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

% Date of Decision : 25th May, 2009

+ CRL. APPEAL NO.823/2007

SHYAM DEV YADAV Appellant
Through: Ms.Purnima Sethi, Advocate.

versus

THE STATE NCT OF DELHI Respondent
Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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. At 5:10 AM on 15.4.2000, DD No.34, Ex.PW-4/A, was recorded by Const. Jaibeer PW-4 recording that Sumitra, wife of the appellant, resident of Jhuggi No.CN-531 Rajasthani Basti, Yamuna Pushta, had been murdered by her husband.

2. A copy of the DD entry was handed over to SI Pradeep Kumar PW-17, who accompanied by ASI Satpal, HC Ramavtar, Const. Kender Pal and Const. Jatinder, proceeded to the place where the crime had been committed.

3. Inspector Ashok Kumar Saxena PW-20 posted as

the SHO of the police station, was given telephonic information about the crime. He too proceeded to the spot and reached contemporaneously when SI Pradeep Kumar and the other police officers reached the place of the occurrence.

4. The police officers met Narayan Mandal PW-11, the father of the deceased named Sumitra, who informed that he was a resident of a jhuggi in the same slum and that the appellant was married to his daughter and the appellant used to quarrel with her. That around 5:00 AM, Sapna, the elder daughter of the deceased came crying to his jhuggi. She informed that her mother was bleeding through the nose and had been killed by her father. The statement, Ex.PW-11/A of Narayan Mandal was recorded by Inspector Ashok Kumar Saxena, who made an endorsement, Ex.PW-20/A, thereon and by 7:00 AM forwarded the statement and the endorsement for an FIR to be registered.

5. At the police station, HC Dharambir Singh PW-1, received the statement and the endorsement afore-noted at about 7:15 AM and registered the FIR Ex.PW-1/A at 7:15 AM.

6. The dead body of the deceased was sent for post-mortem to the Civil Hospital Mortuary, Subzi Mandi. Dr.Ashok Jaiswal PW-6, conducted the post-mortem and prepared the report Ex.PW-6/A noting therein the under-noted external injuries:-

“There was a brownish ligature constriction abrasion mark with bruised margins seen almost horizontally encircling the upper middle part of neck placed 5 cm below chin in midline with neck in extended position, width in front is 1.8 cm. On left side it is seen running horizontally placed 3.5 cm below angle of mandible to back of neck, width 1.7 to 1.8 cm, dark brown with bruising in, with contused margins on right side. It was again running horizontally, 3.3 cm below angle of mandible meeting with the mark on left side at the nape of neck, dark brown in colour with bruise margin 1.6 to 1.8 cm. No ligature material in situ. No other injury seen on the body.”

7. The internal injuries noted were, haemorrhage of the subcutaneous tissue of the right parathyroid region. He opined that the cause of the death was asphyxia consequent to ligature constriction of neck and that the same was sufficient to cause death in ordinary course of nature. It was opined that the deceased had died approximately 36 hours prior to the time when the post-mortem was conducted. It is apparent that as per the post-mortem report the deceased was strangled between 2:00 AM to 3:00 AM in the intervening night of 14th – 15 April 2000.

8. At the spot, the police personnel, namely, SI Pradeep Kumar and Inspector Ashok Kumar Saxena conducted the investigation when they reached the jhuggi somewhere around 5:15 AM. A rope was seized, as recorded in the seizure memo Ex.PW-11/B. Ajay Kumar PW-2, was summoned who took photographs Ex.PW-2/1 to Ex.PW-2/9; negatives whereof are Ex.PW-2/10 to Ex.PW-2/18. Inspector Ashok Kumar Saxena

prepared the rough site plan Ex.PW-20/B at the pointing out of Narayan Mandal.

9. The appellant was not to be found in his jhuggi in the early hours of dawn. He could not be found for days, weeks and months thereafter. Proceedings were initiated under Section 82 Cr.P.C. to have him declared a proclaimed offender. The appellant was apprehended on 17.9.2000 at about 9:55 PM, as recorded in the arrest memo Ex.PW-16/B.

