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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 25th March 2009

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CRL.A. 314/2001

RAJ KUMAR @ RAJU Appellant
Through: Mr. V.K.Raina, Advocate

versus

STATE Respondent
Through: Ms. Richa Kapoor, Advocate
Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Vide impugned judgment dated 8.3.2001, the appellant has been convicted for the murder of his wife.
2. Two co-accused persons, namely Siya Ram and Faqira have been exonerated.

3. It is urged by learned counsel for the appellant that there is an inordinate delay in registration of the FIR. Deceased Promila, wife of the appellant, admittedly died on 30.4.1999. The place of death is the jhuggi where she was residing with the appellant. Unfortunately, the FIR in question i.e. Ex.PW-7/A, was registered on 27.1.2000, on the basis of the statement Ex.PW-2/A of Bhajan Lal who has appeared as PW-2 at the trial. Bhajan Lal is a neighbour of the appellant.

4. Thus, the first and the foremost submission made by learned counsel for the appellant is that on account of the unexplainable delay in registration of the FIR, the appellant is entitled to an acquittal. Second contention urged is that the learned Trial Judge has disbelieved the testimony of Bhajan Lal while acquitting Siya Ram and Faqira and hence the appellant should also be entitled to the same benefit for the reason the intertwined truth and lies in the statement of Bhajan Lal has rendered it impossible to separate the grain from the chaff. Lastly, it is urged that the conduct of Bhajan Lal in not reporting the matter promptly to the police and his falsely

implicating the appellant cannot be ruled out.

5. It is not in dispute that DD No.12 dated 30.4.1999 was recorded at the police post Majnu Ka Tila under jurisdiction of PS Civil Lines at 12:15 PM to the effect that a lady has been murdered in the jhuggis at Old Chandrawal. The phone number of the informant i.e. No.3979213 stands noted.

6. SI Harish Chander PW-10, accompanied by Const. Ravinder Kumar PW-4, left for the jhuggis at Old Chandrawal and at Jhuggi No.N-71-B/275, Old Chandrawal, found the dead body of Promila. Blood was oozing from her injuries. A photographer was summoned who took the photographs of the dead body. SI Jai Prakash Meena reached the spot; probably being informed on the wireless of the incident; he prepared the inquest report Ex.PW-5/A. The appellant identified the dead body as that of his wife vide memo Ex.PW-5/B. SI Jai Prakash Meena prepared a brief fact statement Ex.PW-5/C, and sent the body for post-mortem vide application Ex.PW-5/D.

7. The body was sent to the mortuary of the Civil Hospital Delhi. Dr. Ashok Jaiswal conducted the post-mortem

the next date i.e. on 1.5.1999 and penned the post-mortem report Ex.PW-8/A. He noted 13 external injuries on the body of Promila being as under:-

“EXTERNAL INJURIES

1. Extensive defused pinkish bluish bruise on anterolateral aspect of right arm and shoulder over an area 6" to 8" x 2½" to 3".
2. Lacerated wound 2.5 cm x 1 cm x muscle deep on right forearm, middle portion with fracture of radius and ulna with bruising around and blood at fractured ends.
3. Defused pinkish bluish bruise on back of both hands 3" x 2" to 2½ ".
4. Defused irregular bruise pinkish bluish on left arm upper third outer aspect 4" x 2" to 3".
5. Extensive bruise pinkish bluish on back over an area 8" to 10" x 3" to 4" over scapular, infra scapular and supra scapular region.
6. Rail road pattern bruise pinkish bluish border with clear intervening area seen on back infrascapular region 11 cm x 1 cm.
7. Rail road pattern bruise pinkish bluish on right lumbar region back, obliquely placed 10 cm x 1 cm.
8. Defused pinkish bruise on anterolateral aspect of both thighs upper and middle part . 6" to 8" x 3" to 4".

9. Defused irregular pinkish bluish bruise on both knees and legs in front 3" x 2" to 2½" (knee) and 4" x 2" to 2½" legs.
 10. Three rail road bruises obliquely placed on back of left leg 6 cm x 1 cm, 5 cm x 1 cm and 4.5 cm x 1 cm.
 11. Lacerated wound on left occipital parietal region 1¼" x ½" x ¼".
 12. Irregular defused bruise on both malar region 1" x ¼" and 1¼" x ¾".
 13. Extensive bruise on right hip 6" x 8" in size.
- No other external injury was seen on the body."
8. Pertaining to the internal injuries he recorded as under:-

"INTERNAL EXAMINATION:

Head : there was blood under scalp tissue on left occipital parietal region, skull bones were intact. No haemorrhage or clot seen. An oval shape gelatinious mass 2 cm x 2.5 cm seen on medial side of right frontal lobe – a disease process (Tumor). Base of skull was intact.

