

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

% *Judgment Reserved on: July 22, 2009*
Judgment Delivered on: July 27, 2009

+ **CRL.A.31/2007**

CHAND SINGH Appellant
Through: Mr. Sumit Chowdhary with
Mr. Rahul Lather, Advocates.

versus

STATE Respondent
Through: Ms. Richa Kapoor, APP.

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

INDERMEET KAUR, J.

1. The unfortunate victim of this case, namely, Rajni had succumbed to her injuries on the intervening night of 26-27.2.2003. She had been married to the appellant Chand Singh on 11.3.1997. One child was born out of the wed-lock. Their

matrimonial house was situated in village Ghuman Hera, within the jurisdiction of Police Station Jafarpur Kalan. During their matrimony, the deceased was harassed by the appellant in connection with demand for dowry; a case under Section 308/323 of the IPC and another case under Section 498-A/406 of the IPC was registered on the complaint of the deceased against the appellant. In 1999 the deceased had left the matrimonial home and had lived at her parents' house for about two years; thereafter disputes between the parties were settled and on the intervention of the father of the appellant Ram Singh, Rajni had returned back to her matrimonial home. The case under Section 498-A was finally decided on 14.2.2003 in favour of the appellant on statement given by Rajni that she was living happily in her matrimonial home. In both the said cases the appellant had ultimately been acquitted.

2. Investigation of this case had commenced on the recording of D.D.No.5-A Ex.PW-6/A wherein it had been disclosed by an unknown person that the appellant Chand Singh had given beatings to his wife and has made her unconscious. This D.D. had been recorded at 4.35 AM on the morning of 27.2.2003.

3. ASI Dharam Pal PW-16 on receipt of this D.D. along with Const. Jitender PW-15 reached the spot i.e. the house of the

appellant. The dead body of Rajni was lying on a sofa in the back portion of the house and there were injury marks on all over her body. Blood stains were found on the quilt, gadda and other articles. The appellant was not to be seen.

4. The rukka Ex.PW16/A was prepared and after endorsement on the same, it was handed over to PW-15 for the registration of the FIR. PW-10 H.C. Anita posted as Duty Officer in Police Station Jafarpur Kalan had recorded the formal FIR Ex.PW-10/A.

5. Since the offence was heinous and related to the crime of murder, the investigation of the case was handed over to Insp. Ranvir Singh PW-20 who also reached the spot. The marriage being less than seven years, the local Sub Divisional Magistrate Shri Madhu Puvya PW-12 had also been summoned who conducted the inquest proceedings. The crime team and the photographer had also reached. Krishan Singh PW-14 took 14 photographs of the spot, the negatives of which were Ex.PW-14/A1 to Ex.PW-14/A17 and their positives were proved as Ex.PW14/A18 to A-28. Site plan Ex.PW20/A was prepared. From the spot, blood stained cement and pieces of broken floor were taken into possession vide memos Ex.PW-15/A and Ex.PW-15/B. The blood stained quilt and the gadda were also seized and sealed in a pulanda vide memo Ex.PW-

15/C. The blood stained chunni, jampar (shirt) and the half wet salwar of the deceased were also seized vide memo Ex.PW-15/G.

6. The appellant was not available at the spot for interrogation. He was arrested on 27.2.2003 at 9 PM and his personal search was conducted vide memo Ex.PW16/B. He made a disclosure statement Ex.PW-16/B and pursuant thereto he had got an iron pipe recovered from a wheat field nearby which was seized and sealed with the seal of DPM vide memo Ex.PW-16/D. The blood stained wearing clothes of the appellant were also seized and sealed with the same seal vide memo Ex.PW16/E.

7. On the following day i.e. on 28.2.2003, the post mortem of the deceased body was conducted by Dr.L.K.Barua, PW-8 who had recorded 15 injuries upon the person of the deceased, all of which were opined to be ante mortem and caused by a blunt object. Opinion on the cause of death was shock and haemorrhage resulting from the aforesaid injuries. The iron pipe which had been recovered pursuant to the disclosure statement of the accused, was sent to the doctor for subsequent opinion who had vide his report Ex.PW-8/C opined that the injuries mentioned in the post mortem report were possible by the said iron pipe.

8. It is relevant to state that PW-8 has not been cross-examined on the cause of death as opined by him or that the injuries were not

ante mortem in nature. Thus, it can safely be presumed that this was a case of homicide.

