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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 16.04.2009

Judgment delivered on: 28.04.2009

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CRL.A. No.813/2004

MANJIT SINGH

...Appellant

Through : Mr.Sumeet Verma, Advocate

versus

STATE

...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.

1. Vide impugned judgment and order dated 13.05.2004, the appellant stands convicted for the offence of having murdered his wife Sushila (herein after referred to as the "deceased"); as also for the offence of unlawfully possessing and using a firearm.
2. The case of the prosecution was that on 26.10.2000 a quarrel had taken place between the appellant and the deceased. The appellant lost control and shot the deceased, with a gun belonging to his landlord. Santosh PW-4, the landlady of the house had witnessed the crime.

Before fleeing the appellant had made an extrajudicial confession to his neighbour Munni Devi PW-5. On being apprehended, the appellant had made a confessional statement in the presence of Vimlesh Kumar PW-2 and disclosed to the police that he had concealed the used cartridge and thereafter led the police to the place where he had concealed the said used cartridge, which was recovered. He also told the police that he had kept the gun and live cartridges after committing the murder of the deceased, in the room of the landlord, which were got recovered by him from the said room. The ballistic expert opined that the used cartridge, recovered at the instance of the appellant, was fired through the gun recovered at his instance and that the three pellets recovered from the body of the deceased corresponded to the lead pellet size of the cartridge used in the said gun.

3. To put it in a nutshell to sustain the case of the prosecution, the incriminating evidence would be:-
 - A. Eye witness account of Santosh PW-4, which directly would have implicated the appellant.
 - B. The extra-judicial confession made by the appellant to Munni Devi PW-5.
 - C. Recovery of the gun and the used cartridge, at the instance of the appellant.

4. Vide impugned judgment and order dated 13.05.2004, convicting the appellant, the learned Trial Judge has held that the testimony of Santosh PW-4 was credible and the eye witness account by her established that the appellant had shot the deceased; that the deposition of Munni Devi PW-5, to the effect that the appellant had confessed to her about his guilt was trustworthy; that the used cartridge was found pursuant to the disclosure statement of the appellant and from the spot pointed out by the appellant and that the same was fired through the gun recovered at his instance and that the three pellets recovered from the body of the deceased corresponded to the lead pellet size of the cartridge used in the said gun, were incriminating evidence against the appellant and were sufficient to draw the inference of guilt.
5. Information was received by the police when DD Entry No.25, Ex.PW-11/A, was recorded at 12.55 A.M. on 27.10.2000 by Const. Pokhan Singh PW-11, at police post Sangam Vihar that a wireless information has been received that a murder had taken place at I-2 Block, Gali No.9, House No.433, Sangam Vihar.
6. Taking along a copy of the afore-noted DD Entry, SI Subhash Malik PW-18, accompanied by Const. Suresh PW-7 and HC Prakash Chand PW-10, proceeded to the place of occurrence where they found that the deceased

was lying dead on the floor. On finding no eye witness, SI Subhash Malik PW-18, made an endorsement Ex.PW-18/A on copy of the DD Entry Ex.PW-11/A, and at 2.15 A.M. handed over the same to Const Suresh Kumar PW-7 for registration of an FIR. Const Suresh took Ex.PW-18/A to ASI Faiyaz Khan PW-17, who recorded the FIR No.452/00, Ex.PW-17/A.

7. It is most relevant to note at this stage itself that the endorsement Ex.PW-18/A records that no eye witness was found present at the place of occurrence at the time when the police had arrived there.
8. After the endorsement Ex.PW-18/A was sent to the police station for an FIR to be registered, Santosh PW-4, the landlady of the house in a portion of which the appellant was a tenant, surfaced and claimed that she had witnessed the appellant murdering the deceased. Munni Devi PW-5 a neighbour also surfaced and claimed that she had seen the appellant holding a gun in his hand soon after the occurrence and has made a confession to her of having killed his wife. Accordingly, the investigating officer recorded their statements under Section 161 Cr.P.C.
9. The appellant arrived at the place of occurrence few hours after the occurrence, at around 5:00 AM, and was apprehended by the police on his arrival. As claimed by

