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IN THE HIGH COURT OF DELHI

Judgment reserved on : January 27, 2009

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Judgment delivered on : February 02, 2009

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CRL.A.915/2004

ASLAM

..... Appellant

Through: Mr.Rajesh Mahajan, 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? Yes.
3. Whether judgment should be reported in Digest? Yes.

: PRADEEP NANDRAJOG, J.

1. This is a case of false implication. The police has contrived to fabricate evidence and unfortunately had succeeded in pulling wool over the eyes of the learned Trial Judge, who has chosen to proceed on the assumption that the police officers always tell the truth and that they never manipulate witnesses. Lulled into a slumber, the learned Trial

Judge has ignored material contradictions and variations in the deposition of the witnesses of the prosecution. The learned Trial Judge has failed to note the inherent improbability of the nature of evidence sought to be brought on record through the testimonies of Ram Avtar PW-17, as also Bhola PW-11, who, on being declared hostile were cross-examined at length by the learned Public Prosecutor.

2. As per the charge-sheet filed by the prosecution, the case of the prosecution was that deceased Shamima was offering herself for sex in lieu of monetary consideration and that Ram Avtar PW-17 was acting as a pimp. That on 29th January 2001 the appellant had a desire to have sexual intercourse with a prostitute and went to Ram Avtar for a prostitute to be supplied to him and that Ram Avtar contacted the deceased Shamima who was in touch with Ram Avtar so that he could find customers for her. That accordingly, the deceased went along with the appellant, to have sexual intercourse, at the tenanted house of the appellant i.e. A-326 Buddha Market, Mandawali, Zedi Market, Delhi. That it was agreed by the deceased that she would get Rs.200/- after satisfying the desire of the appellant and after she did so, she demanded Rs.300/-, which sum was refused to be paid by the appellant. The deceased threatened the appellant that she

would implicate him in an offence of rape. At that, the appellant strangled her and threw her body in the house of Nasir PW-3, being house No.B-149 Chand Masjid, Mandawali, Delhi. He did so by the mid-night of 30.1.2001 and went to the house of Rajaram PW-2 and used Rajaram's phone to ring up the police at 100 and disclosing himself to be Shankar, informed the police that a quarrel had taken place at Chand Masjid. The police reached Chand Masjid and found that no quarrel had taken place but noted the door of a house half open and the inquisitive police officials entered through the door and saw a dead body of a female inside the room, which happened to be a toilet. The news spread in the locality and the body was identified as that of Shamima, resident of House No.B-235, Gali No.3, Near Memdi Masjid, Mandawali, New Delhi. Rajaram PW-2, had also received information of a dead body being found and police arriving at the spot on hearing that a fight had taken place at Chand Masjid. He knew the appellant, who was from the same village in Bihar i.e. the native village of Rajaram and told the police that the appellant had rung up the police from his house wrongly disclosing his name to be Shanker as the informant. Obviously, the suspicion fell on the appellant who was apprehended by the police on 1.2.2001. According to the charge-sheet, the

appellant made a disclosure statement Ex.PW-3/B and confessed to the crime after disclosing how he had promiscuous sex with the victim and the circumstances under which he was compelled to kill her. He disclosed that when the deceased resisted him as he was strangulating her, a glass bangle worn by the deceased broke and an ear top fell in the room where the incident took place. He offered to have the same got recovered and led the police to his house wherefrom an ear top of the deceased and pieces of broken bangle were recovered on 1.2.2001. It was the case of the prosecution that thereafter, on 4.2.2001, the appellant got recovered a chunni used by him to strangle the deceased from a suitcase in his house.

3. Needless to state, police swung into action when at 3.40 AM on 30.1.2001 a telephonic message was received at the PCR from a person who disclosed his name as Shanker, informing that a quarrel is going on at Chand Masjid, Mandawali.

4. The PCR flashed a message to the police station concerned. ASI Brij Pal Singh PW-20, accompanied by SI DK Tejwan PW-22, reached Chand Masjid, Mandawali but did not notice any quarrel. But, noting the door of a house half open and inquisitively entering through the door, stumbled upon the

dead body of a woman lying inside the toilet. The house happened to be that of Nasir PW-3. Its number is B-149, Chand Masjid, Mandawali.

