

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

% *Date of Decision : 20th April, 2010*

+ **CRL. APPEAL NO.539/2008**

NAND KISHORE @NANDA Appellant
Through: Ms.Charu Verma, Advocate

versus

STATE OF DELHI Respondent
Through: Ms.Richa Kapoor, 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?
3. Whether the judgment should be reported in the Digest?

Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 24.5.2008 the appellant has been convicted for having murdered deceased Smt.Ratna Devi, his aunt, Smt.Pushpa Devi, the daughter of Ratna Devi and Smt.Rekha Devi, the cousin of the appellant.

2. That the three ladies were brutally assaulted at House No.109-B, DDA Flats, Jhilmil Colony, Delhi where Pushpa Devi resided along with her husband Jagdish Batra and her daughter Sakshi is not in dispute. Ratna Devi and Rekha Devi

had visited the house to meet Pushpa Devi.

3. That on the same day, as recorded on the MLC Ex.PW-10/A, even the appellant was got admitted at the hospital at 5:35 PM, being brought by the CATS Ambulance with multiple incised wounds on his body is also not in dispute.

4. The author of the MLC Ex.PW-10/A, Dr.Banarasi PW-10, has deposed that he subsequently gave an opinion Ex.PW-10/B as per which it was possible that the appellant had himself inflicted the five incised wounds on his person.

5. As recorded on the MLC of the appellant, there was a superficial incised wound on the front of his neck. There were multiple incised wounds on his left and right wrist as also on the left thigh. There were multiple incised wounds on his abdomen which were superficial to deep as recorded on the MLC.

6. The MLC Ex.PW-6/A of Ratna Devi proved at the trial by its author Dr.Akash Jhanjee PW-6 records following 28 injuries on the deceased:-

“1. Incised punctured wound 5 x 1 cm x muscle deep obliquely placed over right palm inner half with margin clean cut.

2. Incised punctured wound 2 x 1 cm x bone deep transversely placed over back of right index finger with margin clean cut.

3. Incised punctured wound 1 x 0.5 cm x muscle deep obliquely placed at base of right thumb with

margins clean cut.

4. Scratch linear abrasion 3 x 0.2 cm over right forearm.

5. Incised punctured wound 3.5 x 8 cm x fat tissue deep over lower half right breast with margins clean cut.

6. Scratch abrasion over right side Chest.

7. Incised punctured wound 1.5 x 0.6 cm into muscle deep obliquely placed over front of left chest margins clean cut.

8. Scratch abrasion over left side Chest 8 cm outer to injury No.7.

9. Incised punctured wound 1.5 x 0.5 x skin deep almost vertically placed over left clavicle region with margins clean cut.

10. Incised perforating wound 2 x 0.6 cm x muscle deep almost vertically placed over left side shoulder region 1 cm outer to injury No.9. It has cut through the tissues underneath skin surface and communicate and open out via injury No.9.

11. Incised punctured wound 1 x 0.5 cm x muscle deep over upper surface of left side shoulder region just above and outer to upper end of injury No.10.

12. Scratch abrasion over outer aspect of left shoulder region.

13. Incised perforated wound 3 x 1.5 cm x muscle deep over front surface upper half left forearm with margins clean cut (exit of injury No.14).

14. Incised perforating wound inverted L shaped with two limbs measuring first 6 x 0.8 cm x muscle deep over front surface inner aspect of left forearm middle

half, margins clean cut. The injury is placed at a distance of 4 cm below and inner to injury No.13. It cut through the skin, muscles and travel upwards and medially to exit via injury No.13. Travelling the distance of 4 cm in the part.

15. Incised punctured wound 6.5 x 1.5 cm into muscle deep over back of left forearm middle half lying. 0.3 cm left to outer limb of injury No.16, obliquely placed with margins clean cut.

16. V shaped incised punctured wound with outer limb measuring 4.5 cm x 0.3 cm x muscle deep and inner limb measuring 6 x 0.8 cm x muscle deep over back of left forearm lying 9 cm above wrist level. Both limbs of the wound communicate with each other under the skin surface.

17. Incised punctured wound 4 x 1 cm x muscle deep over back of left forearm upper half 4 cm above and outer to injury No.16 with margins clean cut.

18. Incised punctured wound 8 x 2 cm into bone deep obliquely placed over outer aspect of left elbow region with margins clean cut.

19. Incised penetrating wound 6 x 2 cm obliquely placed over lower half left side breast, 5 cm outer in below, left nipple lever with both margins clean cut and liquid blood oozing out on pressing the edges. It cut through the skin, subcutaneous tissues, fat of the breast and then it obliquely cut left side rib cage producing the wound 5 x 1 cm, cutting the full thickness of third rib and lower border of second rib and left side second intercostals muscle in the space at a distance of 4 cm of the costochondral junction and left intercostals space muscle at a distance of 8 cm from costochondral junction and than entered into the chest cavity and produced the cut wound over front surface of left lung upper low measuring 5 cm in length and penetrated into the depth of the low upto distance of 4 cm and ended there. Total depth of

wound is 18 cm. Direction is left to left and plane is from below upwards. Both angles of the wound are acute.

