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

% *Date of Order: April 28, 2009*

+ **CRL.A. 115/2004**

RAJESH SHARMA Appellant
Through: Mr. V.K.Raina, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (Oral)

1. In terms of the order dated 16.2.2009, since compilation is ready; appeal being listed for disposal at the end of 'After Notice Miscellaneous Matters', we have heard learned counsel for the parties.

2. Thus, all pending applications are disposed of as infructuous.

3. Vide impugned judgment and order dated 21.1.2004, the appellant has been convicted for the offence of having murdered his wife.

4. Vide order dated 22.1.2004, the appellant has been sentenced to undergo imprisonment for life and pay a fine of Rs.5,000/-; in failure of deposit of fine, to undergo RI for 2 years.

5. The reasoning of the learned Trial Judge to convict the appellant is the non-satisfactory explanation given by the appellant to the material circumstances appearing against him when he was examined under Section 313 Cr.P.C. The learned Trial Judge has also opined that the testimony of PW-12, Om Prakash Sharma, the father of the appellant was full of contradictions vis-à-vis attempt made to show that the appellant who was in the house, having left for some time, and before he returned to the house some unknown person having murdered the wife of the appellant. Lastly, the learned Trial Judge has also relied upon the disclosure statement made by the appellant pertaining to his knowledge where the weapon of offence i.e. the kirpan used for the crime was kept; which kirpan was recovered from a place pointed out by the appellant. Reliance

has also been placed on the report of the serologist who opined that the kirpan was stained with human blood of group 'A' i.e. the same blood group as that of the wife of the appellant. Further incriminating evidence against the appellant is the seizure of the vest worn by the appellant at the time of his arrest which also had human blood of group 'A'.

6. It is urged by learned counsel for the appellant that the testimony of Om Prakash Sharma PW-12 categorically shows that the appellant was not in the house when his wife was murdered and under the circumstances, there being no witness who has deposed to the contrary, the appellant would be entitled to an acquittal.

7. The process of law commenced when information was received at PS Dwarka at 8:35 PM on 20.11.2002, noted vide DD No.24A, Ex.PW-6/C, to the effect that a woman has been murdered in House No.H-76, Raj Nagar, Part II, Palam Colony.

8. Inspector Umesh Singh PW-13, then posted as SHO PS Dwarka was on patrol duty and a wireless message was flashed to him relaying the information received at the police station and as recorded vide DD No.24A. He reached the place

where the crime was committed. At the spot he met one Hazari Lal Gaur, an uncle of the deceased, who told him that he had reached the matrimonial house of the deceased on receipt of a telephonic information that Purnima, his niece, had been murdered by the appellant, who was her husband. He disclosed that in the past, the appellant used to physically assault the deceased. His statement Ex.PW-1/A was recorded by Inspector Umesh Singh. An endorsement Ex.PW-13/A was made thereon by Inspector Umesh Singh and the statement and the endorsement were dispatched to the police station at around 11:15 PM for FIR to be registered. Const.Kamaljeet who had accompanied Inspector Umesh Singh to the place of the occurrence took the endorsement and the statement to the police station, where FIR Ex.PW-6/A was recorded.

9. Inspector Umesh Singh prepared the site plan Ex.PW-13/B. He summoned a photographer who took photographs of the place of occurrence. Blood sample and earth control were lifted from the spot vide memo Ex.PW-1/B. The body of the deceased named Purnima was sent to DDU Hospital where Dr.Manoj Nagpal conducted the post-mortem and prepared a

post-mortem report Ex.PW-14/A noting thereon the following undernoted 11 injuries on the person of Purnima:-

