

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

% *Judgment Delivered on: May 21, 2009*

+ **CRL.A.No.494/2004**

SABAL SINGH Appellant
Through: Mr. Baljeet Singh, Advocate

versus

STATE Respondent
Through: Mr. Pawan Sharma, 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. On 3.9.2001 at around 7.43 AM Constable Balwinder Jeet PW-17, filled up form, Ex.PW-17/A, when she was posted at the police control room. She recorded information that a lady was lying dead in House No.4649/B/20, New Modern Shahdara. The information was transmitted to the police station concerned where it was noted vide D.D.No.2-A.

2. SI Man Singh PW-20, accompanied by Ct. Vinod Veer PW-10, left for the place where the dead body was found. At the

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first floor of the house a dead body of a female was found by them in a room. Broken bangles and some human hair were also seen. There were scratch marks on the neck of the deceased.

3. On the copy of the D.D. entry, endorsement, Ex.PW-20/A, was made by SI Man Singh, recording aforementioned facts. The endorsement was sent through Ct.Vinod for FIR to be registered. At the police station, ASI Dineshwar Prasad PW-2, recorded the FIR Ex.PW-2/A which was sent to the Magistrate concerned through constable Dinesh PW-16.

4. Crime team and a photographer were summoned by SI Man Singh.

5. Since it was obviously a case of murder, after FIR was registered, investigation was taken over by Inspector Jagjit Singh PW-18. He immediately proceeded to the spot and joined SI Man Singh in further investigation.

6. Inspector Jagjit Singh PW-18 prepared the rough site plan Ex. PW-18/A. He lifted the broken bangles found inside the room where the dead body was found as recorded in the memo Ex. PW-5/A. Human hair were lifted within the room

vide Ex. PW-5/C. A quilt Ex.P-1 was seized vide a memo Ex. PW-5/B.

7. HC Dhiraj Singh PW-1, from the crime team could not lift chance finger prints from the room. HC Ram Singh PW-9, a photographer, attached with the crime team, took photographs Ex.PW-9/A to Ex.PW-9/F; negatives whereof are Ex.PW-9/A1 to Ex.PW-9/F1.

8. No eye witness were present. None came forward.

9. The appellant, who is admittedly the husband of the lady whose dead body was found by the police in the morning of 3.9.2001 in the room of house no. 1/4649/20B, New Shahdara, was not found present in the house.

10. The dead body was sent to the mortuary of GTB Hospital where Dr.Gaurav Aggarwal PW-11, conducted the post-mortem on 05.9.2001. He prepared the post-mortem report Ex.PW-11/A. In the post-mortem report nine external injuries were noted as under:

1. Five oval shaped to irregular shaped bruises, diffusely appreciable present in the area of 3.0 x 2.0 cms on lower aspect of right side of neck. The upper one is placed 6.5 cms below Rt. ear and the lower most 4.0 cms above Rt. Clavicle in middle. The distance between these bruises is between 0.2 cms to 0.4 cms. The bruises are reddish black

in colour.

2. Bruise of size about 1.0 cms x 1.0 cms, diffuse margins present just below rt. half of lower jaw on front of neck, 5.0c.m. to the right of midline. The bruise is reddish black and extravasations of blood is seen beneath the skin on dissection.
3. Reddish black bruise about 1.0 cms x 1.0 cms diffuse margins, present 1.0 cms to the Rt. of injury no.2.
4. Bruise of size 2.0 cms x 0.4 cms on front of neck, 3.5 cms below midline chin and 8.5 cms above sterna match in midline with extravasations of blood on dissection beneath the skin.
5. Scratch abrasion 4.5 x 0.1 cms obliquely placed in front of neck 1.0 cms below injury no.4. The lower end of the wound is 5.5 cms above sternal notch.
6. Abrasion 0.2 cms x 0.2 cms placed on left side neck, 5 cms below left angle of mandible, 1.0 cms to left of injury no.5.
7. Bruised abrasion of size 0.3 cms x 0.1 cms placed 1.0 cms to left injury no5.
8. Crescantic abrasion 1.0 cms x 0.2 cms places 1.0 cms to the left of injury no.7 and 3.0 cms below left angle of mandible.
9. Bruise 1.0 cms x 0.5 cms diffuse margins reddish black in colour 0.5 cms above and left of injury no.8 and 2.5 cms below left angel of mandible."

