

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

% *Judgment Reserved On: 28th January, 2010*
Judgment Delivered On: 1st February, 2010

+ **CRL.APPEAL NO.208/2004**

SAYYED AHMAD Appellant
Through: Mr.Mahmood Hasan, Advocate

Versus

STATE Respondent
Through: Mr.M.N.Dudeja, A.P.P.

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.

1. Holding that the prosecution has successfully proved that the writing Ex.PW-1/A purportedly in the handwriting of the deceased Sohna Devi was written by the appellant as per the report Ex.PW-17/H of the handwriting expert Ms.Deepa Verma PW-19 and that PW-4, PW-9 and PW-10 had proved that the appellant had wanted to secret away 4 gunny bags which as per the seizure memo Ex.PW-7/A

contained the body parts of deceased Sohna Devi, the learned Trial Judge has convicted the appellant of the offence of having murdered Sohna Devi. Further incriminating evidence held established against the appellant is that after he was apprehended he got recovered a saw after making a disclosure statement which saw was opined by the doctor who conducted the post-mortem of the deceased to be the possible weapon used to cut the body of the deceased as per the report Ex.PW-11/B of Dr.Gaurav Aggarwal PW-11 who conducted the post-mortem of the body of Sohna Devi.

2. With reference to the testimony of Munni PW-1, learned counsel for the appellant conceded that the same establishes that Sohna Devi was found missing on the fourth day of May 2001 and a writing Ex.PW-1/A was recovered from her jhuggi. The said writing purports to be written by Sohna Devi and is addressed to one Asmat Bhaiya. It is written that Sohna was very unhappy and was going away. At the bottom of the writing the name 'Sona' has been written. With reference to the seizure Ex.PW-7/A learned counsel for the appellant further conceded that it stands established that the dead body of Sohna Devi was recovered by the police from 4 gunny bags lying next to a drain and abutting the wall of the

jhuggi of the appellant. Learned counsel further conceded that the post-mortem report Ex.PW-11/A of Sohna Devi establishes that she was murdered and body cut into pieces with a saw and that the saw got recovered by the police from the appellant was opined vide report Ex.PW-11/B as the possible saw with which the body was cut.

3. What was urged at the hearing of the appeal was that the testimony of PW-4, PW-9 and PW-10 was insufficient to prove that the appellant had committed the crime. Learned counsel highlighted that no motive for the crime has been established.

4. It is true that motive plays an important role in every crime, but in relation to proof thereof, the law is at somewhat variance. Though desirable to be proved, but absence of proof of motive for a crime is not treated as fatal, if otherwise, the prosecution has led credible evidence wherefrom the guilt of the accused can be inferred. It need hardly be re-emphasized that the Evidence Act 1872 requires a fact to be treated as proved not upon 100% proof of a fact but to be treated as proved when after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought under the

circumstances of the particular case to act upon the supposition that it exists.

5. The testimony of Baleshwar PW-4, Samay Singh PW-9 and Ram Pal PW-10 may be noted. It reads as under:-

"PW-4:-

Accused present in Court was residing near my jhuggi. On 5.5.2001, at about 11:00 I was present with 5 – 6 persons near the park of SDN hospital. I was called by the accused Sayyed and asked me that there are five gunny bags and either I should sink these or decompose and Rs.500/- would be paid to me. I asked the accused that I will not go in the nallah if he paid Rs.5,000/- to me instead of Rs.500/-. Sumer Singh was asked to enter in the nallah but he also refused. However Ram Pal agreed to enter into the nallah and accepted a sum of Rs.400/- (Rupees four hundred only). I do not know what was kept in the kattas.

xxxx by def. cl. for both accused persons.

It is wrong to say that I had given the time to the police as 10:00 AM – confronted with Ex.PW-4/DA where it is so recorded. I did not lodge any report with the police.

PW-9:-

I am working in SDN Hospital as Safai Karamchari. On 7.5.2001 at about 11:00 Am Sayyed – accused now present in Court told to me that I have to dig 4-5 gunny bags of sand on which I refused. I called one sewer man namely Ram Pal, who is my friend and they both settled the matter orally and Ram Pal left for work.

Sayyed came to me for payment of Rs.300/- Ram Pal had taken Rs.100/- from Sayyed and I asked Sayyed that he should pay the amount to Ram Pal but Sayyed gave the amount to me as Ram Pal had asked me to take the

money whenever Sayyed gives it to me and then I should pay the same to him. I then paid the amount to Ram Pal.

xxxxx by Id.Def. Cl.

