

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

+ **Crl. A. No. 479/2007**

% Date of Order : March 04, 2009

SHABUDDIN Appellant
Through : Ms. Anu Narula, Advocate

VERSUS

THE STATE OF NCT 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? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the parties.
2. Vide impugned judgment and order dated 18.10.2006, the learned trial judge has convicted the appellant for the offence of murdering his wife. Vide order dated 27.10.2006 he has been sentenced to undergo imprisonment for life and to pay fine of Rs. 1000/-; in default of payment of fine to undergo simple imprisonment for one month.

3. At 5.55 AM on 15.6.2004 DD No.32 was recorded at Police Station Malviya Nagar recording that an informant has informed that blood was flowing out and cries of children were being heard from House No. 219, Hauz Rani near Maszid.

4. SI Sanjeev Sharma PW-13, accompanied by Const. Birbal left for the house and found people gathered there. A dead body of a woman having injuries on her neck, right eye-brow and left hand was seen. He learnt that lady was named Noorjahan, the wife of the appellant. A photographer was summoned who took photographs of the spot. Anwar Ahmed PW-11, a resident of house No. 219, Hauz Rani, New Delhi, i.e. the same building in which the murder took place, was found at the spot. SI Sanjeev Sharma recorded his statement, Ex.PW-11/A, in which he informed that he was a resident of House No. 219, Hauz Rani and was a scooter mechanic. That the appellant was a resident of a room in the same building where he was residing with his wife Noorjahan and three children. That the appellant used to frequently quarrel with his wife. That last night, at around 9.30 PM the appellant had quarreled with his wife. That today i.e. on 15.6.2004 at around 5.30 AM he heard quarrel going on in the house of the appellant and after some time he came out of his room and

saw the appellant locking the door of his room and leaving in a perplexed condition. He heard children of the appellant crying. He went to the room. He opened the door and saw Noorjahan smeared with blood. He informed Hasan Mohammad PW-4 of the said fact, who informed the police by ringing up 100.

5. Making an endorsement, Ex.PW13/A, on the statement Ex.PW-11/A, SI Sanjeev Sharma sent the statement and the endorsement at 9.00 AM to the Police Station for registration of an FIR. The FIR was registered at Police Station Malviya Nagar at 9.15 AM under Section 302 IPC.

6. As per the prosecution, the appellant was found absconding and was arrested at 4.00 PM at the bus stop of Hauz Rani, when as per the police, a secret informer informed the whereabouts of the appellant.

7. The dead body of the deceased was sent for post-mortem. Dr. Sanjeev Lalwani PW-1 conducted the post-mortem and prepared the post-mortem report Ex.PW-1/A noting the following ante-mortem injuries:-

“1. Cut throat injury over Rt side of neck anteriorly of size 14x6cm x bone deep (with extended neck) situated 5cm below chin and 7cm above sterna notch and to touching mastoid on Rt side. On dissection underlying muscles, thyroid cartilage trachea, thyroid gland, Rt sided jugular vein and Rt sided carotid artery were found severed in full thickness and through and through.

2. Cut throat injury obliquely placed 8cmx2cmx muscle deep over Rt side of neck anteriorly situated 3cm above sterna notch, 3cm below injury no. 1 obliquely placed.

3. Multiple lacerated wound on Rt side eyebrow, Rt upper eyelid left eye brow, left upper eyelid medically blood clotts of size 3x0.5cm, 3x0.5cm, 4x1cm, 2x0.5cm all muscle deep.

4. Incised wounds two in number each of size 3x0.5cmx muscle deep on dorsum of left hand.

5. Incised wound 1.5x0.5cmx muscle deep on top of middle finger clotted blood on Rt hand.”

8. He opined that the cause of death was haemorrhagic shock due to cut throat injury no. 1 which he opined to be caused by a sharp edged weapon and was sufficient to cause death in the ordinary course of nature. He also opined that injuries no. 2, 4 & 5 were caused by a sharp edged weapon.

9. As per the prosecution, after the appellant was arrested, his disclosure statement was recorded and at his pointing out the weapon of offence was recovered from the room where the dead body of the wife of the appellant was recovered.