9. The FIR had initially been registered under Section 302 of the IPC against the appellant Chand Singh alone. Thereafter the statements of Kewal Singh PW-1 the father and Smt. Dhanpati PW-2 the mother, were recorded by the SDM on 25.3.2003, i.e. about one month after the date of the incident. Statements of the other family members of the deceased i.e. Rohtas Kumar PW-3 and Vijender PW-5 brothers of the deceased, Smt.Vedwati PW-4 and Smt. Sushila Kumari PW-7 sisters-in-law of the deceased were recorded by the Investigating Officer Inspector Ranvir Singh PW-20 even later, i.e. 15 days after 25.3.2003 and this has come in the categorical version of PW-20. Pursuant to the said statements, the offences under Sections 304-B and 498-A of the IPC were added to the FIR and the other family members of the accused namely Ram Singh A-2 his father, Swaroopi A-3 his mother, Umed Singh A-4 his brother and Manju A-5 his sister-in-law had also been arrested and charge-sheeted.

10. The Trial Judge vide impugned judgment dated 23.11.2006 had, returned a finding of guilt against the appellant alone i.e. the husband of the deceased and finding no evidence against the other family members of the appellant i.e. A-3 to A-5, he had acquitted

them of the charges leveled against them. Proceedings against A-2 stood abated as he had died during the pendency of the trial.

11. The appellant had been convicted for the offence under Section 302 of the IPC as also for additional offences under Section 304-B read with Section 498-A of the IPC.

12. The Trial Judge while acquitting A-3 to A-5 had held that the statement of the parents of the deceased had been recorded after a long and unexplainable time gap i.e. the incident having occurred on 27.2.2003 and their statements having been recorded before the SDM only on 25.3.2003 which throws shadows of doubt on their version especially keeping in view the fact that the parents and other family members of the deceased had admittedly reached the place of incident on 27.2.2003 itself and they not having given any incriminating statement to the SDM at that time when the SDM was also admittedly present there, casts a suspicion on their versions which were thus disbelieved.

13. We note that it is strange that the trial judge while disbelieving the versions of the parents of the deceased i.e. PW-1 and PW-2 and holding that they had been recorded after an inordinate delay had at the same time relied upon the same versions and had used them to convict the appellant for the offence under Section 304-B and 498-A of the IPC. Trial Judge had also

relied upon the statements of the other family members of the deceased i.e. PW-3, PW-4, PW-5 and PW-7 to nail the appellant which had been recorded even later i.e. around 10.4.2003.

14. We note that this is a fallacious and illegal approach of the principles to be followed on the evaluation and appreciation of evidence; the same evidence which had been rejected qua A-3 to A-5 has been used as incriminating against A-1 when the ground for rejecting this evidence was the long and unexplainable delay in recording the said statements. This inordinate delay had also to be answered qua the role of A-1. Trial Court has gravely erred in using the same evidence against A-1 which had been rejected qua A-3 to A-5. Besides, if the offence was proved to have been committed by the appellant, where was the scope to bring in the offence punishable under Section 304-B IPC.

15. It is thus clear that the conviction of the appellant under Section 304-B and 498-A of the IPC is unwarranted and cannot be sustained, it is accordingly set aside.

16. The learned counsel for the appellant has argued that this is admittedly a case of circumstantial evidence and there was no eye-witness. The prosecution has not been able to establish any circumstance of the last seen theory, in the absence of which it cannot be presumed that the appellant was in the matrimonial

home at the time when the incident had occurred. It is argued that the defence of the appellant all along has been that he was a taxi driver and he had gone to Gurgaon to ply his taxi and it was only when he returned, he learnt about the incident of his wife having been murdered; he had himself informed the police; this was a case of robbery and the robbers had ransacked his house and committed murder of his wife. It is argued that the plea of alibi set up by the appellant has been established by a preponderance of probabilities and all witnesses of the prosecution had been given suggestions to the said effect; the trial judge has committed error in ignoring the defence of the accused. It is argued that the prosecution has not been able to establish all the links in the chain of circumstances to hold the accused guilty and as such he is entitled to benefit of doubt and a consequent acquittal.

