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

% *Date of Decision : 18th May, 2009*

+ **CRL. APPEAL 66/2009**

RAMU PASWAN Appellant
Through: Ms.Charu Verma, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, APP and
Ms. Richa Kapoor, APP
for the State.

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. Vide impugned judgment and order dated 6.7.2004, the appellant has been convicted for the offence of having murdered Mrs.Raminder Khurana W/o Brig. Devinder Singh Khurana at their residence i.e. Flat No.H-3/8 Shanker Vihar, Delhi Cantt., New Delhi. Vide order dated 7.7.2004, the appellant has been sentenced to undergo rigorous imprisonment for life and to pay a fine in sum of Rs.500/-; in

default of payment of fine to undergo simple imprisonment for six months.

2. The entire case of the prosecution stands summarized and set out in the statement Ex.PW-3/A made by Smt.Sunita Malik W/o Col.Anil Malik (PW-3) and the tehrir Ex.PW-23/A recorded by Inspector S.P.Gupta PW-23.

3. On 29.9.1999 at 1521 hours DD No.16-A was recorded by the Duty Constable at PS Delhi Cantt. to the effect that police control room had flashed a wireless message pertaining to a housewife being stabbed at H-3/8 Shanker Vihar.

4. Inspector S.P.Gupta PW-23 accompanied by ASI Gopal Krishan and Const. Rakesh left for the spot and on reaching the place of the occurrence met Smt.Sunita Malik W/o Col. Anil Malik PW-3 who informed the Inspector, as recorded in her statement Ex.PW-3/A, as under:-

“Statement of Smt.Sunita Malik, W/o Col.Anil Malik, R/o H-3/6, Shankar Vihar, Delhi Cantt. New Delhi, aged 42 years

I reside at the aforementioned address with my family. My husband Col. Malik is posted at the Army HQ New Delhi. Today at around 3 O’ clock I heard sound of knocking at the main door followed by ringing of the bell. On opening the door I saw Mrs.Raminder Khurana smeared in blood lying outside the main door. She was bleeding profusely from the chest. At the gallery outside Mrs.Shashi and my servant Santosh W/o Kali Charan as also another servant were

standing. A servant ran downstairs and called Col.Gurung so that Mrs.Khurana could be removed to the hospital. I handed over the key of my car to Col.Gurung. Neighbours removed Mrs.Khurana to the car. Santosh told me that she had responded to the shrieks of her house mistress and as she reached the house of Brig.Khurana she saw somebody closing the door from inside. Somebody informed the police. On arrival the police broke the main door of the flat of Brig.Khurana and from within took out the domestic servant Ramu working with Brig.Khurana. At that time the clothes of Ramu were stained with blood."

5. On the statement Ex.PW-3/A, Inspector S.P.Gupta made the endorsement Ex.PW-23/A recording as under:-

"To the duty officer Delhi Cantonment New Delhi.

On receipt of a wireless message that the wife of a brigadier has been stabbed at house No.H-3/8, Shankar Vihar, along with ASI Gopal Kishan and Const.Rakesh 976/SW I reached H-3/8, Shankar Vihar and found SI Uddham Singh along with the staff of the PCR present. I learnt that Mrs.Raminder Kaur W/o Brig.Devender Singh who had stabbed with a knife had been removed to R.R.Hospital from outside house No.H-3/8, Shankar Vihar and H-3/6 Shankar Vihar as she was found lying in the space outside said two flats. Blood stains are present at the place of occurrence. Statement of Smt.Surinder Malik R/o H-3/6 Shankar Vihar has been recorded at the spot as per which she has informed that somebody had closed the main door of the flat of Mrs.Raminder Khurana from within. With the help of all police personnel the main door was broken a person whose identity was disclosed as Ramu S/o Rogani Paswan, R/o Village Pachari was found inside with a belt in one hand and a hammer in the other. He was overpowered. The statement of Smt. Sunita Malik has been affirmed by her. Thereafter leaving SI Uddham Singh to guard the spot I proceeded with Const.Rakesh to the Army R.R.Hospital where as per MLC No.277/99 it was recorded that Mrs.Raminder Khurana W/o Brig.D.S.Khurana R/o H-3/8 Shankar Vihar was

declared brought dead. The aforesaid facts disclosed the commission of an offence punishable under Section 302 IPC and thus the tehrir is being sent through Const.Rakesh for registration of an FIR. The crime team and a photographer be sent. I am proceeding to the place of occurrence.

