

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

% *Judgment Reserved on: July 28, 2009*
Judgment Delivered on: July 31, 2009

+ **CRL.A.316/2001**

ASRA BANO Appellant
Through: Mr. Sunil Sethi,, Advocate.

versus

STATE Respondent
Through: Mr. Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. On 1.7.1996 in the afternoon at about 3 PM, the appellant Asra Bano had gone to chamber No.104 of Sh.B.T.Singh, Additional Public Prosecutor PW-17 in the High Court and informed him that she had killed her husband Raju; at that time she was carrying a packet

containing the severed private parts of her deceased husband.

2. Sh.B.T.Singh immediately called up his Naib Court HC Ved Prakash PW-14 and passed on this information to him who in turn rang up the concerned police station i.e. police station Sarojini Nagar. The said information was recorded in D.D.No.24-A Ex.PW-7/B; copy of the same was handed over to the Additional SHO Smt. Kamlesh Kumari PW-18.

3. On receipt thereof PW-18 along with SI Karuna Sagar PW-11 and Const.Samar Singh PW-8 reached chamber No.104 of the Delhi High Court where they met PW-14; the appellant Asra Bano was also sitting there. PW-14 informed the police party that the lady sitting along with him, namely, Asra Bano had disclosed to him that she had murdered her husband; she had first disclosed this fact to PW-17 who in turn had informed him about the same; the appellant at that time was holding a white coloured plastic bag in which besides the private parts of her husband, a pink coloured chunni, some envelopes and photographs and a strip of Nitrovet tablets were found.

4. Statement of PW-14 Ex.PW-18/A was recorded which formed the basis of the rukka; it was endorsed by PW-18 and sent to the Police Station Sarojini Nagar through PW-8,

pursuant to which the formal FIR Ex.PW-7/A was registered by HC Harish Kumar PW-7.

5. Investigation commenced. The polythene packet found in the hand of the appellant was checked and three separate pulandas of the same were prepared; the private parts of the deceased were kept in one packet, the pink coloured chunni and the photographs were sealed in a second packet and the tablets/wrapper of the Nitravet tablets were seized and sealed in third packet. They were collectively taken into possession vide memo Ex.PW-11/B.

6. The police party headed by PW-18 reached the spot i.e. Jhuggi No. 70, Indira Camp, Safdarjung Hospital, New Delhi along with the appellant. The appellant opened the door of the jhuggi and inside on the mat a dead body was lying which was covered with a red coloured chunni; on lifting the chunni it was noted that the dead body was clothed only in a vest and underwear and on removal of the underwear it was further noted that genitals of the male body were missing. The appellant handed over a blood stained knife lying near the dead body to PW-18, sketch of the same was prepared vide memo Ex.PW-11/D and the said knife was sealed in a pulanda and seized vide memo Ex.PW-11/E.

7. Crime team was summoned which was headed by SI Nirmal Singh who accompanied by Ct. Suraj Mal PW-2 summoned the photographers to the site. Vijay Kumar PW-4 took 12-13 photographs of the scene of the crime from different angles noting that the male organ of the dead body was missing from the dead body; the positives of the photographs are Ex.PW-4/A-14 and the negatives are Ex.PW-4/15 to 17; two blurred photographs are Ex.PW-4/18-19. Sudesh Kumar PW-3 videographed the scene of the occurrence and the video cassette was proved as Ex.P-1. Rough site plan along with marginal notes was prepared vide memo Ex.PW-18/C and thereafter the site plan to scale Ex.PW-5/A was prepared by SI Madan Pal PW-5.

8. The appellant, who was present at the spot was arrested vide memo Ex.PW-11/A. Inquest proceedings were conducted separately. The neighbour in the vicinity i.e. Islamuddin PW-13 on inquiry informed the police that the Jhuggi No.70 belonged to the appellant Asra Bano. Apart from his statement, the statement of Shri Prakash PW-15 Pradhan of the village was also recorded and he had also joined the investigation at the time when the police party had reached the spot.

