

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

+ **Crl. Appeal No.737/2005**

% *Date of Order : July 3, 2009*

BEERU @SURENDER Appellant
Through : Mr.Rajesh Mahajan, Advocate.

VERSUS

STATE (G.N.C.T. OF DELHI) Respondent
Through : Ms. Richa Kapoor, APP.

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICEINDERMEET KAUR

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

PRADEEP NANDRAJOG, J.(Oral)

1. Vide impugned judgment and order dated 29.3.2005, the appellant stands convicted for the offence of having murdered Shanti W/o Narayan Dass. Vide order of sentence dated 31.3.2005, the appellant has been sentenced to undergo imprisonment for life and pay a fine of Rs.1,000/-; in default of payment of fine, to undergo rigorous imprisonment for three months.
2. In returning a finding of guilt, the learned Trial Judge has held that the testimony of Meena PW-1, the sole eye-witness to the incident is creditworthy and inspires confidence. The learned Trial Judge has found sustenance

to the testimony of PW-1 with reference to the testimony of Narayan Dass PW-2. The learned Trial Judge has been influenced by the fact that PW-1 and PW-2 are illiterate beggars and thus their conduct has to be appreciated with reference to their socio-economic background.

3. It is not in dispute that on 10.5.2004, somewhere in the late hours of the evening or in the intervening night of 10th and 11th May 2004, Shanti Devi W/o Narayan Dass was killed. She and her husband i.e. Narayan Dass were vagabonds. Their home was a space under a bridge adjoining Delhi Loco Shed. Shanti Devi suffered from leprosy. Her husband Narayan Dass is a physically challenged person.
4. In her testimony, Meena PW-1, stated that she knew the deceased and her husband Narayan Dass, who used to live under the flyover adjoining New Delhi Railway Station. She knew appellant Beeru who also used to live under the flyover. Shanti Devi used to cook food for the appellant, who would, many a times come drunk, but in spite thereof, would be served food by Shanti. That, on 10.5.2004 she was sitting under the flyover when appellant came at around 7/8 PM and demanded Rs.10,000/- from Shanti. Upon refusal by Shanti to pay, he i.e. the appellant started beating Shanti with a broom lying nearby followed by

beating her with a stick and then a stone. When this was happening, husband of Shanti Devi ran away. She i.e. Meena tried to save Shanti by requesting the appellant to leave her. At that, the appellant slapped her. That the final assault on the deceased was in the form of strangulation. The appellant strangled Shanti to death. She i.e. Meena, got scared and ran away. That on 18.5.2004, the police met her and she narrated the incident to the police.

5. On being cross-examined, Meena stated that at the time of the incident, five to six people collected at the spot and tried to save Shanti Devi from the accused. She admitted that in her statement recorded under Section 161 Cr.P.C. it was not disclosed by her that she intervened to save Shanti Devi when appellant assaulted Shanti Devi and that it was also not recorded therein that when she intervened, the appellant slapped her.
6. Narayan Dass PW-2, deposed that Shanti Devi was his wife and they used to reside under the flyover adjoining New Delhi Railway Station and that he knew appellant as the appellant resided nearby and was a pickpocket and a peddler of smack. That on 10.5.2004 he was sitting with his wife when the appellant came drunk and questioned his wife as to who has picked up Rs.10,000/- which he had

concealed beneath a brick. His wife replied in the negative saying that she had seen no such money nor had she picked up any. At that, the appellant started beating his wife. He got scared. Being a handicapped person he ran away to save himself from the appellant. Next morning when he came back he found his wife lying dead and that the appellant was arrested in his presence on 18.5.2004.

7. As noted herein above, the learned Trial Judge has found Meena to be a truthful and a reliable witness. Thus, with reference to her testimony, the learned Trial Judge has returned a finding that the same establishes that the appellant had caused the death of Shanti on being aggrieved by the fact that Rs.10,000/- hidden by him under a brick were missing. Corroboration has been found with reference to the testimony of PW-2 who claims not to have seen his wife being actually murdered, but had witnessed the assault being commenced on his wife by the appellant. The conduct of PW-2 of running away, being scared, has been found to be acceptable by the learned Trial Judge because of the fact PW-2 was physically handicapped.
8. It is unfortunate, probably the attention of the learned Trial Judge was not drawn to certain relevant evidence which brings out contours of the case of the prosecution in favour of the appellant. Had it been so done, we are confident

that the impugned decision convicting the appellant would not have been rendered.

9. Ex.PW-4/A, Ex.PW-7/G and the statement of Narayan Dass recorded by the investigating officer under Section 161 Cr.P.C. are three material evidences which throw considerable light as to what had happened as also whether appellant's implication in the case is false.
10. As noted hereinabove, Shanti Devi died (was killed) in the late evening of 10.5.2004 or somewhere in the intervening night of 10th and 11th May 2004. Information pertaining to her death was received at the police station and resulted in DD No.6A Ex.PW-4/B being recorded at 11.5.2004. Said DD entry was recorded at 6:55 AM as mentioned therein.
11. SI Brijesh Malik PW-7 (the investigating officer) to whom Const. Darpan PW-5 handed over a copy of DD No.6A proceeded to the spot in the company of Const. Darpan where, as per information received, the dead body of a female was noted in the early hours of the morning of 11.5.2004.
12. In his own hand, PW-7 recorded the endorsement Ex.PW-4/A on copy of DD No.6A. In the said endorsement he wrote that at the spot he saw Narayan Dass next to the dead body of the woman and through Narayan Dass he learnt that the dead body was of Shanti Devi, the wife of

Narayan Dass. He penned in the endorsement that in spite of repeatedly asking Narayan Dass as to what had happened and how Shanti Devi had died, Narayan Dass was telling him nothing. Recording that the dead body has been seized and sent to the mortuary for post mortem, PW-7 deferred registration of an FIR to await the report of post-mortem of the deceased since the material before him was inconclusive, in any case, no definite opinion could be formed based thereon that a crime had been committed.

