

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

% *Judgment Reserved On: 3rd September, 2009*
Judgment Delivered On: 7th September, 2009

+ **CRL.A. 555/2001**

ANITA SAXENA Appellant
Through: Ms. Ritu Gauba, Advocate

versus

STATE Respondent
Through: Mr. M.N.Dudeja, Advocate

CRL.A. 615/2002

MUZAFFER KHAN @ MUNNA Appellant
Through: Ms. Ritu Gauba, Advocate

versus

STATE Respondent
Through: Mr. M.N.Dudeja, Advocate

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.

1. At 7:45 Hrs. on 19.11.1995 i.e. in the early hours of the morning, DD No.6, Ex.PW-20/1, was recorded at police post Dhaula Kuan under jurisdiction of PS Delhi Cantt. that Havaladar

R.P.Singh has informed over the telephone that a dead body was lying near Golf Club, Station Road. Copy of the said DD entry was handed over to SI Dharampal Yadav PW-23 who left for the spot in the company of Const.Ligimor and Const.Shanta Ram. The dead body of a young male was found. On the right arm of the dead body the names 'Ashok Pal Singh' and 'Anita Saxena' were tattooed. There were stab injuries all over the body. It was apparent that the deceased had been murdered.

2. Making an endorsement Ex.PW-23/1 beneath copy of DD No.6, SI Dharam Pal Yadav sent the same through Const.Shanta Ram for FIR to be registered. Photographer and the crime team was summoned. The photographer Const.Hans Raj PW-12 took photographs Ex.PW-12/2 to Ex.PW-12/9, negatives whereof are Ex.PW-12/1 (collectively). A knife Ex.P-1 was found near the body which was having blood on it. It was seized by SI Dharampal vide memo Ex.PW-4/D and sketch Ex.PW-4/C thereof was drawn. From the pockets of the pant worn by the deceased, various articles were recovered, recovery whereof has been noted by SI Dharampal in the memo Ex.PW-4/A. Relevant for the purposes of the present case is to note that a coloured photograph of a girl on the rear side whereof numbers 5538 and 0532 were written; a visiting card Ex.P-6 in the name of P.K.Jain, Partner World Wide Export

having telephone number 91-591-24554 and address Gujrati Southern, 61/A/1 Civil Lines, Muradabad, on the back of which the number 311837 was written and a packet of cavanders cigarette, Ex.P-15 on which the name Satish Kumar and two numbers 310370 and 316316 were written were recovered from the purse Ex.P-5 found in the pocket of the pant of the deceased. All these articles as also a few others, details whereof have been noted in the seizure memo Ex.PW-4/A, were seized by the investigating officer i.e. SI Dharampal. The crime team could lift no clues. The dead body was seized and sent to the mortuary of Safdarjung Hospital for post-mortem, with a request Ex.PW-23/3 by SI Dharampal that as the body was of an unknown person it should be preserved for 72 hours. Negligently, inquest papers Ex.PW-23/2, as per performa prescribed, were filled up and submitted along with the letter of request Ex.PW-23/3. Blood stained earth and control earth were lifted from the spot as recorded in the memo Ex.PW-4/B. Site plan Ex.PW-19/D1 was prepared by him showing the spot from where the body was recovered.

3. It is apparent that SI Dharampal had four leads with him. The first lead were the names tattooed on the right arm of the deceased which possibly could be the names of the parents of the deceased or the name of the deceased and his

spouse. The second lead was Ex.P-6, the visiting card of P.K.Jain. The third lead was the packet of cavanders cigarette Ex.P-15 having two telephone numbers and the name of Satish Kumar and the fourth was the photograph of the lady. Since the visiting card Ex.P-6 had an address thereon, on 20.11.1995, SI Dharampal Yadav accompanied by Const.Shahi Ram went to Muradabad. He proceeded straight to the office of World Wide Export as printed in the visiting card Ex.P-6 and met one Mr.Pourwal who could give no clue pertaining to the dead body, but with reference to the name Satish Kumar written on the packet of cavanders cigarette Ex.P-15, informed that a man named Satish Kumar previously in the service of World Wide Export was currently in the service of Kapoor & Co. at Muradabad. SI Dharampal went to the office of Kapoor & Co. and met Satish Kumar and showed him the photograph of the woman recovered from the purse of the deceased. Satish Kumar told SI Dharampal that the photograph was of his sister-in-law named Anita Saxena who was married to his brother Ashok Pal Singh and that he had handed over the visiting card Ex.P-6 and the cigarette packet Ex.P-15 to his brother after writing the telephone numbers thereon. With reference to the photograph of the deceased, Satish identified the body as that of his brother Ashok Kumar. Madan Pal Singh, brother of

Satish Kumar and the deceased also reached the office of Kapoor and Co. Both brothers were brought to Delhi and taken to the mortuary of Safdarjung Hospital where, as recorded in the identification memo Ex.PW-23/5, Madan Pal Singh identified the dead body in question as that of his brother Ashok Kumar.

