

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

% *Judgment Reserved on: 13th April, 2010*
Judgment Pronounced on: 19th April, 2010

+ **CRL.APPEAL No.812/2008**

JAIVEER SINGH Appellant

Through: Mr.Rajesh Mahajan, Advocate

versus

STATE Respondent

Through: Mr.M.N.Dudeja, Advocate

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. To each and every incriminating circumstance put to him when examined under Section 313 Cr.P.C., the stock answer given by the appellant was: '*It is incorrect*'.

2. The appellant denied that his brothers Dalbeer Singh and Mahavir Singh were tenants in a room on the first floor of House No.RZ-26P/36A, Gali No.39, Mangal Bazar Road, Indra Park, New Delhi where appellant was also residing and that his brothers were working in a private company and thus would leave for work at around 8-8:30 AM and return by 6:00

PM and since he was unemployed, the appellant used to stay back. The appellant denied that in another room on the same floor resided Sangeeta with her husband Vijay Chamoli and her mother-in-law Prema Devi. Appellant denied that on 8.1.2002 his brothers left for work as usual and so did Vijay Chamoli and that the mother and the wife of Vijay Chamoli were in their room and that the appellant was in his room. The incriminating circumstance of the appellant being absconded and being arrested in Bombay was simply denied. Evidence pertaining to Sangeeta and her mother-in-law being murdered in their room was simply denied. Incriminating circumstance pertaining to a vest with blood stains and having cuts thereon stated to be that of the appellant being recovered from the room in which the appellant and his brothers were residing has likewise been simply denied. Recovery of a knife from the switch board which has been opined as the possible weapon with which appellant received injuries on his abdomen has been denied. Incriminating circumstance put vide question No.33 has also been responded with the answer: *'It is incorrect'*.

3. Incriminating circumstance put to the appellant vide question No.33 is as under:-

“Q No.33: It is further in evidence against you that you were got medically examined along with the

knife Ex.P-1 and your medical report is Ex.PW-8/2 containing the opinion of the doctor about the injuries on your person. What have you to say?

4. Case of the prosecution is that the brothers of the appellant namely Dalbeer Singh and Mahavir were tenants in a room on the first floor of House No.RZ-26P/36A, Gali No.39, Mangal Bazar Road, Indra Park, New Delhi and in another room on the same floor resided Vijay Chamoli along with his wife Sangeeta and mother Prema Devi. The brothers of the appellant were employed in a private firm and would leave their residents at around 8/8:30 AM and would return by 6:00 PM. Likewise, Vijay Chamoli also used to leave for work around same time. Being unemployed, the appellant used to stay back. The appellant had an evil eye on Sangeeta who had complained to her husband about said fact. On 8.1.2002, as per their usual schedule, the brothers of the appellant left for work at around 8/8:30 AM, so did Vijay Chamoli. The appellant, Sangeeta and her mother-in-law Prema Devi were the only persons who were on the first floor of the building. Inder Singh PW-2, the husband of the landlady i.e. Smt.Dhano Devi PW-1 went up to the roof of the second floor at around 6:30/6:45 PM to bring clothes hung up for drying and found it strange that there was absolute darkness and silence on the first floor, inquisitively he went to the first floor where he found Sangeeta and Prema Devi lying dead. The appellant was not

to be seen. Inder Singh went to the adjoining room where appellant and his brothers used to stay and on switching on the light noticed a vest with blood thereon hanging on a nail near the almirah. He informed the police. The appellant was found absconding till he was arrested by the police at Bombay on 9.8.2002 and information being passed on to the police at Delhi, appellant's custody was taken over and the appellant was formally arrested in the instant case on 12.8.2002. On interrogation his disclosure statement Ex.PW-18/D was recorded as per which he told that he committed the crime and Sangeeta managed to pick up a kitchen knife and stab him as a result he sustained injuries and his vest got cut and stained with blood. He removed his vest and hung it on a nail and that he hid the knife in the room itself and could get it recovered. Thereafter, as recorded in the memo Ex.PW-18/G, appellant took the investigating officer to the room where he and his brothers resided and hidden behind the electric panel board he got recovered the knife Ex.P-1. The appellant was got medically examined on 19.8.2002 and the knife Ex.P-1 was sent to the doctor concerned for opinion and as recorded on the MLC Ex.PW-8/2, 3 injuries being:-

“1. Old linear scar mark with keloid formation measuring 0.4 cm x 0.2 cm situated in the epigastric region in midline 10.5 cm above the umbilicus.

