

R-24

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

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Date of Order: July 16, 2009

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CRL.A. 62/2001

JAGJIT SINGH

..... Appellant

Through: Mr. Bhupesh Narula, Advocate

versus

STATE

..... Respondent

Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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 appeal had reached for hearing on 8.7.2009. Since none appeared for the appellant, we appointed Ms.Ritu Gauba, a lawyer on the panel of the Delhi High Court Legal Services Committee, who was present in Court, to assist us and formally appointed her as an Amicus on behalf of the appellant. We had fixed her fee at Rs.3,500/-.

2. The appeal was retained on Board and paper book was supplied to the learned counsel on 8.7.2009 itself.

3. Thereafter, though the appeal had reached for hearing on 9th and 10th July 2009, we deferred hearing to

enable the learned counsel to prepare the brief.

4. The appeal reached for hearing on 13th, 14th and 15th July 2009. On each date, when the matter was called out to be heard, the learned counsel did not appear. We retained the matter on Board.

5. Today, i.e. on 16.7.2009, the appeal has reached for hearing. Ms.Ritu Gauba, learned Amicus appointed has not appeared.

6. Noting that in a large number of appeals pending in this Court, counsel for the appellant were not appearing, the Delhi High Court Legal Services Committee has nominated a counsel on the legal aid panel, to be attached with different courts, exercising criminal jurisdiction. Mr.Bhupesh Narula, a counsel on the panel of the Delhi High Court Legal Services Committee has been nominated by the Committee as the legal aid counsel to assist this Court in all such matters where counsel for the appellant are not appearing.

7. Accordingly, we called upon Mr.Bhupesh Narula, learned counsel nominated by the Delhi High Court Legal Services Committee attached to this Court to assist us.

8. Noting that we had fixed the fee of Ms.Ritu Gauba, Advocate at Rs.3,500/-, we fix the same amount i.e. Rs.3,500/- as the fee to be paid to Mr.Bhupesh Narula, Advocate.

9. With the assistance of Mr.Bhupesh Narula, Advocate and Ms.Richa Kapoor, Additional Public Prosecutor we have gone through the impugned decision and the record of the learned Trial Judge.

10. Vide impugned judgment and order dated 13.12.2000 the appellant has been convicted for the offence of having murdered his wife.

11. On the basis of the evidence led before the learned Trial Judge, finding returned is that the testimony of Rakesh Nagpal PW-9, establishes the motive for the crime. Motive being, that the appellant suspected the fidelity of his wife, a fact told by the appellant to Rakesh Nagpal. It has been held that the testimony of PW-9 establishes that the appellant made an extra judicial confession to PW-9, soon after having murdered his wife. The conduct of the appellant of being the informant by ringing up the police and giving information that his wife has been murdered by him has been held to be incriminating evidence; limited to the fact that the appellant was the informant which set into motion the police investigation. The next piece of incriminating evidence against the appellant held, is the reports of the serologist i.e. Ex.PW-15/E and Ex.PW-15/F, as per which, human blood of the same group as that of the deceased was detected on the vest

and the underwear which was seized by the investigating officer when he apprehended the appellant in the precincts of Patiala House Courts and which underwear and vest was worn by the appellant, as also the fact that a blood stained knife recovered at the instance of the appellant was detected with the presence of human blood of the same group as that of the wife of the appellant. The knife Ex.P-1 was opined by the doctor who conducted the post-mortem of the deceased as the possible weapon of offence.

12. Police investigation in the crime commenced when Ex.PW-8/B was prepared by Const.Vandana PW-8, recording information in the early hours of the morning of 10.12.1995, at 5:20 AM, over the telephone, that a man who disclosed his name as Jagjit Singh (the name of the appellant) has rung up and informed that he had murdered his wife in room No.18 i.e. the Court of the Sub-Divisional Magistrate in the precincts of Patiala House Courts Complex. The information was forwarded to SI Banni Singh PW-5 who accompanied by Const.Rakesh PW-7 left for the spot. Inspector Sahdev Singh PW-15 posted as SHO PS Tilak Marg also reached the office of the SDM at Patiala House Courts Complex and joined SI Banni Singh in conduct of investigation.

