

R-12

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

+ **CRL.A. 319/2001**

% *Date of Order: February 17, 2009*

RAMA SHANKAR Appellant

Through: Mr. Sumeet Verma, Advocate

versus

STATE Respondent

Through: Ms. Richa Kapoor, 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? Yes
3. Whether judgment should be reported in Digest? Yes

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

1. The appellant Rama Shankar who has been admitted to bail is absconding and in spite of attempts the warrants seeking his production are not being served upon him. We note that the appellant was admitted to bail by the Supreme Court. We note that the appellant was being represented through an amicus as the appeal was filed from jail; noting further that Mr. Sumeet Verma had been appearing as an amicus for the

appellant we had directed that the appeal would be heard with assistance of learned amicus for the appellant.

2. We note that fee of learned amicus curiae has been fixed. We fix his fee at Rs.5,000/-.

3. Before we note the evidence led by the prosecution, at the outset we notice that chance finger prints were lifted from an almirah, locker and a box from the house of Mehras i.e. Flat No.A-13, 9-Prithvi Raj Road, New Delhi. The same have matched the finger prints of the appellant. We notice that the case of the prosecution was that the appellant was engaged as a domestic help by the Mehras about two months prior to the date of the incident i.e. 7.9.1991, to prove which fact two witnesses namely Shyam Dei PW-3 and Hira Singh PW-4 have been examined. We have questioned learned counsel for the appellant, whether for purposes of the appeal, the counsel seeks to urge submissions on the plea taken by the appellant when examined under Section 313 Cr.P.C. that the appellant was never employed as a domestic help by the Mehras or whether he adopts the line of argument that the appellant was engaged as a domestic help. Learned counsel states that he would argue the appeal on the basis that the appellant was engaged as a domestic help by the Mehras.

4. We understand the predicament of the learned counsel. The incident took place in the forenoon of 7.9.1991. The appellant was found absconding till he was arrested on 16.9.1991. If the appellant admits being engaged as a domestic help, his conduct of absconding would need to be explained by him. If appellant takes a stand that he was not employed as a domestic help by the Mehra family, the incriminating evidence of his finger prints being lifted from the almirah, steel locker and a box in the bedroom of the house of the Mehras would need to be explained. The latter would be fatal. The former would be a lesser evil.

5. The process of law commenced when Harish Mehra PW-7 returned to his flat i.e. A-13, 9-Prithvi Raj Road, New Delhi at around 2:00 PM; having left the same in the morning to visit his factory; the date being 7.9.1991. He saw that the front door of the flat was unlocked. All other doors were closed and were unlocked. He felt suspicious and went to the bedroom of his mother and saw her and his sister, Nidhi (PW-2) in a pool of blood. The cupboard was unlocked and open. Articles were lying messed up. He rang up the police and also informed his father. He noticed that the appellant Rama Shankar, a domestic help, was not in the flat.

6. The police reached the flat and recorded his statement Ex.PW-7/A. His mother and his sister were removed to AIIMS where his mother was declared brought dead as recorded in the MLC Ex.PW-29/B-3. Nidhi was in a critical condition. Her MLC, Ex.PW-18/A, records that she was assaulted and had lacerated injuries on the occipital region. She was found bleeding from both nostrils. Peritoneal odema was suspected. Face was swollen and asymmetrical. There was swelling on the maxicla.

7. It is apparent that Nidhi had been assaulted with a blunt object.

8. The dead body of the mother of Mr. Harish Mehra namely Mrs. Vijay Mehra, was sent for post-mortem and as per post-mortem report Ex.PW-29/A the lady was brutally battered on the face and the skull. Suffice would it be to record that there were fractures on the occipital bone on the right side. There was a fracture on the middle cranialfossa bone.

9. The brain was congested. There was haemorrhage in the brain causing instant death.

10. Nidhi survived and her statement under Section 161 Cr.P.C. was recorded by the Investigating Officer on 23.9.1991

i.e. after 16 days of the incident. She informed that the appellant had assaulted her and her mother.