- “1. Stab wound measuring 0.5 cm from midline on rt. side and 6 cm from rt. nipple – 0.5 x 0.3 cm.
2. A sharp wound 0.5 cm from middle on lt. side and 6 cm from lt. nipple – 0.5 x 0.3 cms.
3. An incised wound 6 cms from injury No.2 and 5.5. cm from lt. nipple – 2.5 x 0.5 cms.
4. A wound 5 cms above lt. nipple and 5 cms from anterior oxillery fold on left. side 2.5 x .5 cm.
5. A wound 5 cm above injury No.4 and 2 cms. above left anterior Oxillery fold – 1.5 x 0.7 cms.
6. One wound 4 cms below lt. shoulder and 6 cm lateral to injury No.5. – 5.5. x 2 cm.
7. Wound 3 cms above left elbow posterior aspect and 11 cms below oxilla measuring 5 x 4 cms.
8. One wound 7 cms below left anterior superior illioc spine and 20 cms lateral to public symphasis – 2.5 x 1 cm.
9. One wound on lateral aspect of left knee 7 cms lateral to left knee and 40 cms above left angle – 9 x 1.5 cms.
10. One wound 13 cm lateral to medially placed on the left side back and 9 cms from inferior angle of scapula 3 x 1.5 cms.
11. Lenier incise wound 7 cms lateral to right side and 12 cms above right clavicale lateral aspect 13 x 1 cm over occipital region.”

10. It was opined that the cause of death was haemorrhagic shock resulting as the cumulative effect of all the injuries. The clothes of the deceased as also blood sample on a gauze were handed over to the police as recorded in the seizure memo Ex.PW-11/A.

11. The appellant was found absconding and was arrested the next day i.e. on 21.11.2002 at 7:00 PM as recorded in the arrest memo Ex.PW-13/G.

12. The appellant was interrogated by Inspector Umesh Singh and his disclosure statement Ex.PW-10/B was recorded, in which, inter alia, appellant stated that he had hidden the kirpan used by him to assault his wife at a place behind an almirah in his house and that he could lead the police to the place and point out the same.

13. Pursuant to the disclosure statement the investigating officer took the appellant to his house and in the house the appellant pointed out the place, as recorded in the pointing out cum recovery memo Ex.PW-10/A, where he claimed to have hidden the kirpan. The place was behind an almirah in the house. Indeed, a kirpan Ex.P-1, was recovered from the said

spot which was seized vide pointing out cum seizure memo Ex.PW-10/A. After the kirpan was seized, Inspector Umesh Singh drew the sketch Ex.PW-10/C thereof.

14. The investigating officer noted blood stains on the vest Ex.P-2 worn by the appellant. The same was seized vide seizure memo Ex.PW-10/E.

15. The blood stained clothes of the deceased, the blood sample on a piece of gauze of the deceased, the kirpan Ex.P-1, the vest of the appellant Ex.P-2, the blood lifted from the place of occurrence and the control earth were sent to the FSL Delhi for serological test and as per report Ex.PX it was opined that the blood group on the gauze cloth piece was 'A'. The clothes of the deceased gave no reaction. The vest Ex.P-2 and the kirpan Ex.P-1 reacted showing presence of human blood of group 'A'.

16. The kirpan was sent to Dr.Manoj Nagpal for opinion, whether the stab injuries noted by him could possibly be caused by the kirpan in question. He gave a report Ex.PW-14/B to the effect that the stab injuries could possibly be caused by the kirpan in question.

17. As noted hereinabove, the learned Trial Judge has

relied upon the disclosure statement of the appellant and the recovery of the weapon of offence pursuant thereto, as also the report of the serologist which shows that the blood group of the deceased was 'A' and that human blood of same group was detected on the kirpan as also the vest worn by the appellant when he was arrested.

18. Indeed, at the hearing of the appeal, learned counsel for the appellant has not challenged the disclosure statement made by the appellant and the recovery of the kirpan pursuant thereto, as also the forensic report. As noted hereinabove, submission made at hearing of the appeal today is that in view of the discrepant statements made by the father of the appellant, he i.e. the appellant is entitled to be acquitted.

19. We have noted hereinabove that the learned Trial Judge has relied upon the non-satisfactory explanation given by the appellant when he was examined under Section 313 Cr.P.C.