13. On the same day itself i.e. 11.5.2004 PW-7 once again tried to reason out with Narayan Dass to elicit information, if any available with Narayan Dass, pertaining to the cause of the death of Shanti Devi. Ex.PW-7/G was penned by PW-7 in which he wrote that Narayan Dass has informed him that last evening at around 7:30 PM, two to three boys came and started raising a hue and cry as to what has happened to their money which they had hidden beneath a tin sheet. He i.e. Narayan Dass got scared that these boys may be suspicious of him and this fear led him to remove himself from the place and that when he returned to the spot in the morning at 6:00 AM, the next day he found that his wife Shanti was dead. A further endorsement stands recorded in Ex.PW-7/G on 18.5.2004 that in view of the

post-mortem report of the deceased which clearly indicates a homicidal death, case was made out to register an FIR for an offence punishable under Section 302 IPC.

14. It would be interesting to note that PW-7 kept pending the registration of an FIR, pending inquest proceedings being completed i.e. to await the report of the post-mortem of the deceased.
15. The post-mortem report Ex.PW-12/A was made available to the investigating officer on 18.5.2004, as per which the cause of death of Shanti was manual strangulation. As per the post-mortem report, Shanti had eight injuries. Six injuries were caused by blunt force and two injuries were the result of being strangled by applying pressure over the neck.
16. It was apparent that the death was homicidal. Thus, on 18.5.2004, an FIR for the offence of murder was registered.
17. Surprisingly, on the same very day i.e. 18.5.2004, the statement of PW-1 and PW-2 were recorded by the investigating officer under Section 161 Cr.P.C. It may be noted that the two statements were recorded after the FIR was registered.
18. In his statement under Section 161 Cr.P.C. Narayan Dass for the first time named the appellant as the assailant. Relevant would it be to note that in the said statement,

Narayan Dass stated that he did not know the name of the appellant and that his name was told to him by Meena PW-1. He informed that in the evening of 10.5.2004, the appellant had questioned his wife as to what had happened to his money and that when his wife told the appellant that she knew nothing about his money, the appellant assaulted his wife. He got scared and ran away.

19. Meena's statement under Section 161 Cr.P.C. which was recorded on 18.5.2004 inculpated the appellant.
20. Suffice would it be state that Narayan Dass had no information about the cause or circumstances under which his wife died when he was first accosted by PW-7. The same is evidenced by Ex.PW-4/A.
21. Ex.PW-7/G shows that at the second instance, PW-2 told PW-7 that two to three boys, not known to him, had created a ruckus pertaining to certain money which they claimed to have hidden under a tin sheet and wanted to know from his wife as to what had happened to their money.
22. If this be so, the assailants had to be two or three. It is also relevant to note that at that point of time, which happened to be 10:05 AM on 11.5.2004, PW-2 just did not name the appellant as the assailant of his wife or being a part of the two or three boys who he claimed had an

altercation with his wife. It is also relevant to note that as per Ex.PW-7/G, PW-2 left the spot being scared that the said two or three boys may be suspicious of him having removed their money, or that he may be assaulted by them and thus he decided to remove himself from the place. In his deposition in Court, PW-2 gave a completely different cause for removing himself from the place of occurrence i.e. when the appellant started assaulting his wife, he got scared and went away.

23. Another important feature is that, in his statement under Section 161 Cr.P.C. recorded on 18.5.2004, PW-2 told the police that he learnt the name of the appellant on being told to him by PW-1 Meena. But, in Court, PW-2 claimed to have personally known the appellant for the reason the appellant also used to share the residence under the same flyover which was the abode of PW-1 and his wife.
24. Meena does not live in a place which is remote from the place of occurrence. Meena also resides under the same flyover where Shanti Devi and her husband used to reside and where Shanti Devi was murdered. Surely, the investigating officer would have questioned all the vagabonds residing under the flyover in question to inquire about the death of Shanti Devi. Meena Devi surfacing as an eye-witness on 18.5.2004 is indeed an interesting facet,

casting a doubt of her being an eye witness.

25. The totality of the circumstances noted hereinabove, makes it highly suspicious whether the investigation has been conducted correctly or that the appellant has been picked up, being a vagabond, to be implicated in the offence and a medal claimed by the investigating officer having successfully solved a murder.
26. For the facts and circumstances noted hereinabove, it cannot be said that the prosecution has been able to present a creditworthy case. The appellant is entitled to an acquittal.
27. The appeal is allowed. The impugned judgment and order dated 29.3.2005 is set aside. The appellant is acquitted of the charge of having murdered Shanti Devi. The sentence imposed upon the appellant is also set aside.
28. The appellant is directed to be set free, if not required in any other case.
29. Copy of this order be sent to the Superintendent, Central Jail, Tihar for compliance.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JULY 03, 2009
Dharmender