4. The go ahead signal was given by the investigating officer for post-mortem to be conducted. We note at this stage that in the inquest papers Ex.PW-23/2 which were furnished on 19.11.1995 the date 19.11.1995 has been recorded. The name, the parentage and the address of the deceased as also the fact that the dead body was identified by Satish and Madan Pal Singh has been recorded. The reason why we have used the expression '*negligently*' in para 2 above while referring to the submission of the inquest papers is obvious. Evidenced by the investigation conducted and as noted above, by 19.11.1995 the brothers of the deceased had yet to surface and thus on 19.11.1995, while submitting the inquest papers the investigating officer could not have recorded that the dead body was identified by the brothers of the deceased. Obviously, pouncing upon the contents of the inquest papers the defence can urge that the inquest papers are ante dated thereby casting a doubt on the recovery of the dead body at

the time and the place as claimed by the prosecution. But, fortunately, the investigating officer has made an endorsement on Ex.PW-23/2 as under:-

“Note : Dead body identified on 20.11.1995 and names of witnesses and deceased entered after identification.”

5. It is apparent that the investigating officer who had requested vide Ex.PW-23/C the officials at the mortuary to preserve the dead body for 72 hours as it had yet to be identified, ought not to have submitted the inquest papers on said day i.e. 19.11.1995. He ought to have done so when formal request for post-mortem was made. What he did is obvious, he filled up the inquest papers without filling in many columns and in particular column No.4 pertaining to the particulars of the person who identified the dead body. When he found the brothers of the deceased who identified the dead body in the mortuary on 20.11.1995, he filled up the remaining particulars in column No.4 thereby giving rise to an argument that how could the inquest papers filled up on 19.11.1995 contain the particulars of Satish Kumar and Madan Pal. Be that as it may, on account of the endorsement, contents whereof have been noted in the preceding para, the

controversy has survived for a moment and perished within a moment.

6. Proceeding ahead with further events which unfolded, the investigating officer gave the go ahead for post-mortem of the dead body to be conducted and obtain the post-mortem report as also to find out the whereabouts of Anita Saxena, the wife of the deceased who was expected to throw further light qua the movements of her husband.

7. On 21.11.1995 Dr.Chanderkant PW-5 conducted the post-mortem on the deceased and prepared the post-mortem report Ex.PW-5/A noting that there were sixteen stab and incised injuries on the deceased. That the proximate time of death was 2½ days prior. That the injuries were ante mortem and were collectively sufficient to cause death in the ordinary course of nature. He further noted that the stomach of the deceased contained undigested semi-liquid material from which strong smell of alcohol was emitting. After the post-mortem he handed over the clothes of the deceased as also a blood sample on the gauze which were seized as recorded in the memo Ex.PW-22/1. After the post-mortem the knife Ex.P-1 was sent to him for opinion on the issue whether the injuries on the deceased could be inflicted by the knife. He gave his

opinion Ex.PW-5/C that injuries 1 to 11 and 13 to 16 were likely to be caused by the knife.

8. Satish Kumar and Madan Pal told the investigating officer that their brother Ashok Kumar and his wife Anita Saxena used to reside somewhere in Shiv Vihar Phase-IV. The investigating officer went to Shiv Vihar Phase-IV and succeeded in locating Satender Kumar PW-10 who resided in House No.226, Street No.7/8, Shiv Vihar, Phase-IV who informed that Ashok Pal and Anita Saxena had taken a room from him on rent and resided there for some time. They retained the room under their tenancy but started residing at Mohammed Pur. He received rent regularly. After two months they started residing in the room. One Munna also started residing with them. Anita told him that Munna was her brother. He became suspicious of the relationship between Munna and Anita. He requested that his room be vacated. On Friday 17.11.1995 Ashok Pal, Anita and Munna removed some luggage from the tenanted room and next day Munna and Anita came and took the remaining luggage. Anita told him that her husband had got employment and henceforth would be residing at the house of an army officer near Sangam Vihar. He learnt about Ashok Pal being murdered when he read a news item on 20.11.1995.