11. He wrote on the post-mortem report, that internal examination of the neck structure revealed massive bruising of the soft tissues of the neck. Haemorrhage was seen in the

soft tissues. The right Column of hyoid was fractured. He opined that the cause of death was asphyxia due to ante-mortem throttling.

12. Proceedings with the investigation, Inspector Jagjit Singh PW-18, recorded the statements of residents of the building.

13. We note that there were large number of people living in the various rooms of the building where the crime was committed.

14. The Investigating officer recorded the statements of Resham Pal PW-5, Rukmani Devi PW-6, Jayant PW-7 and Mool Chand PW-8; all residents of the building.

15. The investigating officer also recorded the statements of Mahender Singh PW-3 and Shaitan Singh PW-4, the brothers of the deceased.

16. Since the brothers of the deceased had told the investigating officer that the appellant used to quarrel with their sister and was having illicit relations with the widowed wife of his elder brother, and PW-5 to PW-8 had stated to the investigating officer that the appellant was seen with his wife and two children in the room taken on rent by him in the

building, and that the appellant was present in his house in the night preceding the morning when the dead body of the deceased was found, obviously, the appellant became a suspect, more so, since he was found absconding.

17. As noted hereinabove, the appellant was not seen by the police in his house when the police reached the house soon after DD No.2A was recorded at the police station in the early hours of the morning of 3.9.2001.

18. The appellant remained absconding, till he surrendered in the court of a learned Metropolitan Magistrate on 18.9.2001. After filing the necessary application, the investigation officer obtained orders for police custody of the appellant. His interrogation, resulted in the appellant making a disclosure statement. Since nothing incriminating has been recovered pursuant to the disclosure statement made by the appellant, it would be of no use to note the contents thereof, for the reason, the disclosure statement is nothing but a confessional statement; being made to the police is wholly inadmissible in evidence.

19. After a few days of arrest of the appellant the investigating officer took SI Mukesh Kumar PW-14, a

draftsman, to the place where the offence took place and with the help of the investigating officer SI Mukesh Kumar prepared the site plan to scale Ex. PW-14/A.

20. Needless to state, the case of the prosecution was based on :-

a)- Motive i.e. the illicit relationship of the appellant with his sister-in-law and the same being a bone of contention between the appellant and his wife. The witnesses to prove the same were the brother of the deceased and Rukmani Devi the landlady of the house.

b) The presence of the appellant in his house in the night preceding the morning when the dead body of the wife of the appellant was detected i.e the statements of PW-5 to PW-8.

c) Lastly, the conduct of the appellant of having absconded; to be proved through the testimony of PW5 to PW8 and the testimony of the investigating officer.

21. Thus, we need not note the deposition of the formal witnesses who were examined at the trial.

22. Mahender Singh PW-3, the brother of the deceased deposed that they were four brothers and two sisters;

deceased Shashi was his sister. She was married in May 1995 to the appellant and lived peacefully with him for about 8-10 years. The appellant developed relations with his bhabhi (sister in law) named Guddi and this became the bone of contention between his sister and the appellant, due to which the appellant started beating his sister. In fact, one day he compelled his sister to hold a live wire. That in the month of Sawan, an attempt was made by the appellant to strangle his sister who was saved with the intervention of a cousin.