the police the appellant was interrogated by SI Subhash Malik PW-18, in the presence of HC Prakash Chand PW-10 and Vimlesh Kumar PW-2. He made a disclosure statement Ex.PW-2/A, confessing to his guilt, and stated that he can get recovered the gun, live cartridges and used cartridge. Pursuant thereto, the appellant led the afore-noted persons to a street near the place of occurrence and got recovered a used cartridge which was seized vide memo Ex.PW-2/B. Thereafter the appellant led SI Subash Malik PW-18 and HC Prakash Chand PW-10 to a room in the building which was in the possession of the landlord and got recovered a double barrel gun and 23 live cartridges from near a cupboard kept in the said room. The gun and the live cartridges so recovered were seized vide memo Ex.PW-4/A. Santosh PW-4 produced an arms license issued in the name of her husband Jaipal which was seized vide memo Ex.PW-4/B.

10. SI Subash Malik PW-18, lifted blood sample earth, earth control and blood control from the place of the occurrence and seized the same vide memos Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/F respectively. PW-18 prepared the site plan Ex.PW-18/B of the place of occurrence recording therein spot 'A' and 'B' where the dead body and the gun respectively were found.

11. Since the deceased was found dead at the place of occurrence, her body was sent to the mortuary, where Dr.T Mallo PW-1, conducted the post-mortem at 11.00 A.M. on 29.10.2000 and prepared the post-mortem report Ex.PW-1/A which records that one fire arm entry wound was found on the right shoulder region of the deceased; that the cause of death was hemorrhagic shock as a result of the said firearm injury which was opined to be sufficient to cause death in the ordinary course of nature.
12. After the post-mortem, the doctor handed over the clothes and blood samples of the deceased on a gauze and three pellets and a wad recovered from the body of the deceased to Const. Suresh Kumar PW-7, who in turn handed over the same to SI Subash Malik PW-18, vide memo Ex.PW-7/A.
13. The seized materials; viz. the blood sample and clothes of the deceased, blood sample earth, earth control and blood control were sent to a serologist for a serological test. Vide FSL report Ex.PW-18/F it was opined that the blood group of the deceased was 'A' and that the earth seized from the place of occurrence was found to be stained with human blood. The gun, the empty cartridge and 23 live cartridges recovered at the instance of the appellant and the three pellets and wad recovered from the body of the deceased were sent to a ballistic expert

for his opinion. Vide report Ex.PW-18/G, the ballistic report opined that the gun recovered at the instance of the appellant is a 12" bore firearm designed to fire standard 12" cartridge and is in a working condition; that the used cartridge recovered at the instance of the appellant has been fired through the left barrel of the said gun inasmuch as the individual characteristic mark present on the used cartridge and on the cartridge fired through the said gun were found to be identical; that the 23 live cartridges recovered at the instance of the appellant could be fired through the 12" bore firearm; that the air piston was recovered from the body of the deceased corresponds to air piston was of 12" bore cartridge; that the three pellets recovered from the body of the deceased correspond to lead pellet size of 12" bore cartridge.

14. At the trial, Const. Pokhan Singh PW-11, proved the DD Entry No.25, Ex.PW-11/A recorded by him. Const. Suresh Kumar PW-7, proved having handed over the clothes and blood sample of the deceased as also the pellets recovered from the body of the deceased to the IO vide memo Ex.PW-7/A. SI Madanpal PW-8, a draftsman proved the site plan to scale Ex.PW-8/A and deposed that he had prepared the same on 11.01.2001 with the assistance of Santosh. Dr.T. Mallo PW-1 proved the post-

mortem report Ex.PW-1/A. Const. Yogender PW-3, a photographer, deposed and proved that the photographs Ex.PW-3/1-A to Ex.PW-3/4-A; negatives whereof were Ex.PW-3/1 to Ex.PW-3/4 were taken and developed by him. SI Bega Ram PW-14, a finger print expert, deposed that he had lifted chance print from the place of occurrence and the gun recovered at the instance of the appellant on the date of the incident but no chance prints could be developed. Vimlesh Kumar PW-2, deposed that the appellant had made a disclosure statement Ex.PW-2/A and had got recovered an empty cartridge in his presence. Const. Suresh Kumar PW-9, the brother of the deceased, deposed that he had identified the dead body of the deceased and that the relations between the family of the deceased and the appellant were strained as the family of the deceased had strongly objected to the marriage of the deceased with the appellant.