Date and time of incident – 29.9.1999 at about 3:00 PM. Place of incident – Flat No.H-3/8, Shankar Vihar Delhi Cantt. ND. Time of dispatch of tehrir – 5:30 PM.”

6. Needless to state, as recorded in the endorsement Ex.PW-23/A, Mrs.Raminder Kaur W/o Brig. Devinder Singh had already been removed to the hospital. The door of house No.H-3/8 Shanker Vihar, which was found locked from within, had to be broken and from within, the appellant was apprehended with clothes stained with blood.

7. The crime team as well as a photographer were summoned. In spite of attempt, chance prints could not be lifted. Photographs Ex.PW-8/1 to Ex.PW-8/17; negatives whereof are Ex.PW-8/1A to Ex.PW-8/17A were taken.

8. Inspector S.P.Gupta proceeded to the hospital where the injured was removed and learnt that she had been declared dead. Her body was seized and sent for post-mortem.

9. Dr.Arvind, Chief Medical Officer, Safdarjung Hospital conducted the post-mortem on 30.9.1999 and recorded the injuries on the person of the deceased, being a stab wound on

the left side of the chest at the level of the third rib, obliquely placed. The second injury was an incised wound on the right hand below right ring.

10. Internal examination revealed that the first stab wound had pierced the chest cavity between the third and fourth rib on the right side, cutting through the muscles and the pericardium. The weapon of offence had pierced the upper part of the right ventricle as also the right lung.

11. The injuries were opined to be ante-mortem and injury No.1 was opined to be caused by a sharp edged weapon like a knife and was sufficient, in the ordinary course, to cause death. Along with the post-mortem report, the clothes of the deceased and blood sample on a gauze was handed over to the investigating officer.

12. We note that a stitch wound on the left nipple was also noted and was opined to be a surgical incised wound.

13. At the spot the kitchen knife Ex.P-1 was seized from within the precincts of the house as recorded in the recovery memo Ex.PW-6/B. The shirt Ex.P-2 and the pant Ex.P-3 worn by the appellant at the time of his apprehension were seized as recorded in the seizure memo Ex.PW-6/E.

14. The knife, the shirt and the pant as also the blood sample of the deceased handed over after the post-mortem on

a piece of gauze were sent for serological examination and as per report Ex.PW-23/G and Ex.PW-23/H it was opined that the blood group of the deceased was 'B'. Human blood of group 'B' was detected on the shirt Ex.P-2. Due to inadequacy of the blood on the knife Ex.P-1, the same could not be subjected to a serological examination. Similar is the report qua pant Ex.P-3.

15. The appellant was sent for trial.

16. 23 witnesses were examined by the prosecution. We need not note the testimony of all the witnesses for the reason, no submissions have been made pertaining to the testimony of the formal witnesses.

17. Lt.Col.K.K.Upadhyay PW-1, deposed that on 29.9.1999 the deceased was brought at the Referral Army Hospital in a critical condition. She had a wound over second intercostal space just left to the sternum. She was declared dead at the hospital as recorded in MLC, Ex.PW-2/A which was penned by Major Sabina Arora. PW-2 Major Sabina Arora deposed that the MLC Ex.PW-2 was penned by her.

18. Dr.Anil, Chief Medical Officer, Safdarjung Hospital deposed as PW-4 and stated that on 30.9.1999 he had conducted the post-mortem of the deceased and the report Ex.PW-4/A was in his handwriting. He deposed that three injuries, one surgical and two others were noted by him which

he had so mentioned in the post-mortem report (the injuries are as noted in para 9 above). He deposed that the cause of death was haemorrhagic shock consequent upon the stab injury No.1 and was sufficient in ordinary course to cause death. He further deposed that the knife Ex.P-1 shown to him in Court could be the weapon of offence by which the two injuries were caused on the person of the deceased.

19. Smt.Sunit Malik PW-3, at whose instance the FIR was registered, deposed that she used to reside at house No.H-3/6 Shanker Vihar, Delhi Cantt. as on 29.9.1999 and knew appellant Ramu Pawan. That on 29.9.1999 she was present inside her house at about 3:00 PM and on hearing knocking on the door of her house, opened the same, and saw Mrs.Raminder Khurana (the deceased) was lying on the floor in a pool of blood. Her servant Santosh and another servant of a neighbour were present. She immediately went down and called Col. Gurang who was on leave on that day. Col. Gurang took Mrs.Raminder Khurana to the hospital in her car. That the appellant had bolted the main door from inside. The police was called. The police broke open the door of the house of the deceased and at that time her maid Santosh and some neighbours were present. Statement Ex.PW-3/A was made by her and bore her signatures at point 'A'. That the appellant

was apprehended and at that time his clothes were smeared with blood.