10. The investigating officer recorded the statement of Kumari Sapna PW-12 and three neighbours Sanjay Kumar PW-7, Abhimanyu PW-8 and Ram Prakash Mandal PW-10. As per said statements, the appellant was present in his house in the intervening night of 14th – 15th April 2000.

11. Needless to state, the case of the prosecution hinged upon the testimony of PW-7, PW-8, PW-10, PW-11 and PW-12. It not being in dispute that the deceased died due to the cause as opined in the post-mortem report Ex.PW-6/A.

12. Sanjay Kumar PW-7, a resident of jhuggi No.C-9D/310, Rajasthani Basti, Yamuna Pushta deposed that on the night intervening 14th – 15th April 2000, at about 3:30 AM he came out of the jhuggi for urination and saw the appellant coming out of his jhuggi and proceeding at a fast pace towards the main road. He returned to his jhuggi and slept. Next morning he learnt that Sumitra, wife of the accused had died.

13. On being cross-examined, Sanjay Kumar stated that he saw the appellant from a distance of 8 – 10 paces. He had seen the appellant by face. His jhuggi and that of the appellant were opposite to each other and he heard no noise from the jhuggi of the appellant. His statement was recorded by the police one or two days after the crime was committed. He stated that he did not tell other jhuggi dwellers about the death of the wife of the appellant. He denied the suggestion that he did not see the appellant going away in the night.

14. Abhimanyu PW-8, a resident of jhuggi No.C-9D/70, Rajasthani Basti, Yamuna Pushta, deposed that there was a jagran (prayer meeting) at the temple of Goddess Kali in the intervening night of 14th – 15th April 2000. After the jagran, they calculated the expenditure, which exercise was completed by around 1:30 AM. Appellant came there at that point of time. A person named Shakil expressed desire to take liquor. He i.e. Abhimanyu took Rs.40/- from someone and handed over the same to the appellant, requesting him to bring liquor. Appellant brought two pouches of liquor. All three i.e. the appellant, Shakil and he i.e. Abhimanyu consumed liquor. The appellant left for his jhuggi. He i.e. Abhimanyu requested the appellant not to quarrel with his wife as it was in his knowledge that the appellant had quarreled with his wife at 11:00 PM. Next day through Sapna he learnt

that the appellant has fled after killing his wife.

15. In cross-examination he stated that the jhuggi of the appellant and his jhuggi are at a distance of about 200 yds. He was confronted with his statement Ex.PW-8/DA recorded under Section 161 Cr.P.C. in which it was not recorded that the appellant was roaming outside when they were calculating the expenditure and the collection. It was also not recorded therein that Shakil expressed a desire to take liquor. His statement that Sapna had told that the appellant had killed her mother and ran away was also not mentioned therein.

16. Ram Prakash Mandal PW-10, deposed that he was running a shop in jhuggi No.C-19A/313, Rajasthani Basti. He was present in his jhuggi at 5:00 AM on 15.4.2000. He heard a noise and saw people collecting outside the jhuggi of the appellant. He saw Sumitra, wife of the appellant, dead in the jhuggi. People were saying that the appellant had killed his wife and had fled. Narayan Mandal, father of Sumitra was present. He requested him to inform the police post. He informed the police. He identified the dead body of Sumitra and his statement was recorded by the investigating officer.

17. Nothing of worth has been brought out in the cross-examination of the witness to discredit him and hence we do not note the general questions put to PW-10 during cross-

examination.

18. Narayan Mandal PW-11, deposed that Sumitra was his daughter and was married to the appellant about ten years ago. She and the appellant were residing at jhuggi No.C-9B/445, Rajasthani Basti, Yamuna Pushta. Two daughters and a son were born to them. The son was handicapped and was suffering from polio. He had died. The elder daughter of his daughter, was named Sapna, who was aged 7 – 8 years when the crime took place. The younger daughter Priya was aged about 2 years. Appellant used to ply a rickshaw and was a habitual drinker and a gambler. His daughter used to clean utensils in kothis. The appellant used to spend his earnings on drinking and gambling and used to frequently quarrel with his daughter and used to demand money from her. In the night intervening 14th – 15th April 2000 at about 11:00 PM the appellant quarreled with his daughter and he intervened and pacified them. At around 4:00 – 5:00 AM Sapna came to his house. She was crying and told him that her father had killed her mother and blood was coming out from the nose of her mother. He went to the jhuggi of the appellant and saw his daughter dead. She was bleeding from her nostrils. He tried to trace the appellant but could not do so. Prakash Mandal came at the jhuggi and he requested him to inform the police. The police and the SHO came. His statement Ex.PW-11/A was

