

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

% Date of Decision: 3rd March, 2010

+ **CRL. APPEAL NO.581/2006**

RAJINDER KUMAR Appellant
Through: Mr.Mukesh 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 the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Vide judgment and order dated 17.2.2006 the appellant has been convicted for the offence of having murdered his wife as also for the offence of attempting to commit suicide.

2. For the offence of murder, the appellant has been sentenced to undergo imprisonment for life and for the offence

of attempting to commit suicide he has been sentenced to undergo simple imprisonment for one year.

3. That the wife of the appellant was fatally stabbed; stab wounds being 13 in number, and that the place where she died was the two room tenement on the first floor of the house taken on rent by the appellant is not in dispute and learned counsel for the appellant concedes the said position.

4. What is debated is the claim of the prosecution that the appellant fatally stabbed his wife and followed the same by attempting to commit suicide versus the claim of the appellant in response to question No.111 when he was examined under Section 313 Cr.P.C. His statement being as under:-

"I am an auto rickshaw driver. On 26.6.2004 in the morning hours I took out my auto rickshaw and went to ply the same. In the morning my wife told that she would go to her parent's house as the telephone call of my sister have to come on that telephone. The telephone was installed at the parental house of my wife. In the afternoon I returned and went to my matrimonial house to give some money to my wife for purchasing the daily goods. At that time my wife told me to give it to my mother in law to purchase some vegetables for that day. My wife told me that she is going back to my house as she has to store the drinking water. In the evening hours I again took out my auto rickshaw and when I was standing at back side of Birla Mandir waiting for the passenger. I saw that my wife was coming with some stranger. On having seen me that stranger ran away. I brought my wife back to my house and after dropping her there I went to my in-laws house to make complaint about this matter. I complained to my mother-in-law telling her that my wife is a mother of two children and her this conduct would spoil the career of my children. I

stayed for some time in my matrimonial house. My mother in law offered me tea and told me that when father of my wife would return in the evening she would have a talk with him about this. After some time when I was returning to my house on the way I met with the same stranger and some other fellows. They picked up a quarrel with me and after that I returned to my house. My wife was annoyed with me on that day. She did not cook any meal. I went upstairs to the house of Rajesh to fetch some food for me. In the meantime I heard some screams and when I came downstairs immediately I saw that stranger along with two of his associates was stabbing my wife. They also caused injury to me and fled away from there. I know that stranger by face only. I do not know his name and his address and same is my statement for the other two associates. This is the genesis of the whole occurrence. I have been falsely implicated. I have no role in this occurrence. I have not killed my wife. I am innocent.”

5. Let us begin with an analysis of the stand taken by way of defence by the appellant.

6. According to him, the day was 26.6.2004. We note that it is incorrect for the reason the date was 27.6.2004. As per him, his wife told him in the morning that she would be going to the house of her parents as her sister would be ringing up there. He went out for his avocation and thereafter he went to the house of his in-laws (wrongly referred to as his matrimonial house). He had to give money to his wife for purchasing daily goods. His wife told him to give money to her mother. His wife told him that she would go back to their house. In the evening hours, he plied his auto-rickshaw and when he was standing at the rear of Birla Mandir waiting for

passengers he saw his wife coming out with some stranger. On seeing him, the stranger ran away. He brought back his wife to his home and after dropping her there went to the house of his in-laws to make a complaint regarding the conduct of his wife which was spoiling the career of his children. He stayed for some time in his matrimonial house. His mother-in-law offered him tea. He returned to his house after some time and on the way met same stranger and another fellow who picked up quarrel with him. He returned to his house. His wife was annoyed with him. She had not cooked any meal. He went upstairs to the house of Rajesh to fetch some food. He heard screams and when he came down he saw the stranger along with two associates stabbing his wife. They also caused injury to him and fled away. He knew the stranger by face only but knew nothing more.

7. Rajesh PW-1, the person whom the appellant has referred to in his statement under Section 313 Cr.P.C. resides in the same building on the second floor. He resides with his family. As per him, the appellant and his wife were not having cordial relationship. Rinki was the sister of the wife of the appellant. Sumitra was the name of the mother-in-law of the appellant. On 27.6.2004 when he returned to his house he saw Sumitra and Rinki in the house of the appellant. After

