

R-126

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

% *Date of Decision: 16th September, 2009*

+ **CRL.A. 648/2001**

BIJENDER SINGH Appellant
Through: Ms.Charu Verma, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, 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. (Oral)

1. The appellant has not denied that he was married to Anita on 8.3.2000 and the two were residing in house No.4767-A, Gali No.1. He has also not denied that Anita was brutally murdered in her matrimonial house on 11th September, 2000. But, the appellant denies that he is the one who has murdered his wife. When examined under Section 313 Cr.P.C. the appellant stated that he was not present in his house when his wife was murdered as he had left his house for duty.

2. At the outset, we may note that the appellant did not disclose the place where he reported for duty and has led no evidence in defence to show that at around 11.24 AM on 11.9.2000 he was at his work place.

3. Information was received at PS Gandhi Nagar through telephone No.2425601 at 11.24 AM on 11.9.2004 informing that a quarrel was taking place at street No.1, Ajeet Nagar, Seelampur. Said information was recorded in Daily Diary register by HC Rajender Singh PW-11 vide D.D.No.13-A, Ex.PW-11/A. At 11.30 AM, information was received through the police control room that a lady has been murdered at Seelampur, which information was recorded in the Daily Diary register by HC Rajender Singh vide D.D.No.14-A, Ex.PW-11/B.

4. Copy of D.D.No.13-A was handed over to SI Rajender Singh PW-20 who along with Insp.Ramdal PW-21 left for the spot.

5. HC Om Prakash PW-6 was on beat duty in Ajeet Nagar from 9 AM to 2 PM and was near the Railway Line between gali No.1 and 3 in Ajeet Nagar. Somebody informed him that a person was mercilessly beating his wife in house No.4767-A, Gali No.1, Seelampur. This information was given to HC Om Prakash at 11.20 AM. He reached the house in question at around 11.25 AM and found the door bolted from inside. Peeping through a window adjoining the gate of the

house he saw appellant stabbing his wife. The door was knocked. Appellant opened the door and ran back on seeing HC Om Prakash. Appellant was overpowered and a blood stained knife was taken possession of by HC Om Prakash. PCR officials were contacted. Joginder PW-3, the brother of the appellant and Basanti PW-5, wife of Joginder were present.

6. SI Rajender Singh and Insp.Ramdal reached the spot and SI Rajender Singh recorded the statement Ex.PW-6/A of HC Om Prakash in which aforementioned facts pertaining to receipt of information by HC Om Prakash requiring him to reach the house in question and what he saw as also his apprehending the appellant were recorded.

7. After SI Rajender Singh PW-20 recorded the statement Ex.PW-6/A in his hand, Insp.Ramdal made an endorsement Ex.PW-21/A beneath the statement and dispatched the statement and the endorsement, as recorded in the endorsement at 11.30 AM, for FIR to be registered.

8. Crime team and a photographer were summoned.

9. Const.Naresh Kumar PW-9 took 17 photographs Ex.PW-9/A18 to Ex.PW-9/A33; negatives whereof are Ex.PW-9/A1 to Ex.PW-9/A17.

10. A hand of a hand pump was found at the scene of the offence and the knife which was taken possession of by HC Om Prakash were seized by Insp.Ramdal vide seizure memo

Ex.PW-6/B. Blood was lifted from three spots as recorded in the memos Ex.PW-6/C, Ex.PW-6/D and Ex.PW-6/E. Earth control was lifted as recorded in the memo Ex.PW-6/K. Certain clothes in the house which were stained with blood were seized vide memo Ex.PW-6/H. Broken pieces of bangles were seized as recorded in the memo Ex.PW-6/F. The pant and shirt worn by the appellant which were found to be stained with blood were seized vide memo Ex.PW-6/J. Rough site plan Ex.PW-21/C was prepared by Insp.Ramdal. The appellant was formally arrested vide memo Ex.PW-6/L, which records the time of arrest at 4.50 PM.

11. The dead body of the deceased was sent to Sabzi Mandi mortuary where Dr.Ashok Jaiswal PW-13 conducted the post-mortem and prepared the post-mortem report Ex.PW-13/A noting therein 12 external injuries on the person of the deceased. Injury No.1 to 4 were opined to be caused by a blunt object and injuries No.5 to 12 were opined to be caused by a sharp edged weapon. All injuries were opined to be ante-mortem and cause of death was opined to be the result of haemorrhagic shock consequent to all injuries inflicted on the deceased. Injuries Nos.5, 7, 9, 11 and 12 were opined to be individually and collectively sufficient to cause death in the ordinary course of nature.