20. We note the explanation given by the appellant vis-à-vis the reason for his absence in the house when the offence took place. He stated as under:-

“I had come from the office. I slept for a while. Then there was a quarrel in the neighbourhood. I woke up

due to commotion. I along with all family members went to see the quarrel. When I came inside I washed my face and then went to take taxi as we wanted to go to attend the marriage of my cousin. When I came back I found the crowd near my house. I got nervous. I went inside and found that my wife was lying on the floor and blood was oozing out from her hand. I felt her pulse and found that it was working. In order to save her I went to bring taxi and I asked others to take care of my wife. I did not find any taxi at the taxi stand nor I could find any three wheeler. Then I took a rickshaw and arrived at my house. When I was going inside the house from the crossing the police was standing there and they apprehended me in this case. I was taken to the police station. I was kept here for full night. I was not allowed to contact my father. Next day I was made to sign few blank papers. I was taken probably to the office of the SHO where the kirpan was planted upon me. I was asked to hold the kirpan."

21. It is apparent that the appellant admitted having returned from his office to his house in the evening. The appellant attempted to prove his being away from the house with reference to stating that as he had to attend a marriage of his cousin, he had to take a taxi and that he left to fetch a taxi and when he returned to the house he got nervous and on entering the house he saw his wife lying on the floor with blood oozing from her hand. He stated that he felt her pulse which was working and in order to save her he went out to bring a taxi. He stated that when he could not find a taxi he took a rickshaw

and arrived at his house where police apprehended him.

22. On somewhat similar lines has his father PW-12, so deposed. He deposed that he was living with his son who was married to the deceased Purnima in house No.H-74, Raj Nagar-II, Palam Colony and that on 20.11.2002 his son came home at 4:30 PM. As a letter had been received that a marriage had to take place in the family, he enquired from his son as to what arrangements had been made to attend the marriage. The appellant told him that he i.e. the appellant and the deceased would be attending the marriage which was to take place on 21.11.2002 in village Hatoli, District Mujaffar Nagar. He deposed that the appellant went to fetch a taxi and when he did so, a quarrel was going on since 7:00 PM in the adjoining house i.e. No.H-73 and that the police were already present. His grand children came home and demanded food. His daughter-in-law i.e. the deceased was watching the quarrel and came back to prepare meals. She fed a chapati each to the children who were watching television. She went back to the kitchen to bring another chapati but did not return. The children went towards the kitchen and saw that somebody had murdered their mother.

He deposed that his son i.e. the appellant had also watched the quarrel nearby. So deposing, when the crux of the testimony had to surface, as to where exactly the appellant was when his daughter-in-law was murdered, Om Prakash Sharma, started making inchoate and inconsistent statements. His further testimony is being reproduced by us in verbatim. It reads:-

“My son did not go for taking taxi immediately after coming from the office. He was present when quarrel was going on in the nearby house at H-73. He had also taken meals. My son Rajesh was also watching the quarrel along with me and my daughter in law and he had taken meals. Again said that my son after coming from the office had taken tea etc. He thereafter went for taking taxi but did not bring taxi. Accused remained in the house after taking tea in my room upto 6-6.30 PM. At that time quarrel was going on the neighbouring house and sound of quarrel were coming. The outer door of H. No.H73 and H74 are adjoining each other. When they gathered outside H.No. H.73 the crowd was also outside the door. I, my son and my daughter in law were watching quarrel from the door itself, one Sushil Kumar was also tenant in H-74 but he was not present on that day and his room was lying locked. When during quarrel grand children asked for food, Purnima came back inside the house with the children. I also came back into the room. I came back into my room at 7.45 or 7.50 PM. Rajesh told me that he was going. My son did not come back. He was to take taxi from neighbourhood. I did not go to check. When my grandson went to take second chapati, he found his mother in pool of blood.

At 7.50 PM when I came inside Purnima was already inside to cook food for grand children. Both my grand

sons were inside. I closed the outer door of the house and came inside. I did not hear the sound of knocking of outer door after that. My grand children were of very tender age that they could have cause any harm to Purnima. My eldest grand child was 5 and three quarter year old. I did not kill my daughter in law. No outside person came inside the house. Again said there were two doors in our house, one in the back side and other in the front side. The back door also used to remain open and same used to be closed down after cooking meals. After seeking my daughter in law lying murdered in the house I did not go outside to inform the police who had come for tackling the quarrel at H.73 to inform about the murder. Mohalla people might have given inf. to police. I did not go to Mohalla people to tell and to call them to see that my daughter in law was lying murdered. I did not go to police or to any neighbourer or to find out my son and inform him that his wife was lying dead. Accd. had come home back at about 8.15 – 8.20 PM when Purnima was lying dead and he saw that Purnima was lying dead. I told him that Purnima was lying dead in pool of blood. Accused left the house after seeing his wife lying murdered. He told that he was going to take taxi. Since he had earlier gone to bring taxi, no taxi had come even earlier. It is wrong to say that accd. after murdering his wife ran away from house after 8.15 – 8.20 PM after murdering his wife.”

