

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

+ **Crl. Appeal No. 409/2007**

% Date of Order : March, 05, 2009

SIRNU Appellant
Through : Mr. A.S. Rajput, Advocate

VERSUS

THE STATE OF NCT 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. The police swung into action on 24.8.2004 at 21:37 hrs pursuant to a phone call received by PCR at the police head quarters from the Central Railway Hospital regarding an injured with stab injuries being admitted to the hospital. ASI Bhoop Singh PW-21, and Ct.Sushil Kumar PW-19, of PCR Van 'Oscar' proceeded to the Central Railway Hospital.

2. They reached the Central Railway Hospital within 5 minutes of receipt of the information and saw a man holding a blood stained churra in his hand being chased by people, who

were rebuking him for having the courage to come to the hospital after the quarrel. ASI Bhoop Singh and Ct.Sushil immediately over powered and apprehended the man whose name was later revealed to be Sirnu.

3. In the meantime, the information about the patient admitted at Central Railway Hospital with stab injuries was forwarded to PS Pahar Ganj. Constable Himmat Singh recorded DD No.78-B, Ex.PW-16/A, on the same day at 21:52 hrs. HC Onkar Prasad PW-16 and Ct. Satya Prakash were sent to the hospital from the police station and Addl. SHO Anil Sharma PW-25 who was on patrolling duty was informed about the incident through a wireless message.

4. On reaching the hospital at about 20:00 hrs, Addl. SHO Anil Sharma was informed that the injured, Ramji Sahai, had already expired and his wife Smt. Budhi Devi was unfit for statement. The MLC Ex.PW-9/A of the deceased Ramji Sahai and the MLC Ex.PW-9/E of Smt. Budhi Devi were collected from the hospital. The custody of accused Sirnu was handed over to ASI Anil Sharma by ASI Bhoop Singh along with the churra seized from the accused. The accused was arrested vide Arrest memo, Ex.PW-17/B, and the churra was seized vide seizure memo Ex.PW-3/D.

5. MLC Ex.PW-9/E of Budhi Devi records the following

injuries:-

“(1) Cut and CLW Rt index finger, rt. Middle finger cut tendon injuries, Rt right finger.

(2) Cut and CLW over midline, scalp 5 cm over mid line.

(3) Cut and CLW c fracture middle, distal pharynx left thumb.”

6. ASI Anil Sharma proceeded to the place of occurrence i.e Jhuggi no. 36 South End Road from the hospital along with the crime team and Shilpi Devi the daughter-in-law of the deceased who was at the hospital. He recorded the statement Ex.PW-3/A of Shilpi Devi and made an endorsement Ex.PW-25/A thereon and forwarded the same for registration of an FIR. The duty constable at the police station HC Naresh Kumar registered the FIR, Ex.PW-2/B at 12:20 AM.

7. At the spot ASI Anil Sharma, with the help of Shilpi Devi prepared the site plan Ex.PW-2/E of the place of occurrence.

8. In her statement, Ex.PW-3/A, the daughter-in-law of the deceased informed that accused Sirnu was a bad character of the area and her father-in-law being the pradhan/president of the resident's welfare association had asked the accused not to visit the area on account of his frequent misbehaviour with the women of the area. That on the day of incident, when she was taking meals along with

her father-in-law and mother-in-law, accused Sirnu came and stood in front of their jhuggi and started hurling abuses at her father-in-law asking him to come out of his jhuggi. That as soon as her father-in-law stepped out of his jhuggi, accused Sirnu shouted *"tu bada pradhan banta hai aaj tera kaam tamam kar deta hoon"*. That on hearing this, she came out of the jhuggi along with her mother-in-law and saw accused Sirnu standing in front of the jhuggi with a churra in his right hand. That accused Sirnu started attacking her father-in-law with the churra. That when her mother-in-law intervened to save her father-in-law, the accused attacked her as well. That her father-in-law and her mother-in-law fell down in an injured condition on the railway line. That the neighbours gathered on hearing her cries for help. That the accused fled away, when he saw the people from the neighbourhood coming. That she took her father-in-law and her mother-in-law to the Central Railway Hospital with the help of her neighbour Dharmender, Suraj Kali and others. That the accused also reached the hospital with the churra in his hand, where he was apprehended by the police. That the doctor declared her father-in-law Ramji Sahai brought dead at the hospital.

