

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

% *Date of Decision: 21st October, 2009*

+ **Crl.A. No.258/2001**

SURENDER Appellant

Through: Mr. Jitender Sethi, Advocate
Mr. Vikram Berwal, Advocate

Versus

STATE Respondent

Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 26.2.2001, the learned Trial Judge has convicted the appellant for having committed an offence punishable under Section 302 IPC, for which offence, the appellant has been sentenced to undergo imprisonment for life. The appellant has also been convicted for the offence punishable under Section 25 of the Arms Act, in respect whereof he has been sentenced to undergo imprisonment for 5 years and pay a fine in sum of

Rs.2,000/-. Both sentences have been directed to run concurrently.

2. To say the least, the impugned judgment has been written in a most unsatisfactory manner, a fact conceded by both counsel. It gives us little clue as to what evidence has been treated as admissible evidence and what circumstances have been used by the learned Trial Judge to convict the appellant.

3. By way of illustration we may note that the case of the prosecution stated by the learned Trial Judge, in para 16 of the impugned decision, the learned Trial Judge has recorded as follows:-

“As per the disclosure statement of the accused Surender i.e. Ex.PW-5/C, the prosecution case is that on the night intervening 28.29/4/94 at about 11:00 PM the accused Surender was sleeping on the roof of the house. He felt thirst. He came down in the outer room of the house. The light was found to be switched off. He came in the gallery and he heard noise of whispering. He found that the door was closed. From the opening of the window, he peeped in. He saw that his mother and Laxman were lying on the same cot and were behaving indecently. Laxman Singh (now deceased) was the Mausa of the accused Surender in relation and he used to come to their house off and on. Accused Surender became annoyed. He knocked the door. The same was opened by his mother and she stood behind the door. Laxman sat on the cot. Accused Surender said something bad to Laxman and Laxman started abusing him and asked as to who he was to interfere in the matter. Accused Surender brought out a knife kept in the room of Buffalows and gave repeated stabs with the knife to

Laxman who fell down on the floor. On getting the knife blows and breathed his last while lying there. Mother of the accused Surender asked him as to what he had done. The bedding were lifted and were kept inside the room and cot was kept straight in the room. Accused Surender asked his mother whatever had happened, had happened good. His mother told him that the bu-shirt and the knife (blood stained) should be hid somewhere. Accused Surender hid his bu-shirt in the keekers near johad and the knife was kept in the heap of wheat and could get recovered the same.”

4. Suffice would it be to state that a confessional disclosure statement by an accused is wholly inadmissible in evidence save and except part thereof to which Section 27 of the Evidence Act is attracted. It is unfortunate that the learned Trial Judge, at the Sessions Division, has shown such innocent knowledge of the law.

5. Be that as it may, with the assistance of learned counsel for the parties, we have perused the impugned judgment and with reference to the evidence on record, as conceded to by learned counsel for the State the following incriminating circumstances can possibly be culled out against the appellant:-

A. The dead body of the deceased was found in the house of the appellant. The dead body was of Laxman Singh, the husband of the cousin of the mother of the appellant.

B. Recovery of the knife Ex.P-13 pursuant to the disclosure statement of the appellant which was opined by the

doctor i.e. PW-18 who conducted the post-mortem of the deceased as the possible weapon of offence.

C. Recovery of clothes of the appellant pursuant to the disclosure statement of the appellant which were opined to be stained with human blood.

6. Learned counsel for the State concedes that there is no evidence that the appellant was seen by anybody in the house where the dead body was discovered. We may note that the house in question belonged to the mother of the appellant and that even she was made an accused with the charge of destroying evidence but proceedings against her abated on her death. It is thus apparent that the house was inhabited by the appellant and his mother. We shall dwell on this a little later.

7. The first police officer to reach the scene of the crime is HC Ishwar Singh PW-1, as per whose testimony, he was informed by somebody that a quarrel had taken place in a house near Patodi Johad, while he was on patrol duty. As per him, he went to the house which was locked. He entered into the house from the rear and saw a dead body, which information he conveyed at the local police station.