some time the appellant left the house to see off his mother-in-law. His i.e. Rajesh's family alongwith Rinki and Pooja, wife of the appellant were watching television in his i.e. Rajesh's house. The appellant walked in and asked Rinki to prepare meal for him. His i.e. Rajesh's wife prepared food. Appellant and his wife took the food to their room saying that they would eat together. After 5/7 minutes he heard screams from the room of the appellant. He and Rinki went down. The light in the room was switched off. He i.e. Rajesh switched on the light and saw the appellant stabbing his wife who was on the floor. He tried to save her. The appellant stabbed himself in his abdomen. He immediately left to inform Pooja's parents who lived 15/20 meters from his house and told them said facts. The chacha of the wife of the appellant telephoned the police who reached the spot after 10 – 20 minutes. The police took the wife of the appellant and the appellant to the hospital. He accompanied them to the hospital. His statement Ex.PW-1/A was recorded by the police and that he returned to the spot where a knife was seized vide memo Ex.PW-1/B. That various blood-stained things were picked up as entered in the various memos at the spot.

8. On being cross-examined Rajesh stated that he was not aware that one could ring up the police through the PCO.

He stated that he reached the house of the mother of the deceased at around 9/9:15 PM and that he left the house where the crime took place at 8:30 PM. That he remained in the house of the mother of the deceased for 15/20 minutes and returned. He stated that he made an attempt to save the deceased from the appellant but as he approached the appellant threatened him with a knife. He denied that he was deposing falsely at the instance of the police.

9. Before noting the testimony of other witnesses, as stated by learned counsel for the appellant, there appears to be a typographic error in the recording of examination-in-chief of the witness where he stated that the house of parents of the deceased Pooja was at a distance of about 15-20 meters from his house. It appears that he wanted to state that the house of Pooja's parents was 15/20 minutes distance from his house. We say so for the reason, on being cross-examined, he stated that he left his house and at around 8:30 PM and reached the house of parents of Pooja at around 9/9:15 PM.

10. Rinki PW-2 stated that the appellant was her brother-in-law, being married to her sister Pooja. On 27.6.2004 Pooja came to the house of her parents at around 11:00 AM and informed that the appellant has asked for Rs.50,000/- to purchase a vehicle and for this reason was

quarrelling with her. She and her mother reached the house of accused at 4:30 PM. Pooja went with them. Her mother returned to her house at 7:00 PM and was dropped by the appellant who returned after some time. She, her sister Pooja, their two children, Rajesh and his wife Guriya, were watching television when appellant asked her to cook food. She refused as she was having a headache. Guriya, wife of Rajesh cooked the food. Appellant and his sister Pooja came downstairs to share food in the room. After 5 minutes she heard cries of his sister. Rajesh and she responded. There was darkness. Rajesh switched on the light. She saw the appellant stabbing Pooja who was on the floor. They tried to save Pooja. Appellant threatened them with a knife and then inflicted a blow in his abdomen.

11. Rinki has been cross-examined but nothing of substance has been pointed out which is worthy of being noted.

12. We would be referring to the argument of learned counsel for the appellant pertaining to Rinki's conduct.

13. Smt.Guriya PW-3 deposed in sync with her husband.

14. Smt.Sumitra PW-4, the mother-in-law of the appellant deposed in sync with the testimony of Rinki up to the

point Rinki deposed that she left the house of the appellant at around 7:30 PM and that the accused had dropped her to her house.

15. Sumitra has not been cross-examined.

16. The submission urged at the hearing of the appeal today is that neither Rajesh nor Rinki nor Guriya could have seen the incident as claimed by them for the reason their conduct is most unnatural. Counsel urges that Rinki is the sister of Pooja and if indeed she saw Pooja grievously injured she would have immediately rushed her sister to the hospital. With reference to the testimony of Const.Balbir Singh PW-14 and SI Rajesh PW-19, the two police officers who reached the place of the crime at around 9:15 PM after DD No.35A Ex.PW-13/A was registered at the police station and found Pooja as also the appellant in the room with grievous injuries, counsel urges that it is obvious that Pooja and the appellant were in the room lying in an injured condition for at least 30 minutes.

17. Further, learned counsel draws attention to the statement made by Rinki that the appellant struck a blow on the person of Rajesh Kumar and that Rajesh Kumar has nowhere deposed to said fact.

18. Lastly, learned counsel urges that Rajesh Kumar cannot be believed inasmuch as apart from his conduct of not

rushing the deceased to the hospital, his not ringing up the police from a police booth and his claiming ignorance that he did not know that he could ring up the police through a PCO booth and his claim of going to the house of parents of Pooja is most unnatural.

19. Before dealing with the 3 submissions urged by learned counsel for the appellant it would be relevant to note that no suggestion has been given to PW-1 to PW-3 that any other person was seen by them stabbing the deceased and the appellant. No suggestion has been given to the three that they actually saw somebody else do the crime.