23. Shaitan Singh PW-4, deposed on the same lines as deposed by PW-3.

24. Resham Pal PW-5, deposed that he was a fruit vender and was residing in the building in which the crime was committed. That on the night intervening 2nd and 3rd September 2001, the appellant and a few other residents were sleeping on the roof. Wife of the appellant was sleeping in her room. It started raining at about 2:45/3:00 a.m.. This necessitated everybody to sleep in their respective rooms. He got up at 6:45/7:00 a.m. and went to purchase vegetables/fruits. On return he learnt that wife of appellant had been murdered. He disclosed true facts to the police.

Appellants used to meet his bhabhi Guddi. That the broken bangles seized vide seizure memo Ex. PW-5/A were recovered in his presence. The quilt and hair recovered vide memo Ex. PW-5/B and Ex. PW-5/C were recovered in his presence. That the bangles Ex.P-3 were the ones which were recovered as noted in the seizure memo Ex. PW-5/A.

25. On being cross-examined, Resham Pal stated that he had been residing in the house for more than one year and that the appellant was residing therein much prior. He stated that he had not seen the appellant and his wife quarrel and that it was his normal routine to go and purchase vegetables and fruits between 6:30 AM to 7:00 AM. He disclosed during cross-examination that on the night of the incident, his brother-in-law, the landlady and her children and the appellant were sleeping on the roof and that he had not heard any quarrel between the appellant and his wife. He stated during cross-examination that he did not notice whether the door of the room where the appellant was residing was open and that when he was sleeping he did not hear any hue and cry. He stated that when he returned between 7:45/8:15 AM. The police had already reached the place. He admitted that in his statement recorded by the police it has not been mentioned by

him that the appellant used to meet Guddi, sister-in-law of the appellant.

26. Rukmani Devi PW-6, deposed that she was the landlady of the house. That the appellant, his wife and children were residing as tenants under her. Shashi was the wife of the appellant. On 3rd September (year she did not remember) another tenant Jayant came to her and told her that the children of Shashi were crying. Accompanying by Jayant she went and peeped inside and found Shashi lying. She checked and found that Shashi was dead. Appellant was not present. She sent a boy to inform the police. Appellant used to return during the night and on some occasion would not return at all. That the appellant was a Halwai in Ghaziabad and had a sister-in-law named Guddi and that Shashi, wife of the appellant, used to tell her that the appellant used to go to Guddi. That on Rakshbandhan day the appellant quarrelled with his wife and she had intervened to pacify the matter. That the appellant used to quarrel with his wife occasionally.

27. Jayant PW-7, deposed that he used to reside in the house of PW-6 along with his brother-in-law Resham Pal. On 02.9.2001 Resham Pal, the appellant, the owner of the house

and he with his brother-in-law was sleeping on the roof. The appellant had come around 10:00 PM. Appellant's wife was sleeping inside the room. Due to rain which came about 2:00/2:30 AM in the night, all went inside their respective rooms. He awoke at 7.00 AM and found that children of the appellant were crying. He peeped inside the room and called the landlady. The wife of the appellant was lying dead. The appellant had illicit relations with his bhahbi Guddi, due to which his relations with his wife were strained.

28. Mool Chand PW-8, deposed that on the third of the month, at about 8:00 AM while leaving for work he heard that a lady has been murdered and that he did not know anything about the crime. On being cross-examined by the learned public prosecutor, Mool Chand denied the statement attributable to him in his statement recorded by the investigating officer under section 161 Cr. P.C. wherein it was recorded that he had seen the appellant leaving the house at 6.30 AM and that the appellant was in a nervous condition.

29. Needless to the state PW-8 has turned hostile.

30. When the incriminating circumstances were put to the appellant, he admitted that his wife and children as well as he

were tenants in a room at House No.4649/20, Gali No.12, New Modern Shahdara and that Guddi was his bhabhi. He also admitted being in his house in the intervening night of 2nd and 3rd September 2001, but stated that he left the house in the morning at 4.00 AM to reach his shop at Ghaziabad and that thereafter he went to his native place to see his ailing mother. He stated that he used to help his bhabhi, who was a widow, on humanitarian grounds and that he surrendered in court when he was being harassed by the police. He suggested that Remesh Pal (PW-5) and Jayant (PW-7) had an evil eye on his wife.

