

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

% Date of Decision :24th February, 2010

+ **CRL.APPEAL NO. 684/2006**

RAJAN KHARBANDA Appellant
Through: Mr.Mukesh Jain, Advocate

versus

STATE (NCT OF DELHI) 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. The appellant was charged for the offences punishable under Section 394 IPC as also Section 302 IPC. He has been convicted for both offences. For the offence of murder he has been sentenced to undergo imprisonment for life. For the offence punishable under Section 394 IPC he has been sentenced to undergo imprisonment for 5 years.

2. Two pieces of incriminating evidences have been held established against the appellant. The first is his being seen in the house in the company of the deceased soon before

the deceased was found grievously injured. The said evidence has emanated through the testimony of PW-2 and PW-4, the grand daughter and the grandson of the deceased. As a link to this, is the evidence of PW-4 that he saw the appellant leave the house, walking hurriedly away. The second piece of incriminating evidence against the appellant is the recovery of two gold bangles Ex.P.2/1 and Ex.P.2/2 from PW-8 to whom appellant had pledged the same as also the recovery of a gold chain Ex.P-1 from PW-10, to whom the same was pledged by the appellant. It has been held that the said three gold jewellery pieces have been proved to be belonging to the deceased. To put it in layman's language, the second incriminating evidence is the recovery of the fruits of the crime at the instance of the appellant.

3. As deposed to by Inspector Om Prakash PW-1, who was posted as SHO Police Station Vikaspuri, on 15.10.2001, he was told that a lady had been admitted in an injured condition in U.K.Nursing Home. He went to the Nursing Home and found one Smt.Mayawati i.e. the deceased having multiple wounds on her neck and other parts of the body. She was declared dead. He learnt that the lady had been brought from a house which falls within the jurisdiction of Police Station Tilak Nagar and accordingly he informed the Duty Officer at said Police

Station and got recorded DD No.21 at 7:25 P.M. Soon thereafter Inspector Rajinder Prasad, Addl. SHO, PS Tilak Nagar reached the hospital and took over the investigation.

4. Inspector Rajinder Prasad PW-29. reached House No.WZ-15/A, Krishna Park i.e. the residence of the deceased and recorded the statement Ex.PW-2/A of Tanvi Kharbanda, the grand-daughter of the deceased, as per which she informed that along with her parents and brother Manan she resided in House No.WZ-15/A, Gali No.10, Krishna Park, Tilak Nagar. Her grandmother, the deceased resided with them and had returned back from school along with her brother. After lunch she went to sleep in her bedroom and got up around 5:00 P.M. She saw the appellant, her uncle, sitting on the bed with her grandmother. At that time her brother Manan left to play outside. Her grandmother went inside and her uncle followed her grandmother inside. After 5-7 minutes her uncle left. She went inside the house to the kitchen and saw her grandmother lying on the floor of the kitchen. Blood was oozing from her neck. She rang up her father who told her to contact somebody in the neighbourhood and take her grandmother to the hospital. People from the neighbourhood gathered and took her grandmother to the hospital.

5. We shall be noting only such evidence as is

required to be noticed to deal with the submissions urged by learned counsel for the appellant in appeal today.

6. The first and the foremost submission urged is that no reliance can be placed upon the testimony of Anil Kumar PW-11, the son of the deceased, and his identifying the jewellery of the deceased as belonging to her for the reason his statement under Section 161 Cr.P.C. was recorded by the investigating officer on 15.10.2001 i.e. the very date of the incident but the fact of any jewellery being stolen has not found a mention in the inquest papers which were filled up after the said statement was recorded.

7. With respect to the proof of the two gold bangles and the gold chain belonging to the deceased it is urged that the same were not subjected to any Test Identification Proceedings and the same being identified in Court by Anil Kumar PW-11 and Tanvi Kharbanda PW-2 does not inspire any confidence.

8. We now note the testimony of the relevant witnesses.

9. Tanvi Kharbanda PW-2 deposed facts in sync with what she had told the investigating officer and as find mentioned in her statement Ex.PW-2/A. She identified the gold chain Ex.P-1 and the two gold bangles Ex.P-2/1 and Ex.P-2/2 as

those of her grandmother.

