

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No. 123/2007**

% Date of Order : February 19, 2009

SURAJ PAL Appellant
Through : Mr. Mukesh Jain, Advocate

VERSUS

STATE Respondent
Through : Ms. Richa Kapoor, APP

CORAM :-

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

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 28.7.2006 the appellant has been convicted for the offence of murdering his wife Somwati; an offence punishable under Section 302 IPC as also voluntarily causing simple hurt on the person of his daughter Lispat; an offence punishable under Section 324 IPC. For the offence of murder he has been sentenced to undergo imprisonment for life and pay a fine of Rs. 1000/- failing which to undergo simple imprisonment for one month. No separate sentence has been awarded for the

offence punishable under Section 324 IPC because the learned trial judge has held that the convict has already been imposed the sentence of imprisonment for life.

2. The involvement of the police surfaced when vide DD No. 52B, Ex. PW-1/B, information was recorded by the duty officer at 7.42 PM on 1.10.1998 that a stabbing incident has taken place near the jhuggies adjoining a medical hospital. At 8.30 PM vide DD No. 5B, Ex.PW-8/B, information was recorded by the duty officer as conveyed by the duty constable from All India Institute of Medical Sciences that Somwati wife of Suraj Pal was admitted at the hospital and had died.

3. ASI Iqbal Singh PW-17, and constable Surender Singh PW-7, immediately left the police station after DD No. 52B was recorded and reached All India Institute of Medical Sciences where they met Santosh PW-10, son of the deceased, who made a statement Ex.PW-10/A informing the police that he was residing along with his parents in Jhuggi No. 142, Ansari Nagar, New Delhi and that he was employed in a private factory at Okhla. That his father Suraj Pal was working as a security guard at Safdarjung Enclave and under influence of alcohol used to regularly fight with his mother. His mother Somwati aged 46 years used to wash dishes in

bungalows and with the income so generated used to manage the kitchen. His father used to fight with his mother and extract money from her to consume alcohol. That on 1.10.98 i.e. the date of the incident, at around 7.30 PM he was sleeping in his jhuggi. His maternal aunt Rajni, who was residing in a jhuggi nearby, came to his jhuggi and after breaking his sleep told him that his father was assaulting his mother. That he immediately left for the jhuggi of his maternal aunt, where outside the jhuggi, he saw his father, armed with a meat chopper, assaulting his mother saying that he was fed up with her constant bickering. He i.e. his father was accusing his mother of not giving him money. He heard his father say that today he would finish her, and so stating, his father struck a blow with the chopper in the stomach of his mother and thereafter on the other parts of the body. That at that time his younger sister Lispat was in the lap of his mother. Even she received a cut on her right foot. That he i.e. Santosh raised a hue and cry and ran to catch his father. People in the neighbourhood gathered on hearing his shrieks and the cries of his mother. That his father ran away with the weapon of offence and he brought his mother to All India Institute of Medical Sciences.

4. ASI Iqbal Singh made an endorsement, Ex.PW-

17/A, on the statement Ex.PW-10/A and despatched the same through constable Surender Singh PW-7 for registration of an FIR. The FIR Ex.PW-1/A was thereafter registered at the Police Station at 9.20 PM by ASI Champa Lal, PW-1.

5. At the hospital Dr. Sayeed Tariq Hussain PW-2, examined Somwati and noted her condition in the MLC Ex. PW-2/A noting three stab wounds on her body. The stab wounds are as under:

- “1. Left flank – deep stab wound 4 cm in length significant bleeding present.
- 2. Right Iliac fossa – Bowel lying outside.
- 3. Left *back 4 cm superficial wound.*”

6. Relevant would it be to note that in the MLC it has been recorded that Somwati wife of Suraj Pal has been brought to the hospital by her son Santosh. While recording the history of the injuries, it is recorded that stab injuries were inflicted on Somwati by her husband.

7. Somwati died within less than 14 hours of her admission. She died on 2.10.98. The dead body was sent to the mortuary at AIIMS where Dr. Sunil Kumar Sharma PW-3, conducted the post-mortem and noted ante mortem injuries being as under:

- “(1) Stab injury on the right iliac fossa 3 cm above the anterior superior iliac spine measuring 7 cm X 2.5 cm cavity depth.
- (2) Stab injury on the left loin, 5 cm above the anterior/superior iliac spine measuring 3 cm X 1.5 cm

cavity depth.

(3) Surgically made incised wound extending from Xiphoid process to symphysis pubis measuring 20 cm in length.

(4) Stab injury only right buttock, 10 cm right to mid-line, 5 cm below the iliac crease size 4X1.5 X 6 cm.

(5) Incised wound on the right lower back 12 cm from mid-line X 15 cm below shoulder measuring 5 X 1.5 cm.

(6) Incised wound on the left lower back 5 cm from mid-line and 20 cm below shoulder measuring 7 X 2.5 cm cavity depth."

8. Internal examination revealed multiple cut injury with stitches over the small intestine. There was a cut wound on the left lower part of the left kidney. He opined that death was due to shock resulting from haemorrhage caused by the multiple stab injuries.

9. Relevant would it be to note that the post-mortem report shows five stab wounds, being at serial Nos. 1, 2, 4, 5 & 6.

10. The appellant, husband of Somwati, absconded. He was found by the police after four years, being apprehended on 1.8.2002.