20. Contusion 5 x 2 cm over upper half front of left thigh 13 cm below the level of left anterior superior iliac spine reddish in colour.

21. Scratch linear abrasion over outer aspect of lower half left thigh front.

22. Incised punctured wound 2.5 x 1 x bone deep over outer front of left knee region with margins clean cut.

23. Incised punctured wound 2.2 x 1.2 cm x muscle deep almost vertically placed over outer aspect front of left leg upper half with margins clean cut lying 11 cm below injury No.22 margins clean cut.

24. Contusion 2 x 1 cm over lower half right breast lying 7 cm below and outer to right nipple level reddish in colour.

25. Incised wound 7 x 1 cm x bone deep obliquely placed over left front region lying 8.5 cm above eyebrow inner end, underlined bone surface separated small bone chip measuring 1 x 0.5 cm from ectocranial surface of the skull valved and margins of the wound are clean cut.

26. Incised wound 2 x 0.5 cm x muscle deep obliquely placed over left side face 2.5 cm below and inner left ear opening with margins clean cut.

27. Scratch linear abrasion over back surface right forearm, lower half 5 cm above the wrist level.

28. Incised wound 6.5 x 1 cm x scalp tissue deep obliquely placed over right frontal region lying 8 cm

above top of right ear pinna and inner and 5 cm to the right of injury No.25. Margins clean cut and underlined tissue clean cut.”

7. Suffice would it be to note that out of the 28 injuries, 20 are either incised penetrated or incised perforating or incised penetrating wounds.

8. As opined by the doctor, injuries No.1 to 4, 13 to 17 and 27 were defence wounds. All injuries were ante mortem with injury No.19 being sufficient to cause death in the ordinary course of nature.

9. Post-mortem report Ex.PW-7/A of Pushpa, proved at the trial by the author thereof Dr.K.Goel PW-7, records 29 injuries on her person as under:-

“1. Incised wound (IW) 3.5 x 1 cm over right forehead. 1 x .25 cm middle part of forehead, 1.5 x .5 cm over right face, 3 x ½ cm over chin.

2. Incised cut was present over left ear in all transfers length.

4. 2 IWs over left mandibular and upper part of left neck, each of size 5 x 1 cm.

5. Superficial IW 1 x .2 cm over right side neck and another IW 2 x .25 cm over middle of left side neck.

6. IW 4 x 1 cm over left side front of neck muscle deep.

7. IW 5 x 1 cm over mid line front of neck lower side, muscle deep only.

8. IW 4 x 1 cm just right to mid line neck at base.
9. IW 5 x 1 cm just right to mid line over right clavicular region.
10. Incised penetrating wound 3.6 x 1.25 cm obliquely placed at midline front of chest about 7 cm below suprasternal notch having both angles more or less acute.
11. IW 1 x .2 cm over right anterior auxiliary fold.
12. Two obliquely placed incised penetrating wound. United to each other of size about 3.5 cm x 2.1 cm over upper medial quadrant of left breast.
13. IW 2.5 cm x ½ cm over left upper chest.
14. IW 3 x 1 cm over left breast.
15. 3 IWs each 4 x ½ cm over left anterior axillary fold.
16. 9 IWs over upper part of left arm of size between 3 x 1 cm to 4.5 cm x 1 cm.
17. IW 3 x 1.25 cm over front of left elbow, 6.5 cm x 1.5 cm over back of left forearm.
18. IW 7 x 2 cm over lower back of left forearm.
19. Flap cut incised wound 8 x 4 cm over back of left wrist.
20. All four proximal phalanges of fingers of left hand show transverse cuts (defence cut).
21. IW 4 cm long at left first web space and 3 x 1 cm

over left hypthena eminence.

22. Incised wounds 2 x ½ cm over left chest at mid axillary line and another same type of wound at left mid axillary line below the upper one.

23. IW 6 x ½ cm in front of right elbow, 3 x 1 cm right forearm at lower lateral side.

24. Deep incised wound 5 x 1 cm over right thinner eminence cutting the underline thumb joint.

25. IW 5 x ½ cm over metacarpal head region of right ring and little fingers.

26. IW 5 x ½ cm over middle of left leg.

27. 2 x 1.5 cm flap cut just below right knee.

28. IW 2.5 cm x 1 cm over middle of left scapula.

29. IW 4 x 1 cm below left ear.

30. IW 3 x 1 cm over left side back of neck at base."

10. Injuries No.9 and 11 were opined to be sufficient to cause death in the ordinary course of nature, individually and collectively. All injuries were opined to be ante mortem.