31. It is also relevant to note that that he admitted that due to rain, at about 2:45/3:00 AM he went to sleep in his room.

32. The learned trial judge has held that the testimony of PW-3, PW-4 and PW-6 established that the appellant had strained relationship with his wife. This was the motive which led the appellant to commit the crime.

33. Discussing the testimony of PW-5 to PW-7; noting that PW-8 has turned hostile, learned the Trial Judge, in paras 19 to 22 of the decision has discussed the evidence pertaining to

the appellant being last seen in the company of his wife inside the room as under:-

“19. The witness of last seeing the accused leaving the house in the morning after this incident is Mool Chand, PW-8. Although, Mool Chand, PW-8, has not supported the prosecution case but there is evidence of last seen before incident of Resham Pal, PW-5, regarding accused going to his room at 3 AM on the night intervening 2/3.9.2001. This witness PW-5 has deposed regarding meeting the accused with his Bhabhi Guddi. Even the accused admits his presence in his house on the intervening night of 2/3.9.2001. The stand taken by the accused in his statement under Section 313 Cr.P.C. is that in the morning of 3.9.01 he had left for his work at Halwai shop at Ghaziabad at 4 AM and thereafter he went to his native village to see his ailing mother. It is not the case of the accused that he used to daily leave for his Halwai shop at 4 AM, therefore, it appears to be abnormal that he had left his house on the day of the incident at old hours i.e. at 4 AM without eating anything and without informing anybody. In normal course, accused ought to have informed his wife before leaving. Thus, I hold that the aforesaid stand taken by the accused in his statement under section 313 Cr.P.C. is false on the face of it and cannot be accepted.

20. In judgment reported in AIR 2003 SC 258 (Anthony D'Souza Vs. State of Karnataka), it has been held as under:-

21. “By now it is well established principle of law that in a case of circumstantial evidence where an accused offers false answer in his examination under S. 313 against the established facts that can be counted as providing a missing link for completing the chain.”

22. From the evidence of Jyanti @ Sanjay, PW-7, it is established that the accused was with him on the terrace of their house and at about 2.30 AM this witness and the accused had gone to their respective

rooms due to rains and at about 7 AM children of the accused were found crying and wife of the accused was lying dead in the room. Accused was not present there. The irresistible conclusion arrived at on the basis of evidence of Jyanti @ Sanjay, PW-7, is that accused had absconded after this incident. This conduct of the accused is an incriminating evidence against him. The evidence of witnesses PW-5 and PW-7 discussed above sufficiently proves the circumstance of actual last seen of accused at his room at about 2.30 or 3 AM (night) i.e. at the time of this incident."

34. With reference to the post-mortem report of the deceased, which shows that the death was due to strangulation, the learned trial judge has concluded that the chain of the circumstances i.e. the motive, last seen evidence and the appellant's absconding after the incident, formed a complete chain of circumstances, unerringly pointing towards the guilt of the appellant.

35. Learned counsel for the appellant urged that in view of the testimony of the defence witnesses namely Guddi DW-1, and Shyam Lal DW-2, the father of the appellant, it was apparent that the appellant had no illicit relationship with Guddi and that the appellant was helping his sister-in-law, who had become widow, with some financial help. Thus, counsel urged that the motive has not been established.

36. With respect to the circumstance of the appellant found to be absconding, learned counsel urges that the Halwai shop of the appellant was at Ghaziabad and he had to leave his house at 4:00 AM so that the Halwai show could be opened by him for customer service by 7 or 8 AM. Counsel urges that there is every possibility of some other person entering the house and thereafter the room, in which the wife of the appellant was found dead, and thus the chain of circumstances is not complete.