2. Old linear scar mark measuring 1.5 cm x 0.2 cm in midline in epigastric region just below and medial to injury No.1.

3. Old linear scar measuring 1.5 cm x 0.2 cm situated 3.5 cm above and left to the umbilicus.”

were detected and noted by the doctor concerned i.e. Dr.Bhim Singh, who, with reference to the knife Ex.P-1, sketch whereof was drawn by him on the MLC opined that the same could be caused by the knife in question. He further opined that the injuries could be caused during scuffle and were more than 4 months old.

5. Lest there be any confusion we may note at the outset that two objects have been referred to as Ex.P-1 while recording evidence. Firstly, a vest which was recovered as aforementioned has been referred to as Ex.P-1. Secondly, a knife which was got recovered by the appellant as aforementioned has also been referred to as Ex.P-1.

6. The post-mortem on the dead body of Prema Devi and Sangeeta was conducted by Dr.M.M.Narnaware PW-9 who proved the post-mortem reports Ex.PW-9/1 and Ex.PW-9/2 of Prema Devi and Sangeeta respectively which show that Prema Devi was strangled with ligature material and died due to asphyxia. Sangeeta died due to head injuries. Subdural and subarachnoid haemorrhage was detected on her person.

7. Dhano Devi PW-1 and her husband Inder Singh PW-2 deposed that the brothers Dalbeer Singh and Mahavir Singh of the appellant were the tenants under Dhano Devi with respect to a room on the first floor of House No.RZ-26P/36A, Gali No.39, Mangal Bazar Road, Indra Park, New Delhi. In another room on the same floor resided Vijay Chamoli as a tenant along with his wife Sangeeta and his mother Prema Devi. That brothers of the appellant were employed and used to leave for work at around 8/8:30 AM and would normally return by 6:00 PM. Vijay Chamoli also used to leave and return around said time. Being unemployed, the appellant used to stay back. Sangeeta and her mother-in-law also used to stay back. On 8.1.2002 the brothers of the appellant went to work. Vijay Chamoli also left. After washing clothes Dhano Devi went to the roof at around 11:00 AM and hung the clothes for drying. Inder Singh went up at around 6:00 in the evening to remove the clothes.

8. Inder Singh further deposed that he felt suspicious on seeing neither light nor hearing any sound of activity from the first floor and his curiosity led him to the first floor where he saw Sangeeta and Prema Devi lying dead in their room. He went to the room where the appellant and his brothers were staying. Nobody was present. He switched on the light and saw a blood stained vest with cuts thereon hanging on a nail

and that he informed the police. Inder Singh further deposed that the vest Ex.P-1 was recovered by the police in his presence after police came to the spot when he gave information to the police. Inder Singh further deposed that he had seen Jaiveer frequently wearing the vest which was recovered. He further deposed that Jaiveer and his brothers were the sons of his sister-in-law.

9. Vijay Chamoli PW-6 deposed that he resided with his wife and mother as a tenant in a room on the first floor of House No. RZ-26P/36A, Gali No.39, Mangal Bazar Road, Indra Park, New Delhi and that the appellant and his brothers resided as a tenant in another room on the same floor. On the day of the incident i.e. 8.1.2002 the brothers of the appellant had left for duty when he left for duty at 8:00 AM and that at 7:00 PM his friend Sushil informed him to return home immediately. On his return he found his mother and wife dead. That around Diwali his wife had told him that appellant had passed some comments on her and had cracked some obscene joke to her and that he had told his wife to remain alert.

10. SI Hari Kishan PW-19 to whom investigation was entrusted when DD No.37A was recorded at PS Dabri at 7:00 PM on 8.1.2002 deposed that the vest Ex.P-1 with cut marks

and with blood stains was seized in his presence by the SHO Kailash Chand who had come to the spot after he i.e. SI Hari Kishan got registered the FIR for the offence of murder. SI GhanShyam PW-24 deposed that on learning information that the appellant had been arrested at Bombay under Section 41 Cr.P.C. he went to Bombay and took custody of the appellant and formally arrested him on 12.8.2002 and after interrogating him recorded his statement Ex.PW-18/D that the appellant led him to the room where he was residing with his brothers and from behind the panel board of electricity supply got recovered the knife which was seized by him as per memo Ex.PW-18/G and that he got the appellant examined by the doctor. Insp.Kailash Chander PW-25 corroborated what was deposed to by SI Hari Kishan and SI Ghanshyam.