11. Post-mortem report Ex.PW-4/A pertaining to Rekha proved by the author thereof Dr.Sarvesh Tandon PW-4 records 15 injuries as under:-

"1. Incised wound (IW) 1 x .5 cm size over left side of fact, 2 cm deep sharp edges clean cut margins (CCM).

2. Incised penetrating wound (IPW) 3 x 1.2 cm in size over right side of Chest, 7 deep vertically placed both angle acute over the clavicle sharp edges (SE), CCM, 7 cm to the right of mid line, 3 cm deep into the muscle.
3. IPW 2 x 1.2 cm size SE, CCM, vertical 5 cm below injury No.2 over right side of chest. Both angle acute 4 cm deep into the muscle.
4. IPW 3 x 1.6 cm in size / in midline over front of chest SE CCM with a tailing of 6 cm long, 3 cm deep into the muscles.
5. IPW 4 x 2 cm size, over left nipple fat coming out of it, SE CCM at 2 O' Clock position/obliquely placed 5 cm above left areola (on dissection it was growing into between second and third intercostal muscles with a 3 cm long rent in the pericardium and then going into left ventricle of heart and 3 cm long injury and ending there).
6. IPW over left nipple 4 x 2 cm size at 3 O'Clock position, fat coming out, SE CCM both angle acute, 9 cm above and out to left areola (on dissection it was going between third and fourth intercostals muscle and into pericardium 3 cm long injury and then into left ventricle as a 3 cm long rent and ending there).
7. IPW 4 x 2 cm size transfers SE CCM 6 cm above and outer to injury No.5, both angles acute, 4 cm deep from the surface into the muscles.
8. IW 3 x 1 cm size transfers SE CCM in mid line 21 cm above umbilicus. 7 cm deep into the muscles and going into the liver.
9. Irregularly sharp wound, 5 x 3.4 cm size, some edged sharp some lacerated in mid line, 3 cm below injury No.8. On dissection, 9 cm deep from the surface into the liver and stomach and ending there.
10. IPW 3.5 cm x 1.2 cm size vertical SE CCM both angles acute, present by the left side of mid line 2 cm to the left of injury No.9 and muscle deep.

11. IW 3 in number over outer side of left knee 3 to 4 cm size each in area of 9 x 6 cm muscles deep SE CCM.

12. IW over right hand 6 x 2 x .2 cm size in the cleft between index finger and thumb, muscle deep SE CCM (defence wound).

13. IW over right forearm 4 x 2 cm muscle deep transverse on outer side, 4 cm below right elbow SE CCM (defence wound).

14. IW over right arm 4 x 2 cm size in middle front part 7 cm above right elbow muscle deep SE CCM, (defence wound).

15. IWs multiple over left hand and lower part of left forearm inner side, 4 in number, 4 to 5 cm long each SE CCM (Defence wound)."

12. All injuries were opined to be ante mortem and injuries No.5, 6, 8 and 9 were opined to be singularly or collectively sufficient to cause death in the ordinary course of nature.

13. It is but apparent that the three ladies were brutally assaulted.

14. Who did it?

15. Sakshi PW-5 gives us the answer.

16. Sakshi is daughter of Jagdish Batra and deceased Pushpa Devi and resides at the place where the crime was committed i.e. House No.109-B, DDA Flats, Jhilmil Colony, Delhi. She deposed that the time was around 4 – 4:30 PM and the date was 18.8.2002. She was present in the house. Her

maternal grandmother Ratna Devi and Mausi Rekha Devi had come to visit her mother Pushpa. Appellant who is her Mama (maternal uncle) reached. He had a dialogue with her Naani. They were talking to each other. Suddenly she heard noise of her Naani and saw her Mama inflicting blows with a chhuri on her Naani. Her mother came to rescue her Naani. Appellant attacked her mother. Her mother ran to save herself. Appellant chased her mother. She ran out of the house. Her Mausi Rekha tried to save her mother and the appellant ran after her Mausi.

17. Since Sakshi who was aged 15 years when she deposed did not state all facts which were narrated by her in her statement Ex.PW-5/A, which we note has been treated as the complaint on which FIR has been registered she was declared hostile and cross-examined. She admitted having told the police that when accused was injuring her mother her Mausi Rekha intervened but stated that she did not remember whether the accused caused injuries to himself. She denied that she saw the accused stab himself.

18. The young girl has been subjected to an extensive cross-examination, purport whereof appears to be to bring out that her father was present in the house. Apparently, an attempt was made to create evidence wherefrom it could be

argued that there is a possibility that Sakshi's father did the crime.

