

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

% Date of Decision :19<sup>th</sup> March, 2010

+ **CRL. APPEAL NO.673/2004**

DINESH KUMAR ..... Appellant  
Through: Mr.Anurag Jain, 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 Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?Yes

**PRADEEP NANDRAJOG, J.** (Oral)

1. Arguments had been concluded in the afore-noted matter and we had reserved the matter for pronouncing decision.

2. While dictating judgment, it transpired that no incriminating circumstance whatsoever, save and except one or two, have been put to the accused when he was examined under Section 313 Cr.P.C.

3. The statement of the accused under Section 313 Cr.P.C. reads as under:-

“Q1: It is in evidence against you that on

9.8.2002, Satnam Singh lodged a complaint with the police which is Ex.PW-1/A. His statement regarding identification of the body was recorded, same is Ex.PW-1/B. Also, statement of Ravinder Singh regarding identification of the dead body was recorded, same is Ex.PW-15/E. SI Dinesh Kumar on receipt of DD No.16, reached the spot along with Constable Ashok. SI Dinesh Kumar prepared rukka Ex.PW-4/A. On the basis of the rukka, FIR No.288/02 was registered. Carbon copy of the same is Ex.15/A. What have you to say?

A1: I do not know.

Q2: It is in evidence against you that after reaching the spot, SI Dinesh Kumar, lifted the blood stains lying on the stair case and took in possession vide memo Ex.PW-1/C. Cloth and chappal were seized and taken into possession vide memo Ex.PW-1/D. Hawaii chappal for stair case, another hawaii chappal from the lobby Exs.P4, green colour chunni Ex.P-5 , cream colour towel Ex.P1, a sofa seat bearing the impressions of shoe marks, one broken knife in two parts blade Ex.P-2 and handle of knife Ex.P-3 were taken into possession vide memo Ex.PW-1/F. A sealed pulanda containing sample seal and clothes of Dinesh were taken into possession vide memo Ex.PW-1/E. What have you to say?

A2: I do not know.

Q3: It is in evidence against you that IO prepared the sketch of knife, same is Ex.PW-1/F and same was taken into possession vide memo Ex.PW-1/G. Your disclosure statement was recorded vide memo Ex.PW-1/H. Your shoes were got recovered and taken into possession vide memo Ex.PW-1/J. Blood was lifted from the place of incident and was taken into possession vide memo Ex.PW-1/K. What have you to say?

A3: I do not know about the preparation of knife sketch. I never gave any disclosure statement. The shoes Ex.PW-1/J were planted upon me. I don't know about Ex.PW-1/K.

Q4: It is in evidence against you that Dr.Shamal Sarkar prepared the post mortem report of the deceased Amarjeet Kaur, same is Ex.PW-3/A. What

have you to say?

A4: I don't know.

Q5: It is in evidence against you that SHO Insp.Ashok Kumar seized the pulanda pertaining to deceased Amarjeet Kaur vide memo Ex.PW-6/A. Also, Dr.Abhishek Jha prepared the MLC No.CS-77956/02, same is Ex.PW-8/A. What have you to say?

A5: I don't know.

Q6: It is in evidence against you that on 10.9.2002, Draftsman Madan Pal prepared rough notes and on the basis of rough notes, he prepared the scaled site plan, same is Ex.PW-9/A. What have you to say?

A6: I don't know.

Q7: It is in evidence against you that Photographer Gir Raj took 17 photographs and developed photographs, same are Ex.PW-11/1 to 7 and Ex.PW-18 to 34, respectively. What have you to say?

A7: I don't know.

Q8: It is in evidence against you that you were arrested vide arrest memo Ex.PW-12/B and your personal search was conducted vide memo Ex.PW-12/A. What have you to say?

A8: I was arrested, when still in AIIMS hospital. I was getting the medical treatment.

Q9: It is in evidence against you that ASI Khazan Singh received a call on 9.8.02 from Wazir Nagar, Kotla Mubarakpur. The telephone number from where he received the call is Ex.PW-13/A. What have you to say?

A9: I don't know.

Q10: It is in evidence against you that on 9.8.2002, Dr.L.M.Darlong, prepared the MLC of deceased Amarjeet Kaur, same is Ex.PW-14/A. What have you to say?

A10: I don't know.

Q11: It is in evidence against you that on 10.8.2002, IO Ashok Kumar, prepared proforma

application for conducting postmortem, same is Ex.PW-15/C. He also prepared the death report proforma, same is Ex.PW-15/D. He recorded the statement of Ravinder Singh, same is Ex.PW-15/B. Also, dead body of deceased Amarjeet Kaur was handed over to his relatives and a receipt was executed in this regard, same is Ex.PW-15/F. The reports from CFSL were received, same are Ex.PW-15/G and Ex.PW-15/H. What have you to say?

A11: I don't know.

Q12: It is in evidence against you that on 9.8.2002, at about 6:15 p.m., in H.N.1566A, Gali No.I, II Floor, Wazir Nagar, K.M.Pur, N. Delhi, you committed murder of Smt.Amarjeet Kaur and stabbed Smt.Amarjeet Kaur on different parts of her body. What have you to say?

A12: I deny that on 9.8.02 at about 6:15 p.m., I committed murder.

Q13: Why this case is against you?

A13: I don't know.

Q14: Anything else you want to say?