I had given my statement to the police. I am illiterate. I cannot say whether I had given the date of abovesaid incident as 5th or 7th. It is wrong to say that accused had offered Rs.500/- to me. It confronted with Ex.PW-9/DA where it is so recorded. It is wrong to say that I am deposing falsely.

PW-10:-

I am safai karamchari with SDN Hospital. It was fifth month of 2000, then said it was 7.5.2001 that day at about 11:00 AM Sayyed met Samay Singh. Sayyed is accused now present in Court. Sayyed asked Samay Singh that five gunny bags be put in the earth. He replied that he is on emergency duty and he cannot do so. He introduced me to the accused. I asked Sayyed what was in the gunny bags and he informed me that these are containing MALBA and bricks. Instead of putting the same under the earth, I brought the bag out of the nallhi and placed the same on the patri. I demanded the money and told him that I have placed the bags under the earth. This was a false statement. Accused gave me Rs.100/-. Rest of the money was paid to Samay Singh by wife of Sayyed. I do not know what money was paid to Samay Singh and on the next day, Samay Singh gave me Rs.300 to me.

xxxxx by Id.Def.Cl. for the accused.

Today is 21st day of month. It is correct that I know the dates. I had put sariya inside the gunny bags and there appeared to be brick (voltd.) and the next day when it was opened it was found containing portions of dead body and bricks as well. I did not see the dead body. I had told the police that some money was paid to me and some was paid to Samay Singh for dumping the dead body. I did not open the gunny bags. I stated to the police that Rs.100/- were given to me and remaining

Rs.300/- were given to Samay Singh by wife of Sayyed – confronted with Ex.PW-10/DA where it is recorded. It is wrong to say that I am deposing falsely.”

6. A cumulative reading of the testimony of the three witnesses establishes that Baleshwar PW-4 was contacted by the appellant with a request to secrete 5 gunny bags in a *nallah* and upon his refusal to do so he contacted Samay Singh PW-9 to do the needful, who in turn contacted Ram Pal PW-10. PW-10 took out the bags from the *nallah* and belying the trust of the appellant, did not secrete the bags, he left them at the *patri* from where they were recovered by the police.

7. Now, why should the appellant try to secrete the body parts of deceased Sohna Devi?

8. The said fact is within the personnel knowledge of the appellant and he having rendered no explanation, a reasonable presumption can be drawn that the appellant wanted to secrete the dead body of Sohna Devi to hide his guilt. For, people secrete things to hide something else.

9. Just as recoveries of dead bodies lying secreted pursuant to the disclosure statements of the accused, as held in the decisions reported as AIR 1947 PC 67 Pulukuri Kottaya & Ors. Vs. Emperor, 1989 Cri LJ (NOC) 200 (Gauhati) Chakidhar Paharia Vs. State of Assam, 1986 Cri LJ 220 Parimal Banerjee

Vs. State and AIR 1963 SC 1074 Ram Lochan Ahir Vs. State of West Bengal have been held to be highly incriminating evidence, logic demands that actions of an accused to secrete a dead body must be treated as equally highly incriminating evidence.

10. The fact that a saw opined to be the possible weapon of offence was got recovered by the appellant on which as per the report Ex.PW-17/J of the serologist blood was detected but the sample being too small could not be further tested for the origin or the group thereof, is further incriminating evidence albeit of a very weak nature.

11. We are constrained to ignore the fact that the writing Ex.PW-1/A has been opined vide report Ex.PW-17/H to be in the hand of the appellant for the reason the alleged specimen writings of the appellant were obtained by Insp.Shiv Dayal PW-17 when the appellant was in his custody without following the provisions of the Identification of Prisoners Act 1920. As held in the decisions reported as 1994 (5) SCC 152 Sukhvinder Singh & Ors. Vs. State of Punjab, AIR 1980 SC 791 State of U.P. vs. Rambabu Mishra AIR 2003 SC 4377 State of Haryana vs. Jagbir Singh & Ors. anything personal to an accused for purposes of comparison with a suspected sample

if obtained from the accused without the permission of the competent Court and without the accused being identified as required by the provisions of the Identification of Prisoners Act 1920 has to be ignored and such a report has to be excluded while considering the incriminating evidence.

12. From the twin circumstance of the possible weapon of offence being recovered pursuant to the disclosure statement of the appellant and at his instance, which we note is weak evidence, coupled with the conduct of the appellant, which we note is highly incriminating evidence, to secrete the body of the deceased Sohna Devi, we hold that the learned Trial Judge has correctly returned the verdict of guilt.

13. The appeal is dismissed.

14. Since the appellant is still in jail we direct that a copy of the decision be sent to the Superintendent, Central Jail, Tihar to be made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 01, 2010
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