

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. A. No. 460/2001**

% Date of Order : March 25, 2009

RAVI PARKASH Appellant
Through : Mr. Raman Sawhney, Advocate

VERSUS

STATE Respondent
Through : Mr. Pawan Sharma, APP

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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 23.5.2001 the appellant has been convicted for the offence of murdering his wife. Vide order on sentence dated 24.5.2001, the appellant has been sentenced to undergo imprisonment for life and to pay fine of Rs.2,000/-; in default of payment of fine to undergo rigorous imprisonment for two months.

2. The conviction of the appellant is rested on the deposition of his daughters; namely Kumari Nisha PW-3 and Kumari Shikha PW-4, aged about 20 years and 17 years respectively when they deposed in court in the year 1998. The incident took place on 10.12.1995 and it is obvious that Kumari Nisha was aged about 17 years and Kumari Shikha was aged about 14 years when the incident took place.

3. Additional sustenance to the conviction has been found on the recovery of the weapon of offence, a hammer Ex.P-1, as also the fact that the pant Ex.P-5 and the shirt Ex.P-6 worn by the appellant when he was arrested were found to be stained with human blood group whereof was 'AB'; the same blood group as that of the deceased as opined in the report of serologist Ex.PW-17/G.

4. Police got information of a lady being injured in her house as recorded in DD No.16-A. SI Prem Mittar PW-16 accompanied by Const. Satbir left for the spot and there from to Hindu Rao Hospital. Indira Devi, wife of the appellant had been rushed to the hospital by a neighbor Ram Avtar PW-2. He met PW-16 at the hospital. His statement Ex.PW-2/A was recorded by PW-16. Endorsement Ex.PW-16/B was made on the statement and was sent to the Police Station for registration of an FIR. At the Police Station, the FIR under Section 307 IPC was registered. The FIR is Ex.PW-5/A. On

death of Indira Devi the offence punishable under Section 302 IPC was added.

5. Ram Avtar told PW-16 that he was a TSR driver and was present in his house at 4.00 P.M. His daughter told him that people had assembled in the street outside his house because an incident had occurred in the house opposite to his. He came out and learnt that Indira Devi was injured. On being requested by the people he removed Indira Devi, who was badly injured in the head and blood was oozing out, to the hospital. That after he admitted Indira Devi to Hindu Rao Hospital her brother came to the hospital.

6. The statement of Kumari Nisha and Kumari Shikha was recorded by the Investigating Officer on the day of the incident itself. The two girls implicated their father telling the police officers that with the use of hammer in the house, their father had assaulted their mother and fled.

7. Needless to state, the appellant became the suspect and was apprehended the next day at 11.30 A.M. He was apprehended near Roshnara Bagh. On being interrogated by PW-16 the appellant made a disclosure statement Ex.PW-16/E. In his statement he admitted his guilt and disclosed to the police that he can get recovered a hammer used in the crime, which he had hidden. Thereafter, he led the police to inside Roshnara Bagh and pointed out the

bushes, from underneath which, after shifting leaves, the hammer Ex.P-1 was recovered. The recovery memo Ex.PW-16/G was drawn-up. The sketch Ex.PW-16/F of the hammer was prepared by PW-16.

8. The clothes i.e. the shirt and the pant which the appellant was wearing was noticed being blood-stained. Both were seized vide seizure memo Ex.PW-15/A.

9. Since Indira Devi died at the hospital her body was sent to the mortuary where postmortem was conducted on 11.12.1995 and as per postmortem report Ex.PW-8/A fifteen external injuries all directed towards occipital region were noted. The jaw 'mandible bone' was fractured. Internal examination revealed that deceased had suffered cerebral damages. Injury No. 8 and 10 were opined individually and collectively to be sufficient in the ordinary course to cause death.

10. It would be a useless formality to note each and every external and internal injury several and except to record that the same evidence complete battering of the head of the deceased.

11. The doctor who conducted the post-mortem opined that all injuries except injury No.15 have been caused by a sharp edged weapon and injury No.15 has been caused by a blunt force impact with a hard surface object.

12. We note that the sketch of the hammer i.e. Ex.PW-8/B shows that the hammer is akin to a pick axe. One side is round and has a flat surface. The other side tapers, akin to a pick axe, i.e. the hammer has a sharp edge on one side and a blunt side on the other.

