

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

% Date of decision : 07th January, 2010

+ **CRL. A. No. 296/2003**

SUKH PAL SINGH Appellant
Through : Ms.Charu Verma, Advocate

versus

STATE Respondent
Through : Ms. Richa Kapoor, 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 Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Appellant Sukh Pal Singh is in Jail and through Jail has given in writing that his appeal shall be argued by Ms. Charu Verma, Advocate nominated by the Delhi High Court Legal Services Committee. The writing of the appellant has been certified by the Jail Authorities and is placed in the file along with the order sheet.

2. Ms.Charu Verma, Advocate has appeared on behalf of the appellant to argue the appeal.
3. We fix the fee of Ms.Charu Verma, Advocate in sum of Rs.5000/- to be paid by the Delhi High Court Legal Services Committee.
4. Vide impugned judgment and order dated 06.03.2003 the appellant has been convicted for the offence of having murdered Usha Rani, his wife. Needless to state, the sentence imposed upon the appellant is to undergo imprisonment for life.
5. With reference to the evidence led at the trial and the impugned decision, it is apparent that the learned trial judge has convicted the appellant on account of two incriminating circumstances. Firstly the appellant absconding and secondly the writing Ex.P-1 seized by the Investigating Officer from the room where dead body of Usha was recovered has been opined by the handwriting expert to be in the hand of the appellant.
6. Ex.P-1 is in Devnagri Script and translated version reads as under:-

(Translated Version):-

I am the killer of Usha Rani. The reason why I have killed her is that she has a loose moral character and indulges in prostitution. I had repeatedly warned her. We have three children. I use to tell her to think about the future of these children. She never cared for me. I always cared for her. I never cared for myself, my parents or my relatives. I only cared for Usha. Rajbir scooter wala and Pappu vegetable vendor are my witnesses. She use to go out to solicit customers in Scooter No. DBR-391. The person who was instrumental in giving the second plot is responsible for all this. It is correct that we were divorced but why did she continue to live with me for three years. Her family members use to tell me to go away inspite of my requests to impress upon them to in turn impress upon her to mend her ways. They threatened me in writing. She continued to flirt with Sandeep Jain (Dog) who assaulted me many times. I cannot fight. I bore the insult but till when? On finding an opportunity I have killed her. I should have done this long time back..... (illegible)."

7. The process of law commenced when Ashok Kumar

Pathak went to the Police Station at around 7.00 P.M. on 20.05.1990 and made the statement Ex.PW-1/A informing that he was residing at House No.J-386, Gali No.14, Kartar Nagar, Delhi and was employed with M/s R.P. Associates at Bhagirathi Palace and that in the neighbouring house bearing House No.J-387 he had seen the appellant quarreling with his wife in the evening of 19.05.1990. Next day morning i.e. on 20.05.1990 he saw the cycle of the appellant outside the house of the appellant. He saw the cycle at the same spot in the evening at around 5.30 P.M. when he returned home and since he neither saw the appellant nor his wife since morning, he felt suspicious. He called both but got no response. Inquisitively, he entered the house of the appellant and saw his wife Usha lying dead.

8. Inspector Ishwar Singh PW-13 posted as SHO of the concerned Police Station received wireless message and proceeded to House No.J-387, Gali No.14, Kartar Nagar, Delhi where dead body of a female was recovered. Letter Ex.P-1 was seized vide Memo Ex.PW-13/B. An Avon cycle was seized from the courtyard as recorded in the Memo Ex.PW-13/D. FIR

was got registered. The dead body was sent to the Mortuary of LNJP Hospital where Dr.L.T.Ramani PW-15 conducted the post mortem and prepared the report Ex.PW-15/A as per which the deceased was killed due to 'Asphyxia' resulting from blunt force being excessively applied on the neck region. The post mortem which was conducted on 21.05.1990 recorded that the approximate time of death was 36 hours prior i.e. the time of death of the deceased would be the intervening night of 19th and 20th May, 1990.