5. The news spread in the locality. People gathered. On the dead body being found in the house of Nasir, Shazad Ali PW-5, who was the Pradhan of the area was called. Shazad Ali stated that possibly the deceased was Shamima, sister of Munni. Munni is actually Anwari Begum PW-1, who was summoned and reached the spot at around 4.00 AM and identified that the dead body was that of her sister Shamima. Her statement Ex.PW-1/A was recorded by Inspector GS Randhawa PW-26, the SHO of the police station, who had reached in the meanwhile. He made an endorsement thereon and forwarded the same for registration of the FIR through Inspector BP Sharma PW-23. The FIR was recorded at the police station by HC Kusum Pal PW-19 at 8.50 AM.

6. The dead body of Shamima was sent to Lal Bahadur Shastri Govt. Hospital where Dr.L.C.Gupta PW-13, conducted post-mortem on 31.1.2001 and gave his report Ex.PW-13/A. He recorded therein that there were ligature marks and abrasions on the mid one-third neck. Nail scratch abrasions were noted by him on the right side of the mid one-third neck. He opined that the deceased died due to asphyxia resulting

from strangulation by means of ligature material which is sufficient to cause death in the ordinary course of nature.

7. Being relevant to note, in relation to the testimony of the husband of the deceased Kammuddin PW-8, Dr.L.C.Gupta PW-13 noted on the MLC that the deceased was poorly nourished and was severely anaemic.

8. In his statement recorded under Section 161 Cr.P.C. Rajaram PW-2, disclosed to the police that the appellant had come to his house and rung up the police to give the information which resulted in the police reaching the spot and had wrongly disclosed his name to be Shanker. The police set about to apprehend the appellant, who as per the police, voluntarily surrendered at the police station on 1.2.2001 and made a confessional statement Ex.PW-3/B before the SHO Inspector GS Randhawa which was recorded by SI DK Tejwan PW-22.

9. In the meanwhile, after the post-mortem of the deceased was conducted and her body was handed over to her husband Kamuddin PW-8, he took the dead body to the house for burial and bathed the body and removed a chain and one ear top from the dead body. A glass bangle worn by the deceased got broken and pieces thereof were collected by

him. The police seized vide seizure memo Ex.PW-5/2 only the chain and the pieces of the broken bangle.

10. Since Ex.PW-3/B, the disclosure statement of the appellant, disclosed that after committing sexual intercourse with the deceased and on the issue of money a fight erupting and he having strangled her; in the process a glass bangle of the deceased getting broken as also an ear top falling in the room where the act was committed, he accompanied the police to the room in question. At the spot, vide seizure memo Ex.PW-5/1, an ear top as also broken pieces of glass bangle were recovered, ostensibly at the pointing out of the appellant.

11. Three days later, on 4.2.2001, the appellant again took the police to his room and from a suitcase therein got recovered a chunni which was seized vide seizure memo Ex.PW-6/1. The chunni is stated to be the weapon of offence.

12. Bhole PW-11, was a person contacted by the police. He is a vagabond lad aged 12 years when he deposed in the Court on 19.9.2002. He ostensibly told the police as recorded in his statement under Section 161 Cr.P.C. that on 29.1.2001 he had gone to the room of the appellant as he knew the appellant and that the appellant opened the door when he knocked. He saw a woman lying on the cot crying 'bachao'. He ostensibly told the police that the appellant told him to run

away and thereafter he closed the door. He claimed to have peeped from the gap between the door and the floor and saw that Aslam sat on top of the woman and strangled her to death. After that, Aslam opened the door and on seeing him standing, gave him Rs.2/- and asked him to bring a deck. That he ran away thereafter.

13. That the deceased was supplied to the appellant, was as per the statement of Ram Avtar PW-17, a photographer by profession; statement being recorded under Section 161 Cr.P.C. He ostensibly told the police that the deceased had told him that her husband was not looking after her and she needed money for sustenance and offered herself for sex. He used to find customers for her and that on 29.1.2001 he supplied her to the appellant for the sexual gratification of the appellant.

