

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

% *Judgment Reserved on: July 8, 2009*
Judgment Delivered on: July 13, 2009

+ **CRL.A. 335/2008**

SUNITA GROVER Appellant
Through: Mr. Anil Soni, Advocate.

versus

THE STATE Respondent
Through: Mr. Pawan Sharma, 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. Vide impugned judgment and order dated 12.10.2007 appellant Sunita Grover has been convicted for the offence punishable under Section 302/120-B IPC as also independently for the substantive offence punishable under Section 120-B IPC. She has been sentenced to undergo imprisonment for life and to pay a fine in sum of Rs.5000/- and in default of payment of fine, to undergo simple imprisonment for three months for the two

offences. Needless to state the sentences have been directed to run concurrently. The co-accused Om Prakash has been acquitted. Trial against the third accused Mohd. Shakil @ Pappu has been separated as he was declared a proclaimed offender.

2. The version of the prosecution as unfolded is that the appellant Sunita Grover was married with the deceased Kishan Lal Grover and two children were born to them. Her husband, the deceased had a petty business of repairing spectacles and was in the habit of taking liquor. He contributed little to the household income. To supplement the family income, the appellant used to do tailoring and stitching work given to her by co-accused Shakil @ Pappu, who was running a tailoring shop. Their relations became intimate day-by-day. Shakil often used to visit the house of the appellant and would help her in purchasing household articles; to the annoyance of her deceased husband, who suspected her of infidelity qua Shakil. About two and a half months prior to the date of the incident, the appellant and her deceased husband had purchased a Janta Flat at Rohini i.e. A-1/116, Sector-17, Rohini for a sum of Rs.2.5.lacs and Shakil was an active intervener in the purchase of said property. The lustful relationship between the appellant and the co-accused Shakil grew with the passage of time. They i.e. the appellant and Pappu along with co-accused Om Prakash hatched a conspiracy to get rid of Kishan Lal Grover.

3. As per the conspiracy, on the intervening night of 8/9th July, 2007, the appellant administered sleeping tablets to her husband in liquor. He went off to sleep. Along with her two children, the appellant went out of the house and informed her co-accused i.e. Shakil @ Pappu, who along with his co-worker Om Prakash went into the house of the deceased and after pressing his mouth gave him a blow in his chest with an iron press lying nearby; the deceased was attacked on his head and thereafter with the same instrument he was struck on his private parts thereby incapacitating him, as a result of which blood oozed out from his body. He died and a bed sheet was put upon his body; thereafter the co-accused i.e. Shakil @ Pappu and Om Prakash fled from the scene. Sunita Grover, the appellant then entered the house along with her children and slept inside the house as if everything was normal. On the following morning, the appellant, as per the plan hatched, went to the house of her neighbour Gurdyal Mohan PW-8 and told him that her husband was not rising from his slumber. Gurdyal Mohan came to her house and saw that her husband was dead and summoned the police.

4. It is not in dispute that after the police was informed about Kishan Lal's death and the IO arrived at the house, the statement Ex.PW-20/A of Sunita Grover was recorded and the FIR in question was registered on the basis of the said FIR.

5. In her statement Ex.PW-20/A Sunita Grover stated that on the previous night i.e. in the intervening night of 8/9.7.1998, at about 9.30 p.m. her husband had gone out and came after about half an hour and went off to sleep. She along with her two children aged six years and eight months went to sleep on the floor. The house was securely locked with a lock as also after bolting it from inside and key of the lock was kept on the fridge. In the morning when she woke up to heat the milk for her daughter, she noted that blood was oozing out from her husband's body and he was not responding to her calls. She informed her neighbour Gurdyal Mohan who came to the spot and saw that Kishan Lal had already died.

6. On this statement Ex.PW-20/A endorsement Ex.PW-20/B was made; the rukka was then taken by PW-9 HC Subhash for the registration of the FIR which was formally registered by PW-1 HC Raj Bala at 1.35 p.m. on the same day.

7. Investigation was set in motion. The crime team was summoned and the photographer PW-11 Kuldeep took nine photographs of the spot, the positives of which were Ex.PW-11/1 to 9.

8. The rough site plan Ex.PW-20/C was prepared at pointing out of the informant i.e. the appellant Sunita Grover. PW-20 Investigating Officer, Inspector Ved Prakash collected the blood stained clothing from the spot which included one pillow, one bed sheet as also one

iron gas stove which was taken in possession vide memo Ex.PW-10/A. The inquest proceedings were conducted vide proceedings Ex.PW-20/D.