9. On the next day i.e 25.8.2004 Budhi Devi was declared fit for statement and her statement was recorded by

ASI Anil Sharma in which she substantially informed the same facts to the police as were disclosed by her daughter-in-law.

10. Since the deceased was declared brought dead at the hospital, his body was sent to the mortuary, where Dr.Sumit Seth conducted the post-mortem on 26.08.2004 and gave his report Ex.PW-22/A which records that 13 ante-mortem injuries were found on the person of the deceased; that the cause of the death was haemorrhagic shock due to multiple incised wounds which were caused by a sharp edged weapon and were sufficient to cause death in the ordinary course of nature. Later, the doctor also gave an affirmative opinion, Ex.PW-22/B, regarding the weapon of offence; that the injuries could have been caused by the churra Ex.P-1. The following injuries were found on the person of the deceased:

“1. A deep incised wound of size 7cm in length, resulting in transsection of outer one third of pinna , at the level 8 cm below the upper end on the left side.

2. An incised wound is present over the left side of the over the scalp over the left occipital region of size 10cmx1cmxbone deep, located from the point where the incised wound of injury no. 1 ends, reaching till the point 2cm from occipital protuberance.

3. An incised wound of size 8cmx1cmxskin deep present behind the left ear lobe reaching towards the outer aspect of left neck on the back side (is shown in the diagram) reaches till the mid line over the back of the neck.

4. An incised wound size 6cmx2cmx0.5cm is present on the left side of the face over the jaw 2cm from the angle of mouth and the outer end is 4cm from the left ear lobe. The incised wound is spindle shaped, medial end is acute angled. The direction of the wound is from left towards right.

5. An incised wound of size 3cmx1cmxskin deep is present 1.0 cm below injury no. 4, spindle shaped, medial end is acute the direction of wound is from left towards right.

6. Scratch abrasion is present on the left side, front of neck of length 5cm, 3cm below the jaw line.

7. An incised wound is parallelly placed below injury no. 6, 8cm below injury no. 6, 6cm in length the depth of the wound is skin deep and fish tailing is present over the medial side. The wound is linear shape.

8. A scratch abrasion is present over the deltoid region (shoulder) on left side of length 7cm.

9. A superficial incised wound is present on the outer aspect of left thigh of length 23 cm starting from the left buttock region and end till the mid region on anterior aspect of thigh.

10. A deep incised wound is present over the left calf region on the outer aspect 5cm below the knee joint of size 14cmx5cmx4cm with associated injury of underlying muscles, nerves and blood vessels.

11. Multiple incised wounds are present over the lateral aspect of left shin region in the lower half of lower limb, total five in number of respective dimensions from above downwards (a) 8 cm x 2.5 cm x 2 cm (b) 7 cm x 1 cm x 1 cm (c) 6 cm x 1.5 cm x 3 cm (d) 6.5 cm x 1 cm x 0.5 cm (e) 4 cm x 1 cm x skin deep. All the five incised wound are parallel placed with respects to each other and their direction is from lateral to medial aspect.

12. An incised wound is present on the right lower limb medial aspect, in the calf region of length 4 cm x 0.5 cm x skin deep present 4 cm below knee joint.

13. Chop wound is present over the medial aspect of right hand causing complete transaction of the medial one third of right hand at the level of base of metacarpals, the chop wound is 7 cm x 3.5 cm x 3 cm.

11. The Investigating Officer recorded the statements of Dharmender PW-7, and Suraj Kali PW-8. Both of them were at the hospital where the deceased Ramji Sahai and the injured Budhi Devi were admitted.