9. The investigating officer SI Dharampal went to Sangam Vihar and learnt that no serving army officer was residing there. Being aware that serving army officers were residing in Arjun Vihar, he went to Arjun Vihar and on inquiry learnt that a man and a woman had taken up residence in a servant quarter in Block-4 of Arjun Vihar. He proceeded to said block in the afternoon of 24.11.1995 and saw appellant Muzaffar Khan in the company of appellant Anita Saxena, whom he recognized as the lady whose photograph was recovered from the purse of the deceased. Anita Saxena could not give any satisfactory explanation of the whereabouts of her husband. The investigating officer became suspicious of her conduct and brought her as also Muzaffar Khan to the police station and interrogated them. Both were arrested. Personal search of Muzaffar Khan yielded various articles entered in the memo Ex.PW-17/1 which inter alia included a paper cutting of a news item published in the daily edition dated 20.11.1995 of Punjab Kesri pertaining to the recovery of a dead body of a male near Golf Club on Station Road and a writing, Ex.P-X on the letterhead of Wg.Cdr. P.S.Sandhu as under:-

“Wg.Cdr. P.S.Sandhu
4/38 Arjun Vihar

Security Officer

DOERA
Arjun Vihar

Mr.Muzzaffar Khan has shifted to my servant quarter on 18 Nov.95. He may be permitted to enter the Arjun Vihar Complex till his permanent security pass is made.

Thanks

Sd/-
(PS Sandhu)”

10. Personal search memo Ex.PW-16/1 records the items recovered from the personal search of Anita, none of which is relevant and hence contents are not being noted.

11. On being interrogated in the police station, Muzzaffar Khan made a confessional-cum-disclosure statement Ex.PW-17/3 in which he confessed to have murdered the deceased and stated that he and Anita had purchased the knife Ex.P-1 from a shop at Welcome Colony Phase-IV. That he and Anita shifted to a servant quarter in Arjun Vihar in a flat allotted to an army officer on the consideration that Anita would do the domestic work in the house. They shifted to the servant quarter on 17.11.1995. He disclosed that the deceased was murdered on 17.11.1995 and that while committing the murder the shirt and the pant worn by him got stained with blood and were washed and that he could get the

same recovered. He further stated that he could point out the shop from where the knife was purchased. In her confessional-cum-disclosure statement Ex.PW-16/1 Anita confessed to be a party to the crime and stated same facts as were disclosed by Muzaffar Khan. Even she volunteered to point out the shop from where the knife Ex.P-1 was purchased.

12. Muzaffar Khan and Anita led the police officers to the servant quarter attached to the flat of Wg.Cdr. P.S.Sandhu and from within the flat Muzaffar Khan got recovered a pant Ex.P-A and a shirt Ex.P-3 which were seized in the presence of Wg.Cdr. P.S.Sandhu as entered in the seizure memo Ex.PW-3/A.

13. Wg.Cdr. P.S.Sandhu informed the investigating officer that he was looking for a domestic help and the domestic help of Wg.Cdr. Arvind brought the appellants i.e. Muzaffar Khan and Anita Saxena to him. They claimed to be husband and wife. He agreed to employ Anita Saxena who agreed to work as a domestic help in his house in consideration of residential accommodation in the servant quarter attached to his flat. He handed them the keys of the servant quarter where they shifted in the evening of 17.11.1995. The next two days i.e. 18th and 19th November 1995 were consumed by them in bringing remaining

household articles of theirs'. Thus, on said two days Anita did not report for duty. She reported for duty on 20th and 21st November 1995. She did not report to work on 22nd November 1995. He found that the door of the servant quarter was locked. That he saw the appellants thereafter when they were brought to the servant quarter by the police.

14. The appellants thereafter led the investigating officer to a shop at Welcome Colony owned by Abdul Hakim PW-8 and pointed out the same as the one from where they had purchased the knife Ex.P-1. Abdul Hakim told the investigating officer that the appellant had purchased the knife in question from him in November 1995 stating that they had opened a shop to sell chicken meat and needed a knife.

15. To complete the record of investigation, the blood stained soil, the knife Ex.P-1, the clothes of the deceased, the blood sample of the deceased as also the shirt and pant got recovered by appellant Muzaffar Khan were sent for serological examination and as per the report of the serologist the blood group of the deceased was 'A'. Human blood was detected on the shirt and the pant got recovered by Muzaffar Khan, but group thereof could not be determined.

