

R-77

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

% *Date of Decision : August 24, 2009*

+ **CRL.A. 415/2001**

RASHID KHAN Appellant
Through: Mr.Dinesh Malik, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, A.P.P.

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

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 28.9.1999, the appellant has been convicted for the offence of having murdered Raj Kali wife of Joginder PW-11. Appellant has been sentenced to undergo imprisonment for life.

2. The case is based on circumstantial evidence urges learned counsel for the appellant and hence submits that unless it is held that the chain of circumstances proved by the prosecution are complete wherefrom the only inference which can be drawn is the guilt of the accused and his innocence being ruled out, only then can the conviction be sustained.

3. We agree.

4. As per the impugned judgment, with reference to the testimony of Maninder PW-9, Lala Ram PW-10 and Joginder PW-11, learned Trial Judge has held that the testimony of the three witnesses establishes that at 11:30 AM on 19.7.1997 the appellant was seen running away from the place where the deceased was found murdered and at that point of time the appellant had a chhura (knife) in his hand.

5. With reference to the testimony of Joginder PW-11, the husband of the deceased, the learned Trial Judge has held that the same establishes the motive i.e. that the appellant was having an evil eye on the deceased and killed her when she, in all probability, repelled his overtures.

6. With reference to the FSL report Ex.PW-17/J, the learned Trial Judge has held that the same establishes that the shirt which was recovered when the appellant was arrested was stained with human blood of the same group as that of

the deceased. With reference to the same report, learned Trial Judge has held that the pant recovered when the appellant was arrested was detected with human blood group whereof could not be detected. Knife which was got recovered by the appellant was detected with human blood of the same group as that of the deceased and the doctor who conducted the post-mortem opined that the injuries on the person of the deceased could possibly be caused by that knife.

7. Though not used as incriminating circumstance, we note that the appellant was not found at his house by the police. He absconded. Appellant surrendered in Court on 6.8.1997 and thereafter the investigating officer, after obtaining permission of the Court, took the appellant on police remand.

8. While considering the incriminating evidence against the appellant, we shall be ignoring the evidence pertaining to the report of the serologist for the reason we find it strange that the same pant and the same shirt which the appellant was alleged to be wearing on 19.7.1997 i.e. the day when the crime was committed, was continued to be worn by the appellant when he surrendered in Court on 6.8.1997. Pertaining to the recovery of the weapon of offence i.e. the knife seized vide seizure memo Ex.PW-6/D, pursuant to the

disclosure statement of the appellant, we note that the knife was recovered from bushes in an open area. The recovery is on 6.8.1999. Being monsoon season, it is highly unlikely that remnants of blood group could be detected on the knife. Be that as it may, the recovery is from an open place and does not inspire confidence.

9. Movement of the police with respect to the crime commenced when DD No.8A Ex.PW-3/A was recorded by the duty officer at PS Saraswati Vihar noting therein that a person Maninder (PW-9) had informed over telephone that Raj Kali has been fatally stabbed by her neighbour Rashid Khan at House No.B-304, Shakarpur J.J. Colony.

10. Copy of the DD entry was handed over to SI Dhan Singh PW-6, who accompanied by Const.Dhanpal went to the spot. He and Const.Dhanpal reached the place at around 12:00 noon, the time being disclosed by SI Dhan Singh when he was cross-examined. Soon thereafter Inspector Naval Kishore PW-17 reached the place as he was also directed to reach the spot.

11. Joginder PW-11, the husband of the deceased made a statement Ex.PW-11/A which was recorded by Inspector Naval Kishore PW-17. The statement is the complaint to the police and has formed the basis of the FIR.