14. Armed with the afore-noted witnesses and hoping that the witnesses would support the case of the prosecution and pinning its case on the recovery of one ear top of the deceased and broken pieces of a bangle of the deceased from the room of the appellant and hoping that her husband would corroborate them that indeed the said ear top was that of his wife and that the broken bangle pieces were a part of the bangles worn by his wife, the prosecution proceeded to file the

charge-sheet, indicting the appellant with the offence of murdering Shamima.

15. The most incriminating evidence against the appellant which was sought to be brought on record was the alleged recovery of the ear top and the broken pieces of glass bangle recovered from his room.

16. While deposing as the witness of the prosecution, Kamuddin, husband of the deceased who was examined as PW-8 deposed as follows:-

“After post-mortem of the dead body the dead body of my wife was handed over to me on 31.1.2001, vide memo Ex.PW-1/B which bears my signatures at point B. I took the dead body at my house and bathed the dead body. At that time I had removed a chain from her neck which was of white metal and a bangle from the left hand. The bangle broke into three pieces while I was removing the same from her hand. I had also removed one top from her left ear. I handed over the same to the IO of the case who had taken the same into possession after sealing the same into a parcel with the seal GSR vide memo Ex.PW-5/2 which bears my signature at point B.”

17. With reference to the recovery of an ear top from the room of the appellant, he went on to depose that after the appellant made a disclosure statement before the police, he accompanied the police party to the residence of the appellant and that :

“Near the drum an ear top was lying. Aslam picked up that top and handed over the same to the police. I had identified that top as the top of my wife which she used

to wear in her ears. Near the folding bed, 3 – 4 pieces of broken bangles were lying. Those were also of white colour, and was the same pieces of bangle which my wife used to wear in her hands. The pieces of broken bangles which were recovered from the room of the accused at my instance and the pieces of bangles which were broken which I had produced to the police, in the above said manner were the same. The police had seized the above said recovered top and pieces of bangle in a parcel with the seal of GSR and taken into possession vide memo Ex.PW-5/1. My statement was recorded and I was discharged.”

18. Surprisingly enough, Ex.PW-5/2, the seizure memo omits the seizure of the ear top. It only records seizure and sealing of a chain and three pieces of glass bangle.

19. Deposing as PW-26 Inspector GS Randhawa, with respect to the testimony of the chain and the pieces of broken bangle handed over by Kamuddin to him deposed as under:-

“Thereafter we went to the house of Kamuddin the husband of the deceased. Kamuddin had produced a chain Ex.P-2 and broken bangle Ex.P-3 which he had removed from the dead body of his wife deceased Shamima. I seized the above said chain and broken pieces in the parcel and sealed the same with my seal GSR and taken into possession vide memo Ex.PW-5/2. Seal after use was handed over to PW Zaidi. Kamuddin had told me that there was one top in the ear of his deceased wife and while they were bathing the dead body, the said top fell down in a nali and could not be traced out. I recorded his statement in this regard under Section 161 Cr.P.C. I had also recorded statements of other witnesses. Thereafter we returned to the PS and deposited the case property with the malkhana mohrar.”

20. It is relevant to note that as per PW-26, one ear top of the deceased, as told to him by Kamuddin, had fallen down

the drain and could not be traced. As per Kamuddin he had noticed only one ear top on the left ear of his wife which he handed over to the police. It is relevant to note that in the seizure memo Ex.PW-5/2 there is no mention of the ear top being seized. It is apparent that one ear top came in the possession of SHO GS Randhawa, which obviously was planted at the spot. It is relevant to note that the house of the deceased was searched on 1.2.2001. Kamuddin had handed over the ear top, the chain of the deceased and the broken pieces of bangle of the deceased to the police on 31.1.2001.

21. What was intended to be proved from Bhola PW-11 can be ascertained from the questions put to him by the learned APP. We intend to note the deposition of Bhola in its entirety.

