

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

% *Judgment Reserved on: 8th April, 2010*
Judgment Pronounced on: 13th April, 2010

+ **CRL.APPEAL 644/2007**

SHRI NATH Appellant
Through: Mr.K.B.Andley, Senior Advocate
with Mr.M.L.Yadav, Advocate and
Mr.M.Shamikh, Advocate.

versus

STATE 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 the Reporter or not?
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. As deposed to by Yogender Pal Singh PW-2 and his wife Chander Kanta PW-3 their daughter named Sarika was taught by the appellant Shri Nath who was her cousin, being the son of Prem Singh Chauhan, the elder brother of Yogender Pal Singh. Unknown to the parents, Shri Nath and Sarika developed relationship with each other and eloped in the year 1999. Needless to state, Sarika and Shri Nath were within spinda relationship, and even as per the social norms of the

society to which Shri Nath and Sarika belonged, this relationship was not acceptable. Though not said through their mouth, it is apparent that Sarika's parents would have liked that the issue was resolved without the knowledge of the public. This is the reason why Sarika's elopement was not reported to the police. As deposed to by the parents of Sarika, Prem Singh Chauhan assured them that as and when he would get information about the whereabouts of his son and Sarika he would inform the parents of Sarika. As deposed to by Chander Kanta PW-3 after she eloped Sarika changed her name to Sonia.

2. Time elapsed and parents of Sonia @ Sarika got no news regarding the whereabouts of their daughter, till as deposed to by Yogender Pal Singh, in February 2000, Prem Singh Chauhan informed him that he had seen Sarika in a vehicle which passes daily from Sector-13 Rohini and proceeds towards Sector-15 Rohini. At that, Prem Singh Chauhan lodged a complaint Ex.PW-2/A on 18.2.2000 at PS Prashant Vihar. In writing, Prem Singh Chauhan informed the police that his son Shri Nath had run away with Sarika on 19.10.1999 and that he had learnt that his son and Sarika were seen in a Tata sumo vehicle in Sector-13 Rohini. The complaint Ex.PW-2/A, as deposed to by Yogender Pal Singh, was countersigned by

Yogender Pal Singh. HC Surender Kumar PW-9 posted at PS Prashant Vihar had corroborated the fact that the complaint Ex.PW-2/A was received at the police station. As deposed to by SI Dinesh Chand PW-18 he was entrusted with the investigation of the complaint but no headway could be made.

3. 24.4.2003 was the date when criminal justice machinery which has finally ended in the conviction of the appellant and his father being acquitted was set into motion.

4. As deposed to by HC Mangat Ram PW-19, he was posted at the police control room on 24.4.2003 when at about 1:28 PM he recorded DD No.445, Ex.PW-19A, noting therein that a call was received at the police control room through telephone No.7614992 and the caller gave his name as Manoj Kumar and informed that a dead body was lying in the sewer of the house of Shri Nath in Gali No.19, Road No.10, Mukandpur. As deposed to by him, HC Mangat Ram forwarded the information to the concerned police station, where, as deposed to by ASI Prem Singh PW-13, he being posted as the duty officer PS Samaypur Badli, recorded said information vide DD No.17-A, Ex.PW-13/A at around 1:40 PM and entrusted the investigation to SI Dhananjay Gupta PW-29, who accompanied by Const.Dharamvir Singh PW-25 left for the spot.

5. Manoj Kumar, the person referred to by HC Mangat

Ram appeared as PW-7, but turned completely hostile and denied having made any telephone call to the police. He denied that Shri Nath and his wife Sonia and daughter Tannu (Tanya) were residing in the house in question.

6. It is apparent that Manoj Kumar PW-7 has deposed falsely for the simple reason how on earth could HC Mangat Ram conceive of the fact that Shri Nath was residing in the house, in the septic tank whereof, the dead body of a girl child and a woman were recovered. How could HC Mangat Ram refer to the house being in Block-D, Gali No.19, Road No.10, Mukandpur.

7. Be that as it may, SI Dhananjay Gupta PW-29 and Const.Dharamvir Singh PW-25, as deposed to by them, on reaching the spot i.e. a house in Block-D, Gali No.19, Road No.10, Mukandpur saw a crowd consisting of about 50-60 persons with the name of Prem Singh Chauhan (Advocate) on the board affixed in front of the house. A foul smell was emanating from the septic tank of the house. As deposed to by the police officers the lid of the septic tank was opened and the dead body of a lady and a female child were recovered from the septic tank.