10. Tanvi Kharbanda has been subjected to cross examination and we do not find anything which has discredited her testimony.

11. Manan PW-4, who we note was 10 years of age has deposed the same facts as deposed to by his sister till he left the house at around 5:00 PM. He has deposed a further fact: that around 6:00 PM he saw the appellant walking away hurriedly.

12. We have perused the cross-examination of Manan and do not find anything brought out to discredit his testimony save and except that in his statement to the police it has not been recorded that the appellant was walking away hurriedly. It is only recorded that he saw the appellant walk away. It is trivial.

13. Before proceeding further ahead, we express our pain to note that Manan aged 10 years has been administered oath and has been examined by the learned Trial Judge on solemn affirmation.

14. Relevant would it be to note that as per Tanvi Kharbanda she was present in her house when she saw her grandmother and the appellant walk inside. The appellant walked out of the house after 5-7 minutes. She entered and

saw her grandmother in blood.

15. No suggestion has been given to Tanvi that any other person accessed the house.

16. Without noting anything further, it assumes importance to note that the appellant has simply denied the incriminating circumstance of his being in the house where the deceased was killed, a fact believed from the testimony of Tanvi and her brother.

17. The law of last seen evidence requires that where the accused and the deceased (when alive) were last seen together at a place and at the same place, a few minutes later, the dead body of the deceased is recovered and the accused is seen leaving the place, unless the accused renders a satisfactory explanation he must suffer the consequences of the Court holding that he is guilty.

18. That apart, we find that after he was apprehended, the appellant made a disclosure statement informing that he had pawned the two gold bangles to Satpal PW-8. The investigating officer not only recovered the two gold bangles from Satpal who is a jeweller but even recovered from him, as the same was voluntarily handed over by Satpal, a document of pledge Ex.PW-8/A.

19. Ex.PW-8/A has been witnessed by Jagdish Lal PW-9.

At the trial Satpal PW-8 and Jagdish Lal PW-9 deposed that the document of pledge Ex.PW-8/A was executed in their presence by the appellant when Satpal loaned Rs.10,000/- to the appellant with the two gold bangles were given to him i.e. Satpal by way of security.

20. Further, Manoj Kumar PW-10 a person in hardware business, whose particulars were disclosed by the appellant to the investigating officer with further information that he had pledged the gold chain with him, not only proved that he had handed over the gold chain Ex.P-1 to the investigating officer which was retained by him as security for Rs.3,600/- advance to the appellant, but also proved the document of pledge Ex.PW-10/A executed by the appellant.

21. Tarlochan Singh PW-13 a witness to the document of pledge Ex.PW-10/A duly corroborated PW-10 in proving the pledge of the gold chain by the appellant to PW-10 and the appellant receiving Rs.3,600/- by way of loan and the appellant executing the document of pledge Ex.PW-10/A.

22. The testimony of the aforesaid witnesses clearly establishes that the appellant had pledged two gold bangles and a gold chain with PW-8 and PW-10 respectively and had executed the two documents of pledge, Ex.PW-8/A and Ex.PW-10/A.

23. On the issue whether the same were proved to be belonging to the deceased, there is independent evidence through the testimony of Jagdish Chander PW-12 who is a goldsmith that the gold bangles belonged to the deceased. He has deposed that he was given old gold jewellery by Mayawati i.e. the deceased on 20.9.2001. After extracting gold therefrom weighing 30.16 gms. he made two gold bangles weighing 25.080 gms. of 22 ct. gold and charged Rs.1,254/- as making charges that he issued a job receipt Ex.PW-11/B to Mayawati on 18.10.2001. That the two gold bangles Ex.PW-2/1 and Ex.PW-2/2 were prepared by him.

24. If not for the gold chain, at least for the two bangles, Jagdish Chander has proved his being the fabricator thereof and that they belonged to the deceased. His testimony has been corroborated with reference to the job work receipt Ex.PW-11/B.

