further deposed that he had wrongly affirmed the same when Learned Public Prosecutor had carried out his cross examination with the permission of the Court. The point to be noted is that he had, however, reiterated in the cross examination by the defence that the deceased alongwith the Appellant had come to his house with axe at 4.00 to 5.00 pm on 28.4.2000 and at that point of time, his sons Shri Ramesh and Shri Suresh were also

present in his house. He reiterated the fact, in his cross examination, that his daughter Rajan had come to his house on 28.04.2000 at about 4.00 – 5.00 pm after being involved in a quarrel with her husband. He flatly denied the suggestion made to him in the cross examination that because he was fed up of the quarrel between his daughter and the Appellant, and in order to teach the Appellant a lesson, he had concocted a story to falsely implicate the Appellant in the case, or that he had planted the axe in connivance with the Police to implicate the Appellant.

20. To our mind the substratum of the testimony of Shri Nathi (PW4) remains unaltered which is further substantiated by the testimony of the brothers of the deceased Shri Ramesh and Shri Suresh. The fact that a specific threat to the effect 'YA TO RAJAN KO SAMJHA DO VARNA ME USE KHATAM KAR DOONGA' had not been made to our mind would not alter the fact that the relationship between the Appellant and the deceased had turned sour and bitter, and had attained ominous signs with Appellant following the deceased Rajan to her parental house with an axe on 28.4.2000. What seems to be clearly established is that there was a quarrel between the Appellant and his wife on 28.04.2000

which resulted in the Appellant visiting the house of Shri Nathi (PW4). This version of the events of 28.04.2000 are corroborated by the testimony of sons of Shri Nathi, namely, Shri Ramesh (PW11) and Shri Suresh (PW12) being PW11 & PW12 respectively. As a matter of fact, even Smt. Daya (DW1) has also referred to differences between the Appellant with his wife, even though she had labeled them as those which were not out of the ordinary.

21. The submission of the learned counsel for the Appellant that there were inconsistencies and contradictions in the deposition of the star witness of the prosecution, Shri Nathi (PW4) is thus untenable, for the reason, as long as the core and the substratum of the deposition of the witness remains unaltered, it will have to be accepted. As noted above, in the instant case the essence of Shri Nathi's (PW4) deposition, that is, that the Appellant and the deceased often quarreled; and as to what transpired on 28.4.2000 has been further corroborated by the deposition of Shri Ramesh (PW11) and Shri Suresh (PW12) leaves no doubt in our mind that no one else but the Appellant had the necessary motive to do away with Smt Rajan.

22. The other submission of the learned counsel for

Appellant that the DD entry No. 2A Ex.PW7/B was not recorded in the morning as claimed by prosecution does not to our mind have much substance. The reason being that at some stage the events of the previous day had to be brought to a close and hence, the explanation of the prosecution that the entry for the next day, bore a different number would not by itself to our mind prove that it is fabricated.

23. This bring us to the submissions of the learned counsel for the appellant that since no blood was found on the axe as per the CFSL Report this is indicative of the fact that it was a planted. First and the foremost aspect to be noted is that it is no one's case that the deceased had not suffered injuries on her person or that the body of the deceased with injuries was not found lying on the cot on the roof of the said premises. The fact that the injury on the head was suffered by use of blunt object and that the cause of death is manual strangulation is established by virtue of testimony of Dr Ashok Jaiswal (PW1). The fact that the CFSL report did not indicate that there was blood on the axe, in our opinion, would not help the Appellant. The best that could be stated in favour of the Appellant is that perhaps the axe which was seized by the Police is not the object

which caused the injury on the head. Death in this case as opined by Dr.Ashok Jaiswal (PW1) was due to asphyxia brought about by manual strangulation.

24. Moving to the other submission of the learned counsel for the Appellant that there was no motive established and that a domestic quarrel could not be a motive for the crime. Whether a domestic quarrel can be a motive for committing a crime is dependent upon deposition of the perpetrator of this crime. There are those who deal with interpersonal differences in a calm and collected manner while there are others who take to violence to resolve differences or even to vindicate a perceived slight. In the present case the quarrel between the Appellant and his deceased wife, Smt Rajan seemed to be the motive for commission of the crime which became starkly evident when on 28.4.2000 the Appellant followed his deceased wife to her parental house with an axe in hand fulminating at the mouth. The observations of Supreme Court in the case of Supreme Court **Bahri vs. State of Bihar** reported in **AIR 1994 SC 2420** at Page 2430-31; Paragraph 25 apposite. This was the case where in brief the husband who was one of the accused was charged with murder of wife and two children. The motive attributed to

him was strained relationship with him because of which the wife was desirous of leaving him and liquidating the property and finally migrating to USA where his parents were settled. The Supreme Court while repelling the submission of the counsel for the defence that the husband could not have taken the extreme step of liquidating his family solely on the ground of strained relationship with the wife observed as follows:-

‘..... The argument of the learned counsel for the appellant that even if it is accepted that there were strained relations and serious differences between the deceased Urshia and the appellant Suresh Bahri, his mother Santosh and maternal uncle, Y D Arya, yet Suresh would not go to the extent of hatching a conspiracy and actually killing his wife and the two children does not appeal to us and we are not at all convinced by this argument because different persons react differently under given circumstances. It is difficult to lay down a hard and fast rule as to how and in what manner a person would react and to achieve his motive could to what extent in the commission of crime under a particular circumstance. It is not possible to measure up the extent of his feelings, sentiments and desire and say as to what compelled him to commit a particular crime. There may be persons who under frustration and on mere trifling domestic matter take decision to commit a serious crime, while others may approach it with cool and claim mind and think more dispassionately before taking any hazardous and serious steps. It all depends as to how a person reacts in a given circumstance and it is he along who best knows his intention and motive to commit a crime and the extent thereof.