12. Briefly noted, in the statement Ex.PW-11/A, Joginder stated that he was a resident of House No.B-304 J.J.Colony, Shakarpur. For the last three months he was residing on the first floor thereof along with his wife, the deceased. That he was earning his livelihood by selling eatables on a handcart. On the first floor of the adjoining house Rashid Khan used to reside with one or two companions who used to sell clothes on hand cart. Four days ago, due to fever he had not gone to work and was resting in his room. Through the partition wall segregating his room and the room of Rashid Khan he saw Rashid Khan peeping into his room. His wife Raj Kali was in the room. He asked Rashid Khan as to why was he peeping inside his room. Rashid Khan responded that he was scenting the air in his room. Yesterday i.e. on 18.7.1997 when he returned home in the evening after work, his wife told him that during the day Rashid Khan talked to her indecently. She rebuked him as a result the two had a verbal duel. He did not inform the police as he thought that the matter pertained to the reputation of his family. He left for the market at 9:30 AM on 19.7.1997 to deliver money to a shopkeeper and returned back at 11:30 AM. As he proceeded to go to his room upstairs he saw Rashid Khan rushing down holding a knife in his hand. He felt alarmed and tried to stop Rashid Khan who pushed him

aside and ran towards the park in the front. He and Lala Ram chased Rashid Khan who managed to flee. He returned and on coming to the room saw his wife smeared in blood having stab wounds all over her body.

13. After recording the statement, Inspector Naval Kishore made an endorsement Ex.PW-17/A beneath the statement and as recorded in the endorsement dispatched the rukka at 1:30 PM to the police station for FIR to be registered.

14. At the trial, Maninder, the person who conveyed the first information to the police over the telephone as recorded in DD No.8A, Ex.PW-3/A deposed as PW-9. He stated that on 19.7.1997 at 11:30 AM he saw Joginder PW-11 and Lala Ram PW-10 standing in front of their room. He saw accused Rashid Khan coming down with a chhura in his right hand. Joginder and Lala Ram followed Rashid Khan. He went upstairs and saw Raj Kali with injuries on her neck. She had died. He informed the police. Maninder was cross-examined and the only thing which has been brought out in his cross-examination is his statement that he raised an alarm, a fact not recorded in his statement Ex.PW-9/DA i.e. his statement under Section 161 Cr.P.C. recorded by the investigating officer.

15. It is settled law that minor embellishments not impinging upon a fact in issue are irrelevant and have to be

ignored. Thus, while deposing in Court, Maninder stating that he raised an alarm and his not so stating to the police when his statement was recorded under Section 161 Cr.P.C. is of a trivial kind. The same does not discredit the witness.

16. Lala Ram PW-10 deposed that on 19.7.1997 at 11:30 AM he and Joginder were coming from outside and were going to their room upstairs and saw accused Rashid Khan coming down with a chhura in his right hand. He pushed Joginder and fled. He i.e. Lala Ram followed him for some distance but could not apprehend the accused. When he went upstairs he saw wife of Joginder in a very bad state. She was stabbed on the neck and other parts of the body. She was dead.

17. Lala Ram was cross-examined and nothing has been brought out in the cross-examination to discredit the testimony of Lala Ram.

18. Joginder, husband of Ram Kali deposed as PW-11 and stated that on 18.7.1997 Rashid Khan had used indecent words with his wife which resulted in a verbal duel between the two. To avoid defamation he did not inform the police. On 19.7.1997 he went to the market and returned at around 11:15 AM. As he started going up and had placed his foot on the first step he saw Rashid Khan coming down with a chhura

in his hand. He tried to stop Rashid Khan who pushed him aside. He went upstairs and found his wife Raj Kali with blood all over. She had stab injuries on various parts of her body. The police reached and picked up blood with the help of cotton. The floor was broken and part thereof was picked up. After the accused pushed him he ran towards the park and he and Lala Ram followed the accused.

19. Joginder was cross-examined and during cross-examination stated that the place where he had gone in the market to pay money was situated at a distance of 10 km. He went on foot. He left his house at 9:30 AM.

20. Inspector Naval Kishore PW-17 proved the investigation conducted by him and in respect of the circumstances of first meeting Joginder at the spot stated that when he reached the spot he found SI Dhan Singh and Const. Dhanpal at the spot. He saw the dead body of a woman and that in the meanwhile the husband of the deceased i.e. Joginder Singh also arrived and was horrified to see the scene of the occurrence. When he regained composure his statement was recorded.

21. SI Dhan Singh PW-6 deposed that when he reached D-304 Shakarpur J.J.Colony he met Joginder at the spot and

that the investigating officer recorded the statement of Joginder in his presence.