12. Armed with the post-mortem report of the deceased, the MLC of Budhi Devi and citing the daughter-in-law of the deceased Shilpi Devi PW-3, injured Budhi Devi PW-4 and Dharmender and Suraj Kali as eye witnesses as also listing various police officials who were associated in the investigation, a charge sheet was filed charging the appellant with the offence of having murdered Ramji Sahai and the offence of attempting to murder Budhi Devi.

13. At the trial Shilpi Devi PW-3 and Budhi Devi PW-4 deposed in harmony with each other and disclosed the facts noted hereinabove by us in the statement Ex.PW-3/A recorded by the police soon after the incident. Relevant would it be to note that Shilpi Devi stated that the accused followed them to the hospital and was apprehended by the police along with the churra i.e. the weapon of offence.

14. Since a submission has been urged by learned counsel for the appellant, we note, that on being cross-

examined Shilpi Devi PW-3 stated, *"On 25.8.2004 the weapon of offence i.e. Churra was handed over to I.O. by a police personnel whose name I do not remember."*

15. PW-7 Dharmender did not fully support the case of the prosecution. He deposed that on the night of 24-25 August, 2004 at around 9.00 P.M. he heard a noise outside his house and on coming out saw Ramji Sahai lying outside his house in an injured condition; his wife and daughter-in-law were crying, *"bachao bachao"*. He deposed that he took Ramji Sahai to the hospital. He denied having seen anything else.

16. Relevant would it be to note, on being cross-examined by the learned Public Prosecutor he stated : *"It is correct that accused Sirnu later on came in the hospital following us and was arrested by the police."*

17. Suraj Kali PW-8 also did not support the case of the prosecution. She deposed that on 24.8.2004, at about 9.00 P.M. she heard cries of *"bachao bachao"* and came out of her jhuggi. She saw Ramji Sahai lying injured; his wife and daughter-in-law were crying. Dharmender PW-7 also reached and both of them took Ramji Sahai to the hospital. She stated that : *"In the hospital, accused Sirnu, present in the court, also reached following us. The accused had some altercation*

and "hatha pai" with the police and thereafter he was arrested". Thereafter she stated that she did not see anything else.

18. ASI Bhoop Singh PW-21, deposed that on 25.8.2004 he was posted as Incharge PCR van "Oscar 29" from 8.00 P.M. to 8.00 A.M. and at 9.40 P.M. he got information that a person who has been stabbed was admitted at Central Railway Hospital, New Delhi. He along with the other members in the van reached the hospital within 4-5 minutes and found some persons chasing a boy who was having a churra (chopper) containing blood-stains thereon and those persons were shouting that how daring the accused is who has reached the hospital after the quarrel. He deposed that he and the police personnel accompanying him over powered the accused with the help of public and took the churra into possession. That after 10-15 minutes, Additional SHO along with his staff reached there. The custody of the accused was handed over to the Additional SHO. The churra, possession whereof had already been taken from the accused, was given to the Additional SHO and that he came to know that the name of the person apprehended was Shirnu. He deposed that the churra was seized vide a seizure memo Ex.PW-3/D. He identified the churra Ex.P-1 as the one which was seized at

the spot.

19. In cross-examination he deposed that the seizure memo Ex.PW-3/D was prepared at about 10.30 P.M.

20. Vide impugned judgment and order dated 27.2.2007, the appellant has been convicted for the offence of murdering Ramji Sahai. He has been sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-; in default of payment of fine to undergo rigorous imprisonment for one year. He has been convicted for the offence punishable under Section 307 IPC for having launched a murderous assault on Bhudi Devi. For said offence he has been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/-; in default of payment of fine to undergo rigorous imprisonment for five months. Both the sentences have been directed to run concurrently.