9. Since the appellant was found absconding, the needle of suspicion pointed towards him and for the additional reason Ashok Kumar Pathak informed the police that there used to be frequent quarrel between the appellant and his wife as the appellant suspected the fidelity of his wife and for long the relations between the two were not too good.

10. On 22.05.1990 the Investigating Officer met Sanjeev Jain PW-8 the son of the proprietor of M/s R.P.Associates i.e. Sh. S.K. Jain. As recorded in the Seizure Memo Ex.PW-8/A he i.e. Sanjeev Jain handed over two letters Ex.PW-1/E and Ex.PW-1/F, the latter dated 25.09.1989 and the former dated 12.06.1989

informing the Investigating Officer that the same were in the handwriting of the appellant and that the appellant had handed over the same to him as an employee of M/s R.P. Associates. He informed that the letter dated 25.09.1989 was the letter of resignation submitted by the appellant.

11. The appellant absconded. Proceedings under Sections 82/83 Cr.P.C. were initiated against him. He was declared a Proclaimed Offender. Resort was taken by the Investigating Officer to Section 299 Cr.P.C. when Ashok Kumar Pathak was examined in court on 17.07.1991.

12. He deposed that he was working as a Salesman in M/s R.P. Associates, a shop selling medicines in Bhagirathi Palace, Delhi and that the appellant, his wife Usha and their children used to reside in his neighbouring house. The appellant also served with M/s R.P. Associates. The appellant suspected the fidelity of his wife and on said count there use to be quarrel between the two. The appellant left his house and started living in village Khatta in UP but used to visit Usha. On 19.05.1990 at about 10.30 P.M. he saw Usha and the appellant on a cot in the courtyard of their house. He went to sleep in his

house. Next day he saw the cycle of the appellant parked inside his house and thought that husband and wife would be inside. In noon he saw the cycle at the same spot. He saw the same in the evening at 5.30 P.M. On calling and getting no response from the house, he entered and saw Usha lying dead on the cot and the appellant was missing. That he gave information to the police.

13. The appellant was declared a Proclaimed Offender and was apprehended on 09.03.2000 i.e. after nearly 10 years of the crime. He was sent to trial.

14. After the appellant was apprehended, his specimen writings were obtained when he was in police custody. The same along with Ex.PW-1/E and Ex.PW-1/F were sent to the Forensic Science Laboratory for opinion of handwriting expert with reference to Ex.P-1. Ms.Deepa Verma PW-24 gave the opinion Ex.PW-12/F opining that the specimen writings and Ex.P-1 were written by the same person and that the letters Ex.PW-1/E and Ex.PW-1/F and Ex.P-1 were also written by the same person.

15. In other words, the handwriting expert opined with

reference to Ex.P-1 with reference to not only the specimen handwriting of the appellant taken when he was in police custody but even with respect to the two letters Ex.PW-1/E and Ex.PW-1/F.

16. At the trial Ashok Kumar Pathak could not be examined inspite of best efforts made by the Investigating Officer to trace him. Apparently Ashok Kumar Pathak had changed residence.

17. Sanjeev Jain PW-8 deposed that in May, 1990 he handed over the letters Ex.PW-1/E and Ex.PW-1/F to the Investigating Officer and that the Seizure Memo Ex.PW-8/A pertaining to the said two letters bore his signatures at point 'A'. He deposed that both the letters were in the handwriting of the appellant and that the letter dated 25.09.1989 was the letter under which the appellant tendered his resignation. He deposed that the appellant was working in the Company M/s R.P. Associates which belonged to his father.

18. Smt. Shanti PW-9 the mother of Usha deposed that her daughter was married to the appellant and they had separated but later on the appellant started visiting her daughter. Sudha

PW-10, sister of Usha deposed that the appellant was married to her sister and a day prior to the death of her sister she had gone to their house and saw the appellant quarrelling with her sister.

19. Deepa Verma PW-24 proved her report Ex.PW-12/F.

20. Inspector Ishwar Singh PW-13 deposed that the letter Ex.P-1 (also exhibited as Ex.PW-12/E) was seized by him at the spot where the dead body of Usha was lying vide memo Ex.PW-13/B.

