

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

% *Date of decision: 2nd June, 2010*

+ **CRL.A. 551/2010**

BHAGWAN DASS Appellant
Through: Ms.Rakhi Dubey, Advocate.

versus

STATE (NCT) OF DELHI Respondent
Through: Ms.Richa Kapoor, APP

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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant has been convicted for the offence of having murdered his daughter Seema. He has been sentenced to undergo imprisonment for life. As per the prosecution, the motive for the crime was the wayward act of Seema in abandoning her husband and living in adultery with one Srinivas, who happened to be the son of the maternal aunt of the appellant i.e. the relationship between Srinivas and Seema was that of an uncle and cousin niece. Needless to state, the two were within prohibited relationship as per Hindu Law, of course, in North India, to which part of the country the parties belong, such a relationship is treated as incestuous. It attracts a social stigma and many a North Indians believe that such families have to be looked down upon. Obviously, the

appellant felt humiliated and to avenge the family honour, murdered his own daughter, so alleges the prosecution.

2. It is apparent that our job is to return a verdict whether the prosecution has proved as afore-noted. The learned Trial Judge has returned a verdict that the prosecution has proved its case. In sustaining the conviction of the appellant, though not in very clear language, but it appears that the learned Trial Judge has relied upon the statement made by the appellant to the learned SDM wherein he admitted his guilt and further to the fact that after he was arrested, the appellant got recovered an electric wire Ex.P-1 which was the ligature material used to strangle Seema to death. The two star witnesses of the prosecution had turned hostile. They are Dhilllo Devi PW-4, the mother of the appellant and Khem Chand PW-6, the elder brother of the appellant.

3. That Seema was found dead in the house of the appellant on 15.5.2006 is not in dispute. It is also not in dispute that vide DD No.21A dated 30.4.2006 the appellant had lodged a report with the police that his daughter Seema was missing. As deposed to by Seema PW-2 (not the deceased but her cousin aunt) and Srinivas PW-3 (again not Srinivas the person with whom deceased Seema had run away) they chanced to see Seema i.e. the deceased, at around 10:00-11:00 AM on 14.6.2006 and since they knew that she was missing from her house they talked to her and left her in the house of her grandmother Dhilllo Devi where appellant came and started talking to Seema when they left.

4. Dhilllo Devi PW-4 did not dispute that Seema was her granddaughter and was married to one Raju and that Seema ran away and was brought to her house by Seema PW-2 and her husband Srinivas PW-3 and that her son Bhagwan

Dass i.e. the appellant came to her house. She deposed that when the appellant was talking to his daughter she went off to sleep and thus disclaimed any knowledge as to how Seema died. She was declared hostile and was cross-examined with reference to her statement recorded by the learned SDM and in relation thereto she denied having told that her son and her granddaughter had a verbal squabble on the issue of Seema leaving the company of her cousin uncle Srinivas and returning to her husband Raju. She also denied that she saw or ever told anyone that her son i.e. the appellant had strangled his daughter to death. Similarly, Khem Chand PW-6 turned hostile when he said that on the day when Seema died in her house he saw or ever told anyone that the appellant had murdered her. He denied that the appellant told him of having murdered his daughter and that he disclosed said confession to anyone. However, he admitted that relationship between father and daughter was not cordial as the deceased was living in adultery with her cousin uncle. He categorically stated that no one in the family approved of such a relationship.

5. It may be noted that as per the post-mortem report Ex.PW-1/A, Seema had been strangled to death with a ligature material. As per the post-mortem report, likely time of death of Seema was 32 hours prior to the post-mortem, which as recorded in the report, was conducted at 11:45 AM on 16.5.2006. This conforms to the time 4:00 AM and the date 15.5.2006 as the time when Seema died. Giving a margin of 2 hours, plus or minus, it would be safe to conclude that Seema died anywhere between 2:00 AM to 6:00 AM on 15.5.2006 and it assumes importance that her death was kept shrouded and no steps were taken to inform anybody, till somebody

informed the police at 2:00 PM when DD No.16A, Ex.PW-10/A was recorded to the effect that one Bhagwan Dass had murdered his daughter Seema.