NECK : Except pallor nothing abnormal detected in the neck.

CHEST : There was fracture 5 to 8 ribs on right side post laterally with blood at fractured ends. Both lungs were pale and the heart was normal.

ABDOMEN AND PELVIS : Stomach contained 2 ounce of creamish paste, mucosa pale, no abnormal smell, bladder and rectum half filled.”

9. He opined that all injuries were ante-mortem and were caused by blunt force/object and were not possible due to a fall. He opined that death was due to haemorrhagic shock consequent to cumulative effect of all the injuries. He further opined that the brain findings suggested a tumor in the right frontal lobe.

10. Regretfully, though blood was oozing from the forehead of the deceased, SI Jai Prakash Meena, in the brief statement to facts Ex.PW-5/C, penned by him recorded that as told to him by SI Harish Chander that it appeared to be a case of natural death.

11. The result thereof was that though the dead body of the deceased was handed over to the relatives on 1.5.1999 after the post-mortem was over, neither SI Harish Chander nor SI Jai Prakash Meena bothered to collect the post-mortem report which clearly evidences that the death of Promila is a homicidal death.

12. The external injuries show that she was hit with a blunt object. The fracture of four ribs i.e. rib No.5 to 8 at the right side also shows that she was repeatedly hit on the chest.

13. The 13 external injuries cannot be possible if a person were to fall. In any case, the post-mortem report did not opine that the injuries were a result of the fall. If not more, at least, the matter required further investigation.

14. Nothing happened at the police station till somebody thought it necessary to go to the mortuary and collect the post-mortem report. It appears that the post-mortem report was obtained from the doctor somewhere in the month of July 1999. Unfortunately, there is no clear evidence to this effect. On 12.10.1999, SI Mukesh Kumar PW-9, (the date deposed to by him) received the inquest papers along with a complaint of Bhajan Lal. SI Mukesh Kumar recorded the statement Ex.PW-2/A of Bhajan Lal on 20.12.1999 and made an endorsement Ex.PW-9/A and based thereon got the FIR registered somewhere around 7:00 PM on 27.1.2000.

15. It is apparent that the registration of the FIR has

been delayed due to initial callous conduct of SI Harish Chander and SI Jai Prakash Meena and to some extent due to the belated action taken by SI Mukesh Kumar who received the inquest papers on 12.10.1999 and yet chose to act only when he received a written complaint from Bhajan Lal and recorded Bhajan Lal's statement Ex.PW-2/A on 20.12.1999 and thereafter on 27.1.2000 made an endorsement thereon and got the FIR registered on said day.

16. At the trial, Bhajan Lal PW-2, deposed that on 30.4.1999 at around 6:45 AM, when he was returning home after answering the call of nature when he reached in front of the house of the appellant which was in his neighbourhood, he saw appellant hit his wife Promila on the head. Due to which she fell down. Accused Siya Ram and Faqira were standing at the gate. He asked why Promila was being beaten. Siya Ram replied that it was not the concern of Bhajan Lal to be bothered as to why Promila was being beaten.

17. The prosecution had cited Inder as PW-3. He did not support the case of the prosecution.

18. In a nut shell, post trial, the only incriminating evidence which surface against the appellant was the deposition of Bhajan Lal and the post-mortem report.

19. Relevant would it be to note that when the incriminating circumstances were put to the appellant, in response to the last question, whether he had something to say he replied:-

'I got up in the morning. At that time she was lying on the floor near stone. I called neighbours. I have not killed her.'

20. Reference to 'her' by the appellant is obviously to the deceased.

21. It is apparent that the appellant admitted his presence in the house when his wife died.

22. Delay in registration of an FIR becomes fatal where it gives time and space for evidence to be fabricated. If there are traces of fabrication of evidence, delay in registration of an FIR becomes fatal.

23. Every delayed FIR is not so fatal, that by itself, it inflicts wound on self.

24. The delayed registration of the FIR, in the instant case, is obviously due to the most callous attitude of SI Harish Chander and SI Jai Prakash Meena. We are at pain to note that the two police officers have betrayed the trust reposed in their uniform. As responsible police officers it was expected of them to have promptly got registered an FIR. It was expected of them to have ensured that the post-mortem report was obtained on 1.5.1999. They just did not bother to do anything.

25. Why did they do so? The answer to this question is difficult to be found. Did they take illegal gratification from the appellant? Or was there some other motive? It is difficult to answer.

