

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

+ Crl. Appeal No. 835/2005

% Date of Decision : 13th of April, 2009

RAJESH KUMAR @ RAJU Appellant

! Through: Mr. Sumit Verma, Adv.

versus

\$ STATE (GOVT. OF NCT OF DELHI) Respondent

^ Through: Ms. Richa Kapoor, APP

* **CORAM:**
HON'BLE MR. JUSTICE B.N.CHATURVEDI
HON'BLE MR. JUSTICE P.K. BHASIN

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| 1. | Whether the Reporters of local papers 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 |

: **B.N.CHATURVEDI, J.**

1. Charged and tried for an offence punishable under Section 302 IPC, the appellant is in appeal against his conviction vide judgment dated 1.7.2005 and sentencing to life imprisonment and fine of Rs.2,000/-, in default of payment of fine RI for ten months by an order dated 2.7.2005.
2. Material facts leading to appellant's prosecution, as stated in the chargesheet, disclose that on 19th of November,

2000, at about 4.10 a.m. an information was received on phone from one Subhash Chand, S/o Fateh Chand, at Police Station Nabi Karim, Delhi, that a lady smeared in blood was lying in an injured condition in front of his house. The information so received was recorded being DDNo.6-A dated 19.11.2000 at PS Nabi Karim, Delhi. A copy of such DD report was passed on to SI Jai Raj Singh for necessary action. SI Jai Raj Singh, accompanied by Constable Satish Kumar 1453/C, proceeded to the spot where he came to know that the injured had been removed to Lady Harding Hospital. He, accordingly, accompanied by the said constable proceeded to the Lady Harding Hospital. On reaching there, he learnt that the injured lady had been declared by the doctor concerned as brought dead. SI Jai Raj Singh came across with one Madhu Sharma at the hospital. He recorded her statement and sent the same to the police station with his endorsement thereon through Constable Satish Kumar for registration of a case under Section 302 IPC. An FIR was, accordingly, registered at 6.10 a.m. SI Jai Raj Singh collected MLC of the deceased lady and went back to the spot. He took into his possession a bloodstained knife lying at the spot, got the scene of the crime photographed by crime team and

completed other proceedings. As Madhu Sharma, complainant, had named the appellant as the one who caused fatal injuries on the person of the deceased, the police searched for him and eventually succeeded in effecting his arrest on 1st of June, 2001. Pursuant to a disclosure made by the appellant, his bloodstained shirt was recovered from the Jhuggi of one Ravi Rai on 3rd of June, 2001, which was taken into possession by the police. The knife recovered from the scene of crime as also the clothes of the deceased, which she was wearing at the time of incident and bore cut marks were later referred to Lady Harding Hospital for opinion if the cut marks on the KAMEEJ of the deceased could have been possible by the knife in question. The doctor, who examined the cut marks on the KAMEEJ and the knife, gave his opinion in affirmative, as mentioned in the report dated 16.8.2001.

3. In the course of investigation, statements of witnesses, including PW-3, Sonu, son of the deceased, who was living with her and had witnessed the appellant causing stab injuries on the person of his deceased mother, were recorded. On investigation being complete and chargesheet being filed, the appellant was tried, which culminated into his conviction and sentencing as aforesaid.

4. The impugned conviction of the appellant, as recorded by the learned Additional Sessions Judge, is primarily based on the testimony of Sonu, PW-3, who happens to be the solitary eye-witness to the incident.

5. Shri Sumit Verma, Advocate, appearing for the appellant, assailed the impugned conviction and sentence on the ground that the very presence at the spot of Sonu, PW-3, the sole witness, being doubtful his testimony could not have been accepted by the learned trial court without corroboration to find the appellant guilty of murder of Smt.Rani. He contended that the bloodstained knife which was recovered from the spot was not sent to CFSL to determine the blood group and the origin of the blood thereon to connect the same with the murder of Smt.Rani. Shri Verma lastly contended that the knife seized by the police from the spot was not shown to the doctor concerned conducting post-mortem examination on the dead body of Smt.Rani in the course of his examination before the court, rather the opinion of another doctor regarding cut marks on deceased's KAMEEJ is being relied upon by the prosecution to prove that the knife in question was used as weapon of offence. It was, accordingly, contended that the evidence on record was not credible and

sufficient to find the charge under Section 302 IPC against the appellant proved beyond reasonable doubt.