23. It is apparent that Om Prakash has admitted that his son had returned home and after taking tea had remained in the house till about 6:30 PM. He has stated that his son left the house to fetch a taxi from the neighbourhood and that his daughter-in-law was murdered at around 7:50 PM. He deposed that when his son came back at around 8:20 PM, he saw his wife

lying dead and left the house to bring a taxi.

24. It would be of relevance to note that PW-12 has categorically stated that no outside person came inside their house.

25. The site plan Ex.PW-9/A shows that house No.H-74 which consists of 5 living rooms, 4 of which are on the North-Western side of the plot. One room is on the opposite side. In between is a passage leading to an open space i.e. a 'L' shape open space. The kitchen and the bathroom are towards the North Eastern boundary of the plot. The place where the body of the deceased was seized by the police is the spot marked 'A' which is just opposite the kitchen on the open space.

26. For an outsider to stab the deceased outside the kitchen, would require an entry from the gali (public street) abutting the kitchen. We note that the father of the appellant has categorically stated that no outsider had entered the house.

27. The nature of the injuries on the deceased rule out suicide. Obviously, somebody present in the house has to be the assassin.

28. We concur with the reasoning of the learned Trial

Judge that the inchoate statements made by the father of the appellant and the explanation by the appellant when he was examined under Section 313 Cr.P.C. do not inspire any confidence, exculpatory of the appellant.

29. The father of the appellant and even the appellant admit that in the evening, the appellant was in the house. Both of them justify the absence of the appellant from the house for an hour, on the plea that a marriage in the family had to take place, which required a departure from the house in a taxi, and for said purpose, the appellant left the house to fetch a taxi.

30. If indeed the appellant had left the house to fetch a taxi, he ought to have returned to the house with a taxi. He and his father claim that the appellant came back after one hour. It is sufficient time for any person to find a taxi. Admittedly, the appellant never brought any taxi to the house. This belies the version of the appellant and his father that he had left the house to fetch a taxi, as the same was required to attend a marriage in the family.

31. The appellant justifies his departure from the house after, according to him, he saw his wife in an injured condition

so that he could take her to the hospital.

32. If this was so, the appellant ought to have returned, if not with a taxi, at least a TSR or any other vehicle in which he could have taken his wife to the hospital. He did not do so.

33. He never returned to the house. He was absconding. He was arrested, as recorded in the arrest memo Ex.PW-13/G on 21.11.2002 at 7:00 PM from the railway road at Raj Nagar II.

34. We concur with the view taken by the learned Trial Judge that the evidence on record conclusively establishes the presence of the appellant in his house when his wife was murdered and that the appellant absconding and not acting to rescue his wife by taking her to the hospital reinforces his guilt i.e. his conduct is indicative of his guilty mind.

35. Linking therewith the post-mortem report, the opinion of the doctor who conducted the post-mortem, the disclosure statement of the appellant, the recovery of the kirpan pursuant to his disclosure statement and the report of the serologist; the chain of circumstances become complete wherefrom the only inference possible is the guilt of the appellant; ruling out his innocence.

36. We find no merit in the appeal in so far the order and judgment of the conviction is concerned.

37. Pertaining to the sentence imposed, we concur with the sentence of imprisonment of life as also the imposition of fine in sum of Rs.5,000/-, but disagree with the alternative sentence, in default of payment of fine, which as noted hereinabove, is to undergo rigorous imprisonment for 2 years.

38. While dismissing the appeal and maintaining the conviction, we modify the order of sentence, in that, direct that in default of payment of fine in sum of Rs.5,000/- the appellant shall undergo simple imprisonment for a period of 3 months.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

APRIL 28, 2009
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