9. The post-mortem on the deceased body was conducted on 11.7.1998 by PW-13 Dr.K. Goel, who noted five external injuries on the body of the deceased, which read as under:

“EXTERNAL INJURIES

- 1.) Right eye ecchymosed and slightly swollen.
- 2.) Lacerated wound 1.5 x .25 “ over right temporal region with bruised margins.
- 3.) Multiple defused bruises over right elbow.
- 4.) There was incised wound with ragged margins over suprapubic region extending from above the both inguinal rings running downwards upto the root of penis cutting vessels and nerves of penis, vas and corpora cavernosa in total area 10 x 6 cm. There was no bruising over any vital sign at the margins of the wounds or cut structures.
- 5.) Defused bruising seen all over sacrotum.”

10. Internal examination of the patient had also been conducted and besides bruises noted under the scalp the second and fifth ribs were found fractured. Testicles were also found bruised. The doctor had opined the cause of death as cardiac reflex resulting from testicular injuries and haemothorax resulting from lung injuries. Injury no. 4 was noted to have been caused after death by a sharp edged weapon. It was opined that the testicular and lung injuries

were sufficient to cause death individually and collectively in ordinary course of nature.

11. The dead body was duly identified. Kamal Kishore PW-3 and his father PW-4 had been examined by the prosecution to establish that co-accused Pappu @ Shakil was running a tailor shop at Rohini and he had got a deal struck for the purchase of flat no. A1/116, Sector 17, Rohini, which had been purchased by the deceased Kishan Lal and his wife Sunita Grover through the intervention of Pappu. PW-4 has reiterated this version in court on oath and had further stated that later on he came to know that the person who had purchased this flat, had been murdered.

12. Both these witnesses had established that Pappu @ Shakil had intervened in this property deal which had led the deceased Kishan Lal to purchase this flat i.e. A-1/11, Sector 17, Rohini where the incident had occurred, thereby also establishing the fact that Pappu @ Shakil was on close terms with the deceased and his appellant wife.

13. In the course of the investigation, the brother of the deceased, namely, Nand Kishore Grover PW-19 was examined wherein he had stated that Sunita Grover had an illicit relationship with Pappu. Attempt was made to trace out Pappu @ Shakil, who was found missing from his shop along with his co-worker Om

Prakash since 9.7.1998.

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14. This gave a feeler to the Investigating Officer about the probable involvement of the appellant which led the police party to her house. The appellant was interrogated and she made her disclosure statement Ex.PW-18/A on 13.7.1998 admitting her guilt, pursuant to which she was arrested. She also got recovered one suit from the bath room of the matrimonial home which was seized vide Ex.PW-18/B wherein it was disclosed that she had kept the sleeping tablets in the one part of the Kurta which she had administered to her deceased husband in the liquor which he had consumed on the fateful night.

15. The role of co-accused Om Prakash and Shakil @ Pappu was also unfolded; co-accused Om Prakash was arrested vide memo Ex.PW-20/A; his disclosure statement Ex.PW-18/D was recorded and pursuant thereto co-accused Om Prakash got recovered an iron press from the bushes near the ganda nala of Sector-17 which was taken into possession vide memo Ex.PW-18/E. PW-15 Sandeep, a photographer was summoned to the spot who took photographs of the press Ex.P-1 to P-10. The iron press was proved in court as Ex.P-6.

16. Co-accused Mohd. Shakil @ Pappu, however, could not be arrested in spite of best efforts and pursuant to the initiation of proceedings under Section 82/83 Cr.PC, the said co-accused was declared Proclaimed Offender.

17. The trial court while returning a finding of guilt against the appellant had relied upon the admission made by the appellant in her statement Ex.PW-20/A which formed the basis of the FIR, wherein she had stated that she was sleeping with her husband and two children in their matrimonial home in the intervening night of 8/9.7.1998. On the following morning when she woke up at about 5.45/6 a.m., she noted that her husband was not responding to her call. She informed her neighbor; her neighbor, on reaching, found her husband lying dead.

18. Admittedly, it was on this statement that the FIR was registered. The trial court has held that this statement is not amounting to a confession and is not excluded from admissibility and such an information is admissible as evidence of her conduct under Section 8 of the Evidence Act. Such information being not confessional, it was also held admissible under Section 21 of the Evidence Act.