21. As noted hereinabove in para 5, the appellant has been convicted with reference to Ex.P-1 which is a confessional note admitting to the crime and that he was seen in the company of his wife in their matrimonial house in the night of 19th and 20th May, 1990 and that the deceased died in the said intervening night. Lastly, the factum of the appellant absconding.

22. Not disputing that the appellant absconded, counsel for the appellant urges that a person can abscond due to fear. With reference to the report Ex.PW-12/F learned counsel urges that the handwriting of the appellant was taken when he was in police custody without obtaining orders from the competent

court and without following the mandate of the Identification of Prisoners Act, 1920 and thus the report was inadmissible evidence. Counsel lastly urges that Ashok Kumar Pathak was not examined at the trial and hence the complaint made by him on basis whereof the FIR was registered was not proved. Thus, counsel urges that there is no evidence to prove that the appellant was with the deceased in the house where the crime took place in the night of 19th and 20th May, 1990.

23. Pertaining to the report Ex.PW-12/F, as noted hereinabove, the handwriting expert has opined that Ex.P-1 has been written by the same person who has written the specimen writings and additionally the same person who has written the letters Ex.PW-1/E and Ex.PW-1/F. Thus, the report has two distinct parts and even if it fails vis-à-vis the comparison with the specimen writings, it is good evidence with reference to the two letters. Thus, in light of the law laid down in the decisions reported as AIR 1980 SC 791 State of UP vs. Ram Babu Mishra and 1994 (5) SCC 152 Sukhwinder Singh & Ors. vs. State of Punjab, the report has to be ignored with reference to the opinion based on the specimen handwritings

of the appellant for the reason they were obtained without permission of the competent court and without following the procedure prescribed under Section 5 of the Identification of Prisoners Act, 1920. But, the report is legal and valid and hence good evidence in so far it contains an opinion based on a comparison of Ex.P-1 with Ex.PW-1/E and Ex.PW-1/F which two letters have been proved to be in the handwriting of the appellant by Sanjeev Jain PW-8. It is also important to note that the two letters have been written in the year 1989 and Ex.P-1 has been written in the year 1990 i.e. there is proximity of time of the said handwritings.

24. On the issue whether the appellant was seen in the company of his wife on 19.05.1990, we have on record the unblemished testimony of Sudha PW-10 who claims to have seen the husband and wife in their matrimonial house a day prior to when his sister died. Thus, apart from the information given by Ashok Kumar Pathak which led to the registration of the FIR, we have independent evidence to establish that the appellant was with the deceased in their matrimonial house in the evening of 19.05.1990.

25. Section 299 of the Code of Criminal Procedure, 1973

reads as under:-

“Record of evidence in absence of accused.-

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try [or commit for trial] such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”

26. The appellant has admittedly absconded and thus the Investigating Officer was fully justified in getting recorded the statement of Ashok Kumar Pathak before the competent court

under Section 299 Cr.P.C. Since Ashok Kumar Pathak could not be traced when the trial commenced after the appellant was apprehended 10 years later, we concur with the view taken by the learned trial judge that the said statement of Ashok Kumar Pathak was inadmissible in evidence.

27. The statement of Ashok Kumar Pathak proves that the appellant and the deceased were in their matrimonial house in the night of 19th and 20th May, 1990. The post mortem report of the deceased proved that she was murdered in the said intervening night.

28. We hold that Ex.P-1 is the confession of the appellant. We hold that the prosecution had established that the appellant was with the deceased in the place where the deceased was murdered in the intervening night of 19th and 20th May, 1990. We hold that the prosecution has established that the deceased died in the intervening night of 19th and 20th May, 1990. We hold that the prosecution had established that the appellant had absconded. We hold that the appellant absconded not out of fear but to flee from justice and this conduct shows his guilt. We hold that the chain of

circumstances afore-noted is complete wherefrom the guilt of the appellant can be safely inferred.

29. There is no merit in the appeal which is dismissed.

30. Copy of this order be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

JANUARY 07, 2010
'nks'