6. Ms. Richa Kapur, Addl.P.P., on the other hand, pleaded that the statement of Sonu, PW-3, coupled with medical opinion and testimony of other witnesses on record clearly established beyond doubt that Smt. Rani was done to death by appellant only by inflicting multiple stab injuries on her person. She submitted that apart from Sonu, PW-3, stating that on the relevant date and time, he was there in the room with his mother, where stabbing took place, the statements of Madhu Sharma, PW-1, Jai Parkash @ Papan, PW-2, Deepak, PW-4, and Uttam Sharma, PW-6, establish beyond doubt that the incident of stabbing by appellant was witnessed by PW-3 and that there is no basis to entertain any doubt in regard to his actual presence at the scene of crime at the relevant time, as argued on behalf of the appellant. It was contended by Ms. Kapur, that in view of eye-witness account of the incident as affirmed by Sonu, PW-3, the omissions on the part of the prosecution, as pointed out by learned counsel for the appellant, could not justify a doubt being entertained on appellant's involvement in the commission of the crime. It was, accordingly, contended that no interference with the

impugned conviction and sentence is called for.

7. We have heard the arguments on either side and examined the evidence on record.

8. The scene of crime is a room where Smt.Rani, the deceased, was staying for the last about three months prior to the incident along with her son, Sonu, PW-3, and the appellant. This fact is established from the statement of Madhu Sharma, PW-1. Smt.Rani, deceased, was married to one Jai Parkash @ Papan, PW-2, and had two sons, including Sonu, PW-3, from this marriage. In July, 2000, the deceased left her matrimonial home and started living separately with the appellant and Sonu, PW-3. Deepak, PW-4, the other son was left behind with his father Jai Parkash @ Papan, PW-2. For some time even Deepak had remained with the deceased when she accompanied the appellant to his native place in Madhya Pradesh where they stayed for about two/three months before returning to Delhi. There is evidence in the nature of statements of Smt.Madhu Sharma, PW-1, Jai Parkash @ Papan, PW-2, Sonu, PW-3 and PW-4, and Deepak, PW-4, to supply basis for a finding that the appellant was staying with the deceased ever since she left her matrimonial home and lastly lived together in the room in question.

9. According to Smt.Madhu Sharma, PW-1, the appellant had to share the rent of the room with the deceased which he was not paying in spite of being demanded by the deceased. She stated that on Smt. Rani, deceased, complaining to her in this respect and on her intervening, the appellant had promised to pay his share of rent to the deceased next morning. Sonu, PW-3, testified that on the date of incident his mother Smt.Rani had demanded money from the appellant but he refused to pay. He further affirmed that the appellant smashed the electric bulb in the room with his hand and thereafter stabbed his mother, Smt.Rani and fled. Sonu rushed to the house of Madhu Sharma, PW-1, in the neighbourhood at some distance and informed her about the incident. When he returned to the place of incident along with Madhu Sharma, PW-1, he saw his mother standing at the door of the house. He further deposed that his mother was removed to the hospital by Madhu Sharma, PW-1, where she had died. The fact that Sonu, PW-3, had approached Madhu Sharma, PW-1, at her house on the night of 18/19 November, 2000 at about 4.00 a.m. and told her that his mother Smt.Rani had been stabbed by the appellant is corroborated by Madhu Sharma, PW-1, as also by her

husband, Uttam Shrama, PW-6. Before the incident of stabbing actually took place, Sonu, PW-3, was asleep in the room but he woke up on hearing noise when he witnessed the incident as narrated by him. From the statement, in the cross-examination, of SI Jai Raj Singh, PW-8, who visited the room of the deceased on receiving the copy of DD No.6-A dated 19.11.2000, it is gathered that he did not come across with Sonu there. He also did not find Sonu being present at the hospital either. It was only sometime in the afternoon that he found Sonu, PW-3, present with others at the room in question. This part of statement of SI Jai Raj Singh, PW-8, was made as a basis by learned counsel for the appellant to contend that had Sonu, PW-3, been staying with his deceased mother, he would have either been present at the spot when SI Jai Raj Singh, PW-8, visited that place for the first time or at the hospital. In this connection it may be noticed that on the date of incident, Sonu, PW-3, appeared to be a child of tender age of about five years. After having witnessed the violent act being unleashed by the appellant on his mother, it was but natural that he would have got quite scared and thus could not be expected to be left alone there at the spot by the neighbours. Though Sonu, PW-3, stated that he had also