11. We eschew reference to the evidence collected by the police in the form of blood stained earth, blood stained clothes of the deceased and evidence gathered during investigation, for the reason nothing much turns thereon except proof of the fact that Somwati was fatally stabbed outside the jhuggi of her sister Rajni PW-9, and that the blood

of her group was found contaminating the soil outside the jhuggi of Rajni.

12. We note the evidence pertaining to: who was the assassin.

13. Two witnesses were cited by the prosecution being Rajni PW-9, the sister of the deceased and Santosh PW-10, the son of the deceased as also of the appellant. Santosh PW-10 turned hostile. He only admitted the fact that Suraj Pal was his father but disclaimed any knowledge about the case. He denied having told anything about the incident to the police. He denied having made any statement to the police but admitted his signatures at point A on Ex.PW-10/A. He denied that the police lifted blood stained earth from outside the jhuggi of his maternal aunt. He denied having told the police that his maternal aunt Rajni came to his jhuggi and informed that his father was fighting with his mother. He denied having gone to the jhuggi of his maternal aunt. He admitted that after the post-mortem of his mother was conducted he took the dead body but denied being involved by the police with any investigation.

14. Relevant would it be to note that inspite of the fact that he did not support the prosecution case, the counsel for the accused cross-examined Santosh and when cross-

examined he answered: *"when on being called by my Mausi Rajni, I reached the place of occurrence. My Mausa Pappu husband of my Mausi was present at his jhuggi."* Thus though wanting to support and save his father, PW-10 admitted that Rajni his maternal aunt had called him and that he had reached the place of occurrence.

15. Rajni PW-9 fully supported the case of the prosecution and deposed that on 1.10.1998 at around 7.30 PM she was at her jhuggi and that after finishing her work Somwati came to her jhuggi and was sitting near her, feeding her daughter Lispat aged 1½ -2 years. Suraj Pal husband of her sister came and demanded money from her sister to buy liquor. Her sister refused. He took out a knife used for cutting mutton and inflicted injuries on her sister. That she tried to rescue her sister but could not do so and immediately rushed to the jhuggi of her sister, which was nearby, to call Santosh. Santosh came and on seeing him, Suraj Pal ran away from the spot. She deposed that Suraj Pal inflicted knife blows on the stomach of her sister and as a result thereof her intestines came out.

16. The witness was cross-examined and indeed nothing of substance was brought out; none has been pointed out to us to discredit the testimony of Rajni.

17. Dr. Sayed Tariq Hussain PW-2, deposed that on 1.10.1998 Somwati wife of Suraj Pal was brought to the hospital by her son Santosh with an alleged history of stab injuries caused by her husband in the evening. He deposed that he prepared the MLC Ex. PW-2/A.

18. Suffice would it be to note that no suggestion was given to PW-2 when he was cross-examined that Santosh had not brought Somwati to the hospital or that he had incorrectly recorded the history of the stab wounds.

19. Believing the deposition of Rajni PW-9 and the fact that in the MLC, history of the stab injuries was recorded as being inflicted by the husband; finding corroboration to the deposition of Rajni and the fact of the appellant absconding i.e. his subsequent conduct; learned trial judge has held that the charge against the appellant of murdering his wife is fully established.

20. Noting the testimony of Rajni that when the appellant inflicted stab injuries on his wife, a cut was made on the foot of his daughter Lispat, who was in the lap of the mother, the charge under Section 324 IPC had been sustained.

21. At the hearing today, learned counsel for the appellant has urged that when the maker of the FIR turns

hostile, the FIR fails and in that view of the matter the conviction of the appellant cannot be sustained. Second submission made is that no independent witness has been examined by the police.

22. It is true that Santosh has not supported the case of the prosecution, but as noted above, he has admitted that Rajni his maternal aunt had summoned him and that he immediately went to the place of the occurrence. This admission of his runs contrary to his earlier deposition where he deposed that he knew nothing of the incident. But he corroborates Rajni being present.

23. As noted above, the MLC of the deceased shows that Santosh, her son, had brought her to the hospital. This was confirmed by PW-2. We have noted hereinabove that the testimony of PW-2 was not challenged with respect to the facts stated by him that Santosh had brought Somwati to the hospital. His testimony has also not been challenged with respect to the history recorded on the MLC that Somwati had been inflicted stab injuries by her husband.

24. Thus Rajni PW-9 stands fully corroborated with respect to a document prepared contemporaneously i.e. MLC of Somwati.

25. It makes no difference whether Santosh did not

live by his conscious and chose to depose falsely.

26. Rajni PW-9 has lived by her conscious and has deposed the true and correct facts which stand independently corroborated as noted hereinabove.

27. That no public witness was examined is neither here nor there for it is the quality of the evidence and not quantity thereof which is of importance at a criminal trial.

28. What was the use of having public witnesses where the police had the son of the accused as the best witness. The son turned hostile. The other witnesses would have so turned hostile. It is an unfortunate thing which we are noticing virtually in every second case. Case after case shows that whenever the police has associated a public witness, invariably the public witness turns hostile.

29. The conduct of the appellant of absconding and not being seen for four years is itself a good circumstance to connect the appellant with the crime.

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

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

February 19, 2009/jk