21. Needless to state the learned trial Judge has believed the testimony of PW-3 and PW-4. Learned trial Judge has found corroboration in the fact of the appellant chasing the victim and his family till the hospital, even with reference to the testimony of PW-7 and PW-8. Learned trial Judge has noted the testimony of the police officers and in particular PW-21 who had reached the hospital soon after receiving the information of the injured being admitted there and saw a

crowd chasing the accused who was armed with a blood-stained churra. The accused was apprehended at the hospital as per the testimony of PW-3, PW-4, PW-7, PW-8 and other police officials and in particular PW-21.

22. We note that the clothes of the accused which were seized vide seizure memo Ex.PW-17/C, along with the blood-stained clothes of the deceased and his blood sample which was seized vide seizure memo Ex.PW-23/A, on being handed over by the doctor who conducted the post-mortem, as per the report of the serologist Ex.PW-24/A were opined to be of human blood having blood group of 'A' i.e. the blood group of the deceased.

23. At the hearing of the appeal today, learned counsel for the appellant draws our attention to the fact that in cross-examination PW-3 Shilpi Devi, the daughter-in-law of the deceased as also of the injured stated that the weapon of offence was handed over to the Investigating Officer by the police on 25.8.2004. Learned counsel draws our attention that ASI Bhoop Singh has deposed of the day of incident being 25.8.2004 and that he gave possession of the churra to the Additional SHO. Learned counsel urges that it is apparent that the weapon of offence was recovered on 25.8.2004 at 10.30 P.M. and this discredits the case of the prosecution that

the appellant was apprehended on 24.8.2004 and the churra was recovered from him.

24. No other submission has been made. Indeed, none can be made.

25. It is a case of a person being caught pants down. Such a person has no means to hide his shame.

26. Pertaining to the recovery of the weapon of offence on 25.8.2004 as deposed to by ASI Bhoop Singh, it has to be noted that the incident of stabbing took place in a slum cluster of C.F. Road, Pahar Ganj at around 9.00 P.M. It was 24.8.2004. By the time the Additional SHO reached and completed the formalities, the next day i.e. 25.8.2004 had come into being. By the time the formalities were completed, in the seizure memos etc., the date 25.8.2004 and the time being 00.10 hours has been recorded. It is obvious that this has caused confusion qua the date.

27. The reference to the time disclosed by various witnesses, which ranges between 9.45 P.M. to 11.00 P.M. is obviously referable to 24.8.2004.

28. As noted above, PW-3, PW-4, PW-7 and PW-8 all have deposed about the accused being apprehended when he had chased the family of the victim to the hospital and from within the precincts of the hospital; each one of them has

consistently deposed that the stabbing incident took place around 9.00 P.M. on the intervening night of 24-25.8.2004. We may clarify that PW-7 and PW-8 have not claimed to have seen the stabbing incident but have deposed that they saw the deceased and the injured outside their jhuggi at around 9:00 PM on 24.8.2004.

29. That PW-21 has deposed that he handed over the possession of the churra to the Additional SHO and that PW-3 has deposed that the churra was handed over to the Investigating Officer by the police personnel has no contradiction, for the reason both of them are speaking about a police officer handing over a churra to the Additional SHO. The statement of ASI Bhoop Singh PW-21 that the custody of the accused and the churra recovered from him were made over to the Additional SHO has to be understood and appreciated with reference to his immediate statement where he stated: *"we over powered the accused with the help of police and took the churra into possession"*.

30. It is apparent that what the witnesses had stated is, that after the accused was over powered; he was disarmed; the churra in his hand was taken possession of by the police persons and when the Additional SHO along with his staff reached after 10-15 minutes. possession of the churra

and custody of the accused was handed over to the Additional SHO.

31. No other point has been urged.

32. Noting the injuries on the person of the deceased, nobody can argue that the intention of the accused was other than to murder Ramji Sahai.

33. Noting the injuries on the person of Budhi Devi, none can urge that but for the grace of the Lord, she would have died. To put it simply, the assault on Budhi Devi shows the intention of the accused to kill Budhi Devi.

34. We find no merit in the appeal.

35. Dismissed.

(PRADEEP NANDRAJOG)
JUDGE

March 05, 2009/vk

(ARUNA SURESH)
JUDGE