

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

% *Date of Decision: 19th February, 2010*

+ **CRL.APPEAL NO.750/2001**

PARMANAND YADAV Appellant
Through: Mr.Rajesh Mahajan, Advocate.

versus

STATE Respondent
Through: Mr.M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers 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. Vide impugned judgment and order dated 29.8.2001 the appellant has been convicted for the offence of having murdered Sapna and Sandeep somewhere in the intervening night of 11th and 12th January 1997.

2. The impugned judgment has not been penned in a manner in which law mandates a decision pertaining to circumstantial evidence to be penned. Law requires that in a case where proof is by means of circumstantial evidence the Court must list the incriminating circumstances held established against the accused and thereafter give reasons as

to why the Court concludes that from the circumstances in question the chain of circumstances is complete wherefrom the guilt of the accused can be inferred and innocence ruled out.

3. But, having perused the evidence of the prosecution in the instant case, it can safely be said that (though not specifically listed by the learned Trial Judge), the learned Trial Judge has held against the appellant on account of proof of the following:-

(A) The suspicious conduct of the appellant in the night in question when the two children were murdered. The same being proved through the testimony of Pavitra PW-1, the mother of the unfortunate child.

(B) The appellant being seen in a nervous condition in the early hours of the morning of 12th January 1997 at around 4:00 - 4:30 PM.

(C) The appellant pointing out the place where he committed the crime. (i.e. conduct of pointing out).

(D) Recoveries of a jacket Ex.P-3 and a muffler Ex.P-4 pursuant to the disclosure statement Ex.PW-1/D made by the appellant after he was apprehended on 12.1.1997; recoveries being shown in the memo Ex.PW-1/H. The recoveries being witness by Pavitra and SI Ranjit Singh. The incriminating content of the recovery is the report Ex.PW-11/B of the

serologist as per which human blood of group 'A' i.e. the same group as that of deceased Sandeep was detected on the jacket.

(E) The appellant making a second disclosure statement Ex.PW-6/B on 13.1.1997 and getting recovered a chappal Ex.P-1 as recorded in the memo Ex.PW-1/E, a ligature material (taar) Ex.P-10 recorded in the seizure memo Ex.PW-1/F as also the counter part of the chappal Ex.P-1 i.e. the chappal Ex.P-6 entered in the same memo and the recovery of a knife Ex.P-8 and a stone Ex.P-11 as recorded in the seizure memo Ex.PW-1/G. The incriminating value of the said recoveries is the chappals being stated to be that of deceased Sapna. The stone and the knife being detected with human blood of group 'AB' i.e. the same blood group as that of deceased Sapna as per the report Ex.PW-11/B of the serologist.

4. In addition to the afore-noted incriminating evidence used (presumably) by the learned Trial Judge, learned counsel for the State submits that two more pieces of incriminating evidence are to be found. The first is the false answers given by the appellant when examined under Section 313 Cr.P.C. The appellant only admitted his casual acquaintance with Pavitra who was working in the same factory as he and his denial that he had nothing more to do

with Pavitra. Learned counsel for the State points out that when Pavitra lodged the missing persons' report Ex.PW-5/A, as deposed to by HC Naresh Kumar PW-5, the appellant had accompanied Pavitra. Thus, learned counsel for the State submits that false answers given by the appellant have to be treated as a chain supplying the missing links in the incriminating evidence against the appellant.

5. The other incriminating evidence, urges learned counsel for the State, is that there is tell-tale evidence of the appellant having some kind of a physical relationship with Pavitra and his moving around with Pavitra till the crime was detected. He absconded at that stage. The act of absconding is established by the fact that the crime was detected in the early hours of the morning of 12.1.1997 and the appellant was apprehended in the evening of 12.1.1997. Learned counsel submits that the conduct of the appellant of fleeing from justice shows his guilty mind.

6. The first record of Sandeep and Sapna being not found by their mother Pavitra, is as entered vide DD No.40-B on 11.1.1997 at around 10:50 PM in the night when Pavitra reported at the police station Okhla Industrial Area and informed that her son Sandeep aged 7 years and her daughter Sapna aged 11 years were missing since 5:00 PM. As deposed to by HC Naresh Kumar PW-5, he scribed the said DD entry

Ex.PW-5/A, and at that point of time the appellant was accompanying Pavitra.