13. The appellant was present near the room where the

offence i.e. murder of his wife was committed. The police officers noted that the appellant was wearing a vest and an underwear which were stained with blood. The vest Ex.P-5 and the underwear Ex.P-6 were seized vide seizure memo Ex.PW-5/9.

14. A saree Ex.P-7 and a pair of ladies sandal Ex.P-8, ostensibly belonging to the deceased, were seized as recorded in the memo Ex.PW-5/E. Two mats on the floor Ex.P-4/1-2, which were stained with blood were also seized as recorded in the memo Ex.PW-5/E.

15. The appellant made a disclosure statement Ex.PW-5/K in which he stated that he can lead the police to the place where he had thrown the knife with which he had stabbed his wife. The appellant led the investigating officer to a toilet adjacent to the place (room) where his wife was murdered and from underneath a heap of papers produced the knife Ex.P-1, which was stained with blood. It was seized as recorded in the memo Ex.PW-5/A. Sketch thereof, Ex.PW-5/B, was drawn by Inspector Sahdev Singh PW-15.

16. Const.Rakesh PW-4, a photographer, was summoned and he took 4 photographs Ex.P-1 to Ex.P-4.

17. The investigating officer i.e. PW-15 prepared the rough site plan Ex.PW-15/A, recording therein the place where

the deceased was found dead and the place where the saree and sandles as also the mats were noted and seized as recorded in the memo Ex.PW-5/E.

18. The body was taken into possession and was sent to R.M.L.Hospital, where at the casualty, Dr.M.P.S.Chawla PW-6, declared her dead. The physical examination of the body revealed multiple stab injuries which were noted by PW-6 on the report Ex.PW-6/A. The body was thereafter sent to the mortuary of Lady Harding Medical College, where Dr.G.K.Sharma PW-1 conducted the post-mortem on 11.12.1995 and noted 10 injuries, some of which were incised and some of which were stab wounds. He prepared the report Ex.PW-1/A, noting there-in the 10 external injuries as also the internal injuries. He opined that the stab injury No.3, 9 and 10 were sufficient to cause death in the ordinary course of nature; collectively and individually. He opined that stab injuries No.2, 3, 8, 9 and 10 were caused by a sharp pointed object having single sharp edge. With reference to the personal apparels of the deceased and the cuts thereon, he opined that injury No.4, 5, 6, and 7 appeared to be defence wounds.

19. The knife Ex.P-1 was sent to him later on, for opinion whether the injuries noted by him could be possibly caused by Ex.P-1. He gave his report Ex.PW-1/C to the effect

that the injuries noted by him while conducting the post-mortem of the deceased could be caused by use of the knife Ex.P-1 or a similar weapon.

20. Soon after conducting the post-mortem, PW-1 handed over the blood sample of the deceased on a piece of gauze as also the blouse and the bra which he had removed from the dead body. All of which were taken into possession by the investigating officer and duly sealed.

21. The knife, the two mats, the underwear and the vest of the appellant which were seized soon after the incident; the blouse and the bra of the deceased as also her blood sample on the gauze were sent for serological examination and vide reports Ex.PW-15/E and Ex.PW-15/F it was opined that human blood of group 'AB' was detected on the knife, the blouse, the bra, the underwear and the vest. Qua the two mats it was opined that human blood was detected but on reaction the blood group could not be ascertained. It was opined that the blood group of the deceased was 'AB'.

22. At the trial Rakesh Nagpal PW-9, the Sub-Divisional Magistrate having office at Room No.18, Patiala House Courts deposed that the appellant was one out of the two chowkidars deputed as caretakers of his office and that on 10.12.1995 at

around 5:15 AM he received a telephone call from the appellant who informed him that he had murdered his wife because he suspected her fidelity and that he immediately passed on the said information to the SHO of police station Tilak Marg and that the next day he gave said information in writing i.e. vide Ex.PW-9/A.