6. When examined under Section 313 Cr.P.C. the appellant admitted that his daughter had been missing and was brought to his mother's house by Seema PW-2 and her husband Srinivas PW-3 and that he had been in the company of Seema. The appellant admitted that he took deceased Seema to his house in the night. The appellant denied having made any statement to the Sub Divisional Magistrate. Appellant denied having murdered Seema and claimed that he himself informed the police of his daughter being dead.

7. Shri S.S.Parihar PW-8 deposed that he was posted as the SDM Najafgarh and that at the request of the SHO PS Jaffarpur reached the house of the appellant where he recorded the statement of the appellant, his mother Dhillon Devi, Raj Bala, Khem Chand and Gopal. He deposed that the statement made by the appellant and as recorded by him was Ex.PW-8/A.

8. We have our doubts whether the statement Ex.PW-8/A is admissible in evidence as it is a confessional statement and admittedly when the appellant made the said statement before the learned SDM, the police was present and as deposed to by Insp.Nand Kumar PW-11, the appellant had confessed to the crime in his presence. The law makes inadmissible such kind of statements. The learned Trial Judge has committed an error in admitting in evidence the said confessional statement.

9. The recovery of the ligature material at the instance of the appellant is a very weak kind of evidence and as held in various decisions, the latest being JT 2008 (1) SC

Mani vs. State of Tamil Nadu, such kind of evidence has very little incriminating value.

10. But, for unexplainable reasons, we find that the learned Trial Judge has not dealt with the incriminating nature of a very strong motive emerging against the appellant through the testimony of his brother. It is apparent that the honour and pride of the appellant was wounded by the deceased who was his daughter and was living in adultery with her cousin uncle. Her act was one of abhorrence as per the social norms. The second incriminating circumstance of the place of death being the house of the appellant and the time being anywhere between 2:00 AM to 6:00 AM and the appellant indisputably being in his house have been ignored. The appellant has to explain as to how his daughter died and there being no proof that any outsider accessed the house of the appellant, keeping in view the strong motive, any reasonable person would conclude that from said two circumstances the appellant has to be the offender. We are satisfied that the circumstances of the instant case attract Section 106 of the Evidence Act, requiring the appellant to speak. Add on to the said is the unnatural conduct of the appellant in not informing anybody about his daughter being killed and keeping her body in the house till late afternoon when somebody informed the police at around 2:00 PM in the afternoon. It is apparent that the appellant hid the information of his daughter being dead for nearly 8 to 10 hours. This conduct attracts the inference of guilt.

11. The only question which we now have to answer is whether the appellant acted when he lost control of his senses or not? For if he acted under loss of self control, the offence would be culpable homicide not amounting to murder.

12. It is urged by learned counsel for the appellant that it is but apparent that what led the appellant to the crime is the obstinate conduct of his daughter to live in adultery and probably she said something to her father and invited his wrath out of loss of self-control the appellant committed the crime.

13. Now, the appellant has said nothing of his daughter provoking him when he had a dialogue with her in the night of 14.5.2006.

14. But, in the context of the background facts, it is apparent that the appellant went to the house of his mother where he had a dialogue with his daughter and then brought her to his house. The dialogue continued, so we believe. But what was the exchange of words? We do not know. Nobody has told us what happened.

15. Now, two things were possible. Either, the obstinacy of Seema outwitted the resilience of the appellant, who decided to take revenge and when Seema went to sleep he strangled her to death with a wire or during the dialogue Seema said something to the appellant which made him lose control over his emotions and senses.

16. The appellant was aware that his daughter had left her husband and was living in an adulterous and incestuous relationship with her cousin uncle. Being the father, the appellant must have known the obstinate nature of his daughter and thus he has to be imputed with knowledge of having known that on the emotive issue on which he would be having a dialogue with his daughter, sentiments would be hurt and emotions may be treaded upon. He has to be imputed with knowledge of being forewarned of the atmosphere being tense and, may be, extremely volatile.

17. It is obvious that learned counsel for the appellant wants to project the defence of the appellant acting without premeditation and upon either a sudden quarrel or upon a grave and a sudden provocation. It is apparent that either Exception 1 or Exception 4 to Section 300 IPC is sought to be brought into aid.

