

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

% Date of Decision : 15<sup>th</sup> April, 2010

+ **CRL.APPEAL NO.678/2008**

MOHD. GULAB ..... Appellant  
Through: Mrs.Renu Kohli, Advocate and  
Mr.Rajesh Kohli, 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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes

**PRADEEP NANDRAJOG, J.** (Oral)

1. The song sung by the appellant, when incriminating circumstances were put to him under Section 313 Cr.P.C. is a two-lined couplet. He sang '*It is incorrect*' and '*I do not know*'.
2. To the last question, being question No.48, as to whether he had anything to tell, appellant answered:-

"I am innocent and falsely implicated in this case. I was married to Nasreen about 8 years back. From this wedlock, I am having two children aged 5 and 4 years. We were living happily. There was no quarrel between me and my wife. I used to work with Ikram. After getting information about unconsciousness of my wife, I along with Ikram went to my room. There I found that my wife had already died. I informed police. Later on I was falsely implicated in this case."

3. With reference to the defence taken by the appellant that he was on work and on getting information about his wife being unconscious he went along with Ikram to his house where he found his wife dead and he informed the police, we note that the investigating officer Insp.Ramesh Kumar PW-15 has deposed that the appellant was apprehended the next day of the crime i.e. on 11.3.2006 when he was on the street.

4. While cross-examining Insp.Ramesh Kumar PW-15 we find that no suggestion has been given to him that the appellant was present in his house when the police reached. No suggestion has been given that the police has kept the appellant in illegal detention and falsely shown appellant being apprehended on 11.3.2006.

5. Appellant claims to have gone to his house along with Ikram when he received information of his wife being unconscious.

6. Ikram has been examined as PW-3. He deposed that the appellant used to work in his shop and as usual, left the shop to go to his house at 2:30 PM on 10.3.2006. He deposed that after 2/3 hours he saw the appellant going on the road and he asked him as to where was the appellant going, to which he received an answer that the appellant was going to

Badarpur. He deposed that later on he learnt that wife of the appellant had died in her house.

7. Surprisingly, on being cross-examined by counsel for the appellant, he stated that after the appellant left his shop to go to his house at 2:30 PM, the appellant returned to his shop at around 3:30 PM. At around 5:00 PM he went along with the appellant to the appellant's house where they came to know that the wife of the appellant had died. He claimed that Dharampal (PW-1) had come to his shop and informed the appellant that the wife of the appellant had died.

8. Suffice would it be to record that Ikram has turned turtle on being cross-examined, probably to lend a helping hand to the appellant who was his employee. But, Ikram forgot that in his examination-in-chief he stated that he saw the appellant on the road and on asking the appellant where was he going, received an answer that the appellant was going to Badarpur. In his examination-in-chief, Ikram has nowhere stated that after taking lunch at his house, the appellant returned to his shop and that Dharampal visited his shop at around 5:00 PM to give information of the wife of appellant dying.

9. Dharampal PW-1 had deposed that he was in his room at about 5:30 PM on 10.3.2006 when he heard screaming

sound of a lady coming from a room in front of his room. He saw appellant in a perplexed condition walking away from his room. He asked the appellant where was he going but the appellant ran away. He went inside the room where the appellant used to reside and saw the wife of the appellant lying dead. He came down from the room and saw the appellant making a telephone call to the police. After some time the police came and recorded his statement Ex.PW-1/A. A wrist-watch Ex.P-1 was seized from the bed as recorded in the memo Ex.PW-1/B. Broken bangles lying on the bed were seized as recorded in the memo Ex.PW-1/C.

10. SI Naveen Kumar PW-2 and Const.Nand Kishore PW-4 were the two police officers who reached the scene of the crime i.e. room No.10 at House No.A-148, Ramesh Market, Garhi and as per them they reached the spot at about 7:00 PM after information was received at the police station recording commission of the crime. Insp.Ramesh Kumar PW-15 was the person who reached the place of the crime next as even he proceeded when information of the crime was passed on to him. As deposed to by Insp.Ramesh Kumar he met Dharampal whose statement Ex.PW-1/A was recorded by him and endorsement Ex.PW-15/A beneath the statement was in his hand and that thereafter FIR was registered.

11. ASI Rakesh Kumar PW-8 has deposed that he received the rukka at 8:30 PM and registered the FIR Ex.PW-8/A.

12. Though Dharampal claims not to have seen the appellant murder his wife but his testimony is tell-tale evidence of res gestae. If he has to be believed, appellant was seen in a perplexed condition leave his room when upon entering in the room Dharampal saw wife of the appellant lying dead on the bed. The unusual conduct of the appellant of running away from his house where his wife was found murdered is fully inculpatory of his guilt, if we believe Dharampal.