10. At the trial, apart from examining the formal police officers associated with the registration of the FIR and other police officers pertaining to the seizures effected, Hassan

Mohammad PW-4, Allauddin PW-9, Mst. Khatoon PW-10 and Anwar Ahmed PW-11 were examined as public witnesses. SI Sajeev Sharma PW-13 was examined as he had conducted the investigation.

11. Allauddin PW-9 is the son of the deceased. He deposed that relations between his father and his mother were cordial and that he did not know who murdered his mother. He was declared hostile and was cross-examined by the public prosecutor. He denied that what was recorded by the police in his statement under Section 161 Cr.P.C. was disclosed by him to the police.

12. Hassan Mohammad PW-4 deposed that on 15.6.2004 at about 5.30/5.45 AM Anwar Ahmed told him that a lady was lying stained in blood in his neighbouring room. He contacted the police at No. 100 and went along with Anwar Ahmed to the spot. Police came there. On reaching the spot he learnt that the lady who had died was Noorjahan.

13. The witness was cross-examined. He disclosed that the distance between his and Anwar's house was 4000/5000 steps. He disclosed that he had a telephone connection in his house and that there was no telephone in the house of Anwar and that Anwar was his uncle's son.

14. Mst. Khatoon PW-10, also a resident of room in the

same building where the deceased died i.e. House No. 219, Hauz Rani, deposed that the appellant used to quarrel with his wife and she had witnessed the quarrel on a number of occasions and had counselled the appellant not to quarrel with his wife. She deposed that the deceased used to work as a maid and that the accused used to consume alcohol and used to follow his wife to the house where she used to work as a maid because he suspected that she was having illicit relations with somebody. That in the month of June, she saw the deceased murdered. That the children of the deceased were weeping. That the neck of the deceased was cut. That the children were saying that their father had murdered their mother and had fled.

14. The witness was cross-examined. Suffice would it be to note that in cross-examination she could not give any particulars of the dates and time which she claimed having witnessed quarrel between the appellant and the wife. She was confronted with her statement recorded by the police under Section 161 Cr.P.C. in which it was not recorded that she had told the police that the accused suspected his wife to be having illicit relations.

15. Anwar Ahmed PW-11, deposed that he was residing in house No. 219, Hauz Rani and that the appellant

was his neighbour and used to reside with his wife and three children. That in the intervening night of 14-15 June 2004, at 9.00 PM, a quarrel had taken place between the deceased and the appellant and that the next morning he heard some noise from the house of the appellant and he saw the appellant leaving his house at 5.00 AM in a hurry after closing the door. Appellant's children were weeping in their house. He entered his room and found that the wife of the appellant was lying dead. He deposed that he got perplexed on seeing the incident and informed his cousin Hassan Mohammad who informed the police over No. 100. That the police came and recorded his statement Ex.PW11/A which bore his signatures at point "A". That the police came to the spot at 3.00 PM and the accused got recovered a blood stained knife which was seized vide memo Ex.PW-8/F and sketch Ex.PW-8/E thereof was drawn. He identified the knife Ex.P3 as the one recovered by the police. In cross-examination, he disclosed that house No. 219 belonged to one Rukku@ Abdul Hasan. That he used to leave for his job at 9.00 AM and used to return at 8.00 PM. He deposed that since his shop is near-by, he used to return for lunch. That the appellant was engaged in the activity of white washing and his wife used to work as a maid servant. He denied that the appellant and his wife used

to stay happily. He stated that he could not disclose as to on what matter the appellant and his wife had quarrelled at 9.30 PM. He volunteered that so frequent were the quarrels that hardly it was his concern as to what the matter was. He disclosed in cross-examination that his wife used to counsel the appellant to mend his ways. He denied the suggestion that no quarrel took place between the appellant and his wife on 14.6.2004 at 9.30 PM. He denied that he did not see the appellant leave his house at 5.30 AM or that he never heard the cries of the children of the appellant or that he never went to the room of the appellant. He denied that he did not inform Hassan Mohammad about the incident or that Hassan Mohammad did not inform the police.