17. Admittedly the appellant Chand Singh and the deceased Rajni had been living in their matrimonial home of village Ghuman Hera where the incident had occurred. Ex.PW-6/A DD No.5 recorded at 4.35 AM on 27.2.2003, which was the first information received in PS Jafarkalan about the incident clearly recites that appellant Chand Singh had inflicted injuries upon his wife and had made her unconscious. This document has been proved in the

testimony of PW-6. This witness has not been cross-examined; the recital in this document which clearly names Chand Singh as the offender who had inflicted injuries upon his wife is, thus, admitted.

18. In his statement under Section 313 of the Cr.PC in answer of query No.15, the appellant has stated that he was present at the spot at the time when the SDM had come. In response to the query No.42 he has stated that he had gone to Gurgaon at the time of incident and when he returned back he saw his wife Rajni lying in a pool of blood having a number injuries on her person and he himself had informed the police about the incident. Further, as the police had not lodged any complaint, he had gone to the police station where he had been detained and falsely implicated in the present case as the SHO had the enemical relations with him. Further, he had learnt that robbers had come to his house in the previous night and killed his wife. He pleaded innocence.

19. The answers given by the appellant to these queries in his statement under Section 313 of Cr.PC are clearly contradictory and in conflict with one and another. At one time it is stated by the appellant that he was present at the spot when the SDM had come but in the same breadth he has stated that he was at Gurgaon at the time of incident and when he returned back he saw his wife lying in a pool of blood in an injured state. PW-12 the SDM had

come to the spot at about 10.30-11 AM on 27.2.2003. The appellant has been arrested at 9 PM on 27.2.2003. This is evident from the arrest memo Ex.PW-16/B and the said document has not been challenged. The inquest proceedings had been completed by noon and thereafter the dead body has been sent to the mortuary under the supervision of PW-15 Const. Jitender. PW-15 has stated in his cross-examination that he had left the spot with the dead body at 11.30 AM on 27.2.2003. How in these circumstances the accused could have seen the dead body of his wife lying in a pool of blood when he returned back in the late evening of 27.2.2003 is not answered by him; these contradictory and conflicting stands clearly show the falsity of the plea sought to have been set up by him.

20. The appellant had examined DW-1 and DW-2 to establish his defence and to sustain his plea of alibi. DW-1 Naresh Kumar was his uncle. As per his version he had heard screams emanating from the house of the appellant in the early morning hours at 2-2.30 AM on 27.2.2003; he had however gone to the house of the appellant only at 6.30 AM on the following morning. Admittedly, even after he came to know about the murder of the wife of his nephew he did not inform the police about the incident; no complaint about the robbery or the ransacking of the house had also been reported.

21. DW-2 Suraj Prakash was also a relation of the appellant. He has deposed that the wife of the appellant had been killed by robbers and he had been informed about this by DW-1 Naresh. As per his version he had also heard screams coming from the house of the appellant at about 2.30 AM on 27.2.2003 and he went to check the house of the appellant when on the way he met DW-1 who informed him that wife of Chand Singh had been murdered.

22. Both these versions are diametrically opposed to one another and neither can draw support from the other. Defence of the appellant is sham.

23. Further, it is relevant to point out that none of the witnesses of the prosecution have specifically been cross-examined on this defence propounded by the appellant that his house has been ransacked by robbers on the previous night or that they had assaulted his wife and killed her or that he had gone to Gurgaon at the relevant time. No complaint or written document to this effect had been penned by the complainant in this regard. A vague suggestion had been given to PW-20 Insp. Ranvir Singh that the appellant has been falsely implicated as he had made a complaint against him in the court of the Magistrate.

24. In these circumstances, in our view, the Trial Court had rightly rejected this plea of alibi which the appellant had tried to

set up which is essentially a question of fact. This plea besides being contrary and conflicting and the appellant himself shifting stand as to whether he was present at the spot at the time of the incident or whether he was in Gurgaon plying his taxi at the relevant time; further that when he returned back he saw the dead body of his wife lying in the room is contrary to the record which evidenced that the dead body had already been removed to the mortuary in the morning at 11.30 AM. The appellant had come back to his house in the late evening of 27.2.2003; his arrest memo recorded the time as 9 PM; no cogent explanation had also been furnished by the appellant as to how he gained the information about the entry of the robbers in his house in the previous night; as to from which point the robbers had entered the house when there was no evidence of any forced entry; or the details about the articles stolen from his house. All these factors clearly negative this plea of the appellant. Adverse inference has to be drawn against the appellant for setting up a fictitious defence and fabricating evidence to establish his plea of alibi which is apparently false; such a conduct is indicative of his guilty mind; it is a relevant fact under Section 8 of the Evidence Act.