15. Ignoring the testimony of few formal police witnesses who deposed to the receipt of various articles in the malkhana and further movement thereof to the FSL, we note the testimony of such witnesses, in respect whereof, submissions were made during argument of the appeal on the issue, whether Santosh PW-4 was at all an eye witness and whether Munni Devi PW-5 truthfully deposed that the appellant had confessed to her about his guilt

soon after committing the murder of the deceased; if yes, the evidentiary value thereof.

16. Since much turns on the testimony of Santosh PW-4 and Munni Devi PW-5 in the present case, we proceed to note the relevant portion of the examination-in-chief of the said witnesses. The relevant portion of the examination-in-chief of Santosh PW-4, reads as under:-

“.....I identify accused Manjeet Singh today present in the Court also who also was a tenant in my house at the time of incidence. Accused used to reside there along with his wife. He was residing in our house as tenant prior to six month on the date of incident. Accused used to quarrel with his wife when he was residing at our house as a tenant. I cannot tell why accused used to quarrel with his wife. The name of the wife was Sushila. It was a Deepawali day of last year, I was present at my house, after about 9 P.M., accused Manjeet Singh quarreled with his wife, my husband had already gone for his duty. On the Deepawali Day, we had worship the gun belonging to my husband and it was kept at the place of worship in our room. Accused went to the said room and picked up the said gun from my room and ran towards his room. When I followed accused, he directed me that I should keep away myself and he fired shot from the said gun at his wife Sushila. Accused picked up our gun after about 11 P.M. at the said time, children burning crackers etc. Sushila received bullet injuries at her neck. The other tenants were also present in their respective rooms and the doors of their rooms were closed. On hearing the noise of bullet shot, other neighbours also came there. Munni was one of the neighbour amongst the said neighbours. Accused Manjeet Singh threatened me if I informed police he would kill me also. Accused took out empty cartridges from the gun and had thrown the gun towards me. Immediately after the incident accused had ran away from the spot and reached back to his room after a long time at that time police had also reached and he was apprehended by the police. Police had prepared site

plan of the place of the incidence at my instance.....”

17. On being cross-examined about the identity of the gun used by the deceased in committing the murder of the deceased, Santosh PW-4, stated that the gun recovered at the instance of the appellant is not the gun which was used for murdering the deceased. On being cross-examined about the factum of the appellant firing at the deceased, she stated that: *‘I did not see the accused firing at his wife’*. On being questioned about the live cartridges which were recovered ostensibly at the instance of the appellant, she replied that: *‘the belt of 23 live cartridges always used to remain in the almirah along with the gun’*. On being cross-examined about the use of the gun by her husband, she stated that: *‘my husband never used to keep the gun loaded’*. On being cross-examined about the place of recovery of the gun in question, she stated that: *‘police covered the gun from the gallery of the house. There is distinct on between the gallery which I am referring and my room’*. (The said portion is a verbatim reproduction of the cross-examination of the said witness). On being cross-examined about the conduct of the appellant after the incident, she stated that: *‘the accused did not talk to any*

one and ran away from the spot immediately after the incident'.

18. It is relevant to note that the witness has not deposed that she had heard the cries of the deceased on the day of the incident.

19. The relevant portion of the examination-in-chief of Munni Devi PW-5, reads as under:-

“.....On the day of Diwali last year I was present at my house and we were busy in Pooja etc. At about 11.30 pm I heard noise and saw Smt. Santosh was running outside her house. I went near the grill of the roof of accd. Manjeet Singh and I peeped through the said grill inside the room of the accused. Accused was present there and when I asked him as to what had happened, accd. told me “Didi maine Sushila ko Mar Diya” . Sushila was lying in floor of the room in dead condition and she was bleeding. When I asked Manjeet Singh accd. as to with what weapon he killed his wife accd. told me that he picked up the gun of his landlord which was kept for pooja in their room as the landlord were not present in the said room and were busy in distributing sweets. And I also saw that accd. was holding the said gun in his hands when I reached to the spot Smt. Santosh was knocking the door of accused. I called police on telephone and the said call was made by another person on my request. In my presence police had arrested accd. though he wanted to run away.....”