25. Let us now examine the Appellant's contention based

on the testimony of his sole witness Smt Daya (DW1), wife of his brother Shri Dharampal. Smt Daya (DW1) deposed inter alia that on the date of the incident Smt Rajan i.e deceased was sleeping alone, on the roof of the said premises, and that the Appellant alongwith her husband and herself were sleeping on the ground floor. The reason given for this unusual behaviour by Smt Daya (DW1) in her testimony was that, the deceased Smt Rajan slept on the roof because it was hot, while the others slept on the ground floor because there were mosquitoes on the roof and the fact that they had electricity available on that day. Smt Daya (DW1) further went on to say that at about 2.00 to 2.30 am in the morning of 30.04.2008, the Police came to their house and took away the Appellant.

26. The testimony of Smt Daya (DW1) does not inspire confidence. The fact that the Appellant did not sleep on the roof in the company of his wife and chose to sleep with his brother and sister-in-law is tenuous to say the least. Smt Daya's (DW1) deposition that they got to know about the murder of the deceased Smt Rajan when the Police came to pick up the Appellant at about 2.00 to 2.30 a.m in the morning on 30.4.2000 is completely incredulous and unbelievable when examined in

the light of the brutality with which the victim Smt Rajan was done to death.

27. The submission of the learned counsel for the Appellant that no effort was made by the duty officer of the Investigating Officer to locate the person who informed the Police Station at Kalyan Puri about the murder of the deceased on 30.04.2000 is founded on the testimony of Head Constable Kashmiri Lal (PW7) who was the duty officer at the Police Station at the relevant point in time. In his deposition PW7 has stated that he was on duty at the Police Station from the midnight of 29.4.2000 to 8.00 am on 30.04.2000, and that at 6.30 am on 30.04.2000 he received a call from a unknown person that one lady was murdered by her husband on the roof of the said premises.

Head Constable Kashmiri Lal (PW7) was cross examined at length. There was no suggestion made to him that this part of his testimony was false. We have no reason to disbelieve the testimony of PW7 only because he is a witness who is in the Police force. He has no animus with Appellant and none is alleged. In that view of the matter to our mind, the fact that the police did not trace the informer will not help the cause of the

Appellant if otherwise other evidence points a finger in the direction of the Appellant.

28. That leaves us with the submission of the counsel for the Appellant which is, that no independent public witnesses were joined in the investigation. To our mind this attains importance if we otherwise disbelieve the testimony of the witnesses produced before us or we find that the evidence placed before us is otherwise weak. While it may be a wholesome practice to join general public in criminal investigation the ground realities may be different. It is well known that public at large do not wish to get involved in criminal cases because of the travails of a trial. In this case we find that the testimonies of Shri Nathi (PW4) the father and the brothers Ramesh (PW12) and Suresh (PW13) have substantially a ring of honesty and truth in them. Their testimony cannot be disregarded merely because no public witnesses were joined in the investigation. What is of greater importance that the witnesses should be independent. Merely because the witnesses are related, his or her testimony cannot be disregarded only because the testimony relied upon is that of a relative. There is no such rule of law which requires that a testimony of a relative

of the deceased should be excluded. The observation of the Supreme Court in the case of **Dalip Singh V State of Punjab** reported in **AIR 1953 SC 364** at page 366, paragraphs 25 & 26. The relevant extract read as follows :--

‘... 25. We are unable to agree with the learned Judges of the High Court that the testimony of two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. It is the grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – ‘Rameshwar V State of Rajasthan’ AIR 1952 SC 54 at page 59 (A). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true when feelings run high and there is personal cause for enmity that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and

be governed by its own facts.

29. Also see observation of the Supreme Court in the case of **Masalti v/s State of Uttar Pradesh** reported in **1965 SC 202** at page 209 paragraph No. 14. The relevant extract reads as follows:--

'... 14. Mr. Sawhney has been argued that where witnesses giving evidence in a murder trial like the present are shown to belong to the faction of victims, their evidence should not be accepted, because they are prone to involve falsely members of the rival faction out of enmity and partisan feeling. There is no doubt that when a criminal Court has to be appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not evidence strikes the Court as genuine whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by the witnesses should be discarded only the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.

30. To sum up, our decision to accept the case of the prosecution that the Appellant had inflicted the injuries on the deceased and was responsible for manually strangulating his wife Smt. Rajan, is based on the following :-

- i) there was motive in the form of quarrel which took place between the deceased and the appellant on 28.04.2000 proximate to the date of murder i.e. 30.04.2000 and given the fact there was souring of relationship between the Appellant and the deceased as established the by testimony of PW4, PW11 & PW12;
- ii) the body of the deceased was found on the cot on the roof of the premises in which the Appellant was present; a fact accepted by him in his statement under Section 313 Cr P C;
- iii) the injuries and possible cause of death which stand proved by virtue of the testimony of Dr. Ashok Jaiswal (PW1) who conducted the postmortem and opined that the death occurred due to manual strangulation;

iv) and lastly, given the fact that all other hypothesis of the innocence of the Appellant stood excluded as the testimony of DW1 was both unbelievable and incredulous.

31. Thus, given the state of evidence in the present case and the fact that it is not the case of the Appellant that he was not present in the premises on the date of the incident i.e. 29 – 30th April 2000 and also the fact that the body of the deceased was found in the premises in which he was living with his wife, we find that there is no infirmity in the conclusion arrived at by the Trial Court based on the evidence placed before it.

32. In view of the above discussion, the appeal is dismissed.

RAJIV SHAKDHER, J

B N CHATURVEDI, J

JULY 22, 2008
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