7. The children could not be found till early hours of the morning of the 12.1.1997, when as claimed by Pavtira PW-1, she found her children on a wooden platform (takhat) at a little distance from the jhuggi of one Anand. She thought that she had found her children who were sleeping but was shocked to find that the children were dead.

8. The first written document pertaining to dead bodies of two children being found in the area is as recorded vide DD No.2-B, Ex.PW-15/D, at 8:22 AM on 12.1.1997 wherein the duty constable has recorded information at PS Okhla Industrial Area that the PCR had informed that two dead bodies have been found at Jhuggi No.B-153, Okhla, Phase-I.

9. SI Ranjit Dhaka PW-6 was handed over copy of DD No.2-B at 8:22 AM and accompanied by HC Dharamvir and Const.Satbir he reached jhuggi No.183/31, Mazbur Camp, Part-I, Okhla Industrial Area and found two dead bodies of a female and a male namely Sapna and Sandeep. He met Pavitra and recorded her statement Ex.Pw-1/A. Making endorsement Ex.PW-6/A beneath Pavitra's statement he dispatched the rukka for FIR to be registered at around 10:45 AM on 12.1.1997.

10. Since learned counsel for the State heavily relied

upon the contents of Ex.PW-1/A to reflect upon the credibility of the testimony of Pavitra, we may note that in her statement Ex.PW-1/A Pavitra has disclosed that during the subsistence of her first marriage, Sapna aged 12 years, was born to her and during subsistence of her second marriage, her son Sandeep aged 7 years was born to her. After her second husband abandoned her she took up a job in a factory where Parmanand (appellant) was employed as a security guard. He started visiting her house. They became close. He desired to marry her. Her children used to call him 'uncle' and used to often visit his house. That yesterday evening she returned from duty at about 6:30 PM and found that her children were not in the house. She met Parmanand at around 7:00 PM at the place where a jagran (religious ceremony) was being held. She asked him as to where her children were. Parmanand told her that he knew nothing about the children. She told Parmanand that her children used to go nowhere except with him. Parmanand insisted that her children had not accompanied him. She searched for her children in the slum cluster. Jeet Bahadur, the younger brother of her husband and Parmanand accompanied her to the police station at 10:50 PM when she lodged the missing persons' report. After lodging the report she returned to her jhuggi and cried out of pain and anguish due to her children being missing. Around 1:00 in the

middle of the night Parmanand volunteered to look for her children and borrowed a blanket. At around 4:00 AM Parmanand returned and handed over the blanket to her and went to sleep in the jhuggi of Anand. She was tense. She could not sleep and went out of her jhuggi to urinate. On the way she peeped inside the jhuggi of Anand and saw that Parmanand was tense and was not sleeping. Proceeding further ahead she saw her children as if they were sleeping on the wooden platform. Thinking that she had found her children, in happiness, she proclaimed said fact to all. She knocked the door of the jhuggi of Anand. Parmanand came out. Her children were not moving. At the asking of Parmanand, she and Parmanand brought the children inside her jhuggi and at that time she realized that her children had been murdered. Parmanand told her that he had found the bodies of her children near a railway line and he had brought the bodies and kept them at the wooden takhat.

11. After the FIR was registered, further investigation was taken over by Insp.Rajender Singh PW-17. The bodies of the two children were sent to the mortuary, where as per the post-mortem report it was to be found that both were killed due to strangulation. Asphyxia was the cause of death and ligature marks were noticed on the neck of both the children. On Sapna's neck, incised wound with a sharp edged weapon

were also noted.