20. On being cross-examined about the identity of the gun used by the appellant for murdering the deceased, Munni Devi PW-5 stated that she cannot identify the said gun. She admitted during cross examination that her statement recorded by the police under Section 161 Cr.P.C. does not record that the appellant told her that he had picked up the gun of his landlord from the pooja

room and had killed his wife by firing from the gun. On being cross-examined about the presence of other persons at the time of the incident, she stated that: *'at the time of the incident there was no one present except me, Santosh, accused Manjit Singh and injured namely Sushila.* On being questioned as to what had attracted her attention to the place of the occurrence on the date of the incident she had replied that: *'At the time of incident I heard the gun shot and also saw smoke coming from the room of accused and I also heard the cries of Sushila.'*

21. In his examination under Section 313 Cr.P.C. the appellant denied everything and pleaded false implication. He stated that he was employed as a driver and was performing his duty at the time of the occurrence. That when he returned home after performing his duty he learnt that the deceased had been murdered and he was illegally apprehended by the police.
22. The appellant did not lead any evidence in his defence.
23. As already noted hereinabove, believing the testimony of Santosh PW-4 and Munni Devi PW-5 to be correct and holding that the recovery of incriminating articles at the instance of the appellant further clinches the issue that the appellant had committed the murder of the

deceased, the learned Trial Judge had convicted the appellant.

24. Having considered the case set up by the prosecution in its entirety, we find it difficult to agree with the conclusion arrived at by the learned Trial Judge because of following reasons namely, (i) the version of Santosh PW-4, that she had witnessed the appellant murdering the deceased is shrouded with suspicion; (ii) that the evidence on record bring out faint traces of the possibility that the witness was deposing falsely to save her husband; (iii) that Munni Devi PW-5, is a 'wholly unreliable' witness and therefore no reliance could be placed on her testimony and that she has made material improvement while deposing in Court; (iv) certain material circumstances have not been explained by the prosecution which leads to a conclusion that the ocular evidence led by the prosecution is seriously flawed; (iv) the investigation conducted in the present case is most tardy which entitles the appellant to get benefit of doubt; (v) the recovery of the incriminating articles at the instance of the appellant is tainted and (vi) mere recovery of the incriminating articles at the instance of the appellant is insufficient to nail the appellant.

25. Elaborating our reasons for our summarization herein above, as noted in foregoing paragraphs, the

endorsement Ex.PW-18/A made by SI Subhash Malik at the spot just after he reached the spot on receiving information of the crime records that no eye witness was found present at the place of occurrence at the time when the police arrived therein. In this regard, it is of importance to note the testimony of SI Subash Malik PW-18 to the effect that he had made enquiries from the persons present at the place of the occurrence on arriving at the spot, but no eye witness was found available. The fact that Santosh PW-4, did not disclose her version of witnessing the incident to the police at the first available opportunity leads to a strong presumption that she was buying time to come up with a plausible story regarding the incident. We note that Santosh has not stated that she was scared or was confused after witnessing the crime and regained her composure after some time. Another circumstance which strengthens the presumption that Santosh was not an eye witness as claimed by her is that the spot wherefrom she ostensibly witnessed the crime is not indicated in the rough site plan Ex.PW-18/B nor in the site plan to scale Ex.PW-8/A. SI Subash Malik PW-18 and SI Madanpal PW-8, who had prepared the rough site plan and site plan to scale of the place of the occurrence claimed to have prepared the said site plan at the instance of Santosh.