11. It is apparent that the incriminating evidence against the appellant is that only he and the two unfortunate deceased ladies were present on the first floor of House No. RZ-26P/36A, Gali No.39, Mangal Bazar Road, Indra Park, New Delhi after around 8:00 AM when brothers of the appellant and Vijay Chamoli left for work. The two ladies were found dead at around 6:30 PM by Inder Singh and the appellant absconded and continued to remain a fugitive till he was arrested 7 months later on 9.8.2002 at Bombay. No explanation has been given by the appellant as to when he left the place of the

crime and why were his whereabouts not known to his family members. In other words two pieces of incriminating evidence exist. The first is last seen and the second is absconding. The further incriminating evidence against the appellant is the injuries on his person as recorded and noted on his MLC Ex.PW-8/2 qua which the appellant has given no explanation as to when and how he received the injuries. That the injuries existed and were noted on his person has been deposed to by Dr.Bhim Singh, the author of the MLC Ex.PW-8/2 who has not been cross-examined and yet in spite thereof the appellant responded to question No.33 by falsely saying '*It is incorrect*'. Now, in the teeth of not cross-examining PW-8, the fact proved is that PW-8 examined the appellant on 19.8.2002 and noted 3 injuries on his abdomen which were caused by a sharp edged weapon. It was in the personal knowledge of the appellant as to how he sustained the injuries and his rendering no explanation renders credit to the fact disclosed by the appellant in his confessional statement that to save herself Sangeeta had used the knife on him. Further incriminating evidence is the recovery of the vest deposed to as that of the appellant by Inder Singh which had cut marks thereon.

12. Needless to state, the learned Trial Judge has convicted the appellant for the offence of double murder.

13. Learned counsel for the appellant urged that no evidence has been led of the appellant being arrested at Bombay and thus there is no proof of appellant absconded. Questioning the motive, learned counsel urged that as per the testimony of Vijay Chamoli, if at all, the appellant had cracked a dirty joke with Sangeeta around Diwali which had to be in the year 2001. Counsel urged that in the year 2001 Diwali was celebrated on 16.11.2001. It was submitted that the date of the crime being 8.1.2002 the nexus of time with the alleged incident of cracking a dirty joke was broken. Counsel further submitted that as recorded on the MLC Ex.PW-8/2 the injuries on the appellant were opined to be more than 4 months old; counsel urged that the prosecution had to prove that the injuries were around the time when the crime took place and this not having been proved, it hardly mattered whether the appellant gave a false answer to question No.33. Qua the vest recovered from the room where the appellant and his brothers resided, counsel urged that no opinion being taken from the doctor or any expert that the knife Ex.P-1 could cut the vest, nothing turns on said vest being recovered. Lastly, counsel urged that it was abnormal conduct for an accused to stay back at the place of the crime, open the electricity distribution panel, hide a knife, put the screws back to put the panel back in place and then flee.

14. It is true that the prosecution has been negligent in not obtaining certified copies of the proceedings in the Court of Metropolitan Magistrate at Bombay where custody of the appellant was obtained as claimed by the prosecution. But, we have no reasons to disbelieve the testimony of SI Ghanshyam PW-24 that he went to Bombay on learning about appellant being apprehended and obtaining permission from the Court for police custody of the appellant and formally arresting the appellant in the instant case as per arrest memo Ex.PW-18/A. As noted above, the argument pertaining to appellant not being proved to be arrested at Bombay was premised to question the incriminating circumstance of the appellant absconded. Well, assuming that the appellant was not arrested at Bombay, what difference does it make? None at all, for the reason no recovery from the personal search of the appellant has been relied upon as incriminating evidence and no recovery has been shown from Bombay. From the testimony of PW-1, PW-2 and PW-6 we have evidence on record that the appellant was nowhere to be seen in his room on 8.1.2002 when the crime was detected. Through their testimony we have evidence that when the brothers of the appellant and Vijay Chamoli left their respective rooms on the first floor of House No. RZ-26P/36A, Gali No.39, Mangal Bazar Road, Indra Park, New Delhi, except for the deceased and the

