

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

+ **Crl. Appeal No. 329/2008**

% Date of Order : February, 05, 2009

VINOD KUMAR Appellant
Through : Mr. M.L.Yadav, Advocate with
Mr. Mohit Mathur, Advocate.

VERSUS

STATE OF DELHI Respondent
Through : Mr. Pawan Sharma, APP

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

PRADEEP NANDRAJOG, J.(Oral)

1. At 11.10 P.M. on 1.9.2005, DD entry No.72-B was recorded at Police Station Nand Nagri to the effect that the informant had informed that his mother has been shot dead in Gali No.16, Amar Colony, Gokal Puri, Nand Nagri. SI Jai Prakash Meena PW-16, accompanied by Const. Virender Singh PW-7, left for the spot and on reaching there they found Ravi Kumar PW-2, with accused Vinod in his custody. Ravi Kumar handed over custody of accused Vinod to the police personnel as also handed over a country made pistol; stating that Vinod

had shot dead Sushila.

2. Sushila is the mother of Ravi Kumar. Vinod is the brother-in-law of Ravi Kumar i.e. is the son-in-law of Sushila.

3. Const. Virender Singh PW-7, took custody of Vinod and SI Jai Prakash Meena recorded Ravi Kumar's statement, Ex.PW-2/A, and having learnt that the injured was removed to the hospital proceeded to G.T.B. hospital where Sushila had been declared brought dead at 12.00 mid night. Dr. Prabhakar Yadav PW-10, who had examined her, had so recorded on the MLC Ex.PW-10/A.

4. SI Jai Prakash Meena PW-16, returned to the spot and made endorsement Ex.PW-16/A beneath the statement, Ex.PW-2/A, of Ravi Kumar and forwarded the same for registration of the FIR.

5. In the meanwhile, Insp. Bahori Singh PW-17, the Additional SHO of the Police Station Nand Nagri had also reached the spot.

6. SI Jai Prakash Meena and Inspector Bahori Singh conducted investigations at the spot and in the meanwhile, on receipt of Ex.PW-2/A duly endorsed as per endorsement Ex.PW-16/A; at the Police Station the FIR under Section 302 IPC read with Section 25 of the Arms Act was registered by ASI Krishan Pal PW-8.

7. A disclosure statement, Ex.PW-16/E, of the appellant was recorded at the spot by SI Jai Prakash Meena PW-16. Blood, earth control sample and blood-stained soil were lifted from the spot vide seizure memos Ex.PW-16/B, Ex.PW-16/C and Ex.PW-16/D. They were converted into separate parcels and were sealed. The country made pistol was seized by the police vide seizure memo Ex.PW-2/B and sketch thereof Ex.PW-2/C was prepared. Appellant Vinod, was formally arrested as per arrest memo Ex.PW-16/F. Inspector Bahori Singh PW-17, prepared a rough site plan Ex.PW-17/A and recorded marginal notes thereon.

8. Anand Kumar PW-9, a photographer by profession, was summoned at the spot and he took five photographs of the place of occurrence; being Ex.PW-9/A-1 to Ex.PW-9/A-5; negatives whereof are Ex.PW-9/B-1 to Ex.PW-9/B-5.

9. Since Sushila was declared brought dead at the hospital, her body was seized by the police and after filling up the requisite inquest documents, was handed over to the Forensic Department of GTB hospital for post-mortem examination of the dead body, where Dr. S.K. Verma PW-12, conducted the post-mortem on 2.9.2005 and prepared the post-mortem report Ex.PW-12/A. He recorded the following external and internal injuries on the deceased:-

“1. Fire arm entry wound, oval in shape of size 2 x 1 cm placed on left side lower chest 7 cms from mid line and 23.3 cms below the left mid clavicular point, having blackening and tattooing (in an area of 30 x 11 cms) mostly on the lower aspect from main wound. A graze injury mark was also present on left breast at six o'clock position and 7.4 cm below the centre of the left nipple having size of 2.5 x 1.5 cms. The entry wound was directed medially downwards and posteriorly into the abdominal cavity. Injuries were bowel loops and going through the liver and coming out from right side back by making an exit wound of size 2 x 0.5 cms placed 10 cms. To the right of the mid line. And 26 cms above right anterior superior iliac spine. Blood was present through out the track.

2. Fire arm entry wound over left eye of size 4 x 2 cms with total destruction of eye architecture and fracture of orbit going backwards or medially through the base of skull with no blackening and tattooing. Visible outside. On exploring the wound it was going into the cranial cavity and bring entry from the frontal lobe base going upto temporal low on right side and coming out through temporal bone by making an exit wound of size. 1 x 0.8 over mastoid region 10.5 cms to the right of mid line and six cms from right mastoid. The swelling of outer table present around the exit wound on mastoid area. Blood was present through out the track.