8. As deposed to by SI Dhananjay Gupta he called for Prem Singh Chauhan and by the time the dead bodies were

taken out from the septic tank, Yogender Pal Singh and Chander Kanta also reached the spot. As deposed to by Insp.R.P.Gautam, SHO PS Samaypur Badli (PW-31) on receipt of information that dead body of a lady and a girl child were found in the septic tank of the house in question, even he reached the spot. He recorded Chander Kanta's statement Ex.PW-3/A as per which the dead body of the woman was that of her daughter Sarika. He made the endorsement Ex.PW-31/A beneath the said statement and sent Const.Dharamvir Singh for FIR to be registered. As deposed to by ASI Manohar Lal PW-12, the FIR Ex.PW-12/A was registered by him for the offence of murder. Taking along with him a copy of the FIR Const.Dharamvir Singh returned to the spot and handed over the same to Insp.R.P.Gautam, who by then had summoned the crime team, which could lift nothing of incriminating value at the spot. Const.Chunni Lal PW-22 a photographer, took the photographs Ex.PW-22/16 to Ex.PW-22/30, negatives whereof are Ex.PW-22/1 to Ex.PW-22/15.

9. As deposed to by Insp.R.P.Gautam and confirmed in their deposition by Const.Dharamvir PW-25 and Const.Chaman Lal PW-26, after seizing the two dead bodies which were in a highly decomposed state, they were sent to the mortuary of BJRM Hospital where autopsy was conducted the next day i.e.

on 25.4.2003 by Dr.B.N.Acharya PW-5 who prepared the post-mortem reports Ex.PW-5/A and Ex.PW-5/B of Sarika and the girl child Baby Tannu respectively, recording that no definite time since death could be ascertained as both bodies were highly decomposed. No definite cause of death of Tannu could be opined because the body was extremely decomposed. Qua Sarika it was noted that ante-mortem injuries caused by blunt force application on the mouth and the nose were found. Cause of death opined was pressure over external air passage i.e. mouth and nose smothering. As deposed to by Dr.B.N.Acharya one kidney of the deceased was missing. Further, as deposed to by him he preserved the clothes which were removed from the two dead bodies as also a bone sample, one each from the two bodies, if required for DNA examination in future.

10. Prem Singh Chauhan, father of the appellant was arrested at around 4:10 PM on 26.4.2003 from flat No.72, Adarsh Kunj, Sector 13, Rohini as deposed to by Insp.R.P.Gautam PW-31 and HC Ramesh Chander PW-32.

11. Interestingly, without deposing that Prem Singh Chauhan made any disclosure statement to him, as deposed to by Insp.R.P.Gautam PW-31, the day after his arrest i.e. on 27.4.2003, Prem Singh Chauhan led the police party to a room

on the second floor of house No.G-526-527, Jahangirpuri, Delhi and produced the complaint Ex.PW-18/A dated 18.2.2000 addressed to the SHO PS Prashant Vihar, the original birth certificate Ex.PW-10/D pertaining to the birth of a girl child named Tanya, discharge slips Ex.PW-16/A and Ex.PW-16/B issued by Hindu Rao Hospital pertaining to a patient named Sonia, a guarantee card Ex.PW-2/E having an inscription in the hand of Sonia, as deposed to by Yogender Pal Singh, pertaining to a sewing machine and a ration card Ex.PW-31/G, all of which were seized vide memo Ex.PW-31/F.

12. Appellant Shri Nath surrendered in Court on 7.5.2003 and on said information being received at the police station, as deposed to by SI Dhananjay Gupta PW-29, police remand for four days was obtained and Shri Nath was taken into police custody and upon interrogation made the disclosure statement Ex.PW-29/B as per which he disclosed about his residing as husband and wife with Sonia and a baby girl named Tanya being born out of their union. He further disclosed that Sonia had donated a kidney to one Pravin Garg and that the kidney transfer had taken place at Ganga Ram Hospital. He volunteered to get recovered photographs of himself, Sonia and their daughter as also papers pertaining to the property in which Sonia's and Tanya's dead body was found, disclosing the

fact that the said property was purchased in the name of Sonia and that he and Sonia had resided therein as husband and wife.

13. Pursuant to his disclosure statement Ex.PW-29/B, the appellant led the investigating officer to the house where the dead body of Sonia and her daughter were found and produced Ex.PW-17/A being a General Power of Attorney executed by Jitender Kumar PW-17 in favour of Sonia wife of Shri Nath, a receipt Ex.PW-17/B evidencing receipt of Rs.20,000/- by Jitender Kumar from Sonia as full sale consideration for purchase of the land and the building in question, an agreement to sell Ex.PW-17/C executed by Jitender Kumar in favour of Sonia wife of Shri Nath, an affidavit Ex.PW-17/D executed by Jitender Kumar confirming sale of the property in question in favour of Sonia wife of Shri Nath, a possession letter Ex.PW-17/E executed by Jitender Kumar in the name of Sonia wife of Shri Nath as also a Will Ex.PW-17/F executed by Jitender Kumar in favour of Sonia wife of Shri Nath. He also produced four photographs (which have remained unexhibited) in which Sonia and Shri Nath as also their daughter Tanya were photographed as per the disclosure statement of Shri Nath.