22. After asking preliminary questions to ascertain whether Bhola understood what was being queried from him and recording a satisfaction that Bhola, aged 12 years, when he deposed could understand the questions, his testimony was recorded which reads as under:-

“I know Aslam who is present in the Court today as he used to come to get his clothes ironed from my neighbour but I do not know the name of the neighbour. He used to do masonry job of constructing lenter of the roofs. He used to reside in a jhuggi at a distance from my house. The jhuggi belonged to him. I know how to drive a bicycle. I owned my own bicycle. I did not take Aslam’s

cycle for driving. I used to address Aslam as uncle. I did not see anything happening in my presence about 1½ years back in the winter season. I did not see any dead body. I did not hear any cries. In the evening I take tuitions. I do not know anything about this case. At this stage on the request of the APP witness is allowed to put leading questions. It is incorrect that accused Aslam was a tenant in the house in front of my house and that he used to visit us for watching pictures on TV. I do not know if accused had subsequently taken on rent H.No.A-126. It is incorrect that I used to visit Aslam in his house and I used to drive his bicycle. It is incorrect that on 29.1.2001 at about 7 pm I had gone to Aslam and that I had knocked the main gate for taking keys of his bicycle. It is incorrect that Aslam had opened the door of the house and I saw a woman lying on the cot inside the house and I heard the cries 'bachao'. It is incorrect that Aslam asked me to run away and closed the door. It is incorrect that from below I saw accused Aslam sitting on the woman and that I also saw that Aslam had strangled the woman from the neck. It is further incorrect that the legs of the woman were struggling for some time and there after they became silent and the woman died. It is incorrect that when Aslam opened the door I was standing there. It is incorrect that Aslam gave me Rs.2/- and asked me to bring deck. It is further incorrect that after some time I brought the deck which Aslam took from me and put it inside and there after he closed the door. I know Nasir who is living near Jama Masjid. It is incorrect that on the morning of 30.1.2001 I saw the dead body of the same woman whom Aslam had killed in his room lying in the latrine of Nasir. Police did not meet me in my house. I was never summoned in the PS. I have never visited the PS. I did not make any statement before the police. Statement mark X is read over to the witness which he denied having made before the police. It is incorrect that I have been threatened by the accused and that I have deposed falsely at the instance of my father. I know that if a witness give a wrong statement, the Court punishes him."

23. It is apparent that the manner in which the police wanted Bhola to prove having witnessed the crime is

preposterous. No sane person who is in the process of strangulating a person would open a door on hearing a knock and allowing the visitor to have a look inside. Besides, if Bhola had indeed heard the woman crying 'bachao' he would have summoned help for her by calling people from the neighbourhood.

24. It is interesting to note that the suggestion given by the learned APP to Bhola is that; *is it correct whether he saw a woman lying on the cot inside the house.* Of course, Bhola has denied the same. But, was it possible for a person to peep through the narrow gap between the floor and the door and see a struggle going on, on a cot inside the room? The answer is obviously a 'no'. Try and peep through the narrow gap between the door and the floor. Not more than 6 to 8 inches of the opposite wall can be seen.

25. Rajaram PW-2 and his son Rajesh Kumar PW-10 deposed, as directed by the police, that on the intervening night of 29th and 30th January 2001 at around 2.30 am the accused came to their house and made a telephonic call to the police. Rajaram PW-2, additionally stated that the appellant disclosed his name as Shanker to the police and that when the police came, he told the police that Aslam was the person who

had called, because he knew Aslam as both were residents of Bihar.

26. The photographer Ram Avtar PW-17 did not support the case of the prosecution and on being declared hostile was given suggestions pertaining to his alleged statement recorded by the police under Section 161 Cr.P.C. to the effect that he had told the police that Shamima was a prostitute and that he had supplied Shamima to the appellant for satisfying his lust and she was to receive Rs.200/- from the appellant.

27. Needless to state Ram Avtar PW-17 deposed that he never acted as a pimp and that he earned his livelihood by running the business of a photographer from a shop and that he had no concern with the deceased.

28. It is not out of place to record that as per the police Shamima was murdered at the premises, by the appellant which he had taken on rent being A-326 Buddha Market, Mandawali, Zedi Market, Delhi. The dead body was found at B-149 Chand Masjid, Mandawali, Delhi and there is no evidence on record as to how was the body transported from one place to another.

29. PW-6 Mohd. Sadiq Khan deposed of having witnessed the recovery of a chunni from inside a suitcase lying in the house of the appellant.