3. **Internal examination** : There was extravasation of blood in left frontal right temporal region. Fracture base of the skull anterior cranial fossa and right temporal bone.

4. Brain:- Sub arachnoid haemorrhage both frontal temporal. Contusion laceration left frontal, left temporal and right temporal low. Peritoneum was filled with clotted and fluid blood approx. 2 liters. Liver weight 1400 grams shattered with large laceration of size 20 x 8 cms.

10. He opined that fire-arm injuries No. 1 and 2 were

both sufficient to cause death in the ordinary course of nature, independently and collectively.

11. The country made pistol was sent for ballistic examination and as per report Ex.PA dated 3.4.2006, it was opined that the country made pistol had .315" bore and was designed to fire a standard 8 mm/.315" cartridge. It was opined to be in working order and that a test fire was successfully conducted there from. It is opined that the country made pistol is a fire-arm as defined under the Arms Act, 1959.

12. We note that there is no evidence pertaining to the serology test, if at all conducted, with respect to the blood-stained clothes of the deceased and the earth control, blood-stained earth sample, and blood which were lifted from the spot. There is no evidence that the bullets which hit the deceased were fired from the country made pistol seized by the police. The report of the ballistic expert shows that no such opinion was sought.

13. Rohtash Singh PW-1, Kanta PW-3, Kashmiri PW-4, Nanhe Lal Nigam PW-5 and Pooja PW-6 were the persons whom police found at the spot when SI Jai Prakash Meena and Const. Virender Singh had reached. Their statements were recorded by the Investigating Officer during the course of

investigation. Needless to state, the statements were recorded under Section 161 Cr.P.C. As per the statements the appellant had fired two shots at his mother-in-law which proved to be fatal.

14. After a few days Mukesh Kumar PW-15, a drafts-man was taken to the spot on 12.9.2005 and with the assistance of Inspector Bahori Singh prepared the site plan to scale, Ex.PW-15/A.

15. Armed with the eye witnesses of the incident and citing them as witnesses of the prosecution; including in the list of witnesses the names of the police officers who were associated with the investigation and registration of the FIR; the photographer who took photographs of the site; the doctor who recorded the MLC of the deceased and the doctor who conducted the post-mortem and the drafts-man who prepared the site plan to scale; filing the various memos prepared at the spot and the report of the ballistic expert, a charge sheet was filed against the appellant alleging that with the intention of causing death of his mother-in-law, the appellant fired twice upon her and that both shots hit the mother-in-law, resulting in her death i.e. the appellant having murdered his mother-in-law. The appellant was also charged for illegally possessing a fire-arm i.e. committing an offence

punishable under Section 27 of the Arms Act.

16. At the trial, the two doctors i.e. PW-10 and PW-12 proved MLC and the post-mortem report. PW-15, the draftsman, proved the site plan to scale. PW-9 the photographer proved the photographs which he had taken at the spot.

17. SI Jai Prakash Meena PW-16 and Insp. Bahori Singh PW-17 as also Const. Virender Singh PW-7 deposed to the facts relatable to the investigation conducted by them, which needless to state included the fact of the apprehension of the appellant at the spot after being produced by Ravi Kumar PW-2, and being handed over the weapon of offence as also the memos prepared, when at the spot the blood control earth, earth sample, blood sample and the weapon of offence were seized.

18. The eye witnesses to the incident namely PW-1 to PW-6 were examined.

19. Since the learned Trial Judge has accepted the eye witness account of the incident, it would be appropriate for us to note the relevant deposition of the eye witnesses.

20. Rohtash Singh PW-1, deposed that the accused was a tenant in his house since about a year ago and that at around 10/10.30 P.M. on 1.9.2005 he was present at the roof

of his house along with other family members and came down upon hearing a gun shot. As he came on to the street he found a dead body lying there. It was of Sushila, the mother-in-law of the appellant. That the appellant was also standing there. A crowd had gathered. A PCR van reached and removed the body of Sushila. That the appellant was apprehended and taken away by the police. He was questioned by the court whether he had seen any weapon lying at the spot, to which he responded, that he had not seen any weapon of offence. He stated that when he saw the body of Sushila he noted blood was lying on the spot. On being cross examined by counsel for the accused, he stated that dead body of Sushila was lying on the thresh-hold of his house.