13. The two daughters of the appellant, namely Kumari Nisha and Kumari Shikha fully supported the case of the prosecution and deposed that due to the business of their father not being healthy, there used to be a quarrel between their parents and that their father's factory was lying closed. That their mother was compelling their father to sell the machinery in the factory and generate some money. Their father used to tell their mother that he would do the needful, but on the day of the incident i.e. on 10.12.1995, their mother learnt that their father had been telling lies to her as he had already sold the machinery in the factory. That the attention of the two sisters was attracted when at around 3.30 P.M. they heard a quarrel between their parents. The two were studying in a room on the roof top. They came down. Their mother told them to go up. As they were proceeding upstairs, they heard shrieks of their mother "GURIYA - BULBUL" : the nick names of the sisters. They came down. The room was bolted from inside. They called to their parents to open the door. They could not hear the voice of their mother. They

peeped from the window and saw their mother lying and their father hitting their mother. They made an attempt to open the door but could not succeed. Through the bathroom which also had an entry into the room, they managed to enter the room and saw their father with an iron hammer in his hand. He was hurling filthy abuses at their mother. Thereupon, their father opened the room and ran away with the hammer. They came out in the street and raised alarm. Ram Avtar, a TSR driver who resided in the neighbourhood, took their mother to the hospital.

14. We note that both the daughters of the appellant have been extensively cross examined. Indeed, at the hearing today, learned counsel for the appellant has not shown to us anything wherefrom it can be urged that the testimony of the two daughters does not inspire confidence or that the two have contradicted each other or that the two should not be believed.

15. The only submission urged is that immediately on the day of the incident, Ravinder, brother of the deceased i.e. maternal uncle of the girls came to the hospital and took custody of the two girls as also the third younger daughter of the appellant. Counsel urges that the possibility of the daughters of the appellant being tutored cannot be ruled out.

16. We have noted the age of Kumari Nisha and

Kumari Shikha. They were not children who could be tutored. One was aged about 14 years and the other was aged about 17 years when their mother was brutally assaulted. They could form their own opinion. We see no reason why would the two girls falsely implicate their father if somebody else was the assailant of their mother.

17. We note that while cross examining the two girls, their testimony pertaining to their being present in the house has gone unchallenged. The incident took place around 3.30 P.M. It was natural time for the daughters to be in the house.

18. The fact that the appellant absconded and was apprehended the next day at 11.30 A.M. is certainly an incriminating circumstance against the appellant.

19. It is no doubt true that no independent public person has been associated with the recovery of the hammer in question, but that does not mean that the police officers have not to be believed with respect to the recovery of the weapon of offence pursuant to the disclosure statement of the appellant and upon the appellant leading the police to the place wherefrom the same was recovered.

20. It is of importance to note that the hammer Ex.P-1 was identified by both the daughters as the one they had seen in the hand of their father while assaulting their mother.

21. The hammer appears to be of a kind which is

normally found in a house. It is not uncommon to see a hammer of the kind in a house; one side whereof is akin to a pick axe because such shape of the hammer facilitate pulling out nails, if one finds that a particular nails is to be removed from the place where it is hammered inside. What we want to convey is that the daughters could be the best persons to identify the hammer which they presumably would be seeing in their house.

22. That the blood of human origin was found on the shirt and the pant worn by the appellant which was seized when he was arrested and that blood group thereto is of 'AB' group, which happens to be the same blood group of the deceased is another incriminating circumstance against the appellant. More so, for the reason the appellant has not rendered any satisfactory explanation as to how his pant and shirt got stained with human blood, group whereof was 'AB'.

23. A feeble submission is made that it appears to be a case of a quarrel between husband and the wife and upon a sudden cruel the appellant has caused injuries. Thus, counsel urges that the offence made out is not one of culpable homicide amounting to murder but one amounting to only culpable homicide.

24. Assuming that the appellant acted under an impulse and upon a sudden quarrel, but even then the

offence would continue to be one of culpable homicide amounting to murder because of the reason Exception 4 to Section 300 of the Penal Code mandates that to avail benefit thereof, the offender should not have taken undue advantage or acted under a cruel or unusual manner.

25. The fifteen injuries, all directed towards the head of the deceased, shows that he who caused injuries i.e. the appellant has acted in a cruel and unusual manner.

26. That apart, there is no evidence that the appellant acted upon a sudden quarrel. The testimony of Kumari Shikha and Kumari Nisha shows that when they heard a quarrel going on between their parents they came down. Their mother told them to go upstairs and study. As they were climbing upstairs, they heard shrieks of their mother. Meaning thereby, the appellant did not act spontaneously when a quarrel ensued. He quarreled with his wife for some time before launching the brutally assault.

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

28. The appellant is on bail. His bail bond and surety bond are cancelled.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 25, 2009/vk