16. Needless to state, the case of the prosecution hinged upon proof of the fact that the knife Ex.P-1 found near the dead body of Ashok Kumar was sold by Abdul Hakim to the appellants. The appellants being last seen in the company of the deceased on 17.11.1995 when they shifted out along with the deceased from the room taken on rent in the house of Satender Kumar PW-10. The deceased being done to death in the night of 17.11.1995. The effect of a blood stained pant and shirt recovered at the instance of Muzzaffar Khan from the servant quarter of the flat of Wg.Cdr. P.S.Sandhu PW-3. Lastly, the conduct of the appellants absconding and the conduct of Anita Saxena in not reporting her husband being missing.

17. At the trial, SI Dharampal Yadav PW-23 proved the investigation conducted by him as also the various seizures effected by him during investigation. He proved the seizure memos Ex.PW-4/A, Ex.PW-4/B, Ex.PW-4/D and the memo pertaining to the sketch of the knife Ex.PW-4/C. He deposed having submitted the letter of request Ex.PW-23/C and having submitted the inquest papers Ex.PW-23/2. He deposed the facts noted in paras 3, 8 to 11 above as to how he worked upon the leads which led him up to the appellants. He deposed that the dead body was seized by him near Golf Club at Station Road in Delhi Cantt. area. He proved the arrest

memos of the appellants as also the recoveries effected during their personal search. He proved having recorded the disclosure statements Ex.PW-17/3 and Ex.PW-16/1. He proved having drawn up the personal search memos Ex.PW-17/1 and Ex.PW-16/1. He proved having recovered a pant Ex.PA and a shirt Ex.P-3 from the servant quarter attached to the flat of Wg.Cdr. P.S.Sandhu as entered in the seizure memo Ex.PW-3/A. He deposed that he recorded the statements of the various witness who were examined by the prosecution. We must note that the learned public prosecutor has remained negligent in that Ex.PX, contents whereof have been noted in para 9 above, was not put to the witness and no answer elicited pertaining thereto. Thus, a vital evidence showing appellant Muzaffar Khan shifting to the servant quarter of Wg.Cdr. P.S.Sandhu has been nullified. Further, while putting the incriminating circumstances to the accused, the recovery of Ex.PX from appellant Muzaffar Khan has been omitted, thereby requiring us to exclude said evidence while considering the incriminating circumstances against the appellants.

18. SI Dharampal Yadav was extensively cross-examined. Nothing of substance was pointed out to us to discredit his testimony, save and except that the photograph

of a lady which stands recorded in the seizure memo Ex.PW-4/A; being one of the many articles recovered from the pant pocket of the deceased has been found to be missing from the record.

19. Pouncing upon said photograph being missing, learned counsel for the appellants was quick to argue that the photograph being missing casts a serious doubt whether at all any was recovered.

20. We give no credence to the argument for the reason SI Dharampal Yadav has deposed that he had retained the photograph with him as the same would have given him leads. It was with reference to said photograph that Satish Kumar whom he contacted in Muradabad was able to connect the appellant Anita as the wife of the deceased. Dharampal Yadav has deposed to said facts and his testimony has not been challenged in said respect. Further, SI Dharampal Yadav has deposed that he retained the photograph with him till he located Anita. Even said testimony of his has not been questioned.

21. It is apparent that SI Dharampal Yadav retained the photograph for the purposes of further investigation. But, he remained negligent in not depositing the photograph in the

maalkhana and producing the same during trial. It is settled law that a lapse committed by the investigating officer cannot be permitted to be used as an escape route for an accused, if otherwise good and satisfactory evidence is brought on record wherefrom purity of the case of the prosecution can be filtered. It would be relevant to note that SI Dharampal Yadav has not been questioned during cross-examination as to what happened to the photograph. Had he been questioned, some explanation would certainly have been rendered by him. It is settled law that unless an omission/error is put to a witness and an opportunity is granted to explain the same, the same cannot be used to the disadvantage of the prosecution. (See the decision reported as AIR 1975 SC 290 Rahim Khan vs. Khurshid Ahmad.)

22. Satish Kumar PW-2 deposed that his brother Ashok Pal was married to one Ruma Devi and after some time appellant Anita started residing with his brother. On 20.11.1995 Delhi Police enquired from him about his brother. He came to Delhi and identified the dead body in the mortuary as that of his brother.

