

R-61

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

% Date of Decision: 4th February, 2010

+ **CRL A 616/2005**

CHAMAN LAL & ANR. Appellants
Through: Mr. Anish Dhingra, Advocate

versus

STATE Respondent
Through: Mr. M. N. Dubeja, 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. (Oral)

1. At around 10:00 PM on 2.12.1994 information was received at PS Nabi Karim which was recorded vide DD No.27-A that Devki wife of Chaman Lal has not been seen throughout the day and in all probability she has been murdered. SI Surender PW-18 reached House No.6014, Gali Sat Narayan Mandir, Nabi Karim and found the body of Devki bundled inside a sack. It was apparent that Devki had died an unnatural death. He made an endorsement Ex.PW-9/A beneath copy of

DD No.27-A and sent Const.Hari Ram for FIR to be registered. He summoned Const.Babu Ram a photographer and took photographs Ex.PW-13/12 to Ex.PW-13/19. SI Surender Singh prepared the rough site plan Ex.PW-19/A showing the spots wherefrom he had made the recoveries and filling up the form Ex.PW-15/B for inquest proceedings sent the body for post-mortem and recorded the seizure of the rope Ex.P-2 and the gunny bag Ex.P-1 from the spot in the memo Ex.PW-17/A. Another piece of rope Ex.P-3 and two pieces of sarees Ex.P-4 and Ex.P-5 were also taken into possession as entered in the seizure memo Ex.PW-17/C. He also signed and sent the application Ex.PW-18/A for body to be preserved, probably for a proper identification of a body.

2. Appellant Chaman Lal, the husband of Devki was found missing. In fact, as deposed to by SI Surender Singh when he reached the house not a single male member of the house was present. Female members including co-appellant Munni Devi, the widowed sister-in-law of Chaman Lal, was present in the house.

3. During course of investigation Joginder Singh PW-5 informed the investigating officer that on 2.12.1994 at about 9:00 PM in the night Sita Ram and Ramu, the father of Chaman

Lal and the brother of Chaman Lal had come to his house and informed that the wife of Chaman had committed suicide by hanging herself. He advised them to go to the police that after about half an hour even Chaman Lal came to his house and disclosed that his wife had committed suicide by hanging and he told Chaman Lal to report the matter to the police.

4. On 5.12.1994 Dr.Dasari Harish PW-21 conducted post mortem on the body of the deceased. He noted signs of putrefication and maggots in the body. He noted strangulation marks on the neck which due to the body being putrified had lost distinctive characteristics. Internal examination showed that the hyoid bone had no fracture. The thyroid cartilage had a fracture due to inward compression. He opined that cause of death was asphyxia as a result of strangulation.

5. Apart from aforementioned injuries around the neck he noted some other injuries being the result of application of blunt force.

6. Deposing in Court Dr.Dasari Harish stated that from the fact that the hyoid bone was unaffected and the thyroid cartilage was fractured, unless suicide was the result of slip not hanging, it was a case of homicide.

7. The likely time of death opined by him was 3 to 4

days prior to the date when he conducted the post mortem. He admitted the fact that in view of the fact that the body was putrified there was a possibility of the actual date of death being plus or minus one day. It is unfortunate that the dead body was treated with utmost disrespect and probably kept in some corridor of the mortuary and not in the chilled room.

8. It is apparent that on account of what was told to the investigating officer by Joginder PW-5 the conduct of the male members of the family was suspect.

9. Further investigation revealed information to the investigating officer that Chaman Lal was having an affair with Munni Devi, the widow of his brother Prem Singh and the deceased was against the same and to carry on the illicit affairs with Munni Devi, Chaman Lal and Munni Devi conspired to kill the deceased.

10. Though no motive surfaced during investigation against Sita Ram and Ramu, even they were sent for trial on account of their suspicious conduct.

11. Munni Devi who was seen in the house by SI Surender Singh PW-18 when he went to the house in the late night of 2nd December 1994 later on absconded. Chaman Lal, the husband of the deceased was not seen in the house by SI

Surender Singh and even he absconded.

12. Accordingly, when the challan was filed the names of Chaman Lal and Munni Devi were listed in column 2. Sita Ram and his son Ramu were sent for trial.