20. Sunita Malik was cross-examined. Indeed, nothing has been brought out in cross-examination to demolish her testimony.

21. Santosh, the maid servant of PW-3, about whose presence PW-3 has referred to in her deposition, was examined as PW-10. She deposed that on 29.9.1999 she was present at the ground floor below flat No.3, Shanker Vihar, New Delhi and at about 3:15 PM heard the noise of cries. She and her sister Suman, who was sitting by her side, ran towards the place upon hearing the cries of the injured. She saw the owner of house No.H-3/8 Shanker Vihar fall down at the door of house No.H-3. They rang bell of house No.H-3/8 Shanker Vihar. Her 'memsaab' namely Sunita Malik came out and helped the deceased to be removed to the hospital in her car.

22. We note that for unexplainable reasons, the learned APP requested to cross-examine the witness. A request which, for unexplainable reasons, was allowed by the Court. We find nothing said by Santosh which is not supportive of the case of the prosecution. Probably she was not using words which were desired to be spoken of through her mouth by the learned APP.

23. On numerous occasions we have encountered such a situation and have clarified the law on the subject. If a witness of the prosecution is unable to comprehend a question or while answering a question, omits certain details which are desirous to be brought on record, it is always open for the learned Public Prosecutor to seek permission of the Court to put a leading question or give a suggestion to the witness. This is the procedure which is required to be followed in such a situation and not get a witness declared hostile.

24. Be that as it may, continuing with a descriptive reference to the testimony of Santosh PW-10, suffice would it be to note that she deposed that as she went upstairs to the house of Brig. Khurana she saw that somebody had closed the door from within. She stated that she could not remember if Mr.Gurang had driven the car. She admitted that many people had collected at the spot.

25. Suman PW-18, deposed that she and her friend Santosh were sitting in a room at the ground floor and at about 3:00 PM, on 29.9.1999, heard cries of a lady. The cries were coming from House No.3/8. She and Santosh immediately rushed towards the direction from where cries were emanating. She saw the wife of Brig. Khurana lying on the floor and was bleeding.

26. Even Suman was declared a hostile witness and was cross-examined by the learned APP for no apparent reason.

27. On being cross-examined, she stated that when she saw the injured lady for the first time, she i.e. the injured lady, was knocking at the door of the neighbour i.e. House No.3/6 and was crying 'bachao – bachao Sunita – Sunita'. She stated that she could not remember whether Mrs.Malik called Col.Gurang.

28. Col.Shakti Gurang PW-22, deposed that on 29.9.1999 he was present at his house bearing No.H-2/2 Shanker Vihar, New Delhi. That two/three ladies including Mrs.Sunita Malik came to his house and rang the door bell and he opened the door. Mrs.Sunita Malik informed him that her neighbour was stabbed by somebody and requested for help to take the injured to the hospital as none of the ladies knew driving. At that time he did not own a car and accordingly removed the injured to the hospital in the car of Mrs.Malik. The injured lady was unconscious. He was accompanied by the daughter of Mrs.Malik. When he left for the hospital, on the way he saw a girl coming from the opposite direction, who happened to be the daughter of the injured. The daughter of the injured also sat in the car and proceeded to the hospital.

On the way, the daughter of the injured pointed a car coming from the opposite direction and said that the same was her father's official car. He stopped. The husband of the injured managed to sit on the rear seat of his car and all reached R.R.Army Hospital at Rao Tula Ram Marg. The doctor on duty started attending to the injured. He returned to his house and handed over the car and the keys to Mrs.Malik.