23. Wg.Cdr. P.S.Sandhu PW-3 deposed facts as noted by us in para 13 above. He was cross-examined at length. But nothing has been brought out to discredit his testimony. Only

one point was urged pertaining to the cross-examination of Wg.Cdr. P.S.Sandhu. With reference to his statement during cross-examination that the key of his servant quarter was with the police who used the same to open the lock. Counsel urged that the memo Ex.PW-3/A records that Muzzaffar Khan led the police inside the servant quarter and got recovered the shirt and the pant from within the servant quarter. Learned counsel urged that even SI Dharampal Yadav PW-23 stated that accused Muzzaffar Khan got recovered a jean/pant of blue colour and a maroon coloured shirt from the servant quarter attached to the flat of Wg.Cdr. P.S.Sandhu.

24. The plea is nothing but clutching to the straws. Mathematical precision is not required, much less is expected by Courts in the testimony of witnesses other than those who are linguistic experts.

25. PW-10 Shri Satender Kumar deposed facts noted by us in para 8 above. He was cross-examined at length but successfully withstood the test of cross-examination. Nothing has been pointed out to us in the testimony of PW-10 which discredits him.

26. Abdul Hakim PW-8, the person from whom the appellants purchased the knife Ex.P-1 deposed that he sold the

knife to the appellants who wanted to purchase a knife as they told him that they had opened a shop to sell chicken. Relevant would it be to note that Abdul Hakim gave no proof of running any shop. He gave no proof of having sold the knife in question to the appellants. He admitted that the knife had no distinct mark or design with reference where to he could justify his statement that this was the knife sold by him to the appellants. When questioned whether he could identify the knife if it was mixed with other similar knives, he gave a very interesting answer as under:-

“If the chhuris of the same design prepared by me and also by other persons are mixed together, then I am not sure I shall be able to identify the chhuri prepared by me. (Vol. I have identified the chhuri in this case because the accused persons had not paid the entire price. I have also identified the accused persons for this reason alone.)”

27. Abdul Hakim deposed that he sold the chhuri for Rs.35/- and received only Rs.15/- as sale consideration. The appellants told him that they would pay him Rs.20/- later on and he agreed to the same.

28. Testimony of Abdul Hakim has obviously to be taken with a pinch of salt. He has not claimed that the appellants were his regular customers. He has not claimed that they were brought to his shop by a person known to him.

It is unbelievable that Abdul Hakim would have sold a knife worth Rs.35/- on a credit of Rs.20/-.

29. The circumstances under which Abdul Hakim claims to have remembered the appellants; the circumstances under which he claimed to have sold the knife to the appellants; the circumstances under which he justifies his power of recollection to identify the knife, all render his testimony as liable to be classified as tailor-made testimony more so for the reason there is no proof of Abdul Hakim being a shopkeeper engaged in the business of selling knives.

30. Thus, we hold that the learned Trial Judge, who has ignored aforesaid features in the testimony of PW-8 has led himself to wrong conclusions qua the acceptability of the testimony of PW-8 and the link provided i.e. that the knife Ex.P-1 recovered from near the dead body of the deceased was sold by Abdul Hakim to the appellants.

31. When incriminating circumstances were put to the appellants, appellant Munna Khan denied everything. He denied having known Ashok Kumar. He denied having known Anita Saxena. He denied having resided with them in the room taken by the deceased and Anita Saxena in the building owned by Satender Kumar PW-10. He denied having ever met

Wg.Cdr. P.S.Sandhu. He denied that he and Anita Saxena represented to Wg.Cdr. P.S.Sandhu that they were husband and wife. He denied having resided in the servant quarter of Wg.Cdr. P.S.Sandhu from 17th to 21st November 1995. He denied having made any disclosure statement. He denied having got recovered the shirt and the pant found to be stained with human blood from the said servant quarter.

32. Appellant Anita Saxena admitted that she knew Ashok Pal the deceased and stated that she was married to him. She denied everything else. She denied that she and the deceased took on rent a room from Satender Kumar PW-10 and resided there. She denied that Muzzaffar Khan also resided with them in said room. She denied having shifted from the said room to the servant quarter attached to the flat of Wg.Cdr. P.S.Sandhu. To the last question whether she had anything to say, she stated that she read in the newspaper on 20.11.1995 that her husband had been murdered. She went to PS Dhaula Kuan to inform the police but her complaint was not taken and that she was falsely implicated.