23. On being cross examined he stated that there were two chowkidars to perform night duty of acting as caretakers of his office and that the two chowkidars, as per mutual arrangement would act as caretakers in the night. He stated that he was not maintaining any register pertaining to the duty hours of the two chowkidars.

24. Relevant would it be to note that while cross examining PW-9, not even a suggestion has been given to him that he is falsely deposing of the appellant having made an extra judicial confession to him over the telephone.

25. We only need to note that Insp.Sahdev Singh PW-15 as also SI Banni Singh PW-5, deposed and proved of having seen the appellant in the precincts of Patiala House Courts Complex. That the underwear and the vest worn by the appellant were having blood stains thereon and that the same were seized. They also deposed to and proved the information given by the appellant pertaining to the knife Ex.P-1 and the

recovery thereof from beneath a heap of papers in the toilet adjacent to the room where the wife of the appellant was murdered.

26. Needless to state, Insp.Sahdev Singh deposed to have sent the various seized article for serological opinion and receipt of reports Ex.PW-15/E and Ex.PW-15/F. We note that the appellant never desired for the serologist to be brought to Court for purposes of cross-examination. We note that as per the mandate of Section 293 of the Code of Criminal Procedure, the reports of the serologist are admissible in evidence without formal proof thereof, through the mouth of the serologist concerned.

27. Apart from PW-9, we have on record the testimony of Mani Ram PW-12, who deposed that he was the other chowkidar attached to the Court of the SDM at Patiala House and that in the early hours of the morning of 10.12.1995, the appellant knocked at the door of his room i.e. the room of the caretaker at Patiala House Courts and informed him that he had killed his wife.

28. We note that having categorically deposed as aforenoted in his examination-in-chief on 1.4.1998, Mani Ram turned turtle, when during cross examination on 22.9.1998, he stated that the appellant made no such extra judicial

confession to him.

29. Dr.G.K.Sharma PW-1, proved the post-mortem report and his opinion Ex.PW-1/C, contents whereof have been briefly noted by us while penning the chronology of the events as they transpired contemporaneously during investigation.

30. Learned counsel for the appellant urges that the telephonic information given by the appellant to the police, being a confessional statement, is inadmissible in evidence and hence said evidence has to be excluded while considering the incriminating evidence against the appellant. Second contention urged by learned counsel is that Mani Ram PW-12, is not a truthful witness, and in any case has resiled from the fact of the appellant having made any extra judicial confession to him. Thus, counsel urges that the so-called extra judicial confession to Mani Ram has not been proved. Pertaining to the testimony of Rakesh Nagpal PW-9, counsel urges that it is strange that Rakesh Nagpal, a Sub-Divisional Magistrate, chose to give the writing Ex.PW-9/A on 11.12.1995 i.e. the day next after the incident. Counsel urges that the same does not inspire confidence on account of the delay in transmitting the information. Pertaining to the testimony of Rakesh Nagpal that he had transmitted said information over the telephone to the SHO on 10.12.1995 itself, learned counsel urges that as

admitted by the witness during cross examination, said fact i.e. of having informed the SHO over the telephone does not find mention in Ex.PW-9/A. Thus, counsel urges that there is a great doubt, whether at all the appellant made any extra judicial confession to Rakesh Nagpal.

31. We note that the learned Trial Judge has not referred to, as an incriminating evidence, the extra judicial confession to which Mani Ram PW-12 deposed to in his examination-in-chief. Thus, we eschew any reference to the testimony of PW-12, save and except to note that having categorically stood by the case of the prosecution while deposing in examination-in-chief on 1.4.1998, he turned turtle when cross examined on 22.9.1998. There is every possibility of the witness being won over. After all, Mani Ram was a friend of the appellant as both of them were chowkidars in the office of the Sub-Divisional Magistrate concerned.

