

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

% Date of Decision: 12th October, 2009

+ **CRL.A. 528/2003**

NARENDER SINGH Appellant
Through: Mr. Sumeet Verma, Advocate

versus

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

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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. With reference to the testimony of Manish Kumar PW-1, the son of the appellant and the testimony of Anil Kumar PW-3, the appellant has been convicted for the offence of having murdered his wife. The additional evidence held incriminating against the appellant is the recovery of the rapi (chisel) Ex.P-1 at the instance of the appellant, which was ostensibly used as the weapon of offence.

2. With reference to the 4 injuries caused on the deceased as recorded in the post-mortem report Ex.PW-12/A by Dr.Sarvesh Tandon PW-12 who conducted the post-mortem of the deceased on 1.1.2001, learned counsel for the appellant does not dispute that the said injuries make out a case to hold that the act resulting in the injuries constitutes the offence of murder.

3. It is urged by learned counsel for the appellant that the son of the appellant; namely Manish Kumar PW-1 had a motive to get rid of the appellant who was addicted to smack and had made a nuisance of himself to the family. Thus, learned counsel urges that the testimony of PW-1 should be discarded. Since Anil Kumar PW-3 is the nephew of the appellant, learned counsel urges that even Anil Kumar had a motive to falsely implicate the appellant due to Anil Kumar being of the same age as the son of the appellant and hence on friendly terms with him. Learned counsel urges that as deposed to by Manish Kumar, the appellant had an injury on his head on the day of the incident and said injury having not been explained by the prosecution, the defence of the appellant that he told everybody that some stranger had inflicted the injuries on his wife and an injury on him had to be accepted.

4. The record of investigation duly proved at the trial by Insp.S.K.Meena PW-13 establishes that on 31.12.2000 the appellant was taken to the police station by his son Manish Kumar PW-1 who told the police that when he returned home at around 5:15 PM on 31.12.2000 and opened the outer door of the house he saw his father washing clothes in a bhigona and saw blood coming out from the room. On seeing inside he saw the dead body of his mother. When he questioned his father as to what was all this, his father made an extra judicial confession to him that since his mother did not give money to him to buy smack, he has killed his mother. We note that the FIR Ex.PW-7/A recorded by ASI Mohender Singh PW-7 records the aforesaid facts.

5. At the trial Manish Kumar PW-1 has deposed aforenoted facts and has withstood the test of cross examination. During cross examination he has admitted that he saw blood oozing from the head of his father but did not notice the number of injuries. We may note that Anil Kumar PW-3 has deposed that on 31.12.2000 at 6:00 PM he saw the appellant with his son Manish and he saw that the appellant had an injury on his head. He enquired as to what had happened. The appellant told him that he had murdered his wife. We further note that Anil Kumar have withstood the test of cross examination.

6. The investigating officer, Insp.S.K.Meena PW-13 had proved the seizure of the rapi Ex.P-1 as recorded in the seizure memo Ex.PW-1/B as also the seizure of the wet shirt and pant from the house as recorded in the memo Ex.PW-1/C, in respect of which pant and shirt, we note that the forensic report Ex.PW-13/D opines that no blood could be detected thereon. The reason is obvious, as deposed to by Manish, the appellant was in the process of washing the pant and the shirt when Manish came home. Obviously, the fresh blood thereon got washed away in the running water.

7. We agree with the view taken by the learned Trial Judge that the conduct of the appellant who was admittedly in the house when his wife was murdered is suggestive of the guilt of the appellant. Had there been an outsider involved, the natural conduct of the appellant, as a husband, would be to seek assistance of outsiders by shouting for help and not to quietly sit down and start washing his clothes which were stained with blood.

8. The extra judicial confession made by the appellant, firstly to his son and secondly to his nephew cannot be wished away so lightly.

9. It is true that the prosecution has acted negligently in not bringing on record the nature of the injury sustained by the appellant. But, therefrom, we cannot give any benefit to

the appellant. Our reason for so holding is the fact that the appellant, who was apprehended on 31.12.2000 was produced before the Magistrate the very next day and even the Magistrate did not direct any medical examination to be conducted. Had there been a serious injury on the person of the appellant and that too on the forehead, the same could not have gone unnoticed and the learned Magistrate would have directed a medical examination of the appellant. This has not been done and hence our reason for holding that, if at all, the injury was a simple injury. There is another possibility. The photographs Ex.PW-13/6 to Ex.PW-13/10 show extensive blood having flown out from the body of the deceased. The floor of the room is smeared in blood spreading in an area of at least 8 square feet. It is possible that the blood of the deceased spluttered out and fell on the forehead of the appellant and it was this blood which was noticed by his son.

10. The presence of the appellant in his house when his wife was murdered has not been disputed by learned counsel for the appellant. The conduct of the appellant in not seeking any rescue for his wife is incriminating enough wherefrom the guilt of the appellant can be safely inferred. Add on thereto the two extra judicial confessions made by the appellant and proved by PW-1 and PW-3, compels us to concur with the view taken by the learned Trial Judge.

11. We find no merit in the appeal which is dismissed.
12. Copy of this order be sent to the Superintendent Central Jail Tihar for being made available to the appellant who is in jail, serving out the sentence of imprisonment for life.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

October 12, 2009
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