

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

% *Judgment Reserved On: 12th April, 2010*
Judgment Delivered On: 13th April, 2010

+ **CRL.APPEAL 245/2010**

KAILASH CHAND Appellant
Through: Mr.S.K.Sharma, Advocate with
Mr.Dhruv Kumra, 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?
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. That the wife of the appellant was brutally assaulted in the one room tenement where the appellant resided with his wife and son is not in dispute. That the wife of the appellant was detected with fatal head injuries in the room afore-noted at around 7:00 AM on 20.9.2008 is also not in dispute. That the post-mortem report Ex.PW-3/A of the deceased conducted by Dr.Akash Jhanjee PW-3 establishes that the weapon of offence was a blunt object and that the deceased was hit four

times on the skull resulting in caranio cerebral damage is also not in dispute. It is also not in dispute that the furiousness of the blows with which the deceased was hit, evidenced by the fact that internal examination of the head, as recorded on Ex.PW-3/A, evidencing multiple comminuted fractures with fractured fragments piercing the cranial cavity; sub dural and sub arachnoid haemorrhage, ex facie show that the intention of the assailant was to murder the deceased. The only question which we need to answer in the appeal is, whether the appellant murdered his wife or was it the job of some outsider?

2. In response to the incriminating circumstance put to the appellant that there was evidence that the appellant slept along with his wife in the room in which she was found murdered, the appellant admitted said fact and in response to the question that in the morning at around 7:00 AM his wife was found lying in a pool of blood and the appellant missing from his house, the appellant responded by saying that he had not seen his wife in a pool of blood at 7:00 AM because he had left the house in the morning at 6:00 AM to visit a house near Joshi Mandir, adjoining Krishna Nagar, for the work to be performed for somebody whose name he did not remember.

3. Const.Savitri PW-9 has proved recording of DD No.6A, Ex.PW-9/A as per which on information being relayed to

PS Krishna Nagar by the police control room an entry was made at 7:00 AM on 20.9.2008 that a quarrel had taken place at house No.B-7, Gali No.3, East Azad Nagar. SI Rajiv Rana PW-16 accompanied by Const.Prembir PW-7 left the police station with a copy of DD No.6A and reached Gali No.3 East Azad Nagar and learnt that the place of occurrence was B-60 and not B-7. It was on the second floor of the building. They saw the deceased lying dead with blood still oozing from her head. The place was the matrimonial residence of the appellant. SI Rajiv Rana recorded the statement Ex.PW-1/A of Dishant Kumar (PW-1) the son of the appellant as per which his father used to quarrel with his mother as he suspected her character and that last night i.e. on 19.9.2008 the two had quarreled. Thereafter, all slept at around 10:00 PM. He woke up at 7:00 AM and found his father missing and his mother in blood. He immediately called Mahabir, the immediate neighbour who informed the police. Making an endorsement Ex.PW-16/A beneath the statement of Dishant Kumar, SI Rajiv Rana sent the same through Const.Prembir for FIR to be registered for the offence of murder. ASI Bindu PW-8 registered the FIR Ex.PW-8/A at around 8:10 AM. Being a case of murder the investigation was entrusted to Insp.Satish Chandra Sharma who proceeded to the place of the crime and found the

deceased named Deepa lying dead in a room on the second floor of House No.B-60, Gali No.3, East Azad Nagar. He summoned the crime team. Nothing incriminating could be found by the crime team. Const.Manoj PW-4, a part of the crime team took the photographs Ex.PW-4/1 to Ex.PW-4/9. Various exhibits stained with blood were seized by Insp.Satish Chandra Sharma as recorded in the memo Ex.PW-1/B. He seized the dead body and filled up the inquest papers and sent the body for post-mortem.

4. The appellant was apprehended the same day i.e. on 20.9.2008 and his disclosure statement Ex.PW-15/E was recorded as per which the appellant said that he can get recovered a hammer used by him to assault his wife. The appellant voluntarily produced a pant and shirt which he claimed he was wearing when he committed the crime. The same were seized vide memo Ex.PW-15/H. The appellant led the investigating officer to a park near his house and got recovered a hammer which was seized vide memo Ex.PW-15/J.