12. As per Insp.Rajender Singh PW-17 and Pavitra PW-1, the appellant was arrested around evening time (7:30 PM) on 12.1.1997 near a bus-stop of Govindpuri and he made a disclosure statement Ex.PW-1/D pursuant where to he led the investigating officer to his jhuggies and got recovered the jacket Ex.P-3 and the muffler Ex.P-4, incriminating nature whereof has already been noted by us hereinabove in para 3(D). The next day he made another disclosure statement Ex.PW-6/B and got recovered a pair of chappals, a knife, a muffler and a stone. The pair of chappals were got recovered from two different places i.e. a foot each. The incriminating nature of the said recoveries has been noted by us herein above in para 3(E).

13. At the heart of the issue, learned counsel for the appellant and learned counsel for the State so concede, is the relevant fact pertaining to the conduct of the appellant, his nervousness as deposed to by Smt.Pavitra PW-1.

14. We note that the testimony of Smt.Pavitra PW-1 is in sync with her statement Ex.PW-1/A and for said reason it has been urged before us by learned counsel for the State that the credibility of Pavitra is to be gauged with reference to the fact that when her statement Ex.PW-1/A was made to SI Ranjit Dhaka, she was in mental pain and anguish. It is difficult to

believe that she had a scheming mind to fabricate lies to implicate the appellant urges the counsel.

15. With reference to the events of 11.1.1997, as per claim of Pavitra, after she returned from the police station after lodging the missing persons' complaint, Pavitra has to say as follows: (We extract from her deposition in Court):-

"I returned from home after lodging the report and when the children did not arrive till 11 PM I again went to the police station. I told the police that the children had still not returned home and thereafter I again returned home. At 12 midnight or 1 AM the accused asked me for a blanket and told me that he was going to look for the children. I went to the house of Jeet Bahadur and I was lying down when the accused returned at 4 AM and returned the blanket to me. After sometime when I crossed the jhuggi of Anand, I saw the accused lying down in the said jhuggi. He was in a nervous state. I had peeped at him from a peephole in the jhuggi door, as I was passing by from the said jhuggi in order to ease myself."

16. We note that this is exactly what Pavitra has said in her statement Ex.PW-1/A. But, we find that Jeet Bahadur PW-2, the brother-in-law of Pavitra to whom Pavitra had also made a mention of not only in her statement Ex.PW-1/A but even in her testimony in Court, has deposed as follows:-

"We traced the children of Pavitra namely Sandeep and Sapna till 7 or 8 PM but we could not trace them. In the meantime accused Parmanand today present in Court also reached there and we all three went to PS Okhla Ph.I and lodged report there regarding missing of the children. Police instructed us that we should further trace the children and if we fail to trace them then we should again go to police station. At about 11 PM Pavitra and accused Parmanand again went to Police Station and lodged police report there."

Thereafter Pavitra came to my house and slept there. In the morning hours when Pavitra came out of the house for urinating she saw both her children lying on a khadhak in front of a hotel."

17. A perusal of the testimony of Pavitra shows that she states that after lodging the complaint at the police station at 11:00 PM about her children being missing she returned to her house. But, Jeet Bahadur PW-2 states that after lodging complaint at the police station of her children missing, Pavitra came to his house and slept there. As per Pavitra, the appellant came to her house at 12:00 or 1:00 in the midnight and asked for a blanket telling her that he would be going to look for children and at that point of time she went to the house of Jeet Bahadur. It is apparent that there is a variation in the testimony of Pavitra and Jeet Bahadur.

18. Pavitra states that she was sleeping in the house of Jeet Bahadur when the appellant returned at 4:00 AM and handed back the blanket to her. Jeet Bahadur does not depose any such fact.

19. Assuming that when Pavitra said that after lodging the complaint at the police station pertaining to her children she returned home she meant the house of Jeet Bahadur, and on said account there is no discrepancy in the first part of the testimony of Pavitra and Jeet Bahadur in that it can be read that both speak in harmony that Pavitra went to the house of

Jeet Bahadur, the problem which would then arise would be that the act of the appellant in asking Pavitra to lend him a blanket at 12:00 midnight or 1:00 AM would be an event in the house of Jeet Bahadur. Jeet Bahadur has uttered not a word.