recorded. He signed the same at point 'A'. A photographer photographed the jhuggi. A rope found inside the jhuggi was seized in his presence as recorded in the memo Ex.PW-11/B which was signed by him at point 'A'. The dead body was removed to the Subzi Mandi Mortuary for post-mortem. After the post-mortem the dead body was handed over to him for cremation. He deposed that during the intervening night of 14th -15th April 2000 there was a jagran in the temple of Goddess Kali. He was also present there. At about 1:00 AM, after the jagran was over, those present were counting money. Abhimanyu asked the appellant to bring liquor and gave him Rs.40/-. Appellant brought two pouches of liquor. He left the temple and went to his jhuggi. One Sanjay told him that when he came out of his jhuggi at around 3:30 AM for urinating he saw the appellant going away.

19. PW-11 was cross-examined. He stated during cross-examination that his jhuggi was nearby the jhuggi of the appellant. He admitted that in his statement made to the police he had not informed that he had intervened in a fight between the appellant and his daughter at 11:00 PM and had pacified them. He admitted that in his statement recorded by the police it was not mentioned that Abhimanyu had given Rs.40/- to the appellant to purchase liquor. He denied that he was improving upon his statement made to the police to

implicate the appellant.

20. Kumari Sapna PW-12 was first examined by the Court to understand whether she can intelligibly understand the questions put to her. On recording a satisfaction that the child witness was capable of understanding the questions put to her, her statement was recorded without oath. She stated that the appellant was her father and was a rickshaw puller. Her mother used to clean utensils in houses. Her father used to spend money on liquor and gambling and in the night used to demand money from her mother. Upon refusal, he used to quarrel with her mother. On the date of the incident, her father quarreled with her mother at night. Out of fear she slept. She got up when her younger sister started crying and saw her mother bleeding from her nose. Her father had fled. She went to the house of her maternal grandfather and told him about the incident. Her maternal grandfather came to the jhuggi.

21. She was cross-examined. Relevant would it be note that a suggestion was given to Kumari Sapna, a suggestion which she denied; the suggestion being, that the appellant had returned from work in the early hours of the morning at about 4:00 or 5:00 AM.

22. SI Pradeep Kumar PW-17 and Inspector Ashok Kumar Saxena PW-20 deposed about having reached the place

of occurrence after DD entry No.34 was recorded at 5:10 AM in the morning. They deposed that the appellant was not to be seen. They deposed about recording the statement of the father-in-law of the appellant and the same being sent for registration of an FIR. They deposed that the rope Ex.P-1 was seized at the spot. They deposed about the investigation conducted at the spot and as noted herein above in paras 8-10. PW-20 deposed about the appellant being absconding and his being declared a proclaimed offender and the appellant being arrested on 17.9.2000.

23. Relevant would it be to note that no suggestion was given to the police officers that the appellant was present at his jhuggi when they came to the spot.

24. Vide impugned judgment and order dated 12.7.2007, the learned Trial Judge has convicted the appellant, holding that the testimony of PW-7, PW-8, PW-11 and PW-12 established that the appellant was present in his jhuggi in the intervening night of 14th – 15th April 2000 and was seen leaving the jhuggi at around 3:30 AM and soon thereafter his wife was found murdered. It has been held that being last seen with his wife in the jhuggi and the conduct of absconding were sufficient to convict the appellant for the offence he was charged of.

25. It is urged by learned counsel for the appellant that

it is strange that neither PW-7 nor PW-8 nor PW-11 heard any cries of the deceased. It is urged that when a person is strangled there is bound to be resistance and some kind of gargling sound, which would attract people in the neighbourhood.

26. We fail to understand as to where would this argument anchor? That the deceased died inside her jhuggi and was strangled is a matter of fact spoken by the dead body itself and the place wherefrom the dead body was recovered. It is not in dispute that the cause of death of the deceased was asphyxia resulting due to strangulation and that the place of death is the jhuggi where the deceased resided with the appellant. The place of death has not been challenged evidenced by the fact, that not a suggestion has been put to any witness that Sumitra's body was not found inside the jhuggi.