9. The dead body was sent to the mortuary for preservation. Post mortem of the same was conducted by

PW-10 Dr. Alexander on 4.7.1996 who vide report Ex.PW10/A had noted the following external injuries;

“External Injuries

1. Ligature mark was very faint abraded Parchmantised and dry completely and circling the neck just below the thyroid cartilage. Size of the ligature mark was 30 cm x 3.6 cm. Distance from the infra mandibular margin to the ligature mark was 6 cm. Distance from the left and right outer angle of mandible from the ligature mark was 7.2 cm and 7 cm respectively.
2. On dissection over the ligature mark tissue underneath the ligature mark was glistening white subcutaneous extravasation of blood underneath the ligature mark which was more prominent on the front of the neck. There was bruising of the neck muscle bilaterally. There was also a fracture of the left side superior horn of the thyroid cartilage which surrounding extravasation of blood. Hyoid and cricoid cartilage and tracheal rings were normal and intact. Neck blood vessels and cervical vertebrae were normal and intact.
3. The external genitalia had been amputated by a giving a transverse incision on this suprapubic region of size 15.5 cm, and thereby extending it towards and anus bilaterally to the midline and thereby reflecting the incised skin till the scrotum along with both the testes which had been separated from the body and root of penis was reached. The penis had subsequently been amputated leaving behind the stump of length 3.2 cm and diameter 2.5 cm. attached to the body. All the

margins of the wounds were clean cut even not swollen with minimal bleedings and no sign of inflammation. The imputed stump of penis alongwith the scrotum and both the testes were also examined and found to be matching anatomically and is size with the wound."

10. The opinion on the cause of death was asphyxia and cerebral congestion caused by ante mortem strangulation by a soft ligature material on the neck which is sufficient in the ordinary course of nature to cause death. Injury No.3 was opined to be a post mortem injury and caused by a sharp edged weapon or object. Viscera of the deceased had been preserved for further analysis. On the same day i.e. 4.7.1996, PW-10 had given his subsequent opinion on the ligature material i.e. the blood stained pink coloured chunni which had been sent to him for examination and on examining the same he had opined that the said ligature material sent to him was strong enough to be used for strangulation and the ligature marks correspond to injury no.1 on the deceased as mentioned in his report Ex.PW-10/A. PW-10 had further opined that the blood stained knife which had been sent to him for examination, on its examination revealed that injury no.3 as mentioned in Ex.PW-10/A could have been inflicted by said submitted weapon or a weapon

similar to it. This opinion was endorsed by PW-10 on his report Ex.PW-10/C.

11. The dead body of the deceased had been identified by his brother Bishram PW-1.

12. Gore Lal has been examined by the prosecution as PW-16. As per his version his daughter Rajni had been married to the deceased Raju alias Devi Parshad about four years ago i.e. in the year 1996 and he had learnt that Raju had been murdered by a lady. PW-16 had also identified the dead body of the deceased.

13. On 16.7.1996 the Central Forensic Laboratory had received 11 exhibits of this case which included the blood sample of the deceased, his vest and underwear as also the weapons of offence i.e. the pink coloured chunni and the knife. The serologist vide his reports Ex.PW-18/M, Ex.PW-18/N and Ex.PW-18/O had detected human blood on all the said exhibits which was of B origin.

14. PW-18 had recorded two disclosure statements of the appellant. The first disclosure statement was recorded on 2.7.1996 and the subsequent disclosure statement of the appellant was recorded on 4.7.1996. It was pursuant to the second disclosure statement of the appellant that the role of the co-accused Khalil had been unravelled. As per the version of the appellant, the co-accused Khalil had

purchased Nitrovet tablets from the store of Anil Jain PW-6 which had been administered to the deceased and after he had become unconscious; the appellant and the co-accused Khalil had strangled him to death.

15. Co-accused Khalil was arrested on 4.7.2009 vide memo Ex.PW-11/J.

16. The trial court vide its impugned judgment dated 9.3.2001 held the appellant Asra Bano guilty of offence under Section 302 of the IPC but having given benefit of doubt to co-accused Khalil, he had been acquitted.