13. To discredit Dharampal it is urged by learned counsel for the appellant that Dharampal resided on the first floor of the building and the residence of the deceased and the appellant was on the second floor and thus the claim of Dharampal, as deposed to by him that he heard screaming sound of a lady in a room which was in front of his room was false.

14. It is true that Dharampal resides on the first floor and the residence of the appellant was on the second floor, but that does not mean that Dharampal is a liar. At best it is a misstatement on the part of Dharampal that he heard the cries

from a room in front of his room. We note that Dharampal has not been cross-examined as to how come he could hear cries/shrieks of a woman on the second floor when he was on the first floor. We do not know how Dharampal would have answered the question. But we certainly know that a person cannot be discredited on a point on which he has not been cross-examined, unless the version of the person is so improbable that no reasonable person would accept it.

15. What is relevant is the fact that Dharampal claims to have seen the appellant running away from his room in a perplexed condition.

16. Now, we have evidence on record through the testimony of Insp.Ramesh Kumar PW-15 that the appellant was apprehended on 11.3.2004. If this be so, appellant had to explain reason for his absence from his house. The absence extends the entire night of 10.3.2006.

17. It is now urged as we were proceeding to dictate the order, to discredit Dharampal, that he claims to have seen the accused make a telephone call to the police from his shop. It is urged that Dharampal's wife Smt.Vimla PW-6 claims to be present in the shop on the ground floor but does not depose a of Dharampal to inform the police. Thus, it is urged that Dharampal has misstated a fact.

18. We need not bother on this issue for the simple reason, as noted above, in response to the last question as to whether he had anything to tell to the Court, appellant himself admitted having informed the police.

19. Cases are not unknown where husbands have either walked to the police station to admit to their guilt or having rung up the police admitting their guilt, but thereafter absconding. Thus, we simply note and thereafter reject the argument urged as the last submission, as to why, the appellant himself informed the police of the crime?

20. To conclude, by summarizing our decision, we hold that the testimony of Dharampal PW-1 establishes that the appellant was seen leaving his house in a perplexed condition at around 5:30 PM on 10.3.2006 at which point of time Dharampal saw wife of the appellant lying dead on the bed of the house. After ringing up the police and informing about the crime, appellant absconded. He never returned to his house. The entire night went by. The appellant was apprehended the next day.

21. What did the appellant do to his wife, further needs to be discussed.

22. Dr.Manish Kumar PW-9 has conducted the post-mortem on the dead body of the deceased on 13.3.2006. 10

external injuries as under have been recorded on the post-mortem report Ex.PW-9/A.

- “1. Contusion measuring 1 cm x 0.5 cm is present over left eye lid.
2. Contusion measuring 0.5 cm x 0.5 cm is present over outer angle of left eye.
3. Contusion measuring 0.5 cm x 0.5 cm is present just below left eye.
4. Abrasion measuring 0.5 cm x 0.25 cm is present over tip of nose.
5. Contusion measuring 0.25 cm x 0.25 cm is present over left side of lower lip.
6. An obliquely placed imprint abrasion measuring 8 cm x 0.3 cm is present over lateral aspect of left side of neck. Lower end is 5 cm above left sternoclavicular joint and upper end is 9 cm below left mastoid.
7. An obliquely placed abrasion measuring 5 cm x 1.2 cm is present over left side front of middle of neck, extending from 6 cm below left angle of mandible to 8 cm below chin.
8. Transversely placed imprint abrasion measuring 3 cm x 0.3 cm is present over right side of neck extending from 6 cm below right angle of mandible to 7 cm below chin.
9. Transversely placed imprint abrasion measuring 7 cm x 0.3 cm is present over front of middle of neck extending from 6 cm below chin to 7 cm below left angle of mandible.
10. Abrasion measuring 3 cm x 1 cm, transversely placed, with two extended arms each measuring 1 cm x 0.3 cm is present over left lateral aspect of neck extending from 7 cm below left mastoid to middle of nape of neck.”

23. Internal examination as recorded on the MLC showed diffused extravasation of blood on the underlying tissue and muscles of the neck. Trachea and bronchi were congested with petiechae all around inside. The deceased was carrying a pregnancy inasmuch as a dead female foetus measuring 41 cm in length was recovered from the uterus of the deceased. Cause of death opined was asphyxia as a result of ligature strangulation combined with smothering.

24. Ligature strangulation stands proved with reference to injury No.6, 7 and 10.

25. It is apparent that intending to cause death of his wife, appellant strangled his wife and as a result thereof she died due to asphyxia.

26. The act of the appellant spoken through by means of post-mortem report of the deceased concludes the issue that the act is nothing but murder.

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

28. Since the appellant is still in jail we direct that a copy of this decision be sent to Superintendent, Central Jail, Tihar, to be made available to the appellant.

**PRADEEP NANDRAJOG, J.**

**APRIL 15, 2010**  
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**SURESH KAIT, J.**