16. SI Sanjeev Sharma PW-13, deposed that on receipt of DD No. 32 he, along with Const. Birbal, went to house No. 219, Hauz Rani and saw many people having gathered there. On entering the house he found a dead body having injuries on the neck, right eye-brow and left hand. That he recorded the statement, Ex.PW-11/A, of Anwar Ahmed and made an endorsement, Ex.PW-13/A, and through Const. Suman Khan sent the same for the FIR to be registered. That he sent the dead body to the mortuary at AIIMS and at the spot seized blood-stains on the floor vide seizure memo Ex.PW8/A. He

took a sample of the floor piece vide seizure memo Ex.PW8/B. That he prepared the rough site plan Ex.PW-13/B. The witness went on to depose about the investigation i.e. statements recorded by him of persons under Section 161 Cr.P.C. He deposed that he received information that the appellant was present at the bus stop at Hauz Rani and that he apprehended him at the bus stop at around 4.00 PM. He deposed that on interrogation, the appellant made a disclosure statement, Ex.PW-8/D, and as per the same disclosed that he could get recovered the weapon of offence and that he took him to his i.e. appellant's house and pointed out the place where the knife was kept. That he seized the knife vide seizure memo, Ex.PW8/F, and prepared the sketch, Ex.PW8/E, thereof. He deposed that he took possession of the under wear which was having bloodstains thereon, and was worn by the appellant, vide seizure memo Ex.PW-13/C.

17. We may note that after the post-mortem of the deceased was conducted her blood sample and clothes were handed over to the police. The same, along with the weapon of offence as also the under wear of the appellant were sent for serological test and as per the report, Ex.PX, human blood of Group B i.e. the same as that of the deceased was noted on the knife. On the under wear of the appellant, human blood

could be detected but group thereof could not be noted.

18. With reference to the testimonies of PW-4, PW-10 and PW-11, the learned Trial Judge has held that the same establishes the presence of the appellant in his house and that the appellant was seen leaving the house, in a perplexed condition, at around 5.00 AM by Anwar Ahmed PW-11; which according to the learned Trial Judge was a vital circumstance connecting the appellant with the crime. Learned Trial Judge has held that it was not in dispute that the wife of the appellant was murdered in the tenanted room which the appellant had taken and where he was residing with his wife and his children.

19. With reference to the testimony of PW-4, PW-10 and PW-11 it has been held that the evidence that the children of the appellant were found crying by the said three witnesses and each child was saying that the appellant had murdered their mother was another piece of evidence to indict the appellant. To put it simply, said evidence was found relevant and admissible by virtue of Section 6 of the Evidence Act. That the appellant was absconding from his house at a time when he was expected to be in his house has been opined as another incriminating circumstance. Lastly, the presence of human blood of the same group on the

weapon of offence as that of the deceased and presence of human blood on the underwear of the appellant; in respect whereof no explanation was given by the appellant, has been found to be another incriminating circumstance.

20. The cumulative effect is that the learned Trial Judge has held that the chain of circumstances brought on record are complete to point, unerringly, the finger of guilt towards the appellant and rules out his innocence.

21. At the hearing of the appeal today, Ms.Anu Narula, learned counsel for the appellant, has inter alia urged that the learned Trial Judge has ignored the answers given by the appellant while being examined under Section 313 Cr.P.C.

22. Learned Counsel urges that in his statement under Section 313 Cr.P.C. the appellant had told that he was a painter and that he was not in his house in the intervening night of 14-15 June, 2004. That he was working in DLF Gurgaon on the fateful night. That he came to his room the next day and learnt that his wife was murdered. He went to the Police Station and was falsely implicated. Learned Counsel further states that pertaining to the underwear of the appellant found to be stained with human blood, he had stated that the underwear was not his.

24. Learned counsel urges that it is unnatural conduct

for the appellant to be roaming at the bus stop at Hauz Rani. If he was the assailant of his wife, his conduct would be to run away. Learned counsel urges that no attempts were made to lift finger-prints from either the weapon of offence or from the scene of the crime and hence the appellant would be entitled to the benefit of doubt. Lastly, learned counsel pointed out that the weapon of offence was recovered from the house and that the recovery memo shows that it was not hidden nowhere. Under the circumstances, the recovery of the weapon of offence can not be an incriminating evidence or a circumstance against the appellant, urges the counsel.

