

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

% *Judgment Reserved On: 08th February, 2010*
Judgment Delivered On: 22nd February, 2010

+ **CRL.APPEAL NO.146/2008**

PAPPEY Appellant
Through: Mr.D.K.Sharma, 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.

1. The appellant has filed the above captioned appeal challenging the judgment and order dated 28.01.2008, convicting him for the murder of his wife Smt.Rajwati and sentencing him to undergo imprisonment for life and to pay a fine in sum of Rs.100/-; in default thereof to undergo RI for 7 days.

2. We note that the evidence held incriminating against appellant Pappey is of motive emerging from the testimony of Mahesh Chand PW-5, brother of the deceased

who deposed that the relations between the appellant and the deceased were strained and that the appellant used to harass and beat the deceased and used to demand money from her. The second piece of evidence held incriminating is that the post-mortem report and the opinion of the panel of doctors who conducted the post-mortem has opined that the cause of death of the deceased was asphyxia consequent to blunt object force inflicted upon the chest and the neck and since the appellant was admittedly with his wife, he having not explained how his wife suffered the injuries, must own up the guilt.

3. It is not in dispute that the appellant had himself brought his wife to LNJP Hospital at 5:15 PM on 9.12.2003 and she was attended to by Dr.S.K.Aggarwal who has deposed that Rajwati aged 26 years was brought to the casualty in an unconscious collapse state and was not responding to stimuli. Neither BP was recordable nor was the pulse palpable. The patient had history of fever for the last 2 days. Urgent ET Intubation was done. Artificial respiration was started. CPR was started and after resurrection, adrenaline and atropine injection were given. CT scan of the head was got done which revealed diffuse cerebral oedema. The patient died after about 10 hours. On being cross-examined Dr.S.K.Aggarwal admitted that the whole body of the patient was clinically

examined and no visible injury was found and that the provisional clinical diagnosis of the cause of death was cerebral malaria.

4. The post-mortem of the deceased was conducted on 13.12.2003 by a medical board consisting of three doctors; namely Dr.V.K.Jha, Dr.Akash Jhanji PW-8 and Dr.Rajesh Gupta PW-15 and as per the post-mortem report prepared by the 3 doctors following injuries on the body were noted:-

“1. Contusion swelling reddish in colour in area of 4 x 2 cm was present over inner back surface of left side chest upper half lying 1.5 cm below the upper border of the shoulder.

2. Contusion swelling reddish in colour in area of 3 x 3 cm was present over back of right side neck upper half 0.5 cm below the posterior hair line.

3. Contusion swelling reddish in colour in area of 7 x 4 cm was present over back of upper and middle half of right side forearm.

4. Contusion swelling reddish in colour in area of 6 x 3 cm was present over back of upper half left leg.

5. Contusion reddish in colour in area of 4 x 3 cm present over front of right side chest upper half just below and to the right of suprasternal notch.”

5. Internal injuries noted by them are as under:-

“NECK: The adjacent tissues around hyoid bone right side horn showed extensive bruising. Thyroid, cricoids cartilages were intact and frothy mucoid material was found in the tracheal lumen.

CHEST: Rights side clavicle bone medial end showed fracture with fractured ends bruised an adjacent inter coastal muscle of right side first space was found contused. Retrosternal bruising

was present. Ribs were intact. Both lungs were found consolidated. Heart was NAD.”

6. They opined that the cause of death was asphyxia consequent to blunt object force inflicted upon the chest and the neck by a person.

7. The 3 doctors preserved viscera being pieces from the lung, brain and spleen in jar 1 and lymphnodes in jar No.2 from the body of the deceased and as per the report mark X of the Department of Pathology the pathological examination of the viscera revealed as under:-

“Jar 1 – Contain pieces of lung, brain & spleen.

Lung: Two pieces measuring 9 x 4 x 2 cm & 10 x 5 x 1.5 cm received. Histopathology reveals marked oedema and congestion in both with focal haemorrhages in one piece, small granulomas are also present.

Spleen: Part of spleen measuring 6 x 2.5 x 2 cm shows congestion.

Brain: Pieces of brain 7 x 5 x 2.5 cm, shows oedema with mild congestion.

Jar II – Labelled lymphnode: An irregular piece of tissue 2.5 x 2 x 1.5 cm showing caseating tubercular lymphadenitis.”