26. The decision of the Supreme Court reported as Shinghara Singh v State of Haryana AIR 2004 SC 124 may be noted on this issue, wherein it has been held that essential features should be shown in the site plan and the omission to show them in the site plan cannot be said to be a mere lapse on the part of the investigating agency.
27. Continuing the discussion pertaining to the credibility of the testimony of Santosh PW-4, we note that she had stated in her cross-examination that she had not seen the appellant fire a shot at the deceased from the gun belonging to her husband. Surprisingly enough she has deposed that she saw the accused enter her house and pick up the gun. She deposed that she followed the accused. She deposed that she saw the accused take out the used cartridge and thereafter threw the gun towards her. She deposed that she ran away. It is just not possible for Santosh not to have witnessed the appellant shoot at his wife, if indeed she was present at the spot and deposed the facts which she claimed to have seen. It is an undisputed fact that the gun used for murdering the deceased belonged to the husband of Santosh. In such circumstances, the most likely suspect for committing the murder of the deceased would have been the husband of the deceased. Obviously, the endeavour of Santosh would have been to shield her

husband at all costs. The seizure memo Ex.PW-4/A pertaining to the gun in question records that the gun was recovered from the room of Santosh and her husband. As noted above PW-4 has testified in her examination-in-chief that after using the gun and taking out the used cartridge, the accused ran away from the spot. She did not depose that she, innocently, picked up the gun and kept it inside her room. SI Subash Malik PW-18 and HC Prakash Chand PW-10, the witnesses to the recovery of the gun, have deposed that the gun was recovered from the room of Santosh and her husband. But, as noted herein above, while noting the cross-examination of Santosh she stated that the gun was recovered from the courtyard of her house. Obviously, Santosh was aware that she was not to state as to how the gun came back to her house and therefore it is obvious that the only thing she could depose to was that the gun was picked up from the courtyard of her house; a fact which is obviously not correct. It shows her determination to save her husband for the reason the gun used belonged to her husband. We find it strange that the belt containing 23 live cartridges, which admittedly belonged to the husband of Santosh, have been shown to be recovered at the instance of the appellant, as if Santosh's husband had entrusted the

same to the appellant. As noted above, in cross-examination Santosh has admitted that her husband used to keep the live cartridges inside the almirah. She has not deposed that the live cartridges were kept at the place of worship along with the gun. This casts a doubt even on the recovery. We shall elaborate on this issue a little later.

28. The version of Munni Devi PW-5, that the appellant had confessed his guilt to her after committing the murder of the deceased is inherently improbable. As already noted herein above, Munni Devi had deposed that the noise of the gun shot, and the smoke coming from the room of the appellant and the cries of the deceased had attracted her attention to the place of the occurrence on the date of the incident. It is highly unlikely that Munni Devi who was present in the house adjoining the house of the appellant at the time of the incident was able to make out that the noise which came from the room of the appellant, was that of a gun shot, for the reason, there would have been the noise of bursting crackers all around her, inasmuch as the incident had occurred on Deepawali day. It is also further unlikely that Munni Devi, who was present in the house adjoining the house of the appellant, could have heard the cries of the deceased amidst the noise of the bursting of crackers particularly

when Santosh who was present in the same house as that of the deceased did not hear any cries of the deceased. Thus, if Munni Devi was not present in the house where the incident took place, where was the occasion for the appellant to have confessed to her inside the house. As noted above, the confessional aspect is an improvement in the statement made by Munni Devi in Court. She has not so stated to the police and does not find any mention in her statement Ex.PW-5/DA recorded by the investigating officer.

29. A perusal of the testimony of Munni Devi PW-5, contents whereof have been noted herein above, would reveal that the testimony of Munni Devi is an inchoate mix of irreconcilable opposites. Munni Devi had firstly deposed that she had heard a noise on the date of the incident whereupon she had seen Santosh running outside her house. That thereafter she had peeped into the room of the appellant through the grill of the said room whereupon the appellant had confessed his guilt to her. She had further deposed that she had seen Santosh knocking the door of the appellant when she had reached the spot. Munni Devi had not stated in her testimony that what had happened between the time period she had peeped through the grill of the room of the appellant and when she reached the spot. Likewise, Munni Devi has not

stated in her testimony that what had happened between the time period she had seen Santosh running outside her house and Santosh knocking the door of the room of the appellant. It is also relevant to note that Santosh has not deposed a word in her testimony about the locking of the room by the appellant on the date of the incident. The irreconcilable opposites stated by Munni Devi are that when she heard noise she saw Santosh running outside her house and in the next breath deposing that when she went to the spot she saw Santosh knocking the door of the room where the crime took place.