A14: I am mentally unsound and cannot understand things properly. Since 1977-78, I am being treated at AIIMS hospital regularly. On the date of incidence, I went to my brother's shop and fall from the shop's platform which is 5 feet above the ground level. When I got conscious, I found myself in AIIMS hospital surrounded by police officials.

Q15: Do you lead defence evidence?

A15: Yes."

4. It is apparent to the reader that the learned Trial Judge has simply put to the accused the investigation conducted and the various memos prepared and statement recorded during investigation. Question No.1 itself proves the same.

5. As held in the decision reported as AIR 1972 SC 535

Parichhat vs. State of Madhya Pradesh, Trial Judges must realize the importance of the examination of an accused under Section 313 Cr.P.C. It is the duty of the Trial Judge to question the accused properly and fairly, bringing home to the mind of the accused, in simple and clear language, the exact case he has to meet and each material point that is sought to be made against him and of affording him a chance to explain it if he can and so desires. As held in the decision reported as AIR 2004 SC 5068 Parsuram Panday vs. State of Bihar, it is imperative on the Court to give opportunity to an accused to explain every incriminating circumstance proved by the prosecution.

6. Statements of witnesses recorded during investigation by police officer is not substantive evidence and cannot be made basis for putting questions to accused in his examination under Section 313 Cr.P.C.

7. It needs to be clarified that the linchpin of Section 313 Cr.P.C. are the words '*explain any circumstances appearing in the evidence against him*'. This means that every fact from which the Court would draw the inference of guilt against the accused has to be put to the accused. For example, as held in the decision reported as AIR 1953 SC 468 Hate Singh vs. State of Madhya Bharat, if the Courts attach

importance to the fact that the accused absconded, the accused should have been asked question on this point and given a chance to explain.

8. A perusal of the evidence shows that the husband of the deceased, namely, Satnam Singh, who is the complainant, has deposed in Court that he and the father of the accused were having a civil dispute pertaining to the shop which was in the possession of the father of the accused, to which, the sister-in-law of Satnam Singh was laying a claim for possession. Satnam Singh was desiring the father of the accused to hand-over possession of the shop, which was being resisted. As per Satnam Singh, on account of said civil dispute, a few days prior to 9.8.2002, the accused had threatened him. As per Satnam Singh, on 9.8.2002 the accused had come to his shop and after taking a cold drink left. As per Satnam Singh he sensed some problem and immediately spoke to his wife over the intercom connecting his shop to his wife and told her to be careful. As deposed to by Satnam Singh, his wife told him that the accused was already sitting with her and discussing the issue of the shop. As further deposed to by Satnam Singh, immediately thereafter he heard a sound of a person falling on the street opposite his shop. He came out and saw that the accused was

on the street. He looked up and saw the window of his residence, which was on the second floor of the same building in which, on the ground floor, his shop was situate, was opened. Satnam Singh has further deposed that he immediately took the flight of steps to go up to his house and was horrified to see his wife brutally murdered.

9. It is unfortunate that the aforesaid incriminating evidence which has been used by the learned Trial Judge against the appellant has not been put to the appellant when the appellant was examined under Section 313 Cr.P.C.

10. That apart, incriminating evidence in the form of footprints leading up to the sofa adjoining the window on the second floor, suggestive of somebody stepping on the blood of the deceased which had fallen on the floor and thereafter walking up to the window which is open has not been put to the accused.

11. We are pained once again to note that the errant Judge is none else other than Shri Narottam Kaushal, ASJ, Delhi, who we have repeatedly been noticing is totally ignoring the fundamental principles of criminal law. He repeatedly refers to and examines the accused with reference to the narratives in the charge-sheet. We have expressed our anguish on two earlier occasions with respect to the manner in

which trial has been conducted by the learned Judge.

12. We expressed our anguish on the earlier occasion after condoning at least 5 or 6 prior instances which we noted. Thinking that they were aberrations we let it pass, till it dawned upon us that in virtually every case Shri Narottam Kaushal, ASJ, Delhi is resorting to shortcuts.

13. Instant case is probably the 10<sup>th</sup> or 11<sup>th</sup> case we have noted where Shri Narottam Kaushal, ASJ has short-circuited the procedures of law.

14. We are constrained to hold that as a result of total non-application of mind and not a single incriminating circumstance except one or two, being put to the accused, justice requires the appeal to be disposed of after setting aside the impugned judgment and order dated 29.4.2004 and the sentence dated 30.4.2004.

15. Proceedings are revived before the learned Trial Judge who is directed to examine the accused under Section 313 Cr.P.C. and while so doing put all incriminating circumstances to the accused.

16. Needless to state, the accused would be re-entitled to lead defence evidence, should the accused chooses to do so.

17. Ordered accordingly.

18. Noting that the appellant is in custody since the year 2002, in exercise of our inherent jurisdiction, we admit the appellant to bail.

19. We direct that on the appellant furnishing a personal bond in sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the learned Trial Judge, the appellant shall be admitted to bail.

20. TCR be returned forthwith.

21. We direct the Registrar General of this Court to send a copy of this decision to the Inspecting Judges of Shri Narottam Kaushal, ASJ, Delhi.

22. The learned Trial Judge is directed to re-examine the accused and if the accused desires, to record defence evidence, and complete the proceedings preferably within a period of four months from the date of receipt of this order and the record of the trial.

23. DASTI.

**PRADEEP NANDRAJOG, J.**

**SURESH KAIT, J.**

**MARCH 19, 2010**  
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