8. Now, it is apparent that whoever committed the crime had fled.

9. One could say, and indeed with some logic, that where a human being is put to death in a house, the inhabitants of the house must explain. More so when it is night time. From the testimony of PW-1 it appears that he reached the house at around midnight.

10. But, we note that as per Const.Rajender Singh PW-5, who was the next police officer to reach the spot along with the SHO, the mother of the appellant was found in the house. It has surprised us as to why the statement of the mother of the appellant was not recorded. That apart SI Balbir Singh PW-14 who was deputed to conduct the investigation has categorically admitted that: *'at that time a 15-16 years old girl was present at that time'*.

11. It is apparent that people were present in the house where the crime took place and we see no reason as to why the said 15-16 years old girl was not examined.

12. Let us have a look at the conduct of the appellant. He was arrested from the house on 1.5.1994. He did not abscond.

13. That is not all. Jitender, the younger brother of the appellant was also a resident of the same house. Savita DW-1, the sister of the appellant has deposed to said fact. If this be

so, why have the whereabouts of Jitender not been investigated or why has he not been examined as a witness?

14. For if even Jitender was a resident of the house, even his role had to be investigated. Thus, the mere fact that the crime took place in the house in which the appellant, his younger brother and the mother were residing would be no reason to suspect or infer the involvement of the appellant in the absence of a proper investigation qua the role of the mother and the brother of the appellant. We note at this stage that a blood stained mattress was recovered by the police from the house at the pointing out of the mother of the appellant.

15. Three facts have weighed with us. The first is the testimony of PW-5 that the mother of the appellant was seen in the house and she not being interrogated at the spot there and then. The second is the presence of a girl aged 15-16 years as deposed to by PW-14, who has not been examined. The last is the fact of the younger brother of the appellant being also a resident of the same house and there is just no investigation qua him.

16. The knife Ex.P-13 was sent for serological examination and as per the report of the serologist no blood could be detected thereon. As regards the recovery of blood

stained clothes at the instance of the appellant, the same are from an open field, accessible to all.

17. That apart as held in the decisions reported as Narsinbhai Haribhai Prajapat Vs. Chhatrasinh & Ors. AIR 1977 SC 1753, Surjit Singh Vs. State of Punjab AIR 1994 SC 110, Seva Singh Vs. State of Rajasthan 1999 CriLJ 265 and Prabhoo Vs. State of UP AIR 1963 SC 1113, mere recoveries of ordinary articles like blood stained clothes or a knife stained with human blood are weak evidence insufficient to sustain the charge of murder.

18. It is unfortunate that the learned Trial Judge has totally ignored the aforesaid vital circumstances.

19. That apart, we are surprised by one more fact; being the fact that as per the learned Trial Judge the motive for the crime was the provocation when the appellant saw his mother in an objectionable compromising position with the deceased. If this be so, the least what was expected of the learned Trial Judge was to consider whether the same suddenly provoked the appellant attracting Exception 1 to Section 300 IPC. The learned Trial Judge has not even bothered to consider said aspect of the matter.

20. Be that as it may for our reasons in para 1 to para 18 above we are of the opinion that the facts of the instant

case warrant a benefit of doubt to be granted to the appellant.

We do so.

21. The appeal is allowed. The impugned judgment and order dated 26.2.2001 is set aside. The appellant is acquitted of the charges framed against him.

22. Since the appellant is in jail, we direct that a copy of this order be sent to the Superintendent Central Jail Tihar for compliance. Needless to state the appellant shall be set free unless detained in some other case. For the benefit of the learned Superintendent Central Jail Tihar we may notify to him that the appellant was admitted to bail in the instant case but has been subsequently detained in prison, being charged in some other FIR.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

OCTOBER 21, 2009
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