19. Having drawn this conclusion that the deceased and the appellant had both slept in the matrimonial home along with their two children on the fateful night of 8/9.7.1998 and house being securely bolted and locked from the inside and there not being any forced entry of any outsider from outside into the matrimonial home, the accused thereafter having been found dead on the following morning, the burden clearly shifted upon the accused to

explain the circumstances in which the deceased had died in this intervening night; the provisions of Section 106 of the Evidence Act had been invoked by the trial court shifting the onus upon the accused to give a satisfactory explanation about the incident. No such explanation had been found forthcoming.

20. From the nature of the injuries on the person of the deceased the Trial Court has concluded that the same evidenced involvement of more than one person.

21. Reliance had also been placed on the version of PW-8 Gurdayal Mohan, the neighbour to whom first information of this incident had been given by the appellant. The illicit relationship between the deceased and her paramour i.e. the co-accused Shakil @ Pappu had also been highlighted as a motive of the crime.

22. Co-accused Om Prakash had, however, been given a benefit of doubt and he had been acquitted as besides the recovery of an iron press at his behest, no other incriminating circumstance had been advanced by the prosecution against him.

23. On behalf of the accused, arguments have been advanced by Mr. Anil Soni, Advocate. It has been argued that the statement of Sunita Grover, the maker of the FIR cannot be relied upon as the bar of Section 25 and Section 26 of the Evidence Act is attracted and Sunita Grover admittedly being an accused before this court and her statement having been recorded by the police, this bar of

Section 25 & 26 of the Evidence Act gets attracted and her statement clearly amounting to a confession cannot be read in evidence. If this statement of Sunita Grover is ignored, there is nothing on record with the prosecution which could establish their averment that the deceased and the accused were sleeping in the matrimonial home along with their two children in the intervening night and in the absence of which all other consequential and subsequent circumstances flowing thereto have to fall. It is argued that version of PW-8 is tainted and cannot be relied upon to establish any kind of motive as has been set up by the prosecution; it has been brought to notice that in his cross examination PW-8 has stated that whatever information he has given about the illicit relationship of Pappu and Sunita was on the information of Nand Kishore and his sister and Nand Kishore has been examined as PW-19, who has not supported the case of the prosecution and has stated that his Bhabhi, the appellant Sunita was a good charactered lady and he did not suspect her fidelity. It is argued that theory of motive also fails. It is further argued that an incriminating circumstance which has not been put to the accused in her statement under Section 313 Cr.P.C. cannot be used against her and a perusal of this statement shows that no circumstance about the appellant having an illicit relationship with the co-accused Pappu had been specifically put to her. It has lastly been argued

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that PW8 in his cross examination by the learned APP has admitted that he had seen Sunita along with her two children strolling outside her flat at about 10 p.m. and again at 11 p.m., thereby demolishing the version of the prosecution that the accused had returned home at about 10 p.m. in the night and thereafter the couple had gone to sleep; it is argued that this admission by PW-8 is contrary to the stand set up by the prosecution.

24. Arguments have been heard and the record has been perused.

25. Admittedly the statement Ex.PW-20/A made by the appellant Sunita Grover formed the basis of the FIR. Question is whether this statement amounts to a “confession” and can be read in evidence or not.

26. The word “confession” has not been defined in the Indian Evidence Act but the law relating to confession is found generally in Sections 24 to 30 of the Evidence Act and Sections 162 and 164 of the Code of Criminal Procedure, 1898. Confession is a species of admission, and is dealt with in Sections 24 to 30. A confession or an admission is evidence against the maker of it, if its admissibility is not excluded by some provision of law. Section 25 is imperative, and a confession made to a police officer under no circumstances is admissible in evidence against the accused. The partial ban imposed by Section 26 relates to a confession made to a person

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other than a police officer. Section 27 is in the form of a proviso and it partially lifts the ban imposed by Sections 24, 25 and 26. A statement or confession made in the course of an investigation may be recorded by a Magistrate under Section 161 of the Code of Criminal Procedure subject to the safeguards imposed by the Section, which is protected by Section 162 of the Code.

27. A statement containing purely self-exculpatory matter, however, cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. When an admission of an accused is sought to be used against him, the whole of it should be tendered in evidence, and where a part of the admission is exculpatory and a part inculpatory, the prosecution cannot use in evidence the inculpatory part alone. The said statement cannot be segregated.

28. On the basis of these settled principles of law, the statement Ex.PW20/A has to be judged, i.e. the statement made by the appellant who had subsequently become an accused before this Court.

29. Perusal of Ex.PW 20/A shows that this entire statement is self exculpatory and does not show the involvement of the accused in the crime at any stage. Such an information is thus clearly not a confession and is per se admissible under Section 21 of the Evidence Act; such a statement given by an accused of the first

information of an offence where there is no involvement of the accused herself, is also admissible against her as evidence of her conduct under Section 8 of the Evidence Act as well.