22. With respect to the submission of learned counsel for the appellant that there is no eye-witness to the crime, suffice would it be to state that the law of circumstantial evidence does not require the existence of a number of circumstances as the sine qua non before a conviction can be sustained. A single circumstance can be of a nature wherefrom a reasonable and a logical mind, without any hesitation, would draw a conclusion of guilt.

23. Facts which are not themselves in issue sometimes affect the probability of the existence of facts in issue and so constitute the foundation thereof that it becomes impossible to separate the two. Where a fact has occurred with a series of acts preceding or accompanying it, it can safely be presumed that a fact was possible as a direct cause of preceding or accompanying acts unless there exists a fact which breaks the chain upon which the inference depends.

24. Thus, if it is proved that A was seen running away from the place of crime with a knife in his hand and a dead body is found immediately thereafter from the said spot, said evidence is sufficient wherefrom the inference of guilt can be inferred.

25. Thus, the question which arises for consideration is, whether there is sufficient evidence on record to establish the fact that the appellant was seen running away from the spot where the crime was committed at 11:30 AM on 19.7.1997.

26. Three persons namely Maninder PW-9, Lala Ram PW-10 and Joginder PW-11 have deposed said fact.

27. No embellishment worthy of credence has been shown in the testimony of PW-9 and PW-12.

28. Qua the testimony of Joginder, as noted above, it has been pointed out to us that Joginder claims to have left his house at 9:30 AM. He walked a distance of 10 km to deliver money. He returned back on foot. The time of the crime is 11:30 AM. Counsel argues that it is not possible for a man to walk 20 km in two hours. Linking the arguments and extending the same a little further, with reference to the testimony of Inspector Naval Kishore, it is urged that the same establishes that Joginder arrived after Inspector Naval Kishore reached the house, thereby discrediting the presence of Joginder in the house when the crime of his wife being murdered was committed.

29. At first blush, the argument that Joginder was not present at the place as claimed by him appears to be very

attractive. But a close look at the evidence would show to the contrary.

30. Firstly, Joginder has categorically stated in his deposition that he did not have any watch with him. It is apparent that Joginder was referring to time based on his opinion. He was not scientific in his evaluation of time. Thus, nothing turns on the time factor vis-à-vis the testimony of Joginder.

31. Pertaining to the testimony of Naval Kishore, it does happen that while narrating, depending upon the language at the command of the maker of a statement, he uses expressions which are suggestive of an event transpiring after a first event; whereas the maker of the statement simply prioritizes the sequence of the events.

32. Let us take an example. A goes to a spot and notices B and C. He intends to say that he has noticed B and then C. Using imperfect language, A may say that he saw C after some time. That would not mean that C was not present and reached the spot after some time.

33. Be that as it may, Maninder's presence and what Maninder saw and conveyed to the police stands mentioned in a contemporaneous document; namely, DD No.8A, Ex.PW-3/A, which notes the time of the DD entry being 11:50 AM.

34. The said DD entry records the information given by Maninder that Rashid Khan had stabbed Ram Kali at House No.B-303, Shakarpur and that police be sent immediately.

35. Thus, we need not fall back on the testimony of Joginder to prove the presence of the appellant and his seen running away from the spot with a chhura in his hand for the reason Maninder's testimony inspires confidence and needs no corroboration.

36. Lala Ram PW-10 has corroborated the testimony of Maninder PW-9. We once again repeat that nothing has been brought out in the cross-examination of Lala Ram which discredits his testimony.

37. Before bringing the curtains down we must note that Ram Kali was fatally stabbed. She has received, as noted in her post-mortem report Ex.PW-14/A, 10 injuries. The injuries are on her hand, upper arms, the chest and the abdominal region. It is apparent that the lady tried to save herself but so brutal was the assault that she could not survive.

38. Internal arteries were cut. Excessive blood loss resulted in haemorrhagic shock.

39. The injuries inflicted upon Ram Kali show the intention of the assailant; being that, to cause her death.

40. Motive for the crime has been established through the testimony of Joginder. The circumstance of the appellant absconding is also a pointer towards his guilt.

41. We find no merit in the appeal. The appeal is dismissed.

42. The appellant has been admitted to bail. The bail bond and the surety bond furnished by the appellant are cancelled.

43. The appellant is directed to surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

AUGUST 24, 2009

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