12. After the post-mortem, the clothes of the deceased and blood sample on it were handed over to the police.

13. The various articles seized from the spot as noted in the various seizure memos prepared at the spot as also the clothes of the deceased and the blood sample of the deceased were sent for serological examination. As per report Ex.PW-21/D and Ex.PW-21/E, it was opined that the blood group of the deceased was 'A'. Human blood of same group was detected on the pant and shirt worn by the appellant which were seized by the police. Human blood of group 'A' was detected on the knife. Human blood of group 'A' was detected on the blood samples lifted where the crime was committed. No blood could be detected on the handle of hand pump which was seized at the spot.

14. The knife and the handle of the hand pump which were seized at the spot where the crime took place were sent for opinion of Dr.Ashok Jaiswal, who, vide opinion Ex.PW-13/B, opined that injuries No.1 to 4 are possible by the handle of the hand pump and injury No.5 to 12 are possible to be caused by the knife.

15. Listing relatives of the deceased to prove the motive for the crime, which we note has remained unproved and has surfaced very vaguely, the brother and the sister-in-law of the appellant; namely, Joginder PW-3 and Basanti PW-5

were cited as the witnesses of the prosecution. Various police officers associated in the investigation as also Rajbir Tyagi PW-4, the person who was the first one to ring up the police through his P.C.O. booth pertaining to the crime were cited as the witnesses. Needless to state, the doctor who has conducted the post-mortem was also cited as a witness.

16. As was expected, being close relatives of the appellant, Joginder PW-3 and Basanti PW-5 turned hostile. They did not support the case of the prosecution. They disclaimed any knowledge as to how Anita died. However, Rajbir Tyagi PW-4, deposed that on 11.9.2000 when he was at the P.C.O. booth, Basanti PW-5 came to his booth at about 11.20/11.30 AM and told her to inform the police that her Devar (brother-in-law) was mercilessly beating his wife. That he dialled No.100 and handed over the receiver to Basanti who gave the necessary information to the police.

17. Umed Singh PW-1, the grandfather of Anita deposed that the brother of the appellant Banti told him that his grand-daughter had died due to consuming sleeping pills but neighbours told him that the appellant had murdered his grand-daughter. That he identified the dead body of Anita. His statement Ex.PW-1/A wherein his signatures at point 'A' was recorded by the police.

18. Jasbir PW-2, uncle of Anita deposed that the appellant used to harass Anita and who had complained to him of being beaten by the accused. That on 11.9.2000, Banti a brother of the accused came to their house and informed that Anita had consumed sleeping pills but later on he learnt that the accused had murdered Anita.

19. HC Om Prakash PW-6 deposed facts which we have noted briefly hereinabove in para 5 while referring to how HC Om Prakash reached the house; what he saw and his overpowering the appellant and disarming him i.e. taking possession of the knife from his hand. He proved the various seizure memos prepared at the spot, stating that the various articles seized as recorded therein were seized in his presence and that the memos were prepared in his presence.

20. SI Rajender Singh PW-20 and Insp.Ramdal PW-21 deposed regarding reaching the place of the offence pursuant to D.D.No. 13-A being recorded. They deposed that HC Om Prakash had apprehended the accused and handed him over to them along with the knife which he had recovered. The two also deposed of having prepared the various seizure memos and the factum of seizing articles from the scene of the offence. SI Rajender Singh additionally proved having recorded the statement Ex.PW-6/A of Om Prakash. Insp.Ramdal PW-21 proved the endorsement Ex.PW-21/A

beneath the statement Ex.PW-6/A, as also preparing the rough site plan Ex.PW-21/C.

21. Insp.Ramdal identified Exs.P-1 to P-13. Ex.P-1 being the handle of the hand pump and Ex.P-2 being the knife seized at the spot. The remaining exhibits were various blood stained articles and broken pieces of bangles which were seized at the spot.