17. On behalf of the appellant it has been argued that the extra judicial confession relied upon by the trial court besides being a weak kind of evidence even otherwise suffers from a severe infirmity. The incident had occurred on 1.7.1996 and as per the version of the prosecution, the extra judicial confession had been made by the appellant to B.T.Singh PW-17 on the afternoon of the same day itself i.e. on 1.7.1996. Attention has been drawn to the testimony of PW-18 the Investigating Officer who has in his cross-examination admitted that he had recorded the statement of PW-17 B.T.Singh on 25.9.1996 i.e. after a gap of almost three months for which there is no explanation and doubt is, thus, cast upon the version of the prosecution as to whether this version of B.T.Singh is in fact correct or not. It is

CrI. A. No. 316/2001

argued that the statement of PW-14 HC Ved Prakash cannot be read as an extra judicial confession as even presuming that the appellant had disclosed her role in the crime to him, such a statement, if any, given by the appellant to PW-14 would be hit by the bar of Section 25 and 26 of the Evidence Act being a confession before a police officer. It is argued that the post-mortem report has opined the cause of death as asphyxia and injury no.3 that is the severing of the private parts of the deceased was admittedly a post-mortem injury; even if it is assumed that the appellant was carrying the private parts of her deceased husband, there is nothing to connect the appellant with the act of his murder as death in this case was not because of the cutting of the private parts of the deceased but because of asphyxia. Appellant could not have been roped in for this offence. Attention has been drawn to the cross-examination of PW-18 wherein he had admitted that he had not collected any papers to substantiate the version of the prosecution that jhuggi no.70 in fact belonged to the appellant or not. Attention has also been drawn to the version of PW-4 Vijay Kumar, PW-8 Cont.Samar Singh, PW-11 SI Karuna Sagar, PW-12 Islamuddin, PW-15 Shri Prakash, all of whom have given different versions on the manner in which the jhuggi was opened by the appellant when she had led the police party

there; whether the jhuggi had been unlocked by a key or whether it was already in an unlocked condition is not clear; there is no explanation as to why the key and the lock had not been seized by the Investigating Officer. Learned defence counsel has also drawn the attention of the court to the version of PW-9 HC Girish Prashad, the then MHC(M) at police station Sarojini Nagar. It is argued that the exhibits i.e. the weapons of offence; chunni and the knife had been sent to PW-10 on 4.7.1996 but there is no corresponding entry of withdrawal in register No.19 which dents the veracity of a fair investigation. All these cumulative factors entitle the appellant to benefit of doubt and a consequent acquittal.

18. Admittedly, this is a case of circumstantial evidence. There is no eye-witness account.

19. The first circumstance as elicited by the prosecution is the extra judicial confession made by the appellant Asra Bano to B.T.Singh who had been examined as PW-17. There is no doubt that the statement of PW-17 had been recorded after a gap of almost three months by the Investigating Officer which is a lapse on his part, but at the same time non-recording of the statement of B.T.Singh at an earlier date does not prejudice the case of the appellant.

20. PW-17 B.T.Singh has, on oath, deposed that on 1.7.1996 at about 3 P.M., an unknown lady who had disclosed her name as Asra Bano had come to his chamber in the High Court where he was working as an Additional Public Prosecutor. She informed him that she had killed her husband Raju and she was carrying his private parts. This information was immediately transmitted by PW-17 to his Naib Court who was stationed in the chamber of the standing counsel i.e. chamber no.437 of the High Court. In cross-examination PW-17 has admitted that no recovery had been effected in his presence and this lady was not known to him earlier.

21. Reliance by learned defence counsel on the proposition as enunciated by the Supreme Court in Kishore Chand v. State of Himachal Pradesh, 1991 SCC (Cri) 172 is not in dispute. There is no doubt that an extra judicial confession must satisfy the requirements of Section 24 to 26 of the Evidence Act and it has to be construed strictly. Such a piece of evidence must be voluntary and has to be proved like any other fact. However, the mere fact that the appellant had chosen to make this extra judicial confession in presence of a person not specially known to her would not discredit this version. PW-17 was admittedly working as public servant in his capacity as an Additional Public

CrI. A. No. 316/2001

Prosecutor in the High Court. Nothing is emanating from the record as to why the appellant had particularly chosen PW-17 as her confidant but at the same time there is no reason to doubt the version of PW-17 on this score; why would he falsely incriminate the appellant? He was an Additional Public Prosecutor at the relevant time holding an office of high responsibility, also being a person of authority, well versed with angles of criminal law, these factors might well have weighed in the mind of the appellant when she chose to repose her trust in him, even otherwise no suggestion has also been given to PW-17 that he was nursing any motive or ulterior reason to falsely involve the appellant.

