

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

% Date of decision : 16th December, 2009

+ **CRL. A. No. 458/2005**

MAHENDER PAL SETHI Appellant
Through: Mr. Bhupesh Narula &
Mr. Sunny Arora, Advocates

versus

THE STATE Respondent
Through: Ms. Richa Kapoor, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Believing the testimony of the two major sons of the appellant i.e Mohit Sethi and Chetan Sethi, as per whom the appellant, their father, had murdered their mother, the learned

trial judge has convicted the appellant for the offence of having murdered his wife.

2. The learned trial Judge has found additional sustenance to the incriminating evidence against the appellant with reference to a handle of generator which was got recovered after the appellant was apprehended; as per the FSL report Ex. PW-21/G human blood was detected on the handle of the generator.

3. Ignoring the recovery of the generator handle which possibly could be the weapon of offence for the reason the post-mortem report of the deceased shows that she was repeatedly struck on the scalp with a blunt object, we consider the testimony of the two sons of the appellant, who were present in the house when their mother was murdered.

4. As deposed by the two sons of the appellant the crime took place in the bedroom of their house, in which bedroom their parents used to sleep. The crime took place at around 5:30 AM on 12.06.2002.

5. Information was received by the Police Control Room as recorded in the PCR form Ex. PW-23/A at around 7:40 a.m.

6. SI Sita Ram PW-20 and Inspector Om Prakash PW-24 reached House no. H-3/64, Vikas Puri, where the crime was committed and not the sons of the appellant who were present in the house. Inspector Om Prakash recorded the statement Ex. PW-4/A of Mohit Sethi, as per which he was sleeping in the drawing room of the house and his sleep was disturbed in the wee hours of the morning at around 5:30 AM when he heard cries of her mother from the bedroom where his parents were sleeping. He saw his father running away from the back door and his mother lying soaked in blood. He informed that his father used to suspect the fidelity of his mother and on said account there used to be a matrimonial dispute between the two. On the basis of the statement of Mohit Sethi the FIR Ex. PW-1/2A was recorded at the local police station.

7. The body of the wife of the appellant who had died soon after the assault was seized and sent to the mortuary where post-mortem was conducted by Dr. B.N. Mishra, PW-17, who prepared the post-mortem report Ex. PW-17/A, as per which deceased Kanchan Sethi, aged 45 years had five external injuries, two of which had resulted in her scalp being fractured

and the brain being damaged. To put it in medical terms, the upper part of the cerebrum and the left cerebral hemisphere was damaged. The petrous part of the temporal was fractured. Death was instantaneous as a result of the cumulative effect of the injuries suffered by the brain.

8. Dr. B.N. Mishra, PW-17 also gave his opinion Ex. PW-17/B as per which a generator handle sent to him for opinion was opined to be the weapon with which the injuries noted by him on the deceased could be caused.

9. Ignoring the blood stained article which was lifted from the bedroom where the appellant and his wife used to sleep as also the site plan for the reason the appellant does not dispute that his wife died as a result of an assault in the bedroom of the house, we need to note only the testimony of the two sons of the appellant. Out before that we note the answers given by the appellant to some questions when he was examined under Section 313 Cr. P.C.

10. To question No. 1 that there was evidence that the appellant, his wife Kanchan Sethi and his sons Mohit Sethi and Chetan Sethi were residing at House No. H-3/64, Vikas Puri, the

appellant replied in the affirmative.

11. To question No. 5 that there was evidence that on 12.6.2002 i.e. the day when the wife of the appellant was found dead inside the bedroom, the appellant and his wife were sleeping in the bedroom and their son Mohit was sleeping in the drawing room and the other son Chetan was sleeping on the second floor of the house, the appellant replied in the affirmative.

12. All other incriminating evidence put to the appellant was denied.

13. To the last question whether he had anything to say, the appellant simply state that he was innocent and had been falsely implicated.

14. Suffice would it be to note that having admittedly being in the house in the morning on 12.6.2002, the appellant gave no explanation as to how his wife was assaulted. What is the effect of the appellant not giving any such explanation would be dealt with by us after noting the testimony of two sons of the appellant.