11. The appellant who was a suspect for the reason he was a domestic servant in the house and was absconding soon after the incident, the police was on his look out and finally arrested him on 16.9.1991. He was interrogated and made a disclosure statement Ex.PW-4/J in which he not only admitted his involvement in the crime but also disclosed the place where he had concealed the fruits of his crime and pursuant thereto got recovered the following articles:-

Kangan (Gold)	Ex.P-1
Ear Ring (Gold)	Ex.P1/2 & 3
Pair of Karas (Gold)	EX.P-43
Nose Pin (Gold)	Ex.P-45
Ear Tops (Gold)	Ex.P-39
Paijaib (Gold)	Ex.P-44
Tulsi Mala (Gold)	Ex.P-38
Tops (Gold)	Ex.P-50
Bangles (Gold)	Ex.P-7
Karas (Gold)	Ex.P-16
Necklace (Gold)	Ex.P-1/5
Purse	Ex.P-51
Boxes	Ex.P-1/4 & Ex.P-49
Purse	Ex.P-1/6

12. The same were seized vide seizure memo Ex.PW-4/H.

13. Nidhi informed the police that on the day of the incident she was in her house studying for her exams and was in the room of her mother and that the appellant entered the bed room armed with a bat in his hand and assaulted her mother and herself i.e. Nidhi. She lost consciousness as a result of the assault.

14. Needless to state the appellant was charged with the offence of having murdered Mrs.Vijay Mehra and attempted to murder Nidhi Mehra as also for the offence of robbery.

15. We eschew reference to all and sundry evidence for the reason while convicting the appellant, the learned Trial Judge has relied upon the testimony of Nidhi Mehra who claimed to be an eye witness and deposed that the appellant had launched the brutal attack on herself and her mother. The learned Trial Judge has not found any material contradiction or anything in the testimony of Nidhi to discredit her. The second incriminating evidence found against the appellant is his conduct of absconding from the house soon after the incident. Lastly, the recovery of the jewellery and other electronic items pursuant to the disclosure statement of the appellant, all of which we note

were duly identified in Court by Sh. Prem Mehra husband of the deceased who appeared as PW-10.

16. Needless to state, with reference to the third incriminating evidence the learned Trial Judge has held that since the appellant was found with the fruits of the crime; keeping in view the enormity of the recovery made, it was but evident that the said recovery of the fruits of the crime linked the appellant to the crime itself.

17. The appellant has been convicted of the offence of murdering Mrs. Vijay Mehra. He has been convicted for the offence of attempting to murder Nidhi Mehra. He has also been convicted for the offence of robbery. All sentences imposed have been directed to run concurrently. The sentence for the longest period of incarceration, is the one imposed for the offence of murder i.e. imprisonment for life.

18. At the hearing of the appeal today, learned counsel for the appellant has urged that Nidhi Mehra was a planted witness and in any case the police has put words in her mouth for the reason her statement under Section 161 Cr.P.C. was recorder after 16 days of the incident. Learned counsel urges that there is an unexplainable delay in recording the statement of Nidhi. Counsel urges that in the meanwhile, since the

appellant was arrested on 16.9.1991 and his purported disclosure statement was recorded, to fill up the lacuna in the cases of the prosecution the police motivated Nidhi to state incorrect facts.

19. Learned counsel draws our attention to the deposition of Nidhi wherein she has stated that the police had made inquiries from her after 4 and 5 days of the incident. Counsel submits that it is obvious that the police had recorded Nidhi's statement after 4 and 5 days of the incident and said statement has deliberately been withheld. Counsel urges that reason thereof is that in said statement Nidhi did not name the appellant as the assailant.

20. That Nidhi was with her mother when she and her mother were assaulted, stands independently established from the testimony of Harish Mehra PW-7, brother of Nidhi. He has categorically deposed that he had left the flat in the morning to visit his factory and when he returned home at around 2:00 PM he saw that his mother Smt. Vijay Mehra and his sister Nidhi Mehra lying in a pool of blood and brutally assaulted in the bedroom of the house. He deposed that he informed the police and that with the help of the police his mother and his sister were removed to the hospital.

21. Thus, Nidhi being in the company of her mother and both being assaulted together stands established. This in turn gives credence to the fact that Nidhi had witnessed the assault and hence had seen the assailant.

22. We note that in her testimony, Nidhi has stated that she remained unconscious in the hospital for about 15 days. It is true that she has deposed that after 4 and 5 days the police enquired about the crime from her and she told the police as to what had happened. But in the same breath, she has stated that she remained unconscious in the hospital for 15 days.