30. There are material contradictions in the testimony of Munni Devi vis-à-vis the other ocular evidence led by the prosecution which reinforces the presumption that Munni Devi is a planted witness. Munni Devi has deposed that the appellant had attempted to flee from the place of the occurrence but was apprehended by the police on its arrival; whereas the other witnesses of the prosecution namely Santosh PW-4, SI Subash Malik PW-18 and HC Prakash Chand PW-10, have deposed that the appellant had fled from the place of the occurrence after murdering the deceased and was apprehended when he returned to the place of the occurrence few hours after the police arrived.

31. Even the evidence pertaining to the recovery of the gun in question is conflicting and contradictory. As per Santosh, the gun was recovered from the gallery i.e. a common space outside. As per the recovery memo Ex.PW-4/A and the other witnesses the gun and the belt containing 23 cartridges were recovered from a place near the cupboard inside the room where Santosh and her husband resided.
32. For reasons noted herein above, Santosh could not have ever deposed that the gun was recovered from inside her room because this required her to explain as to how the gun came back inside her room. The fact that the gun and the belt containing the cartridges were lifted from the room appears to be correct for the reason qua the belt containing 23 cartridges, there is no evidence that the said belt, which was in the custody of the husband of Santosh, was accessed by the appellant. Thus, there is no scope but to arrive at either one of the two conclusions. Firstly that Santosh is a complete liar or secondly the gun was used by somebody who not only had an access to the gun but even to the belt containing the cartridges and after using one out of the 24 cartridges in the belt kept back the gun and the belt at the same place or nearby from where the same were picked up.

33. Santosh PW-4 has categorically deposed that the gun in question was never kept loaded by her husband. There is no evidence to show that the husband of Santosh or the appellant or any one else had loaded the gun in question on the date of the incident. The question as to how the gun in question came to be loaded on the date of the incident remains unanswered except on the theory that the belt had 24 cartridges, one out of which was used. But, for the same, no evidence has been led by the prosecution that the belt had 24 cartridges, one out of which was used.
34. Why was husband of Santosh not examined as a witness has to be explained by the prosecution for the reason he was the licensed holder of the gun and purchased the ammunition to be used in the gun. He had to explain as to what number of bullets he had purchased and had to account for each one of them.
35. Where an article is recovered from a place accessible to all, the recovery thereof pursuant to the disclosure statement by an accused is rendered meaningless. (See the decision of Supreme Court reported as State of H.P. V Inder Singh AIR 1999 SC 1293). In the instant case, the recovery of the gun from inside the room of Santosh and her husband, at the instance of the appellant, inspires no confidence. The recovery of the used cartridge from the

street accessible to all also does not inspire any confidence. The gun and the used cartridge were not found to be concealed and were visible to all. Applying the ratio laid down by the Supreme Court in Inder Singh's case (supra), no sanctity could be attached to the said recoveries.

36. Mere recovery of incriminating articles at the instance of an accused person, without there being any other evidence to connect the accused with the commission of the crime, is insufficient to bring home the guilt of the accused. (See the decisions of the Supreme Court reported as Narainbhai Haribhai Prajapati v Chhatarsinh & Ors AIR 1977 SC 1753, Surjit Singh v State of Punjab AIR 1994 SC 110 and Deva Singh v State of Rajasthan 1999 CriLJ 265).
37. Before concluding, we note that Const. Suresh Kumar PW-9, the real brother of the deceased and a police officer himself had a grudge against the appellant inasmuch as the family of the deceased was opposed to the marriage of the deceased with the appellant; facts deposed to by Const. Suresh Kumar; therefore the possibility that the appellant was falsely implicated at the instance of the family of the deceased particularly Const. Suresh Kumar cannot be ruled out.

38. In view of above discussion, we hold that the prosecution has not been able to prove beyond reasonable doubt that the appellant had committed the murder of the deceased Sushila.
39. The appeal is allowed. The appellant is acquitted of the charges framed against him. The appellant is directed to be set free unless required in any other case.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

April 28, 2009
Dharmender