5. It be noted that no blood could be detected on the shirt and the pant produced by the appellant but human blood, group whereof could not be ascertained was detected on the hammer.

6. The hammer in question was, as per opinion Ex.PW-

3/B, opined by Dr.Akash Jhanjee to be the possible weapon of offence.

7. During investigation, Insp.Satish Chandra Sharma recorded the statements of various persons living in the same building as per which the appellant used to suspect the character of his wife and under influence of alcohol used to beat her and in the morning of 20.9.2008 Dishant Kumar, PW-1, the son of the deceased and the appellant was heard crying and uttering *Papa Mummy ko maar ke chale gaye*.

8. It is apparent that the prosecution was relying upon the testimony of Dishant Kumar, the son of the appellant and the occupants of the building on the second floor whereof the appellant was staying as a tenant.

9. Dishant Kumar PW-1 deposed that he was a student of class-XI and in the month of September 2008 was residing on the second floor of B-60, Gali No.3, East Azad Nagar along with his parents and that after consuming alcohol his father used to fight with his mother because he was suspicious of her character. On 19.9.2008 there was a quarrel between his parents. They all slept in the room at around 10:00 PM. His mother slept on a table, he slept on the bed and his father slept on the floor. Next day morning i.e. on 20.9.2008 he got up at 7:00 AM and saw his mother in a pool of blood on the

table. He became nervous and called another tenant Mahabir and the landlord Nikhil Rastogi who informed the police. The police came and recorded his statement Ex.PW-1/A and after some time various blood stained objects were lifted from the house by the police as recorded in the memo Ex.PW-1/B.

10. Relevant would it be to note that Dishant made no mention of seeing his father in the house in the morning. Further relevant would it be to note that on being cross-examined by the appellant he said that his father used to go to work at about 6:00 AM.

11. Rama Rastogi PW-2, the landlady of the house deposed that the appellant was a tenant under her and after taking liquor used to beat his wife. She denied any quarrel between the two in the night of 19.9.2008. She stated that in the morning Dishant came to her and told her that his father was not in the house and his mother was bleeding. Being declared hostile, she denied having ever told the police that on the night on 19.9.2008 the appellant had mercilessly beaten his wife.

12. Mumtaz Ahmed PW-5 likewise turned hostile but only supported the case of the prosecution to the little extent of deposing that after consuming alcohol the appellant used to beat his wife. Likewise, Mahavir PW-6 also turned hostile but

supported the prosecution limited to the extent that after consuming alcohol the appellant used to beat his wife.

13. Nikhil Kumar Rastogi PW-14 (the person referred to by Dishant PW-1 as the landlord) deposed that he was a resident of House No.B-60, Gali No.3, East Azad Nagar and knew the appellant who was living as a tenant in his house along with his wife and son Dishant. That on 20.9.2008 at about 7:00 AM when he was sleeping in his room he was informed that appellant's wife was bleeding from the head and the appellant was missing. He went to the room of the appellant and saw the wife of the appellant lying in the room with blood oozing from her head. The son of the appellant named Dishant was weeping and was saying that *Papa Mummy ko maar ke chale gaye*. Thereafter, he informed the police. That appellant used to quarrel with his wife and used to beat her and that on numerous occasions he saved her.

14. Relevant would it be to note that the testimony of Nikhil Kumar of what he heard from the mouth of Dishant has not even been challenged during cross-examination.

15. While narrating the events as they transpired on 20.9.2008, we have referred to the investigation conducted and the involvements of the various police officers from the stage first DD entry was recorded till FIR was registered and

appellant was apprehended and recoveries made, we need not note said evidence save and except to record that the police officers referred to by us in paras 3 and 4 above deposed and proved their role in the investigation and the documents prepared and the recoveries effected.