22. Dr.Ashok Jaiswal PW-13 proved the post-mortem report Ex.PW-13/A and his opinion Ex.PW-13/B.

23. In respect of the offence punishable under Section 27 of the Arms Act, we may note that the relevant notification, Ex.PW-15/A, was proved at the trial through the testimony of Rajiv Jain PW-15, a LDC in the Home General Department.

24. The learned Trial Judge has convicted the appellant for the offence of having murdered his wife as also for the offence punishable under Section 27 of the Arms Act.

25. In returning a finding of guilt against the appellant, the learned Trial Judge has held that the testimony of HC Om Prakash established that the appellant was apprehended at the spot and was the offender. The presence of blood on the pant and the shirt of the appellant, the blood being of human origin and of the same group as that of the deceased was found to be corroborative evidence. Thus, notwithstanding

Joginder PW-3 and Basanti PW-5, turning hostile the appellant has been convicted.

26. At the hearing of the appeal following submissions have been made:-

- (i) That the rough site plan Ex.PW-21/C and the site plan to scale Ex.PW-12/A do not show the spot wherefrom HC Om Prakash peeped inside the house where the crime was committed, and as claimed by him saw the appellant stab Anita.
- (ii) The daily diary entry DD-13A and DD-14A as also the rukka Ex.PW-21/A shows that the crime was committed at around 11:20 – 11:30 AM. The arrest memo Ex.PW-6/L records the time of appellant being arrested at 4:50 PM. Thus, counsel urges that it is apparent that the appellant was not apprehended at the spot.
- (iii) Public witnesses; namely, PW-3 and PW-5 having turned hostile. Learned counsel urges that it would be unsafe to sustain the conviction on the testimony of the police officers.
- (iv) Drawing our attention to the testimony of PW-21 that HC Om Prakash PW-6 was not on patrol duty on 11.9.2000, learned counsel urges that the same completely demolishes the version of HC Om Prakash that being on patrol duty and being informed by somebody that a man

was beating his wife he proceeded to the house where the crime took place. Counsel urges that if this be so, the very foundation of the case of the prosecution collapses.

- (v) Lastly, learned counsel urges that the motive laid in the challan against the appellant was of suspecting the chastity of his wife Anita which has not been proved.

27. We deal with the submissions at seriatim.

28. The site plan is never treated as substantive evidence in law. Of course, the importance of a site plan has not to be belittled. The site plan is the only document available before a Court which is charged of the duty to appreciate and evaluate evidence which helps the Court in recreating the memorabilia as to what happened at the spot.

29. But, an omission by the investigating officer would not be an escape route for an accused, if otherwise the prosecution has proved the case. After all, the task of a Judge is to decide as per law and evidence before the Court.

30. The issue can be looked at, in the instant case, from two angles. The first is the testimony of HC Om Prakash that through a window, on peeping inside, he saw the appellant stab his wife. The second is of apprehending the appellant from within the house.

31. In the absence of the exact spot being shown in the two site plans wherefrom HC Om Prakash peeped inside and saw the appellant stab his wife, we may ignore the testimony of HC Om Prakash that he actually saw the crime being committed. But, both the site plans show the contours of the house where the crime took place. They show the spot inside the house where the appellant was apprehended. The site plan to scale shows the spot where the appellant was apprehended as also the spot where the body of Anita was seized. The spots where blood was lifted have also been shown. The spots where the blood has been lifted show that Anita was chased all over the house by whosoever assassinated her.

32. There is no evidence that any other person was present in the house. The testimony of HC Om Prakash shows that only appellant and Anita were present inside the house. Thus, it is apparent from the testimony of HC Om Prakash that Anita was murdered by the appellant. This takes care of the first submission urged by learned counsel for the appellant.

33. The second submission, predicated on the hiatus between the time of the incident i.e. 11:20 AM and the time of arrest i.e. 4:50 PM shown in the arrest memo of the appellant, is explainable. There is always a difference between the time

when an accused is apprehended and formally arrested. Apprehension and arrest are distinct legal terms.

34. It is apparent that after the rukka was dispatched at 1:30 PM the investigation continued at the spot. Photographer was summoned. Photographs were taken. Various articles were seized and seizure memos drawn up. Thereafter the formal arrest was shown. This explains the hiatus between the time of the incident and the time of the arrest memo. No conclusion can be drawn that the appellant was arrested not as claimed by the prosecution or not within the house where the crime was committed.