25. Only yesterday, while deciding CrI.A.No.834/2007 Ram Dayal v. State, we had an occasion to discuss the effect of not lifting fingerprints from the weapon of offence or the place of occurrence. In said case, learned counsel for the appellant therein had cited two decisions of the Supreme Court being 1998 SCC (Cri.) 984 Omwati & Ors. vs. Mahendra Singh & Ors. and 1975 SCC (Cri.) 530 Datar Singh vs. The State of Punjab.

26. We had observed that neither of the two decisions laid down the law that merely because finger-prints are not lifted, the accused cannot be linked to the weapon of offence or the place of occurrence. Both decisions show that the

Court found the eye-witness account untrustworthy and in said context emphasized the importance of lifting fingerprints from the weapon of offence. We emphasized that every criminal trial unfolds its own story and facts can never be identical and thus strictly speaking there can be no precedent in a criminal case.

27. Deciding Crl.A. No.834/2007, with reference to the certain decisions of the Supreme Court, we had opined that where the ocular evidence is clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it out-weighs the effect of the omission on the part of the prosecution to carry out an investigation in a more scientific way, credence has to be given to the eye-witness account.

28. Pertaining to the apprehension of the appellant, we note that in his statement under Section 313 Cr.P.C. the appellant stated that he was not in his house in the intervening night of 14-15 June 2004. That he was working in DLF Gurgaon. That he returned to his house in the morning and saw his wife murdered. He went to the Police Station where he was falsely apprehended.

29. We note that the appellant did not disclose the house where he was working in DLF Gurgaon. Even

otherwise, we find it unbelievable that the appellant would have left the said house in Gurgaon before the dawn broke and reached his house in the morning.

30. We need not theorize for the simple reason, when SI Sanjeev Sharma PW-13, deposed about the factum of the arrest of the appellant from the bus stop at Hauz Rani at 4.00 PM, no suggestions were given to the witness that the appellant had himself gone to the Police Station in the morning and was apprehended by the police in the morning. We also note that no suggestion was given to the witness that he was falsely deposing that the appellant was arrested at the bus stop at Hauz Rani at 4.00 PM. That is not all. Anwar Ahmed PW-11, categorically deposed that on the intervening night of 14-15 June 2004 a quarrel was witnessed by him between appellant and his wife at 9.00 PM. Anwar Ahmed was cross-examined. This deposition of his has not even been challenged. As noted by us hereinabove, he was questioned as to on what matter the couple were fighting. He responded that since so frequent were the quarrels, he did not know as to what was the matter on which the couple were fighting.

31. Thus, it stands conclusively established that the appellant was in his house at 9.00 PM on the intervening night of 14-15 June 2004. It is a false answer given by him that he

was not present in his house at 9.00 PM on 14-15 June 2004.

32. Pertaining to the so-called unnatural conduct of the appellant of being around the locality and being apprehended from the bus stop of Hauz Rani, the argument may look attractive if one were to consider the conduct of a motivated killer.

33. Unfortunately, in the city of Delhi, with too many people crammed into small areas, mindless crimes are being committed. There is neither rationality in the crime nor is there any rationality in the subsequent conduct of, either the neighbours, or those who are accused of having committed the crime.

34. The fact of the matter remains that the presence of the appellant at his house in the intervening night of 14-15 June 2004 is established. That his wife was found murdered at around 5.00 AM next morning in the house stands established. That the appellant was not to be seen in his house when the police arrived stands established. That he was seen leaving his house at 5.00 AM stands established by Anwar Ahmed PW-11. The motive of the crime has been proved by Mst. Khatoon PW-10 who has deposed that the appellant used to suspect the credibility of his wife.

35. No motive has been attributed to PW-4, PW-10 and

PW-11 for falsely implicating the appellant.

36. That the son of the appellant did not support the case of the prosecution is neither here nor there. We cannot speculate as to what led the child state what he did. May be, he thought that his mother is no longer in the world of the living, it makes worldly sense to have the father around.

37. Be that as it may, the testimony of PW-4, PW-10 and PW-11 inspires confidence. No doubt, neither of them has seen the appellant inflicting the fatal injuries on his wife, but, the conduct of the appellant leaving his house at 5.00 AM; his children crying; his wife dying, are events which have been seen by PW-11 and corroborated by PW-4 and PW-10. They leave no doubt in any rational mind that the appellant is the assassin of his wife.

38. We find no merit in the appeal.

39. The appeal is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

March 04, 2009
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