29. Jaspal Jolly PW-6 deposed that the deceased was his elder sister and that in the afternoon of 29.9.1999 his niece Simran informed him that their servant Ramu Paswan had stabbed the deceased who was removed to R.R.Hospital. He reached the hospital and identified the dead body of his sister as per his statement Ex.PW-6/A. He joined the investigation. In his presence the knife Ex.P-1 was seized by the police from near the door of the kitchen as recorded in the seizure memo Ex.PW-6/B and that a hammer Ex.P-4 and a belt Ex.P-5 were seized from near a table in the corridor as recorded in the seizure memo Ex.PW-6/G. He deposed that the clothes of the accused were seized vide seizure memo Ex.PW-6/C, but went on to add that the accused was not present there and had already been arrested. He further deposed that the police seized the blood with the help of cotton from near the main door as also the drawing room near the fridge as recorded in

the seizure memo Ex.PW-6/D. That blood from outside the main door was seized as recorded in the seizure memo Ex.PW-6/E. He identified his signatures at point 'A' on all the recovery memos afore-noted.

30. Major General Rajiv Chopra PW-21 deposed that he was posted as a Brigadier in MCC Directorate on 29.9.1999 and at about 3/3:30 PM was present in his office. Wing Commander Bhupinder Singh informed him of having received telephonic information that wife of Brigadier Khurana was murdered in her house. On receiving the information, accompanied with Col. Man Singh, he reached the house of Brig. Khurana. The police was present. The main door of the house was bolted from within. The police officers knocked the door several times and requested the person inside to open the door, but the same was not opened by him. Ultimately, the door had to be broken open. On opening the door, Ramu Paswan was found inside, holding a hammer like object in his hand and his clothes were blood stained.

31. Brig. Devinder Singh Khurana PW-5, the husband of the deceased, deposed that Ramu Paswan was employed by him as a domestic servant. On 29.9.1999 he had left his house at about 8:30 AM for his office. He returned home at 1:30 PM and left the house at 2:05 PM. At that time, his wife and

accused Ram Paswan were present in the house. His daughter was in the college. That Ramu Paswan used to live in a servant quarter attached to his house and Ramu Paswan used to take money for his daily needs only, requiring remaining amount to be retained by him; to be given at the request of Ramu Paswan as and when he desired to go to his house and that some days prior to the incident, the accused had requested for leave to go to his house and that they had told the accused to visit his house after the marriage of their nephew which had to take place on 24.10.1999. He deposed that at 3:00 PM, when he was in his office, he received a message from Col.Anil Malik on telephone that he should immediately reach his house as his wife Mrs.Raminder Khurana had been stabbed by someone. He immediately proceeded to his house in an official vehicle and on the way saw a maruti car coming from the opposite direction in which his daughter was sitting. At her indication he stopped his vehicle and saw his wife lying on the rear seat in an injured condition and the maruti car being driven by Col.Gurang. His wife was unconscious. He also sat in the maruti car and took his wife to the Army Hospital. Attempt made to revive his wife was futile as she died.

32. On being cross-examined Brig. Devinder Singh admitted that two orderlies were provided by the Indian Army whose names were Havaladar P.C.Nair and Nayak Harinder Singh to assist him in his house, but stated that the said orderlies were not working in the kitchen and therefore accused Ramu Paswan was employed by him for cooking in the house. He stated in cross-examination that a servant quarter attached to his flat was given by him to Ramu Paswan to reside and the entrance of the servant quarter was separate. He admitted that on the day of the incident the accused prepared the breakfast for the family. He stated that he used to pay Rs.600/- as salary to the accused. He admitted that accused Ramu Paswan was a quite person and would never speak in a high tone.

33. Mohan Singh PW-19 deposed that on 29.9.1999 he was posted as a Head Constable In-charge of PCR van 'Zebra-41'. On receiving information from the control room of stabbing incident at army officers' colony Shanker Vihar, he reached the colony and saw the first floor of house No.H-3/8 Shanker Vihar was bolted from outside and within. He informed the local police and in pursuance thereof Inspector S.P.Gupta, SHO, Delhi Cantt. reached the spot and pushed

open the door. Accused Ramu Paswan was taken out from the house.