26. But, it appears that illegal gratification was not the motive for delay in registration of the FIR for the reason the appellant lives in a jhuggi. Presumably, he has no means to bribe his way through. The only reason we can think of is the apathy, callousness and I care less attitude which men in India show towards their female counterpart.

27. It is painful to record in a judicial order, but we must

do so. We have been noticing that investigation pertaining to a crime against a woman is lackadaisical and the same amount of enthusiasm which we find oozing in investigations where a male is a victim, is found wanting when the victim is a female.

28. What did it matter to the police officer if another woman has been killed by her husband? It appears to be an everyday phenomenon in the Indian society, and hence it troubles none.

29. No society can progress where half its population is denied equal rights in law. Even in death, one has a right to be treated equally and have ones death investigated impartially and fairly.

30. On the assumption that the delay in registration of the FIR has given ample time to Bhajan Lal to cook up a story, we ignore the testimony of Bhajan Lal and independent thereof see whether there are sufficient incriminating circumstance against the appellant, wherefrom his guilt can be inferred and innocence ruled out.

31. The post-mortem report opined that the probable

time of death of the deceased was about 36 hours prior to the time when the post-mortem was conducted. The post-mortem was conducted at 1.5.1999 at 2:30 PM. Thus, as per the post-mortem report the deceased died somewhere in the early hours of the morning of 30.4.1999. The appellant has admitted his presence in his jhuggi. He must therefore explain the circumstance under which his wife died.

32. The last seen evidence, as explained in the decision reported as AIR 2007 SC 2531 Swami Shardhanand Vs. State of Karnataka requires an inference to be drawn as under:-

“36. If it is proved that the deceased died in an unnatural circumstance in her bed room, which was occupied only by her and her husband, law requires the husband to offer an explanation in this behalf. We, however, do not intend to lay down a general law in this behalf as much would depend upon the facts and circumstances of each case. Absence of any explanation by the husband would lead to an inference which would lead to a circumstance against the accused.”

33. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the

accused being the author of the crime becomes impossible, as explained in the decision reported as AIR 2003 SC 3131 Mohibur Rahman Vs. State of Assam.

34. Indeed, in Swami Shardhanand's case (supra), upon proof of the fact that the husband was in the house when the wife died, in the absence of an explanation by the husband as to how his wife died, an inference of circumstance sufficient to convict the accused was found by the Supreme Court.

35. As noted above, the post-mortem report of the deceased conclusively establishes a homicidal death. The doctor who conducted the post-mortem, namely Dr. Ashish Jaiswal appeared as PW-8 and re-affirmed the report. He denied the suggestion that the injuries were possible due to a fall.

36. Thus, the over simplified explanation by the appellant that when he got up in the morning he found his wife lying on the floor near a stone is obviously a false explanation and even the same forms a link in the circumstances which are incriminating against the appellant.

37. Pertaining to the acquittal of the co-accused, suffice would it be to state that the learned Trial Judge acquitted them not on account of the fact that there were trances of lies in the deposition of Bhajan Lal but on account of the fact that Bhajan Lal attributed no role to Siya Ram and Faqira. Qua them, he only deposed that they were standing at the gate and when he i.e. Bhajan Lal asked as to what was happening, the two replied that it was not the concern of Bhajan Lal as to what was happening.

38. Be that as it may, we have removed the incriminating evidence brought on record by Bhajan La while considering whether there is sufficient evidence on record wherefrom the guilt of the appellant can be inferred.

39. It is not the time to pen off. SI Harish Chander and SI Jai Prakash Meena as also SI Mukesh Kumar have to be accountable for their lapses. SI Jai Prakash Meena had prepared the inquest papers and just did not bother to obtain the post-mortem report. Wherefrom could he have recorded in the brief facts Ex.PW-5/C, that it was a case of a natural death,

remains a mystery.

40. The learned Trial Judge has directed that a copy of his decision be sent to the Deputy Commissioner Police North hoping that same action would be taken against the erring police officers.

41. We desire that a status report be filed and hence we direct the Deputy Commission Police North to file a report in this Court within 10 weeks from today informing as to what departmental action was taken pursuant to the impugned decision dated 7.3.2001.

42. If none was taken, we direct that an enquiry be conducted against SI Harish Chand, SI Jai Prakash Meena and SI Mukesh Kumar. The report of the enquiry, if not already available, would then be submitted within 6 months from today.

43. We dismiss the appeal.

44. The appeal would be formally listed on 6.7.2009 on the administrative side before the Registrar General of this Court who would ensure that the Deputy Commissioner Police

North complies with the directions issued today.

45. The appellant is on bail.

46. His bail bond and surety bond are cancelled. The appellant shall surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

MARCH 23, 2009
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