32. Pertaining to the fact that the deceased was killed inside the chamber room of the SDM concerned, we find that there is no scope for raising any issue on said fact. The testimony of the police officers, as also the site plan, categorically establishes the fact that the wife of the appellant was brutally stabbed in the chamber attached to the court room of the SDM i.e. PW-9.

33. The place where the murder has been committed assumes significance, for the reason, how could the wife of the appellant reach the said place, save and except her husband taking her there.

34. The fact that human blood of the same group as that of the deceased has been detected on the underwear and the vest of the appellant which were seized by the investigating officer soon after the crime and the fact that the appellant has not explained as to how his underwear and vest got stained with human blood of the same group as that of his wife, is another very vital piece of incriminating evidence against the appellant. That the knife Ex.P-1 was recovered after the appellant made a disclosure statement and led the investigation officer to a toilet and from underneath a heap of papers took out the knife is admissible evidence under Section 8 of the Evidence Act of his conduct and additionally his disclosure statement which has resulted in the recovery of a blood stained knife admissible under Section 27 of the Evidence Act.

35. In our opinion, the trinity of the circumstances i.e. that the wife of the appellant was murdered in the chamber of the court room of the SDM; the apprehension of the appellant from near the said room coupled with his clothes being stained

with the blood of his wife as also the fact that the knife which was also stained with the blood of his wife was got recovered after the appellant led the police to the toilet, are enough wherefrom it can safely be said that the chain of circumstances is complete to hold qua the guilt of the appellant.

36. But we go a little further. As held in the decisions reported as AIR 1966 SC 119 Aghnoo Nagesia Vs. State of Bihar and AIR 1972 SC 922 Khatri Hemraj Vs. State of Gujarat, a confessional information report by the accused to the police which forms the First Information Report is inadmissible in evidence, save and except those statements in the report, which identify the accused as the maker of the first information report and the conduct of the accused as the maker of the first information report, as held in para 10 and 20 of the decision in Aghnoo Nagesia's case (supra).

37. Thus, the DD Entry No.33-A, Ex.PW-8/B and the testimony of PW-8 are admissible evidence to prove that the appellant was the informant. The same are admissible evidence to show the conduct of the appellant; conduct being of informing the police about the death of his wife. Therefrom, it can safely be held that the said evidence establishes the knowledge of the appellant that his wife has been killed; the

knowledge of the appellant that he knew the place where his wife was killed.

38. We further have the testimony of PW-9, which establishes the extra judicial confession made by the appellant to him.

39. The challenge to the credibility of the testimony of PW-9 on the grounds noted hereinabove, while noting the submissions of learned counsel for the appellant, are akin to clutching to straw.

40. In the report Ex.PW-9/A, PW-9 has written as under:-

“Shri Jagjit Singh s/o Shri Maman Singh was working as chowkidar looking after the work of chowkidari of both the rooms of SDM's of South and New Delhi. He was on duty in office on 9.12.95 which was Saturday. He informed at my residence on 10.12.95 at 5.25 AM that he has murdered his wife in the court chamber premises as he suspected his wife's fidelity. Immediately the said information was given to the SHO Tilak Marg about the incident.”

41. It is apparent that PW-9 has categorically written that when he received information from the appellant, confessing to the murder of his wife, he immediately passed on the information to the SHO PS Tilak Marg. The fact that he did not write that he passed on the information over the telephone is of not much significance. What is important is that, in Ex.PW-9/A, PW-9 has written that he immediately

passed on the information to the SHO concerned.

42. The fact that he followed up the communication of the oral information by penning down the same and transmitting the writing on the next day to the police station, cannot detract from the contemporaneous conduct of PW-9. It is apparent that having passed on the information over the telephone to the SHO of the police station concerned, the Sub-Divisional Magistrate formalized the same by sending the communication, in writing the next day.

43. As noted hereinabove, while cross examining PW-9, we find that his testimony pertaining to the extra judicial confession made to him by the appellant has not been challenged at all.

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

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

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

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JULY 16, 2009
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