34. Inspector Udham Singh PW-20, deposed that on receipt of copy of DD No.16A, accompanied by Const. Sunder Lal he reached House No.3/8 Shanker Vihar and saw that a crowd had gathered in front of the house. He was informed by somebody that Smt.Raminder Khurana, the wife of Brig.Khurana had been stabbed and had been removed to R.R.Hospital by some person. He learnt that somebody was present inside the house and had bolted the door from within. Inspector S.P.Gupta, SHO, PS Delhi Cantt. along with the staff reached there and in his presence, requested the person inside to open the door and even warned him to do so. The person inside refused to open the door. The door was broken open. Accused Ramu Paswan was found inside the house, holding a hammer in one hand and a belt in the other. Blood stains were noted by him on the shirt of Ramu Paswan. Accused was captured. In the process, the hammer and the belt fell down. Inspector S.P.Gupta recorded the statement of Smt.Sunita Malik and went to the R.R.Hospital after handing over the custody of the accused to him. Inspector S.P.Gupta returned to the spot at 5:45 PM. Site plan was prepared. Crime team and a photographer were summoned. Crime team inspected

the spot. Photographer photographed the place of incident. Inspector S.P.Gupta again went to R.R.Hospital and returned at 7:00 PM and recorded the statement of the witnesses who were present. Accused Ramu Paswan was formally arrested at 7:40 PM as per arrest memo Ex.PW-20/A which bore his signatures at point 'A'. That the accused was interrogated and his disclosure statement Ex.PW-20/C, which bore his signatures at point 'A' was recorded. The accused got recovered a knife which was seized vide seizure memo Ex.PW-6/B which bore his signatures at point 'A'. That the hammer and the belt which had fallen down were seized vide seizure memo Ex.PW-6/G which bore his signatures at point 'B'. Blood was lifted in front of the house i.e. the gallery between House No.H-3/6 and H-3/8. It was also lifted from various places within the house as recorded in the three memos Ex.PW-6/D, Ex.PW-6/E and Ex.PW-6/F all of which bore his signatures at point 'B'. That the hammer Ex.P-4 and the belt Ex.P-5 were the ones which were lifted from the spot as recorded in the seizure memo. That the knife Ex.P-1 was the same knife which was seized vide seizure memo Ex.PW-6/B.

35. On being cross examined, Inspector Udham Singh stated that the PCR van had reached the spot prior to him. The SHO reached the spot after about 10/15 minutes of his

reaching the spot. The door of the house was broken open after the SHO arrived at the spot and that he remained at the spot till 10:15 PM. The crime team tried to lift finger-prints but could not lift the same and remained at the spot for about 2 ½ hours. That the accused remained at the spot till all left for the police station in the night at about 10:15 PM. Statement of Sunita was also recorded in his presence. He stated that the various seizure memos which were drawn in his presence were signed by him along with Jaspal Jolly.

36. Inspector S.P.Gupta PW-23 deposed that on 29.9.1999 he was posted as the SHO PS Delhi Cantt. and received a message that wife of a Brigadier had been stabbed at H-3/8 Shanker Vihar, Delhi Cantt. On receipt of the message, accompanied by ASI Gopal Krishan and Const. Rakesh he reached the spot. SI Udham Singh along with his staff had already reached there. Sunita Malik met him there and revealed that a person had bolted the door of house No.H-3/8 from inside and that person could be involved in the stabbing of Mrs.Khurana. He knocked at the door of H-3/8 repeatedly and also instructed the person present inside to open the door, but received no reply. He broke open the door and found the accused present inside, holding a belt in one hand and a hammer in the other, and that there were stains of

blood on his shirt. He recorded the statement Ex.PW-3/A of Sunita Malik and went to the R.R.Hospital where the injured was admitted but had died. He made the endorsement Ex.PW-23/A on the statement of Sunita Malik and sent the same through Const.Rakesh for FIR to be registered at the police station. The FIR Ex.PW-9/A was registered. He returned to the spot and prepared a site plan Ex.PW-23/B. A photographer and a crime team were summoned. Photographs Ex.PW-8/1 to Ex.PW-8/17 were taken in his presence. He prepared the inquest papers Ex.PW-5/B after dead body was identified by Jaspal Jolly and Brig.Devinder Singh Khurana. He arrested the accused as recorded in the arrest memo Ex.PW-20/A. The blood stained clothes of the accused were seized by him as recorded in the seizure memo Ex.PW-6/C. He interrogated the accused and recorded his statement Ex.PW-20/C. He seized the knife, hammer and belt as recorded in the seizure memo Ex.PW-6/B and Ex.PW-6/G. He lifted blood from various spots and recorded the same in the seizure memos Ex.PW-6/D and Ex.PW-6/E. Blood was lifted from the main gate of the place of incident as recorded in the seizure memo Ex.PW-6/F. He obtained the post-mortem report Ex.PW-4/A. After a few days, he got prepared the site plan to scale Ex.PW-7/A and sent the various exhibits to the CFSL laboratory and obtained the

reports Ex.PW-23/G and Ex.PW-23/H. He deposed that he recorded the statement of the various witnesses. He identified the knife Ex.P-1, the hammer Ex.P-4 and the belt Ex.P-5 as the ones seized by him. He identified the shirt Ex.P-2 and the pant Ex.P-3 which he took possession of from the person of the appellant.

