

R-110

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

% Date of Decision: 9th March, 2010

+ **CRL. APPEAL NO.730/2007**

SMT.SUDAMA Appellan
Through: Ms.Charu Verma, Advocate

Versus

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

PRADEEP NANDRAJOG, J. (Oral)

1. We note that the appellant has all throughout been represented through a legal aid counsel and as per list supplied to the Court by the Delhi High Court Legal Services Committee Mr.Sumeet Verma Advocate has been nominated to argue the appeal.

2. Ms.Charu Verma Advocate is present in Court and states that she is prepared with the matter. We appoint Ms.Charu Verma Advocate as the Amicus Curiae to argue the appeal and fix her fee in sum of Rs.7,500/- to be paid by the

Delhi High Court Legal Services Committee.

3. Young Cherry could not blossom. She suffered an untimely death on or around 28th or 29th August, 2003.

4. That Cherry's dead body was found tucked inside a cemented cupboard on the first floor behind a crockery table in the building bearing Municipal No.AZ-2/266, Paschim Vihar, New Delhi is not in dispute. The time when the dead body was found, as deposed to by Narender Singh Sodhi PW-5 was around 2:15 PM. The date was 31.8.2003.

5. That Cherry was missing stands recorded at PS Paschim Vihar vide DD No.15A, Ex.PW-14/A on 30.8.2003 at 4:15 PM, on the complaint of Cherry's uncle Col.Inderbir Singh Behl PW-23.

6. That the body of Cherry was found as aforementioned in her house on 31.8.2003 stands recorded at the police station vide DD No.8A Ex.PW-1/A at 2:15 PM.

7. Inspector Lakhvinder Singh PW-12, the SHO PS Paschim Vihar reached the spot and took into custody the dead body of Cherry and sent the same for post-mortem to Sanjay Gandhi Memorial Hospital where Dr.V.K.Jha PW-19 conducted the post-mortem on 2.9.2003 and penned the post-mortem report Ex.PW-19/A opining thereon that the deceased died due to asphyxia resulting from ligature throttling of the

neck. He opined that the likely time of death was 4-5 days prior to the date when he did the post-mortem. Meaning thereby, the likely time of death of the deceased is any time between 28th and 29th August 2003.

8. That the deceased was working with Sanjivini Counseling Center and was under the direct control of Ritu PW-8 has been deposed to by Ritu who has additionally deposed that the deceased did not report for work on 28th August 2003 and thus she sent her driver Anil PW-9 to the house of Cherry and that her driver returned to inform her that the servants in the house had informed him that Cherry had not returned from work the previous evening.

9. Anil PW-9 has deposed that on 28th August 2003 Ritu sent him to the house of Cherry because Cherry was not responding over the telephone. He knocked the door of Cherry's house and finding no response went to the neighbouring house of Mr.Narender Singh Sodhi PW-5. Both of them returned to Cherry's house and at the second time the door was partially opened and he saw Madan the domestic help of Cherry who stated that Cherry had not yet returned to the house and would be returning home after 9:00 PM.

10. Anil was declared hostile by the learned public prosecutor and with reference to his statement recorded by

the investigating officer under Section 161 Cr.P.C. was confronted with the question that he had seen even appellant in the house when Madan opened the door. Anil denied having seen so or said so to the investigating officer.

11. Narender Singh Sodhi PW-5 deposed that he was the immediate neighbour of Cherry. That he last saw Cherry in the evening of 27.8.2003. In the morning of 28.8.2003 a driver of the employer of Cherry contacted him to enquire about Cherry. He and the driver went to Cherry's house and knocked at the door. Madan opened the door and he saw the appellant sitting on the floor. He deposed that the appellant was the maid in the house of Cherry. He deposed that Madan and appellant stated that Cherry had not come back from work and that she would be returning home around 9:00 PM. He further deposed that next day on 29.8.2003 he once again went to Cherry's house at around 10-10:30 PM. Madan responded to his knocks and informed him that Cherry had still not returned. He deposed that when Madan opened the door in the night he saw Sudama i.e. the appellant in the house. He went on to depose that next day morning he noted that the newspaper outside the house had not been picked up. He informed when Col.Behl a relative of Cherry who came to the house. Mr.Behl got made a duplicate key and entered the

house. Nobody was present in the house. Cherry could not be seen. Missing person report was lodged. Next day body of Cherry was recovered from the first floor in a cemented cupboard behind crockery table when foul smell was noticed emanating from the house.

