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

+ **CRL.L.P. 304/2008**

% *Date of Order: 2nd March, 2009*

STATE Appellant

Through: Mr.Pawan Sharma, Advocate.

versus

MANBEER SINGH Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Heard learned counsel for the State.
2. The State seeks leave to appeal against the judgment and order dated 4.8.2008 acquitting Manpreet Singh from the offence of having attempted to murder his wife.
3. The learned Trial Judge has given the benefit of doubt to the husband of the victim, inter alia, on the reason that there is evidence on record to suggest that the victim was in liaison with one Tejinder. The victim, Gurjinder Kaur PW-1, on cross-

examination admitted having visited Ponta Sahib along with Tejinder Singh. She admitted that certain photographs were taken at Ponta Sahib and that one photograph Ex.PW-1/DA was taken. The said photograph shows Tejinder Singh hugging Gurjinder Kaur.

4. We have seen the photograph. The hug appears to be more than a friendly hug.

5. Though not expressly stated in the judgment, the underlying effect thereof could be a possible motive for the victim to falsely implicate her husband.

6. The second fact noted by the learned Trial Judge is the discrepant statements of PW-1, PW-5, PW-7, PW-8 and PW-9 as to what was the place where the injuries were inflicted. Whereas PW-1 i.e. the complainant stated that she had been attacked at flat No.96, Block No.7, PW-5 deposed that the flat was No.191. PW-7 deposed that the flat was No.171. PW-8 and PW-9 deposed that the flat was No.191 but gave a different block being block No.5. PW-5 deposed that the block was No.7.

7. The third fact noted by the learned Trial Judge is that in the MLC Ex.PW-6/A, while recording the history of the knife injury, the doctor concerned viz. Dr.Poonam Sharma PW-6 has firstly recorded: *Alleged H/o injury by knife by unknown person*. Thereafter, the words 'unknown person' have been scored off

and in their place the words 'husband (Manbeer Singh)' have been penned by the doctor.

8. The learned Trial Judge has further noted that in her deposition Gurjinder Kaur PW-1, deposed that since she could not speak due to injuries on her neck, soon after the attack she gave a written complaint Ex.PW-1/A. The learned Trial Judge has accordingly opined that if PW-1, as claimed by her, was not in a position to speak after the assault, it remains unexplained as to who gave the information to the doctor.

9. Lastly, the learned Trial Judge has noted that the informant on whose information the initial DD entry was recorded disclosed that a lady had been attacked at the bus-stand of Block No.5.

10. Even the place and the manner of arrest of the respondent and recovery of a razor from him has been found to be mired in controversy, with respect to the deposition of Amarjit Singh PW-3, the father of Gurjinder Kaur and the testimony of PW-9. The discussion is to be found in paras 21, 22 and 23 of the decision which read as under:-

"21. PW-3 deposed that he went to Vivek Vihar along with the police as the police had got some information. The accused was found standing near a school and he was apprehended on his pointing out. He further deposed that from the search of the accused, two razors were recovered from his pocket of pant, one having handle of green colour and one of white colour. When

the case property was shown to the witness, both razors were found having plastic handle of white colour. In his cross-examination he was also confronted with his previous statement Ex.PW-3/DA when he deposed that he had not disclosed to the police that he was present in his house when the information was received about the incident. He admitted that he had not disclosed to the police that he got a message on his mobile phone from his wife while at Chandni Chowk. He further deposed that he received the call between 10 and 11 AM. He was further confronted with Ex.PW-3/DA when he deposed that he had not disclosed to the police that his wife was accompanying him when he went to SDN Hospital.

22. According to PW-3, he went to Vivek Vihar with the police in a gypsy and kept sitting therein while the accused was apprehended. He also disclosed that the police had shown him the razors in the gypsy. Thus, it shows that the search of the accused, if any, was not taken in his presence. He further clarified that the accused was arrested from a distance of 20 feet and he remained present in the jeep alone. In this respect PW-8 and PW-9 both deposed that they had gone to Vivek Vihar to arrest the accused along with PW-3. While PW-8 had gone on his own scooter, PW-8 and PW-3 had gone in a TSR. This is totally contrary to the version of PW-3 who deposed that they had gone there in a gypsy. PW-8 further deposed in his cross-examination that PW-3 had informed him that accused could be found at Vivek Vihar where his friend Tajender Singh resided. This is again contrary to the version of PW-1 and PW-3, PW-3 did not depose any such fact and PW-1 had deposed that she had informed the police that the accused could be found at the house of his brother-in-law and gave his address and telephone no. PW-8 further deposed that accused was pointed out by the father of injured while sitting in the TSR, again contrary to the deposition of PW-3. He further deposed that accused did not tried to run away on seeing the police. The TSR driver was not made a witness to the arrest, though according to PW-8 he remained there at that time. The number of the TSR was also not recorded. No public witness was joined in the investigation.

23. PW-9 also deposed in similar manner and deposed that PW-3 suspected that the accused may be found at the house of his friend at Vivek Vihar. He further admitted that he had stated in his statement Ex.PW-9/DA that accused was found roaming outside the house of his friend at Block No.4, Vivek Vihar, Delhi.”

11. Pertaining to the razor i.e. the weapon of offence in question the learned Trial Judge has noted as under in para 24:-

“24. PW-8 was silent if there was any blood stains on any of the razors allegedly recovered from the accused and PW-9 deposed that he failed to remember if there was any blood stain on any of the razors. It is an admitted fact that none of the razors were sent for CFSL examination. It is hard to believe that if there was any injury caused by the said razors, there would not be any blood stain on it after few hours of the incident. PW-9 even failed to remember the colour of the handle of the razors. PW-8 further admitted that there was clear contradiction in the sketches of the razors Ex.PW-3/A1 and PW-3/A2 and their seizure memos Ex.PW-3/C and PW-3/D respectively. He deposed that he put wrong numbers at the seizure memos. Even if it is accepted, there is no explanation to the overwriting on the sketch Ex.PW-3/A1. It has been mentioned on Ex.PW-3/A1 that the letters ‘OCH44’ were engraved upon it while no such fact is mentioned on the seizure memo of the said razor Ex.PW-3/D. Even if it is presumed that PW-8 wrongly mentioned the numbers, on the contrary it has been mentioned on the seizure memo of the first razor Ex.PW-3/C that words ‘OCK44’ were engraved. Which of these seizure memos and sketches is to be believed is, thus, not known. The entire facts deposed by PW-3, PW-8 and PW-9 about the arrest of the accused, its manner and the recovery of the alleged razors, thus, becomes, highly doubtful.”

12. Learned counsel for the State submits that credence has to be given to the deposition of an injured eye-witness. Counsel states that the victim of assault has survived. She has

given testimony in Court. Motive stands established for the reason the husband of the victim suspected her fidelity.

13. At every trial, two competing views always emerge. The question to be considered is whether the acceptance of one out of the two views by the learned Trial Judge is based on sound reasoning. Needless to state, whenever an issue of doubt arises, benefit thereof has to be given to the accused.

14. Having considered the evidence led and that if the husband had a motive to kill his wife, even the wife had a motive to falsely implicate her husband and carry on the illegal liaison with Tejinder Singh. Thus, the testimony of the wife is to be seen carefully.

15. The learned Trial Judge has noted the discrepancies in the testimony; which have been noted herein above by us, in brief.

16. We are satisfied that the view taken by the learned Trial Judge is a reasonable and probable view. No case is made out to grant leave to appeal.

17. The petition seeking leave to appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

MARCH 02, 2009
Dharmender