8. That the cause of death of Smt.Rajwati was asphyxia is not in dispute. But, the question which arose for consideration before the learned Trial Judge and also arose for consideration before us when the appeal was argued and needs to be decided is, what caused the asphyxia resulting in

the death of Rajwati and at what point of time did she sustain the external injuries noted on her body when post-mortem was conducted.

9. Answering the question as to at what point of time were the physical injuries inflicted upon the body of the deceased, the testimony of Dr.S.K.Aggarwal PW-16 and his admission in cross-examination that when Rajwati was admitted at LNJP Hospital, in the casualty, at around 5:15 PM on 9.12.2003 her whole body was checked and no injury was noticed assumes importance. It may be noted that on the MLC Ex.PW-16/A of the deceased no physical injury on her person has been noted. 5 external injuries have been noted by the panel of doctors who conducted the post-mortem. 2 injuries (serial No.1 and 5) are on the chest; 1 injury (serial No.2) is on the neck. 1 injury (serial No.3) is on the back of upper and middle half of right forearm; and 1 injury (serial No.4) is on the upper half left leg.

10. The text: 'THE ESSENTIALS OF FORENSIC MEDICINE AND TOXICOLOGY' by Dr.K.S.Narayan Reddy who has acquired a post doctorate degree in the subject of Forensic Medicine has devoted a chapter, being chapter No.6 in his book to asphyxia. The learned author has described asphyxia as a condition caused by interference with respiration, or due to lack of oxygen in respired air due to which the organs and

tissues are deprived of oxygen (together with failure to eliminate Carbon dioxide), causing unconsciousness or death. In simpler terms, when there is deprivation of oxygen in the brain and the nerves tissues are affected it is asphyxia.

11. The learned author states that asphyxia may be of various types:

(i) Mechanical:- In this the air-passages are blocked mechanically due to: (a) Closure of the external respiratory orifices, as by closing the nose and mouth with the hand or a cloth or by filling these openings with mud or other substance, as in smothering; (b) Closure of the air-passages by external pressure on the neck, as in hanging, strangulation, throttling, etc.; (c) Closure of the air-passage by impaction of foreign bodies in the larynx or pharynx as in choking; (d) Prevention of entry of air due to the air-passages being filled with fluid, as in drowning; and (e) External compression of the chest and abdominal walls interfering with respiratory movements, as in traumatic asphyxia.

(ii) Pathological:- In this, the entry of oxygen to the lungs is prevented by disease of the upper respiratory tract or of the lungs, e.g. bronchitis, acute oedema of glottis, laryngeal spasm, tumours and abscess. Paralysis of the respiratory muscles may result from acute poliomyelitis.

(iii) Toxic:- Poisonous substances prevent the use of oxygen like: (a) The capacity of hemoglobin to bind oxygen is reduced, e.g., poisoning by carbon monoxide; (b) The enzymatic processes, by which the oxygen in the blood is utilized by the tissues are blocked, e.g., cyanides; (c) Respirator centre may be paralysed in poisoning by opium, barbiturates, strychnine, etc.; and (d) The muscles of respiration may be paralysed by poisoning by gelesmium.

(iv) Environmental:- (a) Insufficiency of oxygen in the inspired air, e.g., enclosed places, trapping in a disused refrigerator or trunk; (b) Exposure to irrespirable gases in the atmosphere, e.g., sewer gas, carbon dioxide and carbon monoxide; and (c) Exposure to high altitude.

(v) Traumatic:- (a) Pulmonary embolism from femoral vein thrombosis due to an injury to lower limb; (b) Pulmonary fat embolism fracture from long bones; (c) Pulmonary air embolism from an incised wound of internal jugular vein; and (d) Bilateral pneumothorax from injuries to the chest wall or lungs.

(vi) Postural asphyxia:- This is seen where an unconscious or stuporous person, either from alcohol, drugs or disease, lies with the upper half of the body lower than the remainder.

(vii) Iatrogenic i.e. induced by anesthesia.

12. As noted above, Dr.S.K.Aggarwal PW-16 who had treated Rajwati at LNJP Hospital where she was admitted at around 5:30 PM on 9.12.2003 has deposed that the patient was given artificial respiration and CPR was performed. CPR is the short form of Cardio Pulmonary Resuscitation i.e. is an emergency procedure for people in cardiac arrest or in some circumstances respiratory arrest. CPR involves physical interventions to create artificial circulation through rhythmic pressing on the patient's chest to manually pump blood through the heart.