30. This is the settled position of law and has been the subject matter of numerous judicial pronouncements.

31. In AIR 1964 SC 1850 Faddi vs. State of M.P. the Apex Court had held that where the person who had lodged the first information report regarding the occurrence of a murder is himself subsequently accused of an offence and tried; the report lodged by him being not a confessional first information report but an admission by him of certain facts which have a bearing on the questions to be determined by the Court, such a first information report was admissible to prove against him, his admissions which are relevant under Section 21 of the Evidence Act.

32. In similar circumstances the Privy Council in the case of Dal Singh vs. King Emperor 44 Ind. App 137 (PC) had held that such first information reports are admissible in evidence. It was inter alia held as follows :-

“It is important to compare the story told by Dal Singh when making his statement at the trial with that what he said in the report he made to the police in the document which he signed, a document which is sufficiently authenticated. The report is clearly admissible. It was in no sense a confession. As appears from its terms, it was rather in the nature of an information or charge laid against Mohan and Jhunni in respect of the assault alleged to have been made on

Dal Singh on his way from Hardua to Jubbulpur. As such the statement is proper evidence against him....”

33. This Court, on the basis of this fundamental principle of law as enunciated by the Supreme Court, is thus of the view that Ex.PW20/A can be read in evidence and is relevant fact under Section 8 qua the conduct of the appellant and its admissibility also has to be read in the context of Section 21 of the Indian Evidence Act. We may hasten to add that in the decisions reported as AIR 1975 SC 757 Shankar Vs. State of U.P. and in the decision reported as AIR 1972 SC 622 Damodar Prasad Vs. State of Maharashtra first information reports lodged by the accused which were found to be false and being exculpatory of the accused; evidence suggesting to the contrary, was held to be an incriminating conduct of a guilty mind which wanted to secrete the truth.

34. It was this statement which had set the Investigating machinery into motion.

35. The prosecution had thus been able to establish that on the intervening night of 8/9.7.1998, the appellant Sunita Grover along with her husband Kishan Lal Grover and their two minor children were sleeping in her matrimonial house i.e. A1/116, Sector-17, Rohini and on the following morning when the appellant awoke she found that her husband was not responding to her calls, pursuant to which she had called her neighbour.

36. The testimony of Gurdial Singh establishes that the appellant was loitering outside her house on the fateful night at around 10:00 PM. It establishes that the appellant told a lie to the police that when her husband returned back at around 10:00 PM, everybody went to sleep after securing the house. It is apparent that the appellant was loitering outside the house to facilitate the commission of the crime.

37. Now, two things are possible. Either that the appellant never went outside the house or she was seen loitering outside the house. Both circumstances are equally incriminating. If the appellant remained in the house, she has to render an explanation as to how her husband died for the reason there is no evidence of a forced entry inside the house. The injuries on the deceased are of a kind which must have caused extreme pain and hence moaning and groaning by the deceased which was bound to attract the attention of his wife. If the wife i.e. the appellant was seen loitering outside her house by Gurdial Singh, her conduct of telling falsehood to the police is incriminating conduct.

38. Under both circumstances the fact that the appellant had a motive assumes significance.

39. In these circumstances, the burden clearly shifted upon the appellant and it was for the appellant to explain the circumstances in which the death of her deceased husband Kishan Lal had

occurred in the intervening night. Provisions of Section 106 of the Evidence Act clearly stood attracted.

40. Prosecution has been able to reach a threshold where the onus now shifted upon the appellant to offer an explanation as to how and in what circumstances the incident had occurred. The accused, however, offered no explanation as to how her husband was murdered; in fact she had taken a contrary plea in Ex.PW 20/A wherein to mislead the investigating authorities she had stated that she had gone to sleep along with her two minor children at about 10.00PM at night and thereafter in the morning she had found her husband dead.

41. It is no doubt true that Gurdyal Mohan has made somewhat contradictory statements vis-à-vis his examination in chief which are favourable to the appellant. But, it assumes significance that Gurdyal was examined in chief on 18.12.1999. Learned counsel for the appellant used every trick up his sleeve and cross examined the witness after five years on 3.1.2005. The witness was either threatened or won over.

42. The testimony of PW-3, PW-4 and Gurdyal Singh establishes a close and an intimate relationship between the appellant and Pappu.

43. The impugned judgment calls for no interference. The appeal is without any merit.

44. The appeal is dismissed.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

July 13, 2009
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