20. Looked at from any angle we find a material variation in the testimony of PW-1 and PW-2 as to where Pavitra was and whether at all the appellant interacted with Pavitra between 12:00 midnight to 1:00 AM and thereafter at 4:00 AM. The same has a very great bearing on the alleged conduct of the appellant as per events which took place between 12:00 midnight or 1:00 midnight as per the version of Pavitra. The discrepancy is not a trivial discrepancy. It assumes material proportions for the reason what is in issue is the conduct of the appellant as sought to be proved by Pavitra.

21. That apart, the claim of Pavitra that at 4:00 AM when she went out of the jhuggi of Jeet Bahadur to answer the call of nature, she peeped inside the jhuggi of Anand and saw the appellant in a nervous condition, is difficult to accept for the reason, as noted above, we are speaking about the morning of 12th January 1997. The place is the city of Delhi. 12th January; 4:00 AM. It is pitch dark. We wonder as to how Pavitra, in complete darkness, by peeping inside the jhuggi, where darkness would be even more, could see the facial expression i.e. tension on the face of the appellant. From the

testimony of Pavitra and even her statement Ex.PW-1/A it is apparent that she and the appellant were having some kind of a liaison. Her daughter was aged 12 years. Pavitra sensed out that her daughter was sensing something which the mother never wanted her daughter to know. She was sensing that even the appellant was aware that her daughter would be sensing something more than a platonic relationship between the two. Obviously, she felt suspicious of the appellant in having a role to see that her children would not be around. Thus, there is every probability that motivated by her strong suspicion, Pavitra has weaved a story to inculcate the appellant.

22. In view of the discrepancies in the testimony of PW-1 and PW-2 where PW-2 discredits the version of Pavitra, of the appellant meeting her in the night and borrowing a blanket from her and then returned at 4:00 AM to return the blanket it also becomes doubtful whether at all the appellant told Pavitra that he found the children next to a railway line and brought them till the takhat. Finding it difficult to believe that Pavitra could have seen the tension on the face of the appellant or his disturbed mind when he was inside the jhuggi of Anand at 4:00 AM on 12.1.1997, we are constrained to return a finding that there is no incriminating evidence against the appellant with reference to his being tense or his suspicious conduct or that

he had interacted with Pavitra in the midnight and thereafter at 4:00 AM as sought to be proved by Pavitra.

23. Before proceeding ahead, we would like to comment that we are unfortunately noticing that learned Additional Sessions Judges are shying away from dealing with evidence which the defence projects as worthy of consideration for the defence or to discredit the testimony of the witnesses. This has happened in the instant case as well. The learned Trial Judge has just not bothered to juxtapose the version and testimony of Jeet Bahadur PW-2 vis-à-vis what has been deposed to by Pavitra PW-1 and as noted by us hereinabove.

24. The role of a Judge at a criminal trial is that of a neutral umpire. In the journey, where truth has to be discovered, every sign-post has to be taken note of and only then the route to be chartered has to be identified and walked upon.

25. We are thus left with the recoveries pursuant to the disclosure statement (two) of the appellant. The first made immediately when he was apprehended on 12.1.1997 in the evening and the other made on 13.1.1997 and the alleged conduct of the appellant in pointing out the place of the crime.

26. The recoveries are of ordinary articles. As held in the decisions reported as JT 2008 (1) SC 191 Mani vs. State of

Tamil Nadu, 1999 CrI.L.J. 265 Deva Singh vs. State of Rajasthan, AIR 1994 SC 110 Surjit Singh & Anr. vs. State of Punjab, AIR 1977 SC 1753 Narsinhbhai Haribhai Prajapati etc. vs. Chhatrasinh & Ors. and AIR 1963 SC 1113 Prabhu vs. State of U.P. recoveries of ordinary articles are weak pieces of evidence.

27. That apart, as per Pavitra, when she found her children on the takhat and in happiness proclaimed that she had found her children, people gathered and she and appellant took her children inside the jhuggi, it could have happened that the blood of Sandeep could have stained the jacket Ex.P-3 of the appellant. That apart, nobody has deposed that the appellant was wearing the jacket. The part of the disclosure statement of the appellant that he was wearing the jacket Ex.P-3 when the crime was committed is inadmissible in evidence and the only part admissible is the recovery of the jacket pursuant to his disclosure statement. Through independent evidence the prosecution had to prove that he was wearing the jacket when the crime was committed. We hasten to add that the prosecution had attempted to do so by means of the report of the serologist as per which human blood of the same group as that of Sandeep was detected on the jacket. To our mind such a linkage, though is relevant and admissible, is a weak linkage. Direct linkage would be the

testimony of somebody who would claim that on the day and around the time in question, he saw the accused wearing the jacket in question.