23. Unfortunately for us, the medical case sheet of Nidhi has not been proved as an exhibit and no doctor has been questioned as to for what duration Nidhi remained unconscious.

24. But we note that on the date of the incident i.e. 7.8.1991, the Investigating Officer had moved an application, Ex.PW-22/A, on which the doctor had written that the patient i.e. Nidhi was unfit for statement.

25. We have referred to the injuries of Nidhi in para 6 hereinabove. The same show odema of the brain. We can reasonably gather therefrom that Nidhi would be unconscious. He who has odema of the brain and has suffered an assault of the nature which was suffered by Nidhi, would presumably be

unconscious. We have no reason to disbelieve Nidhi's statement that she remained unconscious for about 15 days.

26. Hence, the Investigating Officer recording Nidhi's statement on 23.9.1991 cannot be frowned upon.

27. Even otherwise, from the testimony of PW-37 the Investigating Officer, we note that he has deposed of moving out of Delhi to trace and arrest the appellant who was not a resident of Delhi. We note that Hira Singh PW-4, a watchman in the building, who was instrumental in securing employment of the appellant with the Mehras, was taken along by Investigating Officer and the police team had left Delhi on 9.9.1991 to return to Delhi somewhere after 16.9.1991; meaning thereby, that the Investigating Officer was not available in Delhi for recording the statement of Nidhi; even if she had regained consciousness a little prior.

28. Indeed, no discrepancy or inconsistency has been pointed out to us in the deposition of Nidhi and thus we need not discuss any further, for the reason Nidhi was an eye witness to the incident and her testimony is clearly inculpatory of the appellant.

29. Add thereon the fact that the appellant was absconding; the two would be enough to conclude against the

appellant i.e. unerringly would point the finger of guilt towards the appellant.

30. We have noted hereinabove the recoveries effected at the instance of the appellant pursuant to his disclosure statement Ex.PW-4/J.

31. Except for making a feeble attempt that the articles recovered could possibly be planted for the reason no public witness was associated at the time of the recovery, learned counsel for the appellant, very fairly conceded that he had no other submission to make pertaining to the recovery.

32. The extent of jewellery items; the nature thereof and the value thereof are of a magnitude where it would be difficult to believe that to fabricate evidence said quantity would be planted by the police. Indeed, if something had to be planted, there was no necessity of duplicating the jewellery items; a bangle or two; a ring or two would have been enough.

33. We note that the seizure memo Ex. PW-4/H pertaining to the recovery of the jewellery and electronic goods has been witnessed by Hira Singh the chowkidar of the building who was accompanying the police for the reason it was only he who could have helped the police to identify the appellant if the police learnt about the whereabouts of the appellant.

34. We are satisfied that the prosecution has satisfactorily established the recovery of the fruits of the crime pursuant to the disclosure statement made by the appellant, and from the custody of the appellant.

35. Thus, the third piece of evidence namely recovery of the fruits of the crime, linking the same with the first two pieces of evidence namely the eye witness account and the conduct of the appellant of absconding from the flat are sufficient evidence to sustain the finding of guilt returned by the learned Trial Judge.

36. We may incidentally note that the other incriminating evidence against the appellant found by the learned Trial Judge is one envelope containing a letter; recovered vide memo Ex-PW-32/G, from the jhuggi of co-accused Virender Kumar. The envelope in which this letter was found as well as the letter were sent to CFSL for comparison with the specimen writing of the accused Rama Shankar and it was reported vide report Ex.PW-38/A, that this letter bears his writing marked Q1 to Q7. The letter is addressed to co-accused Virender Kumar and Kamlesh Yadav, convicted u/S 411 I.P.C. The letter clearly shows that some articles of jewellery stolen by Rama Shankar from house of Mehras were taken by said co-accused and when Rama Shankar came to know of it, he wrote a letter to them asking them to

deposit Rs.50,000/-. Accused Rama Shankar also threatened to disclose their names in case money was not paid.

37. Noting that the sentences imposed upon the appellant have been directed to run concurrently; finding no merits in the appeal, we dismiss the appeal.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

FEBRUARY 17, 2009
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