12. Col.Inderbir Singh Behl PW-23, the person referred to by Narender Singh Sodhi corroborated what was deposed to by Narender Singh Sodhi with reference to his visit to the house of the deceased at the asking of Narender Singh Sodhi and his calling a locksmith to open the house and access the same and his lodging the report with the police of Cherry being missing.

13. The locksmith Lakhan Singh PW-20 whose role has been referred to by the preceding two witnesses confirm their testimony of having gone to the house and preparing a duplicate key.

14. Madan and the appellant were apprehended from the railway station as claimed by the prosecution and from jute bags which they were carrying certain articles of the deceased were recovered.

15. We eschew reference to the said recoveries for the reason we find that even ordinary articles such as a rubber band has been allegedly identified as that belonging to the

deceased.

16. Being juvenile, Madan was sent for trial to a Juvenile Court. Suffice would it be to state that against the appellant the incriminating evidence was of her being seen in the house till as late as the night of 29.8.2003. She and her co-accused giving false whereabouts of the deceased. She and co-accused Madan absconding. The learned Trial Judge has also used as incriminating evidence the recoveries of the personal belongings of the deceased when the appellant was apprehended.

17. We ignore the recoveries as the same relates to ordinary articles and we find it strange that the father of the appellant would be in a position to identify as ordinary a thing as a hair rubber band and say with certainty that the same belonged to his daughter. It is also relevant to note that the father of Cherry was residing abroad and would not be expected to be familiar with the personal effects of Cherry. Lastly, it may be noted that the articles recovered were not put up for a test identification.

18. It may be noted that when examined under Section 313 Cr.P.C. the appellant admitted that she and Madan were employed as domestic helps by Cherry but stated that she left employment on 11.8.2003.

19. The false answer by the appellant of having left employment on 11.8.2003 is writ large for the reason Narender Singh Sodhi has proved beyond doubt that the appellant was still working in the house of Cherry till Cherry went missing and that he had seen the appellant in the house on 28.8.2003 as also on 29.8.2003.

20. Thus, the incriminating evidence against the appellant is of her being present in the house of Cherry, working as a domestic help till as late as 29.8.2003. The post-mortem report of Cherry probablizes Cherry being murdered in time between 28th and 29th August, 2003; both dates on which appellant and Madan were in Cherry's house.

21. The false and evasive answers given by the appellant to Narender Singh Sodhi regarding the whereabouts of Cherry further inculcate her. That she absconded from the house is further incriminating evidence.

22. Her false answer of having left the employment on 11.8.2003 supplies another chain of incriminating circumstance to nail the appellant.

23. Even ignoring the recoveries attributable to the appellant, the chain of circumstances, in our opinion, is complete wherefrom the guilt of the appellant can be inferred.

24. A feeble attempt has been made before us to urge

and for said argument reference has been made to the confessional statement of Madan wherein it stands recorded that because Cherry used to rebuke him he was compelled to strangulate Cherry.

25. The argument is fairly attractive, but ignores the fact that Madan by himself, assuming he strangled Cherry, could not have lifted the dead body and tuck the same in the cupboard behind the crockery table. He surely required the help of another person.

26. We concur with the view taken by the learned Trial Judge pertaining to appellant being convicted for the offence punishable under Section 302 and 201 IPC.

27. Since with are not satisfied with the evidence pertaining to the recovery we hold that the conviction of the appellant for the offence punishable under Section 381 IPC cannot be sustained.

28. The appeal is partially allowed. Conviction of the appellant for the offence punishable under Section 318 IPC is set aside. Sentence relatable thereto is also set aside. Conviction of the appellant for the offences punishable under Section 302 and Section 201 IPC is upheld along with relatable sentences.

29. Since the appellant is in jail, we direct that a copy

of this decision be sent to the Superintendent Central Jail Tihar for being made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

March 09, 2010
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