accompanied his injured mother to the hospital, but from the statement of Madhu Sharma, PW-1, as also of SI Jai Raj Singh, PW-8, this part of his statement does not appear to be correct. SI Jai Raj Singh, PW-8, in the course of his statement, told that Sonu, PW-3, was left in the company of son of Madhu Sharma, PW-1. The plea in support of his argument raising doubt about the presence of Sonu, PW-3, at the time of occurrence by the learned counsel for the appellant is, in the circumstances, difficult to accept.

10. The fact that a bloodstained knife, Ex.P-1, was found lying at the scene of occurrence and taken into possession by the police vide memo Ex.PW-1/C after preparing a sketch thereof vide Ex.PW-1/B, was not questioned by learned counsel for the appellant in the course of his arguments. This knife along with clothes, including a KAMEEJ of the deceased bearing cut marks, was referred to Lady Harding Hospital with a view to seek opinion of the doctor concerned if the cut marks on the KAMEEJ could possibly be caused with that knife. A report containing opinion of a doctor vide Ex.PW-17/B, was received stating that the stab injuries No.7,9,10,11 and 12 and incised wounds No.5, 8 and 13 on the body of the deceased could be possible with the knife Ex.P-1 and cuts

present on the KURTA/KAMEEJ of the deceased were corresponding to the injuries present on the body of the deceased. No doubt the knife Ex.P-1 was not shown to Dr.Vinay Kumar Singh, PW-14, who conducted post-mortem examination on the dead body of Smt.Rani, in the course of his examination before the court or at the time of autopsy to elicit his opinion if the stab injuries/incised wounds could have possibly been caused by a knife like Ex.P-1, medical opinion of another doctor being available in this respect, the prosecution cannot be precluded from referring to that opinion to prove that the knife, Ex.P-1, was the one used by the appellant as weapon of offence. The omission on the part of investigating officer to send the knife Ex.P-1 to CFSL to find the group of the blood thereon and the origin of such blood cannot be taken to affect the prosecution case materially as the recovery of knife, Ex.P-1 and presence of blood of the deceased thereon could have been used as a corroborative piece of evidence only. In the facts and circumstances of the case, it being a case where there is credible statement of an eye-witness, namely, Sonu, PW-3, that by itself is sufficient to find the appellant guilty of murder of Smt.Rani. From the statement of Dr.Upender Kishore, PW-17, who gave his

opinion vide Ex.PW-17/A in respect of knife, Ex.P-1, and KURTA/KAMEEJ, Ex.P-5, as noticed earlier, it is gathered that Dr.Vinay Kumar Singh, PW-14, who had conducted post-mortem examination on the dead body of Smt.Rani had, after his statement before the court, left the department concerned in Lady Harding Hospital and, therefore, the opinion, Ex.PW-17/A, as sought by the investigating officer, had to be rendered by him. In any case, irrespective of the fact whether or not knife, Ex.P1, was the one used for causing stab injuries/incised wounds on the person of Smt.Rani, which accounted for her death, in view of categorical statement of Sonu, PW-3, that his deceased mother was stabbed by the appellant in his presence, not much benefit can accrue to the appellant on this count.

11. On his arrest, according to prosecution, the appellant got his bloodstained shirt recovered at his instance from the Jhuggi of Ravi Rai, PW-15 which was taken into possession by the police vide Ex.PW-8/K. However, like knife, Ex.P-1, this bloodstained shirt was also not sent to CFSL to find if the same bore stains of blood which matched the blood group of the deceased and, therefore, one cannot be sure if the bloodstains on that shirt were that of the deceased.

Recovery of such a shirt is, in the circumstances of no avail to the prosecution.

12. On a critical analysis of the evidence on record, the appellant is found to be the one who is proved beyond doubt to have committed the murder of Smt.Rani. Hence, his conviction under Section 302 IPC and sentencing therefor as recorded by the learned trial court, is held as fully justified warranting no interference therewith. The appeal, thus, fails and is dismissed accordingly.

(B.N.CHATURVEDI)
JUDGE

(P.K. BHASIN)
JUDGE

April 13, 2009
RS/