14. As deposed to by SI Dhananjay PW-29, based on the

disclosure statement of Shri Nath he wrote a letter to the administration of Ganga Ram Hospital who sent to him an approval Ex.PW-11/A by the authorization committee sanctioning Sonia wife of Shri Nath donating a kidney to Smt.Pravin Garg. On the document photographs of Sonia and Pravin have been affixed. He also sent a joint letter Ex.PW-14/B having affixed thereon the photograph of Sonia and Smt.Pravin Garg and the letter being jointly signed by the two and containing a request of donating the kidney. Three affidavits, one each executed by Sonia wife of Shri Nath and Smt.Pravin Garg and the third having a photograph and executed by Shri Nath were also sent. The affidavit executed by Sonia wife of Shri Nath having her photograph therein is Ex.PW-14/B-2. The one executed by Smt.Pravin Garg and having her photograph thereon is Ex.PW-14/B-1 and the one executed by Shri Nath son of Prem Singh and having Shri Nath's photograph thereon is Ex.PW-14/B-3. The affidavits Ex.PW-14/B-1 and Ex.PW-14/B-2 bear witness of Shri Nath son of Prem Singh. Photocopy Ex.PW-PW-14/B-4 of a ration card issued in the name of Shri Nath son of Prem Singh showing Sonia as the wife of Shri Nath was also forwarded. A certificate of relationship Ex.PW-14/B-4, having photographs of Sonia and Shri Nath, the certificate being issued by the Liaison Officer

certifying that Shri Nath and Sonia were husband and wife, was also sent.

15. At the trial, the afore-noted documents noted in para 14 above were proved by Dr.Nalini Kaul PW-14 who deposed that Ganga Ram Hospital is notified under the Organ's Transplantation Act for conducting transplantation of organ as per Notification Ex.PW-14/A and that pursuant to the joint application Ex.PW-14/B signed by the donor Sonia and the donee Pravin Garg the other documents referred to by us in para 14 above were submitted and that kidney transplantation was performed.

16. Ramesh Chand PW-10 the Sub-Registrar of Births & Deaths produced the register of births of Civil Line Zone and proved the entry showing that on 13.10.2000 a female named Tanya was born to Shri Nath and Sonia then residing at House No.13296 Jahangirpuri and that the information regarding the same was provided by Shri Nath and that the certified copy Ex.PW-10/A as also the original birth certificate Ex.PW-10/B was issued by their office.

17. Dr.Bimla Bansal PW-16 deposed that the discharge slips Ex.PW-16/A and Ex.PW-16/B showing discharge of Sonia wife of Shri Nath and a baby girl born to Sonia were issued by Hindu Rao Hospital.

18. The blood sample of Yogender Pal PW-2 and Chander Kanta PW-3 was taken and along with both samples of Sonia handed over after the post-mortem by Dr.B.N.Acharya as also the bone sample of Baby Tanya was sent for DNA analysis and as deposed to by Shri S.P.R. Prasad PW-33, a DNA analyst reports Ex.PW-33/B and the enclosures Ex.PW-33/C, Ex.PW-33/D and Ex.PW-33/E were sent by his department and that as per the report the DNA sample Ex.PW-A was that of the progeny of Yogender Pal and Chander Kanta. In respect of the analysis of the bone sample of Tanya, DNA could not be extracted as the same was highly decomposed.

19. Unfortunately for the prosecution witnesses cited to prove that they have seen the appellant live with Sonia as husband and wife in the building in the septic tank whereof dead body of Sonia and her daughter was found turned hostile. The closest, which the prosecution could prove through the testimony of Jitender Kumar PW-17, was his having executed the documents Ex.PW-17/A to Ex.PW-17/F in the name of Sonia wife of Shri Nath.

20. Having noted the aforesaid evidence, suffice would it be to state that none could dispute that the prosecution, through the medium of various documents has conclusively proved that a woman named Sonia wife of Shri Nath to whom a

daughter named Tanya was born existed in this world. All the afore-noted documents bearing the name of Sonia wife of Shri Nath are the written proof of the said fact. Through the testimony of the parents of Sonia is the proof of the fact that their daughter eloped with Shri Nath.