35. PW-3 and PW-5 are the brother and the sister-in-law of the accused. Their tendency to support the appellant and not support the prosecution is explainable with reference to the close blood bond they share with the appellant.

36. There is no law which requires any presumption to be drawn up, unless proved to the contrary, that police officers are not truthful persons.

37. The rukka Ex.PW-6/A and Ex.PW-21/A have been prepared so contemporaneously and with sufficient proximity of time vis-à-vis the time of the incident that there is hardly any possibility of the police fabricating the truth. The rukka dispatched from the spot shows the apprehension of the appellant from inside his matrimonial house with his clothes

stained with blood. The appellant has not explained how his clothes got stained with blood.

38. Thus, notwithstanding PW-3 and PW-5 turning hostile, in view of the testimony of HC Om Prakash PW-6; the contents of the rukka and the report of the serologist that the pant and the shirt worn by the appellant were stained with human blood of the same group as that of the deceased are sufficient evidence to draw the only inference which is possible i.e. that the appellant has committed the crime.

39. The fourth plea pertaining to the testimony of the investigating officer that the appellant was not on patrol duty has to be noted and rejected for the simple reason, on being cross-examined, Inspector Ramdal PW-21 stated as under:-

“It is correct that HC Sat Pal No.467/E was on beat duty in Old Seelampur area. It is correct that HC Om Prakash and Const.Pawan Kumar were on beat duty in Ajit Nagar.”

40. The witness has not said that HC Om Prakash was not on beat duty. What he has stated is that the area assigned to HC Om Prakash was Ajit Nagar.

41. HC Om Prakash PW-6 has also said the same. He deposed that he was on duty at beat in Ajit Nagar and at 11:20 AM was between Gali No.1 and 3 near the railway line when somebody informed him of a person beating his wife

mercilessly in House No.4767A, Gali No.1, Seelampur and that is the reason why he went to the house.

42. We note that while cross-examining HC Om Prakash no questions had been put to him as to why he went to Seelampur leaving behind Ajit Nagar. No questions have been put to him as regards the distance between the two colonies. But, it is apparent that the two colonies are adjoining colonies and the place where HC Om Prakash was given information and the house in question are quite near to each other evidenced by the fact that HC Om Prakash has deposed that he received the information at 11:20 AM and within five minutes i.e. at 11:25 AM reached the house.

43. Thus, it cannot be said that in view of the testimony of PW-21 it stands established that HC Om Prakash was not on beat duty.

44. At this stage we may note another submission which has been urged by learned counsel for the appellant while we were dictating our order. Counsel points out that the arrest memo Ex.PW-6/D has an overwriting. The date '06' has been changed to '09'.

45. The said date pertains to the month.

46. The crime took place on 11.9.2000. It is apparent that while drawing up the arrest memo, inadvertently the date

11.9.2000 got incorrectly recorded as 11.6.2000 and the author of the document immediately corrected the same.

47. At this stage, learned counsel points out that the same thing has happened with respect to the rough site plan prepared at the site. There also the month June i.e. '6' has been corrected by overwriting '9'.

48. Pertaining to the arrest memo Ex.PW-6/L, suffice would it be to state that against column No.6 pertaining to the date of arrest, the date has been shown as 11.9.2000 without any over writing or correction. Beneath the signatures of the arrestee i.e. the appellant, the date recorded is 11.09.2000. The over writing is when Inspector Ramdal has attested the same. The date recorded is 11.6.2000; immediately corrected to 11.9.2000.

49. We have used the expression 'immediately' for the reason, having perused the original arrest memo we find that with the same pen, evidenced by the ink and the nib of the pen, the date '6' is overwritten by the date '9'. The rough site plan Ex.PW-21/C, at the caption, clearly records the date 11.9.2000. After the site plan has been prepared and marginal notes penned down, the date 11.06.2000 has been recorded without any correction thereon.

50. That motive has not been proved is neither here nor there for the reason so strong is the weight of the evidence

against the appellant that it hardly matters whether he killed his wife as he suspected her chastity or for the reason he did not like her or she was sick as deposed to by PW-2.

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

52. The appellant is on bail. The bail bond and surety bonds furnished by the appellant are cancelled. The appellant is directed to surrender and suffer the remaining sentence, which we note is imprisonment for life.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

September 16, 2009
Dharmender