19. Having perused the testimony of Sakshi and giving credit to the fact that she was 15 years when she deposed on 1.4.2004, being a little over 13 years when she saw the incident, it is but apparent that events overtook Sakshi who was a witness to a brutal assault on her mother, grandmother and her Mausi. It is apparent that so overcome was Sakshi that she could hardly remember the graphic details as to what happened on the day of the incident. That she did not deposed seeing the appellant stab her Mausi; she having deposed that when the appellant was stabbing her mother who came to the rescue of her grandmother, even her Mausi intervened, is sufficient wherefrom we can safely conclude that the appellant caused injuries even upon Rekha Devi.

20. The song sung by the appellant when he was examined under Section 313 Cr.P.C. is *"It is incorrect"* and *"I do not know"*. Even to the question Nos.34 and 70 where it was put to him that he was removed in a CATS ambulance to GTB Hospital where his MLC Ex.PW-10/A was prepared, the answer given was *"It is incorrect. I had no knowledge"*.

21. Surely, it was expected of the appellant to have explained how he sustained injuries on his person as entered

in the MLC Ex.PW-10/A.

22. Presence of the appellant in the house of Pushpa Devi has also been proved through the testimony of Rahul, brother of Sakshi, aged 12 years when he deposed. As per his testimony his Naani and his Mausi Rekha were in their house when appellant came to their house at about 4:00 PM on 18.8.2002. He left the house for a haircut and when he returned he saw his mother, his Naani and his Mausi in a pool of blood and in an injured condition.

23. The motive for the crime is proved through the testimony of Jagdish Batra PW-29, as per which, he and his brother-in-law i.e. the appellant were partners in a business which had to be closed due to losses and that the appellant used to visit his house to demand money, which as per Jagdish Batra was his i.e. the appellant's share in the loss suffered.

24. It is urged by learned counsel for the appellant that from the testimony of Sakshi it is apparent that the appellant was having a dialogue with Ratna Devi and something happened which overtook the appellant, who acted in an impulse to do the offending act. Thus, learned counsel urges that Exception 4 to Section 300 IPC would be attracted.

25. Suffice would it be to state that as per Exception 4 to Section 300 IPC, culpable homicide is not murder, if the act

is committed without pre-meditation in a sudden fight in the heat of passion upon sudden quarrel and the offender not taking undue advantage or acting in a cruel or unusual manner.

26. We hold that Exception 4 to Section 300 IPC is not attracted in the instant case for the reason nothing has been brought out that Ratna Devi or for that matter the other two ladies who were murdered, did anything to rouse any passion. Secondly, if we look at the injuries upon the three persons, it cannot be said that the offender i.e. the appellant has not taken undue advantage or has not acted in a cruel or unusual manner.

27. It is next urged that the site plan Ex.PW-9/A showing the spots where the dead body of the three ladies inside the house were lying and the places wherefrom blood was lifted omits to show the spot wherefrom Sakshi saw the crime.

28. Suffice would it be to state that as held in the decision reported as AIR 2003 SC 3408 State of U.P. vs. Babu, a site plan is not a substantive evidence and thus omission to record something thereon would not always be fatal. Of course, where there is a serious infirmity in a site plan and prejudice is shown being caused to the accused, the position

would be different. It is also settled law that an error by an investigating officer would not be a ground to throw out the case of the prosecution, if otherwise proved to the satisfaction of the Court.

29. No prejudice caused has been shown to us.

30. It is next urged that the accused was admitted at the hospital on the same day and it has not been explained as to why he was arrested two days later.

31. We reject the argument as of any consequence for the reason no question was put to the investigating officer as to why was the appellant arrested after two days. Had he been asked the question, depending upon the answer one could have analyzed the issue. It is settled law that without inviting an answer on an issue of fact from the concerned witness, no argument can be advanced thereon. The reason is obvious. Courts are not expected to answer questions relating to a fact as to why somebody did or did not do something. Of course, where the person concerned is quizzed and given an answer, it can be argued, and then the Court would have to render an opinion regarding the creditworthiness of the answer given. But, in the instant case, we would be failing if we do not note that the appellant had injuries on his person which required medical treatment being given to him and for said

reason the investigating officer arrested the appellant when his condition improved. Of course, it would have been desirable to have arrested the appellant the same day for the reason Sakshi's statement Ex.PW-5/A was recorded the same day after the incident in which she disclosed the appellant as the culprit. After arresting him, the appellant could have been kept in the hospital for treatment, but in custody. But, not chartering said desirable course does not have any effect for the reason the conviction of the appellant is not based on any recovery effected from his person. There is an eye-witness to the incident.

32. From the testimony of Sakshi and from the fact that the appellant failed to render any explanation as to how he suffered the injuries on his person, we are satisfied that the impugned decision records a correct finding against the appellant.

33. The appeal fails.

34. The appeal is dismissed. The sentence imposed is affirmed.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 20, 2010
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