21. Ravi Kumar PW-2, deposed that accused Vinod was his brother-in-law; being married about 1-2 years ago with his sister Pooja. He deposed that at around 10.00 P.M. on 1.9.2005, he was present in his house and that the appellant came to his house and started quarrelling with the family members demanding money from them. At that time his i.e. Ravi Kumar's father, mother and father's sister were present in the house and that when money was not paid, uttering that he will beat Pooja, the appellant returned to his house. He i.e.

Ravi Kumar, his mother, his grand-mother and his father's sister followed the appellant to his house which was at street No.2, Amar Colony, East Gokal Pur, Delhi. They all reached his house at around 10.15 P.M. He i.e. Ravi Kumar bolted the main door from outside and the appellant came out of his house through a shop which was located in the same house and was having a country made pistol in his hand and that he fired a shot at his mother. His mother immediately rushed to him and requested him to call the PCR van. The shot hit his mother in the abdomen. She fell down and his father's sister tied a *chunni* on the wound of his mother. That when he came back after informing the police he found that there was another gun shot wound on the left eye of his mother. The appellant stood there with a country made pistol in his hand. The police came and took possession of the pistol from the appellant and removed his mother in a PCR van to the hospital. He went to PS Nand Nagri where his statement Ex.PW-2/A was recorded and the pistol was seized vide seizure memo Ex.PW-2/B and sketch thereof, Ex.PW-2/C was prepared.

22. On being cross examined he admitted that the under noted statements were not part of his earlier statement Ex.PW-2/A. The statements are :-

- “(i) Vinod was demanding money from my mother.
- (ii) No money was paid to Vinod.
- (iii) I had closed the main door of the house.
- (iv) Vinod came out of the house through the door which opens in a shop.
- (v) When Vinod came out of the house through the door opening in the shop, there was a country made pistol in his hands.
- (vi) When my mother sustained gun shot injuries, she cried for help and told me to give a telephone call to PCR.
- (vii) I had gone to give a telephone call to PCR at the instance of my mother.
- (viii) When my mother fell down, my sister tied her chunni around the wound.
- (ix) When I returned after making a telephone call, I found one gun shot injury over the left eye of my mother.
- (x) Vinod was present there having a country made pistol in his hands.
- (xi) Police reached there and seized the country made pistol from the possession of the accused.
- (xii) I went to PS Nand Nagri, where my statement was recorded.”

23. Kanta PW-3 deposed that the appellant was the son-in-law (Bhatij Jamai), meaning thereby, the son-in-law of her brother. She deposed that on 1.11.2005 at about 10.00 P.M. the appellant came to their house. She explained that by November she meant the month which comes after August.

The appellant demanded money from her sister-in-law i.e. Sushila Devi. Sushila told the appellant that she was not having any money with her and requested the appellant to leave for his house. Sushila and Ravi followed the appellant and since the appellant had raised an altercation at their house, she and other family members followed them. They reached the house of the appellant after about 10-15 minutes. The appellant went inside the house. Sushila bolted the door from outside. The appellant came out of the house from another door and was armed with a country made pistol which he was having in his hand and he fired a shot at Sushila who sustained injuries in her abdomen and fell down. She tied a *chunni* on the wound of Sushila. The appellant told her to go away otherwise he would shoot at her. She withdrew at some distance from Sushila, when appellant fired another shot at the eye of Sushila who expired immediately. She raised alarm. The appellant declared whoever would come near him would be killed. She left for her house. The witness was cross examined wherein she admitted that in her statement under Section 161 Cr.P.C. she had not disclosed that the appellant had demanded money from Sushila. She admitted that in said statement she had not told the police that when appellant had come to their house, her children

and the children of her sister-in-law were present in the house. She admitted that she had not told the police that Sushila had told the appellant to go home and that she would not give him any money. She admitted not having informed the police that Sushila bolted the door from outside and that the appellant came out of his house from another door. She admitted that she did not tell the police that the appellant was having a country made pistol in his hand. She further admitted that she did not tell the police of having tied a *chunni* on the wound of Sushila. She admitted that she had not told the police that the accused had threatened her to leave, otherwise he would fire at her. She stated that she had told the police that the accused had fired a second gun shot but admitted that the same was not recorded in her statement under Section 161 Cr.P.C.