16. Notwithstanding most of the prosecution witnesses turning hostile, but from the testimony of PW-1 we have a fact on record that Nikhil Kumar Rastogi PW-14 reached the place of the occurrence soon after PW-1 got up from his slumber and saw his mother fatally injured. The contemporaneous uttering of PW-1 of saying *Papa Mummy ko maar kar chale gaye* is res gestae of the events and as noted above said testimony of Nikhil Kumar Rastogi has not even been challenged during cross-examination. Even the hostile witnesses have unanimously deposed that the appellant used to beat his wife under influence of liquor. Dishant Kumar PW-1 has proved that the appellant was suspicious of the character of his wife. Thus, a motive for the crime is established. The son of the appellant has also proved the fact that in the night of 19th September 2008 the appellant had quarreled with his wife. That the crime took place somewhere just prior to 7:00 AM has been proved by PW-1 and PW-14 whose testimony is corroborated by Const.Savitri PW-9 and Ex.PW-9/A which is the DD entry

recorded at 7:00 AM pertaining to the crime.

17. Notwithstanding the fact that the son of the appellant has tried to shield his father by saying that his father used to leave the house for work at 6:00 AM, but we find no credibility in the same for the reason the job of the appellant was that of an electrician and as an electrician, save and except for emergency calls, nobody goes to work at 6:00 AM. Besides, the appellant not disclosing the name of the person nor giving particulars of the house where he went to do electrical work is also a factor to be kept in mind while appreciating the issue of a housewife being murdered in her matrimonial house sometimes just prior to 7:00 AM. Further, through the testimony of witnesses is the fact proved that the building on the second floor whereof appellant was resided was inhabited by various tenants and the landlord. It is just not possible that an outsider would enter and exit undetected. The fact that on the same day the appellant got recovered the hammer which was opined to be the possible weapon of offence on which human blood was detected, though extremely weak in nature as incriminating evidence, has to be put in the weighing scale against the appellant.

18. The argument by learned counsel for the appellant that no blood was detected on the clothes i.e. the pant and the

shirt which the appellant produced as claimed by the investigating officer proves his innocence, is noted and rejected for the reason there is no law that if blood is not detected on clothes produced by the accused, it leads to a presumption of innocence. Cases are not unknown where crafty accused have voluntarily handed over wrong weapons claiming the same to be the one used in the commission of the crime with the obvious intention of misleading the prosecution as it happened in the decision reported as AIR 1963 SC 612 Jaidev Vs. State of Punjab. Similarly the argument that the appellant was apprehended at noon and not in the evening shows his innocence, is noted and rejected for the reason when Insp.Satish Chander Sharma admitted during cross-examination that the appellant was apprehended at around 2:00 PM does not mean that the arrest memo Ex.PW-15/F showing the time of arrest at 6:00 PM is a false document. Insp.Satish Chander Sharma was not called upon i.e. was not questioned with respect to the arrest memo. There is always a time gap between when a person is with the police and the time when he is arrested. Arrest is a formal step taken and prior thereto, a person may be only a suspect and there may be no need to arrest him. But, where the suspect either evades the issue or admits to the guilt and makes a disclosure

statement, would the occasion arise to arrest him. Similarly the argument that the hammer was sent to Dr.Akash Jhanjee after a month and a half and hence it is a case of planting, is noted and rejected for the reason the weapon of offence i.e. the hammer in question was simply opined to be the one with which it was possible to cause the injuries on the skull of the deceased. It is not a case akin to a firearm where adverse evidence can be very lethal and hence requires the custody of the firearm with the investigating officer to be reduced to the bare minimum.

19. In any case, ignoring the recovery of the hammer attributable to the appellant, for the reason a motive has been proved for the crime through the testimony of the son of the appellant, the fact that the appellant fought with his wife the previous night and slept in the same house, the fact of sleeping in the same house being admitted, the fact that the wife of the appellant was murdered in the same house where the appellant and she slept and the time of murder being a little prior to 7:00 AM, a time when husbands are expected to be in their house coupled with the fact that the appellant has not proved the fact of his not being in the house as claimed by him, notwithstanding his son attempting to let the appellant go of the hook by claiming that this father used to normally leave

for work at 6:00 AM, the testimony of PW-14 establishing the contemporaneous utterings of the son of the appellant and the fact that it was not possible for an outsider to enter and commit the crime and flee unnoticed, we are of the opinion that the appeal merits dismissal.

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

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

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 13, 2010
dk/mm