37. Pertaining to the first plea urged by learned counsel for the appellant, it may be noted that the motive alleged by the prosecution is strained relationship between the appellant and his wife. It may happen that the appellant did not have any illicit relationship with his bhabhi, and as claimed by him, he was visiting his bhabhi on humanitarian grounds. But, the same could have been misunderstood by his wife, as suspicious conduct of the husband. What is relevant is, that on said score, there was some bad blood between the appellant and his wife. The landlady PW-6 has categorically deposed that the wife of the appellant used to tell her that the appellant used to frequently visit Guddi and that there used to be quarrel between the couple on said issue. Rukmani is a

independent person. She has no stake in the litigation. Why should she be lying? No answer has been provided to us.

38. It is apparent that the motive for the crime i.e. the strained relationship between the appellant and his wife has been established by the prosecution.

39. We need not discuss the testimony of PW-5 and PW-7 pertaining to the appellant's presence in his room in the intervening night preceding the day in the morning, of which the appellant's wife was found dead in the room in which the couple had been sleeping along with their children. The reason is that the appellant has admitted said fact.

40. There is no evidence that any outsider accessed the building. On the projected defence that Jayant PW-7 or Ramesh Pal (should read Resham Pal) PW-5 had an evil eye on the deceased, suffice it would be to note that both were examined as PW-7 and PW-5 respectively. No suggestion has been given to the said witnesses of having an evil eye on the wife of the appellant.

41. The theory of last seen is that where the accused is seen in the company of the deceased in a circumstance that the accused has to explain as to how the deceased died, in the

absence of any satisfactory explanation from the accused, the court has to draw a presumption of guilt. We need not note numerous decisions, where a husband has been accused of having murdered his wife and the last seen evidence was pressed into aid, save and except, the latest decision from the Supreme Court on the point, reported as 2007 (1) Crimes 132 (SC) Raj Kumar Prasad Tamarkar vs. State of Bihar & Anr. In paras 24 and 25 of the said decision, it is observed as under:

24. This legal position would appear from a decision of this Court in Nika Ram v. The State of Himachal Pradesh (AIR 1972 SC 2007) wherein it was held:

“It is in the evidence of Girju PW that only the accused and Churi deceased resided in the house of the accused. To similar effect are the statements of Mani Ram (PW 8), who is the uncle of the accused, and Bhagat Ram school teacher (PW 16). According to Bhagat Ram, he saw the accused and the deceased together at their house on the day of occurrence. Mani Ram (PW 8) saw the accused at his house at 3 p.m., while Poshu Ram, (PW 7) saw the accused and the deceased at their house on the evening of the day of occurrence. The accused also does not deny that he was with the deceased at his house on the day of occurrence. The house of the accused, according to plan PM, consists of one residential room one other small room and a varandah. The correctness of that plan is proved by A. R. Verma overseer (PW 5). The fact that the accused alone was with Churi deceased in the house when she was murdered there with the Khokhri and the fact that the relations of the accused with the deceased, as would be shown hereafter, were strained would, in the absence of any cogent explanation by him, point to his guilt.”

25. In Trimukh Maroti Kirkan v. State of Maharashtra [JT 2006 (9) SC 50], the law is stated in the following terms:

“Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence took place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime....”

42. Thus, we concur with the reasoning of the learned trial judge, that in the facts of the instant case, in the absence of any satisfactory explanation from the side of the appellant, on the theory of last seen, an inference of guilt can be inferred against the appellant. Conduct of absconding is admissible under Section 8 of the Evidence Act. Thus, the fact that the appellant was found missing from his house in the early hours of morning and his children were found weeping; his wife being murdered, is another incrimination piece of evidence against the appellant; he absconded for nearly 15 days till he surrendered on 18.9.2001.

43. We concur that the trinity of circumstances; namely, the motive, the appellant being in the company of his wife in the

matrimonial house and that in the early hours of dawn the next day, the wife of the appellant was found dead and the appellant absconded, form a complete chain of circumstantial evidence wherefrom the irresistible conclusion which any logical mind would arrive at without any hesitation would be that the appellant is guilty of having committed the crime.

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

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

May 21, 2009
Nandan/rb