18. Now, we have no evidence of there being any fight and thus we see no place to invoke Exception 4. On the issue of Exception 1, circumstances have to be brought on record that the appellant was deprived of the power of self-control by grave and sudden provocation.

19. The word 'sudden' has not to be ignored. It connotes that an event which was not expected came into being unexpectedly; akin to a sudden bend in the road. It is recognized that the defence of sudden and grave provocation consists of a union of two tests: (a) '*subjective*' test, which asks whether the defendant was provoked to lose his self control, and whether he committed the killing as a result of that loss; and (b) an '*objective*' test, which asks whether the provocation was sufficient to make a reasonable person do as the accused did.

20. The problem lies in the applicability of the subjective test, at the heart of which lies the notion of loss of self control to which is added the adjective '*sudden*'. Three questions immediately arise: (i) What is self control? (ii) What do we mean when we speak of someone losing this self control and what characteristics do they display? (iii) What difference, if any, is made to the scope of the provocation defence by the addition to the definition of the word '*sudden*'?

21. Self control must consist in being the master of one's mind. Self control consists in the ability to bring one's

actions into line with one's second order desires i.e. it is the ability to ensure that the desires upon which one acts are the desires upon which one desires to act. To put it differently, it is the ability to bring one's actions into line with one's judgments about what it would be best to do or the ability to bring one's actions into line with one's resolutions and commitments. It is apparent that self control involves an attempt to overcome inclinations such as passions, anger, revenge etc.

22. Having understood what self control is, we may broach as to what it is to lose self control?

23. If self control is a specific ability working through a specific mechanism, the loss of its control has to be the destabilization of the mechanism which regulates self control. And here lies the evidentiary problem. What evidence to look for? The problem stems from the fact that the very counterfactual tests we normally employ to determine causal chains have no obvious purchasers here. To illustrate: if we want to know whether the loss of self control was necessary for the violent response i.e. if we want to know whether the violent response would have happened even without the self control being lost, we cannot ask the question: 'Would the accused have refrained from violence if he had not received the stimulus which is alleged to have caused the loss of self control? For, ex hypothesi, the provocation is the stimulus that caused the accused to lose self control. So how are we to ask the question? If neuro-science could give us a glimpse inside the brain of a person, it would be welcome. But we cannot do that. We have to apply other methods which have to be indirect and may sometimes be unreliable.

24. Given the dilemma, the test of the good old

common man who is the creature of Judge made Law, is the only way out and the account of loss of self control has to be on common sense principles and applying the test of how the common man would react in a given set of circumstance.

25. Now, the provocation of the deceased running away after abandoning her husband and being in adultery with her cousin uncle was a fact in the knowledge of the appellant for over a month and surely this conduct of the deceased would not be a sudden or a grave provocation resulting in loss of self control. That the appellant met his daughter after over a month and chose to have a dialogue with her on the emotive issue of how his daughter should conduct herself socially was with sufficient forewarning to the appellant that he had to deal with an obstinate daughter who could not only test his patience to the extreme but could even possibly provoke him to anger and retribution. It is in this backdrop that we are compelled to hold that the appellant may not be entitled to the defence of loss of self control.

26. We have another good reason to so hold. The post-mortem report Ex.PW-1/A records the weight of the deceased as 50 kg and her height as 155 cm. The photographs of the deceased show her to be a person of good built. There are no injury marks on the body save and except ligature marks on the neck. The time of death is anywhere between 2:00 AM to 6:00 AM in the morning and this is the time when a person is normally in deep slumber. It is apparent that the deceased was sleeping when she was put to death. It is apparent that whatever dialogue had to take place between the father and the daughter was over. Thus, the probability of the appellant losing self control when his daughter said something to him is ruled out from said circumstance and not to ignore that the

appellant, who was the best person to tell what had happened, has not said a word of his daughter having said something which provoked him. It is thus apparent that after the dialogue was over and frustrated on account of the obstinate conduct and stand taken by his daughter, seeking to preserve the family honour, with no loss of self control, on the contrary in full control of himself and being the master of his mind, the appellant strangled to death his daughter Seema.

27. The appeal fails and is hereby dismissed.

28. The appellant being in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar for being supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JUNE 02, 2010
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