appellant nobody else remain back. The fact that the appellant was found absconding on the day of the crime is sufficient to draw an inference that the appellant was wanting to flee from justice and this shows his guilty mind. As per SI Hari Kishan PW-19 he reached the scene of the crime after 7:00 PM when DD No.37A was entrusted to him. He recorded the statement Ex.PW-6/1 of Vijay Chamoli and made the endorsement Ex.PW-19/A beneath the same and got the FIR registered. As recorded on the endorsement Ex.PW-19/A the tehrir was dispatched from the spot at 9:00 PM. Thereafter, as deposed to by SI Hari Kishan PW-19 and Insp.Kailash Chand PW-25 recoveries were effected at the spot and a photographer was summoned who took photographs. It is apparent that the FIR was registered after 9:00 PM and thus Insp.Kailash Chand would have reached the spot after 9:00 PM. It is apparent that thereafter proceedings continued at the spot till late night. That the appellant never came back till late night shows that the appellant had fled knowing that law would catch up with him.

15. We may note that no police officer or any other witness has deposed that brothers of the appellant returned, but we have looked into the inner case diary and find it recorded therein that in the night of 8.1.2002 the brothers of the appellant returned from work and were questioned about

the whereabouts of the appellant. They disclosed that they had no knowledge as to what had happened. They disclosed that the appellant had worked at Bombay as a waiter for about 1½ years.

16. That the incident when appellant cracked a dirty joke with Sangeeta around Diwali and the crime took place on 8.1.2002 is neither here nor there for the reason it is apparent that the appellant was desiring flesh of the opposite sex and he tested the water when he cracked a dirty joke with Sangeeta around Diwali in the year 2001. It is apparent that the appellant was wanting to see how Sangeeta would respond to him. We need not write much save and except that when would the devil within overpower a man and when would the evil gain the upper hand over the good in a man, it is very difficult to say. It is apparent that overcome by passion the appellant had desired something evil vis-à-vis Sangeeta; there was resistance by Sangeeta and her mother-in-law; both lost their lives.

17. That the injuries on the appellant were opined to be more than 4 months old and the date of the incident is 8.1.2002 and the date when the appellant was medically examined is 19.8.2002 makes no difference on the inference which has to be drawn against the appellant for giving a false

answer to question No.33. It is apparent that it is impossible for any expert to precisely state the timing of an old injury. Once a wound heals and a scar is left, it is impossible for anyone to tell as to how old is the scar. It was for the appellant to have truthfully disclosed the circumstance and the time when he received the injuries for the reason it related to a fact within his personal knowledge and hence law casts an obligation on the appellant to speak under pain of adverse inference being drawn against him.

18. It hardly matters whether no expert opinion was sought on the cut marks on the vest Ex.P-1 recovered from the room of the appellant for the reason PW-2, the landlord of the house has categorically deposed that he had seen the appellant wear the vest. At this stage it may be clarified that some witnesses have referred to the vest as a T-shirt. It seems that the piece of clothing is an inner vest worn by people in North India and especially in the Hindi belt; it being neither a vest nor a T-shirt but a hybrid thereof.

19. The argument that it was abnormal conduct for an accused to stay back at the place of the crime, open the switch board and conceal the knife is neither here nor there for the reason the appellant knew that he was alone and had ample time to do whatever he desired. It need not be that it is

the compulsion of every accused to scoot at the earliest available opportunity after committing the crime.

20. To conclude we hold that the evidence of the appellant and his brothers and Vijay Chamoli, deceased Sangeeta and deceased Prema Devi being the only occupants of the first floor of House No. RZ-26P/36A, Gali No.39, Mangal Bazar Road, Indra Park, New Delhi and that on the day of the incident brothers of the appellant and Vijay Chamoli left for work establishes that the appellant and the two deceased ladies were the only three persons on the first floor of the house in question. The said evidence is akin to last seen evidence. The evidence of appellant absconding. The evidence of the appellant having 3 scar marks on his abdomen all of which were the result of a sharp edged weapon injuring the appellant and the appellant rendering no explanation qua the same form a complete chain by themselves wherefrom the guilt of the appellant can be inferred. Further evidence of the vest of the appellant having blood stains thereon and cut marks being recovered from the scene of the crime, though of a very weak kind is further evidence against the appellant. Ignoring the recovery of the knife Ex.P-1 at the instance of the appellant, we conclude by affirming the verdict of guilt against the guilt of the appellant and the sentence imposed.

21. The appeal is dismissed.

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

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 19, 2010
mm