37. Three incriminating circumstances have been held to be established by the learned Trial Judge. Firstly that the deceased and the appellant were the only two persons in the house when the offence took place and there being no explanation by the accused as to how the deceased was injured. Secondly that human blood of group 'B' i.e. the same group as that of the deceased was detected on the shirt of the accused and that the accused could not account for the same. Lastly, the conduct of the accused who was a domestic help in the house of bolting the door of the house from within after the lady of the house stumbled out of the house in an injured condition.

38. Though not so expressly stated by the learned Trial Judge, the signature tune of the reasoning is apparent. The deceased was admittedly proved to have been stabbed inside her house. She stumbled out of the house. A person within the house locked the door. Nobody entered the house

thereafter. The door was broken open. The wounds were not opined to be self inflicted. In the absence of any explanation given by the person found inside the house as to how the deceased sustained the injuries, the obvious presumption would be that the person concerned had done the act. Add on to it the circumstance of blood of human origin of the same group as that of the deceased being detected on the shirt of the accused. The inevitable conclusion would be the guilt of the accused.

39. Learned counsel for the appellant has urged that the witnesses of the prosecution have deposed that when the main door of the house was broken they saw the accused standing inside the house holding a hammer in one hand and a belt in the other. Counsel urges that the post-mortem report of the deceased does not show that the hammer and the belt were the weapons of offence. Counsel submits that the evidence on record does not rule out the possibility of somebody else being the assailant. It is urged that no motive has been proved. It is urged that the finger print of the appellant has not been detected on the knife Ex.P-1. Counsel urges that the testimony of PW-6 demolishes the seizure of the shirt and the pant allegedly worn by the accused at the time of the incident and seized at the spot. Counsel urges that

Simran, the daughter of the deceased, as also the two orderlies of the deceased namely Havaladar P.C.Nair and Nayak Harinder have not been examined. Counsel urges that the accused has been shown to be arrested at 7:30 PM. Counsel submits that the samples seized by the police on 29.9.1999 were sent to the CFSL laboratory after two months i.e. on 30.11.1999. Lastly, counsel urges that a single stab blow has been inflicted on the person of the deceased and hence it cannot be said that the intention of the accused was to murder the deceased.

40. Arguments which do not anchor have no substance or meaning. Rolled over submissions take the Court nowhere. Unless a submission is anchored to a conclusion, by itself the same would have no meaning.

41. It is not necessary to establish motive for every crime. Many a times, it becomes difficult for the prosecution to lead satisfactory evidence pertaining to motive.

42. But it cannot be said that in the instant case no motive is surfacing.

43. A possible motive is surfacing from the testimony of Brigadier Devinder Singh Khurana PW-5, the husband of the deceased. He has deposed that the accused had wanted leave, to go to his house and that the same was turned down

as there was a marriage of his nephew scheduled for 24.10.1999. The possibility of the accused having an altercation with the house-mistress cannot be ruled out on said issue.

44. We fail to understand as to what would be the consequences of the accused holding a hammer and a belt in his hand which obviously are not the weapons of offence. What turns thereon? Nothing we can think of.

45. It is possible that the accused picked up the hammer and the belt when he heard the door of the house being pounded, apprehending that the public outside may assault him and that in the said circumstance he would either scare them or use the hammer or the belt as weapons of defence.

46. That no chance fingerprints could be lifted is a coincidence. It is not that the prosecution made no attempt to lift chance fingerprints. It does happen that chance finger prints are not developed when attempted to be picked up.

47. We fail to understand the logic of the argument of Simran and Havalder P.C.Nair and Nayak Harinder Singh not being examined. It is not the case of the defence or prosecution that they were eye-witnesses.

48. As noted herein above, through the testimony of PW-5 and the testimony of PW-22, we have on record that Simran, the daughter of the deceased was not present in the house as she had gone to the college. When her mother, in an injured condition, was being removed to the hospital by PW-22, the daughter of PW-22 who was accompanying him, saw Simran and made her sit in the car. What would be the necessity to examine Simran? Obviously none.