25. In a case of circumstantial evidence the onus is always on the prosecution to prove that the chain is complete and infirmity or any

lacuna in the version of the prosecution cannot be cured by a false defence or plea. The burden of proof is always on the party who asserts that the existence of any fact, which infers legal accountability. In order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt.

26. Time and again, it has been enunciated by the Supreme Court that if an offence takes place inside the privacy of the house where the husband and the victim wife are by themselves; the time of offence is in the middle of the night or in the early morning hours when normal human conduct presupposes the parties to be sleeping or being together in the matrimonial home; there being no evidence of any forced entry into the house; wife having been found dead the following day in abnormal circumstances; the husband having disappeared from the scene; in such circumstances if the husband puts forward a plea of alibi, it would be incumbent upon him to prove it by positive evidence. No doubt, weakness or falsity of a plea of alibi is not a ground to hold him guilty. However, Section 106 of the Evidence Act prescribes that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The initial burden is upon

the prosecution but there is a corresponding burden on the inmate of the house to give a reasonable explanation as to how the crime was committed and in the absence of any such explanation or an explanation which is contrary or false to the initial evidence sought to be taken up by the inmate an adverse inference for making such a false and contrary statement has to be drawn against such an inmate. This is upon a co-joint reading of Section 106 and Section 114 of the Indian Evidence Act.

27. This court has ignored the evidence of the close relations of the deceased, namely, PW-1 to PW-5 and PW-7 for the reasons as discussed supra. The appellant has however in his statement under Section 313 of Cr.PC, admitted that a case under Section 308 of the IPC and thereafter another case under Section 498-A of the IPC had been registered against him on the complaint of his wife and in both the said cases he had been acquitted. This throws a reflection on the relationship between the parties. The appellant and the deceased did not have a cordial or happy married life. In fact there was acrimony brewing between the parties. This had led the deceased to make complaint twice in the police station against her husband. The appellant had not forgotten his grievances against his wife; he has nurtured the desire to revenge them.

Motive, in these circumstances has been probabalized by the prosecution.

28. After the arrest memo of the appellant on 27.2.2003 and pursuant to his disclosure statement, he got an iron pipe recovered from the nearby fields which has been taken into possession vide document Ex.PW-16/D. This document had been prepared by PW16 and attested by PW-20 as well who had reiterated this version on oath. No discrepancy has been elicited in their cross-examination. This iron pipe was the weapon of offence and it has been established by the subsequent opinion of the doctor PW-8 who vide his report Ex.PW-8/C on the examination of iron pipe had opined that the two elevated rings at both ends 5 ½ inches away could be weapon which had led to be resultant injuries on the person of Rajni.

29. The clothes of the appellant as also the clothes of the deceased had been seized from the spot and this has come in the categorical version of the investigating officer PW-20. These blood stained clothes of the appellant had been taken into possession vide memo Ex.PW-16/E which included one shirt, one vest and one jacket. No suggestion has been given to PW-20 that these clothes were not of the appellant or they have been falsely planted upon him. These blood stained clothes were subsequently sent Central

Forensic Science Laboratory for opinion which vide its report ex.PX and PY had opined that Ex.P-8 i.e. the vest of the appellant was stained with blood group A which was also the blood group of the deceased Rajni.

30. Prosecution has been able to establish that the appellant was nursing a grudge against his deceased wife for having implicated him in two cases i.e. one under Section 308 and second under Section 498-A of the IPC. He was seeking vengeance. He was alone in the matrimonial home on the intervening night of 26-27.2.2003 with the deceased besides their infant child of three years. They were admittedly living by themselves in the rear portion of the house. There is no evidence of any forced entry into the house. The appellant has not been able to give any plausible or reasonable explanation of his absence from the house from the time of the offence up to his arrest at 9 PM on 27.2.2003; his false alibi and contrary pleas in defence evidence his guilt. The opinion given by the doctor who had conducted the post mortem of Rajni established that the iron pipe which the appellant had got recovered could be the weapon which had caused injuries on her person leading to her death. The blood stained vest of the appellant having blood group A also matched the blood group of his

deceased wife. All the links in the chain of evidence point to the appellant as the guilty offender.

31. There is no infirmity in the judgment of the trial court and calls for no interference. The appeal is without any merit. It is dismissed.

**(INDERMEET KAUR)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

July 27, 2009
rb