33. Ignoring the evidence relating to the appellants pointing out the shop of Abdul Hakim which has been held to be evidence of the conduct of the appellants and hence admissible and relevant under Section 8 of the Evidence Act by Crl.A.Nos.555/2001 & 615/2002

the learned Trial Judge, as also the evidence that the knife Ex.P-1 was sold by Abdul Hakim to the appellants, the evidence which remains against the appellants is the following:-

- (i) Evidence through the testimony of PW-10 that the deceased was seen by him in the company of the appellants on 17.11.1995, which was the day when the deceased was last seen alive.
- (ii) The post-mortem report of the deceased and the testimony of Dr.Chanderkant PW-5 which showed that the deceased died in the night of 17.11.1995.
- (iii) The evidence through the testimony of PW-10 that Anita Saxena and Ashok Kumar i.e. the deceased took a room from him on rent and after some months Muzzaffar Khan also started residing with them and he was suspicious of the relationship between Muzzaffar Khan and Anita Saxena and hence told Ashok Kumar, Muzzaffar Khan and Anita Saxena to leave the room under their tenancy.
- (iv) The testimony of PW-3 Wg.Cdr. P.S.Sandhu that the appellants represented themselves as husband and wife and in consideration of appellant Anita working

as his domestic help he allowed them to reside in the servant quarter attached to his flat and that the two shifted their luggage in part in the said servant quarter on 17.11.1995 and the next day brought the remaining luggage; which facts have also been deposed to by Satender Kumar PW-10. As also the fact that Anita Saxena reported for duty in the flat of Wg.Cdr. P.S.Sandhu on 20th and 21st November 1995 and thereafter both the appellants absconded.

- (v) The newspaper Punjab Kesri reported the discovery of a dead body of a male near Golf Club on Station Road, cutting whereof was found and hence recovered from the personal search of Muzzaffar Khan.
- (vi) The post-mortem report Ex.PW-5/A noting strong smell of alcohol emanating from the semi-digested semi-liquid contents in the stomach of the deceased.
- (vii) Anita's admission that she was the wife of the deceased and her false denial of residing as a tenant under PW-10 without it being told as to where she and the deceased were residing. The

false statement of Anita that she went to PS Dhaula Kuan to give information that her husband was missing. She has tacitly admitted that she was residing in an area which fell within the jurisdiction of PS Dhaula Kuan. Arjun Vihar, the colony in which the flat was allotted to Wg.Cdr. P.S.Sandhu falls within the jurisdiction of PS Delhi Cantt. There is no police station Dhaula Kuan. A police post exists at Dhaula Kuan under jurisdiction of PS Delhi Cantt. Similarly the false denials by the appellant Muzzaffar Khan of residing with the deceased and Anita in the tenanted room under PW-10 and shifting to the servant quarter of the flat allotted to Wg.Cdr. P.S.Sandhu and representing himself and Anita to be husband and wife.

34. The motive for the crime has been proved through the testimony of PW-10. The motive being the illicit relationship developed by the appellants and hence the necessity to do away with Ashok Kumar. The circumstance of the appellants last seen in the company of the deceased on 17.11.1995, the day on which the deceased died and the circumstance of the appellants prior thereto holding themselves out as husband and wife to Wg.Cdr. P.S.Sandhu

PW-3 and the circumstance of the appellants absconding on 22.11.1995 read with the circumstance that the newspapers reported on 20.11.1995 that a dead body of a male was found near the Golf Club, Station Road, Delhi Cantt. and the recovery of blood-stained pant and coat; the blood stain being of human origin are circumstances wherefrom the unerring finger of guilt can safely be pointed against the appellants and their innocence ruled out. The conduct of Anita Saxena is not the conduct of a normal wife whose husband does not return home on 17.11.1995. The obvious inference is that she was a party to the crime and has taken a false plea that when the newspaper reported the death of her husband, she went to the police station. From the post-mortem report of the deceased it is apparent that he was led into excessive drinking. The excessive drinking obviously impaired the senses and reflexes of the deceased who was brutally stabbed and sent to the world of the dead. That the group could not be detected on the blood which was of human origin on the shirt and the pant got recovered by Muzaffar Khan from the servant quarter attached to the flat of Wg.Cdr. P.S.Sandhu is for the reason the same were washed as per the disclosure statement of Muzaffar Khan i.e. the residual blood on the same was so less

that on reaction by the serologist to determine the group thereof, none could be detected.

35. We find no merit in the two appeals. The appeals are dismissed.

36. The appellants are on bail. The bail bond and surety bonds furnished by the appellants are cancelled. The appellants are directed to surrender and suffer the remaining sentence.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

September 07, 2009
mm / Dharmender