49. PW-5 has categorically deposed that when he left his house at 2:05 PM his wife and his servant Ramu Paswan were present in the house. No suggestion has been made to the witness during cross-examination that even Havaladar P.C.Nair and Nayak Harinder Singh were present in the house. There is no evidence that said official orderlies provided to Brig. Devinder Singh Khurana were present in the house. What was the need to examine them? Obviously none.

50. That the accused was arrested at 7:30 PM is a matter of fact. But, where does that take us to? We note that except for urging that the accused was formally arrested at 7:30 PM learned counsel could take the argument no further.

51. When an accused is apprehended, there is always a hiatus vis-à-vis the formality of the arrest being completed.

52. From the testimony of the investigating officer i.e. PW-23, it is apparent that after they broke open the house where the crime took place, he recorded the statement Ex.PW-3/A of Sunita Malik and proceeded to the R.R.Hospital. He did so for the reason the consequences of the act of the accused had to be ascertained i.e. whether the FIR had to be for an offence of attempt to murder or murder. He came back to the spot after learning that the deceased had died and thereafter made an endorsement Ex.PW-23/A for registration of the FIR. The time of the incident is 3:00 PM. The police reached the place soon thereafter. The main door was broken open. The statement Ex.PW-3/A was recorded. The investigating officer proceeded to the hospital. He spent some time at the hospital. He reached thereafter. Time was consumed. The formality of the arrest being completed at 7:30 PM is accordingly explainable.

53. At this stage it becomes important to note that the tehrir Ex.PW-23/A was dispatched from the spot at 5:30 PM. As noted above, the incident took place at 3:00 PM. The tehrir was dispatched at 5:30 PM. We have noted herein above the contents of the statement Ex.PW-3/A and the tehrir Ex.PW-23/A. The same record the complete investigation which was over within less than two hours of the crime being committed.

That leave no scope for the police to manipulate or plant any evidence against the accused. It records the presence of Santosh PW-10, Suman (wrongly noted as Shashi) PW-18, as also the presence of Sunita Malik and the role played by the Col. Gurang to rescue the deceased.

54. So soon have the contemporaneous events been recorded that they lend assurance and credibility to the facts unearthed by the prosecution and as led and proved at the trial.

55. It is no doubt true that the various exhibits lifted and seized by the police on 29.9.1999 were sent to the laboratory on 30.11.1999. But, from the said fact alone, we cannot draw any adverse inference of anything being tampered with.

56. The testimony of the malkhana incharge i.e. HC Satbir PW-15 shows that all the articles which were seized on 30.9.1999 were deposited in the malkhana on the same day vide entry at serial No.1407 and 1409. Only one box i.e. the box containing the knife was sent to the CFSL laboratory on 4.10.1999 which was received back on 11.11.1999. Nine other parcels were removed from the malkhana on 30.11.1999 and were received back on 2.8.2000.

57. It is apparent that the seized articles remained in the malkhana and were not in the custody of the investigating officer. The day they were removed from the malkhana was the day they were deposited with the FSL laboratory at Malviya Nagar.

58. The delay in sending the seized articles to the FSL laboratory is the unfortunate consequence of inadequate laboratories functioning in the Union Territory of Delhi. We have only two FSL laboratories in Delhi. One is the Central Forensic Science Laboratory at R.K.Puram and the other is the Central Forensic Science Laboratory at Malviya Nagar and now relocated to Rohini. The FSL Laboratories do not receive samples at random. On prior intimation given, the FSL Laboratories give a priority position for samples to be sent and only thereafter, as per date notified by the laboratory the samples are sent. This explains the delay in sending the seized articles to the FSL Laboratory.

59. But, what is important is that the purity of the seized articles has remained intact. They were deposited in the malkhana on the day on which they were seized. They were removed from the malkhana the very day they were deposited at the forensic science laboratory.

60. That leads us to the last stage of our decision. Whether on the evidence on record an inference can be drawn pertaining to the guilt of the accused?