28. Pertaining to the recovery of the pair of chappal Ex.P-1 and Ex.P-6 it would be relevant to note that Pavitra has identified the same as that of her daughter. But, the recovery of the same is pursuant to the disclosure statement Ex.PW-6/B made by the appellant on 13.1.1997 i.e. a day after he had made the disclosure statement Ex.PW-1/D.

29. Law has always treated with suspicion disclosure statements which are in part or in piecemeal. Decision of the Supreme Court reported as 2008 (1) Crimes 191 (SC) Sattatiya @Satish vs. State of Maharashtra may be referred to. There is also a possibility of the chappals being planted after picking up the same from the jhuggi of Pavitra or Pavitra herself handing over the same to the investigating officer.

30. Though not very relevant, but it may also be noted that 3 recovery memos have been prepared on 13.1.1997 pursuant to the appellant's disclosure statement Ex.PW-6/B. The three memos are Ex.PW-1/E, Ex.PW-1/F and Ex.PW-1/G. We find that Babu Ram PW-3 is shown as a witness to the recoveries reflected in the seizure memo Ex.PW-1/E and Ex.PW-1/F but he is not a witness to the recoveries entered in the memo Ex.PW-1/G although as per the investigating officer

the recoveries entered in the three recovery memos were made in continuity and in the same sequence of events as transpired after the statement Ex.PW-6/B was recorded. It is also relevant to note that while deposing as PW-3, Babu Ram has not even stated that the appellant was present when the recoveries were made on 13.1.1997.

31. Pertaining to the evidence that the appellant pointed out the place where the crime was committed, we wonder wherefrom said submissions have been made for the reason we find not a single pointing out memo proved at the trial recording that the appellant has pointed out the place of the crime. In fact, there is no evidence led that the crime was committed at any particular place. The prosecution has sought to link the place where the chappals Ex.P-1 and Ex.P-6 were recovered as the place where the crime was committed.

32. Pertaining to the plea of false answers, the law is clear. Each and every false answer in the form of denial or refusal to state or comment upon some evidence, cannot be treated as incriminating for the reason the Constitution of India gives the right of silence to the accused. Only when the case of the prosecution has reached a level of proof of a fact where the last step is the personal knowledge of the accused i.e. the stage when Section 106 of the Evidence Act comes into play, only in such circumstances can false answers or denial be

treated as the missing link. Decision of the Supreme Court reported as AIR 1984 SC 1622 Sharad Birdichand Sarda Vs. State of Maharashtra may be noted in this context as to how the issue of false answers being incriminating evidence has to be considered.

33. The appellant has been apprehended on the day when the crime was detected. His apprehension has been shown at 7:30 PM. It is doubtful whether it can be said at all that the appellant absconded. We further note that no such incriminating circumstance has been put to the appellant when he was examined under Section 313 Cr.P.C. Thus, assuming that the appellant absconded, said incriminating evidence has to be excluded from the chain of incriminating evidence against the appellant.

34. Thus, the only incriminating evidence, at best, would be the recoveries attributable to the appellant. As noted above such recoveries of ordinary articles are weak evidence and pertaining to circumstantial evidence law requiring the journey to be terminated at 'should be' and not 'could be' as held in many decisions, the final step from 'could be' to 'should be', though seems to be small but is a giant step to be covered by the prosecution, we give the benefit of doubt to the appellant. We allow the appeal. Impugned judgment and order dated 29.8.2001 is set aside.

35. The appellant is acquitted of the charge of having murdered Sandeep and Sapna.

36. Since the appellant is on bail we discharge the bail bond and surety bonds furnished by the appellant.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

February 19, 2010
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