25. It is no doubt true that the chain and the bangles were not put up for Test Identification Proceedings, but in view of the testimony of the maker of the two bangles qua whom nothing has been brought out in cross-examination to discredit his testimony, we conclude by holding that the prosecution has successfully established that the appellant was the recipient of the fruits of the crime.

26. The false answers given by the appellant that he never went to PW-8 or PW-10 to pledge two gold bangles and a chain respectively, and his false denial of not having executed the two pledged documents Ex.PW-8/A and Ex.PW-10/A, meaning thereby, the appellant not having claimed ownership of the said articles, is another piece of incriminating evidence against him.

27. We wonder how the non recording in the inquest papers of the gold bangles and the chain when the investigating officer sent the dead body for post-mortem assumes relevance in the teeth of above noted evidence.

28. The last submission urged by learned counsel for the appellant is that as per the report of the doctor who conducted the post-mortem of the dead body, injuries on the neck structure of the deceased were sufficient to cause death in the ordinary course of nature but the actual cause of death was not relatable to the said injuries. The cause of death was haemorrhagic shock consequent to laceration of the right lung and hence at best, it is a case of culpable homicide not amounting to murder.

29. To appreciate the said submission, it has to be kept in mind that the deceased was aged 72 years and that it was not the injury which was of a life threatening nature which

resulted in the death but a lesser injury would not lessen the gravity of the offence.

30. It is true that for the offence relating to the death of a human being, the intention of the accused assumes importance when death results as a consequence of his acts. Where the intention cannot be gathered with fair amount of accuracy from other evidence, the same has to be gathered with reference to the injuries on the body and in this context the cause and connection between an injury and the death becomes relevant.

31. The post-mortem report of the deceased shows following 8 external injuries:-

“1. Contused area size 5.5. x 2.5 cm on the right side chin with blood clot underneath.

2. Contused area on the left sub mental area near the chin size 2.5 x 1.5 cm.

3. Contused area below right angle of the mandible size 3.5 x 4 m.

4. Multiple incised wounds of the right side on the lower front of neck (eleven could be identified) placed obliquely horizontal Upper medial ends were over thyroid cartilage and the lower ends were directing right axillary area, the area of involvement was 7 x 3.8 cm.

5. Four numbers of skin deep incised wound on the front base of the neck all skin deep.

6. One incised wound on the right side of the

neck 3 inches below right ear lobe obliquely placed size 8 x 1 cm muscle deep.

7. Contused area on the right side chest just above epigastrium size 2.5 cm x 2 cm.

8. Deffused contusion in front of the neck involving thyroid cartilage and left side of neck involving an area 9 x 7 cm.”

32. Let us look to injury No.4. There are multiple incised wounds on the right side of the lower front of neck. 11 could be identified.

33. What do they show? They show a repeated and a desperate attempt to slit the neck. Though the post-mortem report lists 8 injuries, the injuries are actually 11 + 7 in number. 11 incised wounds on the lower front of neck have been listed against serial No.4. Plus 7 more at S.No. 1 to 3 and 5 to 8.

34. Injury at S.No.1, 2, 5, 6, 8 and 11 injuries at serial No.4 are all directed towards the neck. They show that the assailant was trying to cut either the jugular vein or the trachea of the deceased.

35. To our mind the said evidences an intention to cause the death of the deceased.

36. Injury No.7 is a contused injury on the right side of the chest and is the injury which has lacerated the lung.

37. No law requires the Court to ascertain the intention

by separately looking to each injury. Cumulative effect is also to be kept in view. Keeping in view the age of the victim, any assailant would be presumed to have knowledge that if he slits the neck 17 times, even muscle deep, and inflicts a heavy blow either with the fist or with a blunt object on the chest, death would be the probable result; the probability being near certainty.

38. It assumes important that the appellant was a relative of the deceased. His intention could be no other but to kill the deceased for the reason this would have removed a witness from out of his way.

39. We find no merit in the appeal which is dismissed.

40. 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, J.

SURESH KAIT, J.

FEBRUARY 24, 2010
nks/mm