61. PW-5 Brig. Devinder Khurana has categorically deposed that Ramu Paswan was employed as a domestic help by him. This testimony of PW-5 has gone unchallenged. He has further deposed that on the day of the incident the accused had prepared breakfast for the entire family and he had left for his office and his daughter had left for her college. He returned home at 1:30 PM and changed his uniform, and in a civil dress left at 2:05 PM and at that time, his wife and his servant Ramu Paswan were present in the house and his daughter had not returned. This testimony of PW-5 has gone unchallenged. No suggestion has been put to the witness that when he left the house at 2:05 PM any other servant or person, much less Havalder P.C.Nair and Nayak Harinder Singh were present in the house.

62. The testimony of PW-5 establishes that when he left his house at 2:05 PM on 29.9.1999 the deceased and the accused were the only two persons present in the house.

63. The testimony of PW-3, PW-10 and PW-18 establishes that when the deceased had stumbled out of her house, shrieking for help and knocking at the door of the

opposite flat i.e. the flat of PW-3, the door of the flat in which the crime was committed was closed from within. Nobody entered the house thereafter. The door of the house where the crime took place had to be broken open, as per testimony of the three witnesses as also the testimony of PW-19, PW-21, PW-16, PW-21 and PW-23.

64. From the afore-noted facts i.e. that the deceased and the accused were the only two persons present in the house and that after the deceased was injured inside the house and on her stumbling out of the door, the house was locked from within, any logical mind would reach the inevitable conclusion that in the absence of any explanation from the side of the accused, the only inference possible is of the guilt of the accused.

65. Indeed, the theory of last seen evidence says so. 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, the accused must own up the guilt. It was so 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.

66. Thus, ignoring all other evidence against the accused, from the testimony of PW-3, PW-10, PW-18, PW-19, PW-21, PW-16, PW-21 and PW-23 it is apparent that the findings returned by the learned Trial Judge are correct.

67. Add on the further evidence that the shirt Ex.P-2 recovered from the person of the accused when the accused was apprehended has been opined to be stained with human blood of group 'B' i.e. the same group as that of the deceased adds another incriminating circumstance against the accused who has not explained as to how his shirt came to be stained with human blood of group 'B'.

68. The last contention urged that there being only one fatal injury, it cannot be said that the accused intended to kill the deceased thus, at best, case is made out for the offence punishable under Section 304 IPC and not for the offence punishable under Section 302 IPC needs to be dealt with.

69. We notice that the accused has not projected any defence of being provoked by the deceased. We note that the accused has given no explanation, when examined under Section 313 Cr.P.C. as to what made him commit the crime. Thus, explanation pertaining to a sudden and grave provocation or the accused acting upon a sudden quarrel cannot be projected as defence by the accused.

70. The only evidence we have on record is the post-mortem report. The dead body has spoken through the post-mortem report.

71. Two injuries have been inflicted by a knife on the deceased. The first is a defensive wound on the hand. The other is a stab blow which has pierced the chest cavity from between the third and the fourth rib. Piercing through the heart the knife has cut through the right lung.

72. It is apparent that the accused was acting under an impulse to either kill the deceased or inflict an injury on a vital part of the body. That the deceased managed to ward off one attack, evidenced by the injury on the hand of the deceased, does not mean that the said injury has to be ignored.

73. Intention to cause an injury has to be gathered with reference to the injury caused. Needless to state, a normal

presumption has to be raised by the Court that every person intends the consequences of his acts.

74. The injury caused on the person of the deceased which has proved to be fatal is the injury on the chest. The ferocity of the blow is evidenced by the fact that the knife has pierced about 10 cm deep into the chest cavity cutting through the heart and piercing the right lung. The ferocity of the attack is a fact wherefrom an intention can be gathered.

75. Assuming that some leeway has to be given to the accused on the fact that only one fatal injury has been caused, Part-IV of Section 300 IPC has not to be kept out of sight and out of mind.

76. If a person commits an act knowing that it is so imminently dangerous that it must, in all probability cause death or said bodily injury as is likely to cause death and commits such an act without any excuse for incurring the risk of causing death or said injury as aforesaid, is guilty of murder.

77. The chest cavity houses the heart and the lung. Both are vital organs. He who thrusts a knife with sufficient force was so as to pierce the chest cavity by about 10 cm deep, piercing the heart and the lung in the process, can certainly be attributed of knowingly doing an act so imminently

dangerous that it would, in all probability cause death or such bodily injury as is likely to cause death.

78. Thus, on the evidence on record Section 300 Fourthly, if not Thirdly, is clearly attracted.

79. We find no merit in the appeal. The same is dismissed.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

May 18, 2009
Dharmender