22. The judgments relied upon by the defence counsel and as reported in Rahim Beg and Another vs. State of U.P. 1972 SCC (crl.) 827 and Lakhanpal vs. State of Madhya Pradesh 1979 SCC (crl.) 644 where an extra judicial confession made by an accused to an unknown person were not relied upon are both distinct on their own facts. In the first case, there were two pieces of evidence relied upon by the prosecution, an extra judicial confession and recovery of certain articles; both the circumstances were disbelieved and the Supreme Court had rejected the extra judicial confession as besides the fact that the two persons to whom it was made were strangers of another village, the fact that thereafter on

CrI. A. No. 316/2001

seeing the police the accused persons had fled away was the additional circumstance which had weighed in the mind of the Court to reject this piece of evidence. In the second case an obiter observation had been made by the Court that it would be difficult to believe that confession could be made to person not known to that person at all; in the absence of motive and there being no other evidence, the extra judicial confession had not been believed.

23. In the instant case this piece of evidence i.e. the extra judicial confession has to be tested upon the veracity of the witness to whom it is made, the time and place of making it, the circumstances in which it came to be made and the actual words used by the appellant. In our view, there appears to be no improper or co-lateral consideration on the part of PW-17 to make his version suspect; his testimony in fact inspires confidence. This statement is also not hit by the bar of Section 25 and 26 of the Evidence Act; it is a confession made to an independent public person and not while the appellant was in the custody of a police officer.

24. PW-17 had forthwith passed on this piece of information to PW-14, who in turn had informed the concerned police station i.e. police station Sarojini Nagar. PW-14 had then reached chamber no. 104 of B.T.Singh where he had found the appellant sitting and she disclosed to him that she had

murdered her husband. The appellant was carrying a plastic bag which contained the amputated private parts of her deceased husband as also a pink coloured chunni, some documents which included some photographs and envelopes and a patta of Nitrovet tablets. In his cross-examination, it has been reiterated by PW-14 that the appellant had told him that she had committed the murder of her husband by chopping off his male organ.

25. In this context, the argument of the learned defence counsel that the confession by the appellant to PW-14 is hit by the bar of Section 25 and 26 of the Evidence Act has force; this statement of the appellant to PW-14 cannot be read as an extra judicial confession; it being a pure confession to a police officer, the same has to be excluded.

26. Statement of PW-14 Ex.PW-18/A had formed the basis of the rukka pursuant to which the present FIR had been registered; it was recorded as early as at 7.45 P.M. on 1.7.1996 and has detailed the entire version of the prosecution including the factum of an extra judicial confession having been made by the appellant to PW-17 wherein she had disclosed that she had murdered her husband and was carrying his private parts with her. In these circumstances, even if the statement of PW-18 B.T.Singh was recorded by the Investigating Officer after a

CrI. A. No. 316/2001 Page 14 of 23

delayed period, it would not affect the merits of the investigation.

27. PW-4, PW-8, PW-11, PW-12, PW-15 and PW-18 had joined the investigation when the appellant had led the police party to jhuggi no.70. PW-17 Islamuddin, the pradhan of jhuggi cluster of Indira Camp had deposed that he had informed police that this jhuggi i.e. jhuggi no.70 belonged to the appellant Asra Bano. PW-15 Shri Prakash has also deposed that the police party had taken the appellant to her jhuggi. Both these witnesses have deposed that this jhuggi where the dead body of the deceased was lying belonged to the appellant Asra Bano; in these circumstances the admission of PW-18 that he had not collected any papers relating to the ownership of the jhuggi of the appellant is of little relevance.