15. We proceed from the last answer given by the appellant

to the Court when he was questioned whether he had something to tell to the Court, the appellant stated that he was falsely implicated.

16. Now, who has implicated? The answer is obvious. His sons. As noted above, the informant to the crime is Mohit Sethi.

17. It may be noted, at the outset, that while cross-examining his sons, who appeared as PW-4 and PW-5, no suggestion has been given to the sons with respect to any possible motive for both of them to falsely implicate their father.

18. We have perused the testimony of Mohit Sethi and Chetan Sethi. Mohit Sethi, PW-4 has stated that his father used to suspect the character of his mother and used to give her beatings after consuming liquor; that in the night of 11.6.2002 his parents had a quarrel and went to sleep thereafter in their bedroom and he slept in the drawing room. At about 5:30 AM he heard cries of his mother which awoke him from his slumber. He proceeded to the bedroom and saw his mother lying on the bed with blood oozing from her head.

His father was near the back door of the bedroom and he saw him running away towards the park. He called his younger brother and his maternal uncle. He also contacted his neighbour, who worked as a doctor in Deen Dayal Hospital. The neighbour reached and on seeing his mother declared her dead. Some neighbour informed the police, who came and recorded his statement Ex. PW-4/A which bore his signature at point A. Blood sample of his mother and certain blood stain material was lifted as per the memo Ex. PW-4/C; that he was taken to Magistrate where his statement was recorded (we note that Mohit Sethi's statement was got recorded under Section 164 Cr. P.C., the said statement is Ex. PW-4/G).

19. Chetan Sethi PW-5 deposed that around 5:30 AM on 12.6.2002 Mohit called him and when he came down Mohit told him that their father had left the house. He saw his mother lying on the bed and blood oozing from her body. He deposed that his father was not present in the bedroom at that time.

20. Mohit Sethi and his brother Chetan Sethi have been subjected to extensive cross-examination and we do not find

any material contradiction or falsehood in the testimony of the two sons who were aged about 24 years and 22 years respectively when they deposed in the Court on 15.1.2004 and 27.3.2004 respectively. It is apparent that two were aged about 22 years and 20 years respectively when their mother was killed.

21. What is the evidence which we have before us? Firstly, that the crime took place inside the bedroom of the house in which the appellant resided with his wife and children. Secondly, that the appellant and his wife slept together after a quarrel in the bedroom in question in the intervening night of 11-12.6.2002. At 5:30 AM the cries of the wife of the appellant awoke Mohit Sethi who was sleeping in the drawing room and he saw from his own eyes his mother on the bed with blood oozing from her head and his father standing near the back door of the bedroom and on seeing Mohit Sethi his father running away. There is no evidence that any outsider came inside the house. Thus, the irresistible conclusion has to be that somebody who was inside the house murdered the deceased.

22. Now, only three persons were inside the house; they were the appellant and his two sons. Whereas Mohit Sethi has categorically stated that when he heard the cries of his mother inside the bedroom he saw his father at the back door of the bedroom, it is not the case of the appellant; we say for the reason he has given no suggestion to his two sons, that they had assaulted their mother and thus, the only conclusion which we can draw indeed any reasonable person would be compelled to draw would be that appellant has killed the wife.

23. Two additional facts qua the guilt of the appellant may be noted. Husbands are expected to be in their house at 5:30 AM. The fact that appellant absconded from his house at 5:30 AM is an additional link to the said circumstance and secondly no explanation given by the appellant as to how his wife was murdered.

24. Whether the assault is murderous or a simple homicide. The post-mortem report and the motives give the answer. The motive proved through the testimony of Mohit Sethi establishes that appellant suspected the chastity of his wife. The post-mortem report shows that five external injuries were

inflicted on the skull, a vital part of the body of Kanchan Sethi, the wife of the appellant. Death is instant.

25. It is obviously a case of murder.

26. We find no merit in the appeal.

27. Dismissed.

28. Since the appellant is in jail, copy of this order be sent to Superintendent Central Jail, Tihar to be made available to the appellant.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

DECEMBER 16, 2009
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