27. Obviously, nobody heard the cries of the unfortunate woman when she was being strangled. The reason is not which cannot be ascertained. Wife beating in jhuggis is a day and night phenomenon in the metropolitan city of Delhi. The cries of anguish of a woman do not attract any summons for rescue in the metropolitan city of Delhi, where the concern of everyone is to earn his bread and butter. Human values have no place in such a system.

28. The minor variations in the testimonies of the witnesses noted herein above, are of hardly any significance and consequence. Minor embellishments and improvements which did not impinge upon the substratum of the testimony of a witness are irrelevant. The reason is obvious. There is always a hiatus between the date of a crime and the date when the witness appears in the Court. With passage of time, either memory fails or it does happen that a witness, which keeps on thinking about a particular incident starts adding some marginal facts.

29. We eschew reference to the part of the testimony of the father of the victim wherein he has stated that he had witnessed a quarrel between the appellant and the deceased at 11:00 in the night. Said statement does not form part of his statement recorded by the police.

30. But, we may note that in his statement recorded by the police he has referred to a quarrel between the appellant and his daughter at 11:00 PM in the night. The only improvement made by him, while deposing in Court, is that of intervening in the quarrel. What is relevant is that PW-8 and PW-11, both have deposed of the appellant's presence at the temple of Goddess Kali at 1:30 a.m. i.e. in the middle of the night intervening 14th – 15th April 2000 and thereafter going to his jhuggi.

31. The suggestion of the appellant's counsel to Kumari Sapna PW-12 that the appellant returned home in the early hours of the morning after having completed his work, is suggestive of the fact that the appellant took a plea of alibi. The testimony of PW-8 and PW-11 disproves the theory of alibi.

32. Kumari Sapna PW-12 has corroborated the testimony of PW-8 and PW-11 with reference to the presence of the appellant in the jhuggi in the intervening night when the offence took place. Sapna has been subjected to cross-examination and has withstood the same.

33. The evidence on record establishes the following:-

- (i) The appellant was present in the jhuggi along with his wife in the late hours of the night intervening 14th – 15th April 2000.
- (ii) The wife of the appellant was found dead at around 5:00 AM.
- (iii) The appellant was absconding and continued to remain absconding for over five months when he was arrested on 17.9.2000.
- (iv) The deceased died due to strangulation.
- (v) The post-mortem report Ex.PW-6/A evidences that the deceased was strangled somewhere between 2:00 AM to 3:00 AM.

34. The chain of circumstances is complete, wherefrom,

the only inference possible is that of the guilt of the appellant, for the reason, he has not explained as to what actually happened.

35. The theory of last seen evidence requires that where the deceased is seen alive with an accused and so soon thereafter the deceased is found dead or injured and there is no possibility of any other person accessing the deceased, unless the accused explains the circumstance under which the deceased sustained the injuries or establishes that the deceased was alive when he and the deceased parted company, the accused must own up the guilt. It was held in the decision reported as AIR 2003 SC 3131 Mohibur Rahman Vs. State of Assam; there may be cases, where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the deceased suffered death or should own the responsibility for homicide.

36. A feeble attempt has been made to argue that obviously something would have happened which motivated the appellant to do what he did. The argument is suggestive of a quarrel between the appellant and his wife. Obviously, the attempt is to try and bring the case within Exception IV to

Section 300 IPC and take the trajectory of the offence from Section 302 IPC to Section 304 Part-I IPC.

37. We find no evidence of a sudden quarrel. No witness has deposed to any sudden quarrel. In his statement under Section 313 Cr.P.C. the appellant has not justified his action by pleading that he acted on an impulse and upon a sudden quarrel.

38. The appellant has been sentenced to undergo imprisonment for life.

39. We concur with the view taken by the learned Trial Judge while convicting the appellant for the offence punishable under Section 302 IPC as per judgment and order dated 12.7.2007.

40. We concur with the sentence of imprisonment for life imposed by the learned Trial Judge upon the appellant.

41. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

MAY 25, 2009

Dharmender