21. The scope for the argument that Sonia being a common name and even Shri Nath being a common name, there could be thousands and thousands of Sonia wife of Shri Nath and therefore it could be possible that all said documents could relate to some other person is rendered meaningless in the teeth of Ex.PW-14/B-3 being the affidavit deposed to by Shri Nath son of Prem Singh on which the photograph of the appellant has been affixed. As per said affidavit the appellant has deposed that he is the husband of Smt.Sonia and has no objection if his wife Sonia donates a kidney to Smt.Pravin Garg. The donor Sonia referred to as his wife by Shri Nath in Ex.PW-14/B-3 is the executant of the affidavit Ex.PW-14/B-2 on which Sonia's photograph has been affixed and interestingly the attesting witness thereto is Shri Nath i.e. the appellant. Further, the certificate Ex.PW-14/B-4 certifying that Shri Nath whose photograph has been affixed thereon and Sonia whose photograph is also affixed thereon are husband and wife, bring out the identity of Sonia and Shri Nath with respect to their

photographs.

22. What did the appellant has to say when he was examined under Section 313 Cr.P.C? We note the question and the answer in relation to the said:

“Q33 It is also in prosecution evidence that Ex.PW-14/B, a joint application in form 10 was submitted by Sonia (since deceased) in the capacity of prospective donor and Praveen Garg in the capacity of prospective recipient for transplantation of kidney. Alongwith this application, affidavit Ex.PW-14/B1 was submitted by Praveen Garg and affidavit Ex.PW-14/B2 was submitted by Sonia (since deceased). You in the capacity of close relative of donor also filed affidavit Ex.PW-14/B3 to the effect that you had no objection to the donation of kidney by your wife Smt.Sonia to Praveen Garg. What have you to say?

Ans. I have no knowledge about this fact.

Q34 It is in prosecution evidence that Sh.V.B.Sharma, the Liaison Officer, issued certificate Ex.PW-14/B4 with regard to relationship between you and Sonia (since deceased) as that of husband and wife. Attested copy of Ration Card of you and Sonia (since deceased) is Ex.PW-14/B5 and the attesting copy of ration card of Praveen Garg and Arun Kumar Ex.PW-14/B6. What have you to say?

Ans. It is false.”

23. The song sung by the appellant ‘*I have no knowledge about this fact*’ and ‘*It is false*’ is not enough. The appellant had to explain his signatures and his photograph on such documents on which his photograph was affixed. Having not denied his signatures on such documents on which the same were appended and having not denied the two

documents on which his photograph stood affixed, being his photograph (indeed the two photographs are that of the appellant), the appellant has made himself liable for the Court to draw an adverse inference against him. Indeed, so tell-tale is the story told by the documents which have been proved by PW-14 that there is hardly any scope for any argument to urge that Sonia was not married to the appellant. The other documents to which we have referred to above prove Tanya being born to Sonia. That the dead body of Sonia was found in the septic tank of the house sold by Jitender in the name of Sonia also nails the guilt of the appellant who has chosen to deny even the fact that he was married to Sonia. Unless a husband explains the circumstance of having parted company with his wife, it is an incriminating conduct for a husband not to report his wife missing. It is highly incriminating conduct for a husband who even denies the factum of marriage. It is obvious that such a husband chooses to deny the truth for the reason he has no explanation which is worthy of any credit to explain his innocence. Although the report of the DNA expert gives no opinion qua the suspect sample obtained from the bone of the dead body of the young girl suspected to be that of Tanya for the reason the body was highly decomposed, the fact of the matter remains that Tanya is missing and her father, the

appellant, has rendered no satisfactory explanation as to where Tanya is. Said fact coupled with the conduct of the appellant in denying that Tanya was ever born are sufficient to hold that the appellant is guilty of murdering Tanya.

24. We need to discuss no further as the documentary evidence proved is sufficient to hold against the appellant.

25. The appellant has committed the double murder of his wife and daughter and has been rightly sentenced to undergo imprisonment for life.

26. The appellant should be lucky as in the sentence imposed it has not been directed that the appellant's case for premature release from jail should not be considered before a term set down by the Court expires.

27. Before concluding we may note that the father of the appellant has been acquitted by giving him the benefit of doubt and nothing has been shown to us with reference to the reasoning of the learned Trial Judge that any evidence found tainted against the appellant's father has been used against the appellant. Even ignoring the documents got recovered by the father of the appellant we note that the other documentary evidence produced at the trial is sufficient wherefrom the guilt of the appellant in relation to the conduct of the appellant in denying his being married to Sonia and not reporting to the

police that Sonia was missing is sufficient wherefrom the guilt of the appellant can be inferred.

28. We dismiss the appeal but with a direction that whenever the Executive considers the case of release of the appellant, it shall be brought to the notice of the concerned Board that the appellant is guilty of double murder.

29. Copy of the instant decision be sent to the Superintendent, Central Jail, Tihar for being made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 13, 2010
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