30. In view of the post-mortem report that there were ligature marks on the neck of the deceased and that the death was due to strangulation; holding that the chunni recovered from the suitcase inside the house of the appellant could have been used as the object to strangle the deceased and that the recovery of broken pieces of glass bangle and the ear top of the deceased from the house of the appellant was sufficient incriminating evidence to nail the appellant; believing Rajaram that the appellant was the one to ring up police and wrongly gave his name as Shanker; believing Nasir's statement regarding the appellant having enmity with him which was the reason for dumping the body of the deceased at his house, the learned Trial Judge has returned a finding of guilt. The appellant has been convicted of the offence punishable under Section 302 IPC and for destroying the evidence i.e. the offence punishable under Section 201 IPC, we need not pen down much.

31. The learned Trial Judge failed to appreciate that there is no evidence of how was the dead body transported from the house of the appellant i.e. A-326 Buddha Market, Mandawali, Zedi Market, Delhi to the place where it was recovered i.e. House No.B-149 Chand Masjid, Mandawali, Delhi.

32. Further, the ear top and the broken glass bangles being planted in the house of the appellant stands established from the fact that Kamuddin handed over only one ear top of his wife to the police as also a chain and broken pieces of bangle but in the seizure memo Ex.PW-5/2 the police deliberately omitted to record the seizure of the ear top. This ear top handed over by Kamuddin to the police has been planted in the house of the appellant. It is not out of place to re-note that SHO G.S. Randhawa PW-26 in his deposition stated that Kamuddin had told him that when he was bathing his wife the other ear top fell inside the drain and could not be retrieved; where Kamuddin has categorically deposed that before the burial when he was bathing the dead body of his wife he saw only one ear top on the left ear which he removed and handed over to the police. He has also deposed of handing over broken pieces of bangle; which had to be of glass; the ones which were recovered from the house of the appellant were obviously planted.

33. The learned Trial Judge forgot why the appellant would have gone to the house of a person known to him and rung up the police and disclosed to the police a wrong name. Would any person do that?

34. Well not, unless he is mad.

35. A person would have given a wrong name over the telephone to a person whom he called, obviously to hide his identity. What would be the motive of the appellant to ring up the police, give a wrong name and furnish wrong information of a quarrel going on at Chand Masjid?

36. Obviously to mislead the police to reach the spot with the hope that the dead body would be recovered from the house of Nasir; the intention would obviously be to falsely implicate Nasir.

37. But to give effect to this intention the appellant would certainly not go to the house of a person known to him and give false information and that too under an assumed name. Would he not know that Rajaram would question him as to why was he disclosing his name as Shanker.

38. The learned Trial Judge has forgotten to note that Nasir PW-3 has categorically deposed that there was enmity between him and the appellant and probably for said reason the accused had dumped the dead body in his house.

39. Could Nasir be not the culprit. Could Nasir not have contrived with his versions to ring up the police and then go about falsely deposing that it was the appellant who rung up the police styling himself as Shanker? These are questions

which arise and should have been considered by the learned Trial Judge.

40. These questions assume significance because there is no evidence of the appellant transporting the dead body from his house to the house of Nasir.

41. The colony in question is a re-settlement colony. It is densely populated. People move around in such colonies 24 hours a day. It is not out of place to note that as per Rajaram PW-2 that Saraswati Puja was going on in his house and hymns were being sung late night on the day the incident occurred.

42. It is difficult to believe that nobody saw the dead body being transported.

43. The learned Trial Judge failed to note that as per the MLC of the deceased she was found severely anaemic and under-nourished. Obviously, her husband was not caring for her. Had she been a prostitute, she would have earned enough to keep the body physically fit, at least not in the condition in which it was. It is difficult to accept that the deceased was a prostitute.

44. The false implication of the appellant is writ large. The planting of the ear top of the deceased and pieces of broken bangle in the house of the appellant is writ large.

45. The appeal is allowed. Impugned judgment dated 11.10.2004 and order dated 14.10.2004 sentencing the appellant to undergo imprisonment for life for the offence punishable under Section 302 IPC and to undergo rigorous imprisonment for a period of 7 years for the offence punishable under Section 201 IPC as also the fine imposed upon the appellant is set aside.

46. The appellant is directed to be set free unless required in some other case.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

FEBRUARY 02, 2009

Dharmender