13. While CPR is generally effective in delaying tissue death and extending the brief window of opportunity for a successful resuscitation by maintaining a flow of oxygenated blood to the brain and the heart, at times it can also injure patients. In fact, minor soft tissue injuries are common in both adults and children who undergo CPR. But in rare cases potentially life threatening injuries may also occur. These are a result of complications due to ventilation and chest compression during CPR. Injuries caused as a result of CPR are frequently observed in the neck and the chest regions. It is very difficult for even forensic pathologists to distinguish between CPR related injuries and injuries caused by other factors such as assault or accidental violence.

14. The Journal called 'Legal Medicine Journal' volume IX March Issue 2007 guides us that resuscitative injuries are observed frequently in the neck and the chest. Besides, resuscitation may also cause fractures of the hyoid bone and thyroid cartilage.

15. As per the post-mortem report of the deceased and as noted in paras 4 and 5 above 5 external injuries were noted on the body surface and internal injuries around the tissue of the hyoid bone. The medial end of the right side clavicle bone was fractured with bruises to the intercostal muscle. Restrosteral bruising was also noted. The situs of the 5 external injuries were, 2 on the chest, 1 on the neck, 1 on the back of upper middle half of right forearm and 1 on the upper half left leg.

16. As noted in para 13 and 14 above, resuscitative injuries are observed frequently in the neck and the chest. Besides, resuscitation may also cause fractures of the hyoid bone and thyroid cartilage. Thus, in view of the fact that the deceased was given Cardio Pulmonary Resuscitation as also artificial respiration the possibility of the internal injuries, 2 external injuries on the chest and 1 on the neck being the result of the procedures adopted for Cardio Pulmonary Resuscitation cannot be ruled out. The 2 other injuries on the right forearm and the upper half left leg are not related to CPR

but it cannot be ruled out that the same were the result of attendance firmly holding the patient and pinning the patient to the bed for the reason as noted in para 12 above CPR involves physical intervention to create artificial circulation through rhythmic pressing on the patient's chest to manually pump blood through the heart. At this stage the doctor performing CPR gives repeated jerks by applying pressure with the palm on the chest. The patient is nearly dead. The body is limp and requires to be held on or pinned down to the bed.

17. Unfortunately, the learned Trial Judge has totally ignored the aforesaid medico legal aspects of the problem. We do not blame him for the reason he had no counsel assistance evidence by the fact that the medical experts have not been questioned with reference to the medical literature. Even we were given no assistance and were compelled to dig into medical literature on our own.

18. It is settled law that opinion of an expert is admissible and relevant evidence under Section 45 of the Indian Evidence Act 1872 and the Court cannot delegate the judicial power to decide a matter of fact to the expert. The decision has to be of the Court and it is the duty of the Court to consider and apply the known text on a matter of Science and specialized knowledge.

19. The pathological report of the viscera, contents noted in para 7 above show that the brain pieces revealed oedema. The lymphnodes were showing 'caseating tubercular lymphadenitis'. 'Caseating' means nearly busting, 'tubercular' means affected by tuberculosis and 'lymphadenitis' means the swelling of the lymphnodes, and can be the result of tuberculosis. It is apparent that the deceased was a patient of tuberculosis. That Dr.S.K.Aggarwal PW-16 found oedema of the brain during CT scan of Rajwati has also to be factored. Lastly, now it assumes great importance to restate the fact that Dr.S.K.Aggarwal has categorically deposed that when the patient was brought to the casualty he could see no external injury mark on the body.

20. Thus, the appellant is entitled to the benefit of doubt with respect to the incriminating nature of the evidence with respect to the post-mortem report for the reason all injuries noted therein are explainable as above with reference to medical literature. Thus, the only incriminating evidence left would be the testimony of the brother of the deceased Sh.Mahesh Chand PW-5 pertaining to motive and this piece of solitary incriminating evidence can never form the basis to sustain a conviction on the finding of guilt.

21. The appeal is allowed. Impugned judgment and order dated 28.1.2008 is set aside. The appellant is acquitted

of the charge of having murdered his wife. The sentence imposed upon the appellant is quashed.

22. Since the appellant is in jail we direct that a copy of this order be sent to the Superintendent, Central Jail, Tihar for necessary action.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 22, 2010
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