28. A perusal of the version of the aforesaid witnesses i.e. PWs 4, 8, 11, 12, 15 and 18 further show that there is no discrepancy in their versions on the manner in which the entry was effected into the jhuggi when the police party reached there.

29. PW-4 has stated that the police party had been led by the appellant to her jhuggi where she had opened lock of the same. PW-8 is silent on the score i.e. as to whether the jhuggi was in a locked or an unlocked state. PW-11 in his

cross examination has admitted that Asra Bano on the asking of the investigating officer had opened the lock of the jhuggi by pushing the same outwards. PW-12 has deposed that the door of the jhuggi was closed but not locked. PW-15 has also deposed that the jhuggi was locked and was opened by the appellant in his presence. To the same effect is the version of the Investigating Officer PW-18 who has on oath stated that the jhuggi was unlocked by Asra Bano.

30. It is clear from the reading of these testimonies that there is no discrepancy in any of these statements; the jhuggi was lying closed and it had been unlocked by the appellant in the presence of the aforesaid witnesses; PW-8 has not specified as to whether the jhuggi was in a locked or unlocked state; PW-12 is the only person who had stated that the door of the jhuggi was lying closed and not locked. This is no discrepancy or contradiction which is material from which the appellant can draw any support; merely because the key and the lock of the jhuggi had not been seized by the investigating officer is also of little relevance.

31. All these witnesses have corroborated one and another on the point that the appellant Asra Bano was present at the spot i.e. in jhuggi no.70 along with the investigative team at the time when they first saw the dead body of Raju lying in this jhuggi which is the jhuggi of the appellant.

32. The dead body was covered with a red coloured chunni. This also answers the query of the appellant that although there were two chunnis, there is no confusion on this score. The weapon of offence was the pink coloured chunni which had been taken by the appellant to the chamber of PW-17 when she had made her extra judicial confession to him; the same had seized and sealed on the same date itself i.e. 1.7.1996 and it was the same blood stained chunni which had been sent to CFSL for its subsequent opinion who had opined blood group B on the same which was also the blood group of the deceased. PW-10 Dr. Alexander who had conducted the post mortem of the deceased vide his subsequent opinion Ex.PW10/B had opined that injury no.1 as noted in his post mortem could have been produced by the said chunni or a cloth similar to it.

33. The blood stained knife had been taken into possession by PW-18 from the spot at the pointing out of the appellant vide memo Ex.PW-14/E in the presence of public witnesses PW-12 and PW-15 both of whom have corroborated this seizure. This weapon had been sent to the CFSL for analysis which had opined that the blood stains on the said knife contained blood group B which was the blood group of the deceased. PW-10 vide his subsequent report Ex.PW-10/C had

further opined that this knife could have been the weapon used to sever the private parts of the deceased.

34. The post mortem of the deceased had opined the cause of death as asphyxia. Although injury no.3 was a post mortem injury but the factum of the physical possession of the private parts of the deceased by the appellant and the corroboration of the investigation on the spot that in fact the male genitalia of Raju was missing from his dead body and the place of the dead body having been pointed out and led to by the appellant herself; opinion of the doctor that the amputated stump of the penis along with the scrotum and the testes matching anatomically in size with the wound of the deceased establish that the nature and manner of the crime was fully within the knowledge of the appellant. Her role in the offence has thus been etched out by herself; she knew the manner in which she had perpetrated the crime. Argument of the learned defence counsel that she could not be connected with the murder is thus of little value.

35. PW-9 was the then MHC(M) who had produced the entries of register no.19.

36. As per the prosecution, the weapons of offence i.e. the chunni and the knife had been sent to PW-10 for opinion on 4.7.1996; admittedly there is no entry of withdrawal of any exhibit from the malkhana on the said date but no cross-Crl. A. No. 316/2001

examination of PW-9 has been effected on this score. PW-10 Dr.Alexander, on the other hand, has categorically deposed that vide his reports Ex.PW-10/B and Ex.PW-10/C he had given his opinion on these weapons of offence which had been received by him on 4.7.1996. No cross examination of this witness has also been effected. This version of PW-10 was corroborated by the version of PW-18; it is thus established that on 4.7.1996 the weapons of offence had been sent to PW-10 for his expert opinion.