20. Much would therefore turn on proof of PW-1 to PW-3 being present where the crime was committed as claimed by them.

21. Smt.Sumitra PW-4 has stated that her daughter Pooja who was married to the appellant had come to Sumitra's house in the morning of 27.6.2000 and had informed that the appellant was quarrelling with her as he was demanding Rs.50,000/-. She and her daughter Rinki went to Pooja's house at around 4:30 PM to counsel the appellant not to fight with Pooja. That she remained with the appellant in his house till she was dropped back by the appellant at around 7:30 PM.

22. Sumitra, as noted above, has not been cross-

examined with reference to her testimony. The only suggestion put to her is that she never saw the incident of stabbing; a fact which she admitted.

23. Her statements that she went to the house of the accused with her daughter Rinki and that only she returned to her house have not been challenged. Thus, Sumitra PW-4 has proved Rinki's presence in the house of the appellant when Sumitra left the house of the appellant at around 7:30 PM.

24. Thus, the statement by way of defence when the appellant was examined under Section 313 Cr.P.C. is completely false and his said stand, which was never taken by the appellant when said persons were tendered as witnesses of the prosecution, is false.

25. Dealing with the 3 submissions urged by learned counsel for the appellant, it requires to be noted that the weapon of offence, sketch whereof is Ex.PW-1/C, shows that it is a knife tapering toward the tip having blade with thickness of 4 cm at the center of the blade. Total length of the knife is 31 cms. The length of the blade is 20 cms.

26. That Rajesh and Rinki claimed that they could not do much as the appellant threatened them with a knife has to be accepted, keeping in view that the knife was indeed of threatening proportions.

27. That Rajesh, Rinki and Rajesh's wife did not rush Pooja to the hospital is not, in the circumstances of the instant case, a circumstance wherefrom an adverse inference relatable to their conduct can be inferred.

28. The post-mortem report Ex.Pw-15/A of Pooja evidences 13 stab wounds all over the body.

29. It is within the realm of probability that he who saw the incident realized instantaneously that the victim is no more. Indeed, Pooja was brought dead at the hospital. It is thus quite probable that the one who witnessed the crime thought that it would be useless to render any assistance and thus it would be desirable to preserve the scene of the crime as it is.

30. That Rinki says that when an attempt was made to rescue the deceased, the appellant hit Rajesh and Rajesh not saying so is not a contradiction which is destructive of the testimony of the two witnesses. We have noted above that Rajesh claimed to have tried to save the deceased but retracted when he was threatened with a knife. Rinki who was behind Rajesh may have seen the movement of the hand of the appellant directed towards Rajesh and what she saw perceived in her brain was as if Rajesh was hit. Thus, she is not a liar.

31. The statement of Rajesh that he tried to intervene and retracted when threatened, is explainable with reference to the testimony of Rinki that when Rajesh tried to intervene he was hit by the appellant.

32. The claim of Rajesh that he is not aware whether the police could be rung up at No.100 through a PCO booth needs to be understood with reference to whether he was aware that through the PCO booth the police could be rung up at No.100.

33. It may happen that a person may not have change with him to put inside the PCO booth; requiring the person to look for a landline number.

34. That apart, a person may be of soft nerves and not of nerves of steel. Such a soft person may not like to get involved with the process of law and the conduct of such person to go to the house of the relative of a victim to inform about the crime is not such conduct wherefrom such degree of unnaturalness can be inferred so as to discredit the very credit of the percipient evidence of such witness.

35. We note that PW-3 has made an improvement vis-à-vis her statement to the police under Section 161 Cr.P.C. In her statement under Section 161 Cr.P.C. she has stated facts as deposed to by her husband and Rinki, but limited till the

point when her husband and Rinki ran down on hearing the cries of Pooja from the first floor tenanted premises of the appellant. The improvement is that, while deposing in Court, she claims to have also come down and when her husband switched on the light in the room of the appellant she saw Pooja being stabbed by the appellant.

36. It is apparent that while deposing in Court Guriya has somewhat mixed up facts which she must have heard vis-à-vis the facts which transpired in front of her eyes. We discard her testimony of having seen the appellant stab Pooja in the matrimonial house of Pooja; but she corroborates the other two witnesses that after she cooked the meals the appellant took his wife to his tenanted premises to take food and within 5-7 minutes thereof shrieks of Pooja were heard from her matrimonial house.

37. Having taken note of and dealt with the submissions urged by learned counsel for the appellant, none of which compel us to alter the impugned judgment, we dismiss the appeal and maintain the sentence imposed upon the appellant.

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

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

March 03, 2010
dkb / mm