24. Kashmiri PW-4 deposed that the appellant is the son-in-law of her son and that Pooja was married with him about a year ago and that about five months ago, the appellant had come to their house at about 10.00 PM; demanding money from his mother-in-law Sushila. Sushila told him to speak to her in the morning and the appellant declared that he will teach Pooja a lesson and left for his house. Sushila, Kanta and herself followed the appellant who

resided nearby. The appellant went inside his house and came out from another door and give kick blow to his mother-in-law. He took out a country made pistol and fired at Sushila who sustained injuries in the abdomen. He fired another shot on the left eye of Sushila. Police reached the spot as someone had made a telephone call to the PCR. Vinod was having a country made pistol in his hand which was seized by the police. She deposed that Ravi was also present at the spot at that time. In cross examination she stated that she had told the police that the appellant had left their house uttering that he would teach Pooja a lesson, but admitted that the said statement was not recorded by the police and was not forming a part of her statement recorded under Section 161 Cr.P.C. She stated that she told the police that the family members followed Vinod as there was a possibility of his having an altercation with Pooja, but admitted that the same was not to be found in her statement recorded by the police.

25. Nanhe Lal Nigam PW-5, a neighbour deposed that he was present in his house at 10.00 P.M. on 1.8.2005 and learnt that a gun shot was fired. He reached for the said spot and found Sushila lying on the ground. Police reached and removed Sushila to the hospital. He stated that when he reached the spot Vinod was in the custody of the police.

26. Pooja PW-6, the wife of the appellant deposed that she was married to the appellant on 16th June about 1-2 years ago and after living in the matrimonial home which belonged to the elder brother of the father of the appellant they shifted to the present house about six months ago. At 10.00 P.M. the appellant had a quarrel with her mother demanding money. Her brother had informed her that the appellant was quarreling with her mother. He requested her to call Vinod back to their house and she expressed her inability to do so. After sometime, her husband came home and took out a country made pistol. He went outside; fired at her mother who was outside the house. Her mother died in front of her. She saw her mother bleeding from an injury in the abdomen. Her grandmother, her father, father's sister and her brother Ravi were also present there. Her husband was taken away by the police.

26. In cross-examination, Pooja admitted that her husband used to prevent her from going to the house of her parents. She stated that she was confined inside a room and could not state whether the incident happened on the right side or the left side of the main gate.

27. The appellant was questioned on the incriminating evidence emerging against him. He denied his involvement

in the crime and stated that he had been framed up. He said that he would lead evidence in defence. But did not lead any.

28. Believing Ravi Kumar PW-2, Kanta, PW-3 and Kashmiri PW-4 and additionally finding corroboration from the testimony of Pooja PW-6 of the appellant taking out his country made pistol, the learned trial judge has held that the ocular evidence was of a high quality and was enough to sustain a finding of guilt. The result is the conviction of the appellant for the offence of murdering his mother-in-law as also for the illegal use of an unlicensed firearm.

29. At the hearing today Sh.M.L.Yadav, learned counsel for the appellant has urged that the 12 statements noted hereinabove in para 22 were improvements made by PW-2 on his earlier statement Ex.PW-2/A and therefore the testimony of PW-2 had to be discarded. Learned counsel urges that Kanta PW-3 deposed that the deceased and PW-2 Ravi went to the house of the accused to leave him at his house; whereas PW-2 and Kashmiri PW-4 deposed that the family members left their house and followed the appellant because they feared that he would harm Pooja. Counsel urges that this shows material contradictions in the deposition of the witnesses. Learned counsel further urges that Kanta PW-3 improved upon her statement recorded by the police in

which statement she had not told that she had tied a chunni on the wound of Sushila. Learned counsel further urges that Kanta PW-3 deposed that when the appellant threatened her after she had tied a chunni on the wound of Sushila, she left the house along with her brother and sister but surprisingly enough the police officers found them at the spot. Learned counsel further urges that Pooja PW-6 deposed that her brother had informed her that the appellant was quarreling with her mother and requested her to call Vinod back to the house and she expressed her inability to do so and that after some time her husband came home and took out a country made pistol; but the other witnesses had not deposed that Vinod had left his house to summon Pooja when the appellant was fighting with the deceased in the house of the deceased. Learned counsel further urges that the evidence probablizes that Ravi PW-2 had murdered his mother and the motive was the ill repute of his mother.

30. The last submission made, that the evidence probablizes that Ravi PW-2 could be the murderer of his mother and the motive was the ill repute of his mother, requires to be thrown in the dustbin without any further consideration, for the reason, save and except a vague suggestion given to Kashmiri PW-4, that it was Vinod who had

shot his mother, no such line of cross-examination was adopted vis-à-vis the other witnesses. Even in his statement under Section 313 Cr.PC the appellant did not say that Ravi was the assassin. We may note that Sushila has admittedly been shot outside the house of the appellant. If Ravi had to kill his mother, surely he would not have done so in a street; in full public glare.