37. The motive of the crime to some extent can be detected from the statement of PW-16, the father-in-law of the deceased Raju, who had deposed that his daughter Rajni had been married to deceased Raju about four years ago i.e. sometime in the year 1996 and he came to know that Raju had subsequently been murdered by one lady. This has also been corroborated by PW-1 brother of the deceased who has deposed that Raju had been married one year ago with a girl of their village. From the version of PW-1 and PW-6 it is apparent that Rajni had got married to Raju sometime in June 1996. This offence is of 1.7.1996. It appears that appellant could not accept the fact that Raju had married another lady which could be probablized as the reason for the appellant to vent her vengeance against him.

38. Co-accused Khalil has been given benefit of doubt and he had been acquitted by the trial court. The main reason for his acquittal was that PW-6, the chemist from whom the co-accused had apparently purchased the Nitravet tablets could not identify the co-accused. In these circumstances, co-accused Khalil had been given benefit of doubt.

39. It is argued that the co-accused having been given benefit of doubt, by applying the same corollary, appellant is also entitled to benefit of doubt. This argument has been centered on the submission that assuming that asphyxia was the cause of death of the deceased, the act of his strangulation could not be the handiwork of a single lady even presuming that she is strong and able-bodied; in the absence of the prosecution having been able to establish the role of the co-accused, appellant is also entitled to a benefit of doubt on this score.

40. It is well settled by a catena of judgments that the powers of the Appellate Court in dealing with evidence are as wide as that of the trial court; as the final court of fact, it has the duty to examine the evidence and arrive at its own conclusion; the Appellate Court in fact has to reappraise the evidence. The Appellant Court is not debarred from considering indirectly the case against the accused who has been acquitted and may come to the conclusion that the

evidence against him was also good; however, in the absence of any appeal against an acquittal against such an accused, the acquittal order cannot be interfered with but the finding is nevertheless relevant in invoking against the convicted appellant his constructive criminality.

41. In the instant case, it had been established by the prosecution that the shirt of Khalil which had been recovered at his instance had detected blood group B on it which was also the blood group of the deceased; the clothes of co-accused Asra Bano had also been got recovered by Khalil from his jhuggi and which had been taken into possession vide memo Ex.PW11/L. PW-6 although hostile on the identity of Khalil had admitted that the cash memo of his shop Ex.PW-6/B bore the name of Khalil as the purchaser of a strip of Nitrovet tablets on 30.6.1996. The appellant had also made a disclosure statement indicting the co-accused which is a relevant fact under the provisions of Section 30 of the Evidence Act. These pieces of evidence which had been built up against co-accused do show his involvement in the crime. The effect of this is not to reverse the order of acquittal or to foisten the acquitted co-accused with criminal liability but nonetheless these circumstances can be kept in mind by this court to return a finding that the appellant had

been assisted by another in the commission of the crime i.e. in the act of strangulation of her deceased husband.

42. In our view the prosecution has been able to establish:

- (i) Appellant had made a voluntary and unambiguous extra judicial confession to PW-17 on 1.7.1996.
- (ii) At that time she was carrying the amputated private parts of her husband and a pink coloured chunni.
- (iii) Rukka was dispatched on the same day which contained all this information.
- (iv) On the same day, appellant had led the police party to her jhuggi.
- (v) On opening the jhuggi dead body of Raju was found lying and his private parts were missing.
- (vi) Anatomical examination of the private parts matched the size of the wound of the deceased.
- (vii) Blood stained knife was seized at the pointing out of the appellant.
- (viii) Chunni and knife were opined to be the cause of strangulation and severance of the genitalia of the deceased respectively.
- (ix) Chunni and knife were stained with blood group B which was the blood group of the deceased.
- (x) Deceased, about one month ago, had married Rajni when he was already married to the appellant.

43. It was all these cumulative factors which had rested in the mind of the Trial Judge to return a finding of guilt against the appellant Asra Bano.

44. In our view, there is no infirmity in this finding; all the links in the chain have been closely interwoven and

unerringly point fingers of guilt at the appellant. The appeal is without any merit. It is dismissed.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

July 31, 2009
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