13. At the trial against Sita Ram and Ramu the only incriminating evidence which surfaced was the two not being in their house when SI Surender Singh reached the house at late night of 2.12.1994 and that Jogender PW-5 had stated that both had come to his house at around 9:00 PM to inform that wife of Chaman Lal had committed suicide. But, the admission of SI Surender Singh that his investigation revealed that the two were not present in the house around the likely time when the deceased died, led the learned Trial Judge to acquit them vide judgment and order dated 3.11.2001.

14. Chaman Lal and Munni Devi remained absconders till the year 2002. On 9.9.2002 they surrendered in Court and accordingly were charged for the offence of having murdered Devki.

15. Vide impugned judgment and order dated 16.07.2005 the appellants have been convicted for the offence punishable under Section 302 read with 34 IPC as also for the offence punishable under Section 201/34 IPC.

16. For the offence of murder the appellants have been sentenced to undergo imprisonment for life and for the offence punishable under Section 201 IPC they have been sentenced to undergo RI for 7 years each.

17. With respect to the incriminating evidence held established against the appellants the learned trial Judge has held that the post mortem of the deceased clearly established that she was murdered. Holding that the prosecution had failed to bring direct evidence of illicit relationship, there was evidence that relationship of the deceased with her husband Chaman Lal were far from cordial and that both accused absconded has been used as further incriminating evidence. The testimony of Joginder Singh PW-5 has been held as establishing a suspicious conduct of appellant Chaman Lal who has acted most unnaturally with respect to the death of his wife.

18. Noting that Sita Ram and Ramu were acquitted on account of the fact that as per the Investigating Officer their presence in the house at that time when the deceased was murdered was doubtful, learned trial Judge has held that the acquittal of Sita Ram and Ramu would have no bearing vis-à-vis the evidence against the appellants.

19. With respect to appellant Munni Devi, we note that the learned trial Judge has ignored the testimony of SI Surender PW-18 who has clearly stated that when he reached the house, all male members were absconding; family members including Munni Devi were present in the house.

20. That Munni Devi subsequently absconded is possibly due to her being scared. We note that Munni Devi is a widow and is an illiterate person evidenced by the fact when examined under Section 313 Cr.P.C. she could not even sign and affix her right thumb impression.

21. Since motive for the crime i.e. illicit relationship between Chaman Lal and Munni Devi have not been established, the only circumstance that Munni Devi was in the house when the deceased was murdered and subsequently absconded after the few days of the crime are insufficient evidence wherefrom guilt of Munni Devi can be inferred. We highlight the fact that there were other ladies present in the house when the crime was committed.

22. Pertaining to appellant Chaman Lal the incriminating evidence is the proof that, whatever be the reason, relations between him and the deceased were not cordial i.e. there exists the motive for the crime; his act of

absconding; his suspicious conduct proved by Joginder Singh PW-5; the place of crime being the matrimonial home of the deceased and Chaman Lal they are sufficient evidence wherefrom the guilt of Chaman Lal can be inferred.

23. We may note that when examined under Section 313 Cr.P.C. the signature tune of the song sung by Chaman Lal was: (a) I do not know; (b) it is wrong; and (c) it is false. He gave no explanation how his wife died.

24. We note that Chaman Lal has led defence evidence. DW-1 Kaushalya has hardly deposed anything worthy of being noted. She has only deposed that the wife of Chaman Lal was sad on account of bearing no child. If the intention was to prove that the deceased committed suicide, the same has miserably failed in view of the post mortem report of the deceased.

25. The second witness is Irshad DW-2 who has deposed that the deceased committed suicide. The said deposition is obviously false being contrary to the post mortem report of the deceased.

26. The above captioned appeal stands disposed of as under:

a) Pertaining to co-appellant Munni Devi the appeal is

allowed. Her conviction for the offence of having murdered Devki and the offence punishable under Section 210 IPC is set aside. Since Munni Devi is on bail, her bail bond and surety bonds are discharged.

- b) In so far as appellant Chaman Lal is concerned, the appeal is dismissed. Since Chaman Lal is still in jail, we direct that a copy of the present decision be sent to the Superintendent, Central Jail, Tihar to be made available to Chaman Lal.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

FEBRUARY 04, 2010
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