31. Pertaining to the 12 statements made by PW-2 and as noted in para 22 above, in respect whereof, submissions have been made that they are material improvements; what is a material improvement has to be kept in mind vis-à-vis variations in the narration of the same sequence of events at two different points of time by the maker of the statement.

32. Now, what was told by Ravi to the police which finds recorded in the statement Ex.PW-2/A has to be understood with reference to the fact that this statement was made by Ravi immediately after his mother was shot at, in his presence. His mental condition has to be kept in mind while analyzing what he stated when Ex.PW-2/A was recorded and what he deposed later on in court.

33. In his statement Ex.PW-2/A, Ravi has stated that on 1.9.2005 his brother-in-law Vinod came to their house at around 9.30 PM and started accusing his mother and him

(meri maa va mujhe bura-bhala kehne laga). His sister Pooja was married to Vinod on 16.6.2004. After the marriage, Vinod did not allow his sister to visit them. Vinod suspected the character of his mother and this is the reason why he did not permit Pooja to visit their house. After verbally abusing their family, Vinod returned to his tenanted house A-2/226, East Gokulpuri, Delhi. Soon after Vinod left, he i.e. Ravi and his mother had a doubt that Vinod may cause harm to Pooja. At that time his mother Sushila, aunty Kanta and grand-mother Kashmiri were present in the house and all followed. They reached house of Vinod. His sister and his brother-in-law were sitting outside their house. His mother and his grandmother were speaking with Pooja so that Pooja could counsel her husband to not visit their house and create a scene, when Vinod went inside his house and came out with a country made pistol and fired at his mother, who sustained an injury in her abdomen. He attempted to snatch the country made pistol from the hand of Vinod at which Vinod yelled at him and threatened that if he did not move away Vinod would shoot him and re-loaded a second round and fired at his mother which hit her near the eye. At that he i.e. Ravi pounced upon Vinod and disarmed him.

34. In substance and in material particulars, Ravi has

stated the same facts which were disclosed by him at the first instance. Whether money was demanded by Vinod when he had come to their house and that none was paid and whether after entering the house of Vinod the gate (referred to as the main door of the house) was closed or not are not of material consequence. Whether it was disclosed to the police that when his mother fell down, his sister tied the chunni or it was not so disclosed is immaterial. Similarly whether his sister tied the chunni around the waist of his mother or his aunty did so is immaterial. Similarly, variations which have been pointed out by learned counsel with respect to the testimony of PW-2 and PW-4 of the sequence of the family members following the appellant when he left their house are not fatal. We note that PW-4 was aged 70 years when she deposed. She is a rustic lady and possibility of not remembering minor details of the exact sequence of events leading to the family members going to the house of the appellant cannot be ruled out. Similarly, Kanta PW-3 deposing that she tied a chunni on the wound of Sushila and left the house when threatened by the appellant, but the police officers finding her at the spot is explainable as a memory lapse by the witness, who certainly went home after every thing was over. Merely because she deposed to have left a little earlier, is immaterial for the

reason, she has deposed in harmony with her statement recorded by the police under Section 161 Cr.PC up to the events of the appellant shooting at his mother-in-law and the mother-in-law falling down. Similarly, Pooja having mixed up some facts of her brother coming to her house and requesting her to call back her husband, with the actual event of her husband accompanying her mother, her aunty and her grandmother when they reached her house cannot be ruled out. In any case, we see no point of substance in the said mix up.

35. It is of importance to note that the police had found PW-1 to PW-6 at the spot and hence they being the natural witnesses stands corroborated from said fact. It is true that PW-1 and PW-5 have not deposed of having seen the shooting but have corroborated having seen the deceased shot dead outside the house of the appellant and that the appellant was being held by Ravi. Why would Ravi be holding the appellant? Obviously, so that the appellant could not run away.

36. Some witness speaking that the police picked up the country made pistol from the ground and some speaking that Ravi handed over the same to the police is inconsequential because every witness would be scared

having seen a woman being fatally fired upon and would not precisely be expected to remember the minutest details of the incident. The social background of the witnesses have to be kept in mind. They are all residents of an unauthorized slum colony and unlike educated persons have poor vocabulary at their command and hence cannot speak with precision. It is settled law that minor variations by eye witnesses pertaining to the account of the incident seen by them are inconsequential. It is only contradictions on material facts which discredit the eye witnesses.

37. Learned counsel for the appellant does not dispute that the place where Sushila was murdered is the street just opposite the house of the appellant; a place at a distance of about 15 minutes walk from the house of the deceased. The place of occurrence corroborates the testimony of all eye witnesses that the assassin was the appellant.

38. We find no merits in the appeal. The appeal is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

February 05, 2009
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